

## General Terms and Conditions for the Provision of Engineering Services, Support Services, and Software Maintenance

These terms and conditions (the “**Terms**”) govern the supply of engineering services, support services, and software maintenance by us to you. Please read these Terms carefully.

### 1. Definition and Interpretation

#### 1.1. Definitions:

**ETAS:** means ETAS Limited (registered in England and Wales with company number 03383737) whose registered office is at c/o Robert Bosch Ltd, Broadwater Park North Orbital Road, Denham, Uxbridge UB9 5HJ, England.

**Business Day:** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Confidential Information:** information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) including, without limitation, relating to ETAS’s business, clients, customers, products, pricing, assets, affairs and finances confidential to ETAS and trade secrets including, without limitation, technical data and know-how relating to ETAS’s business or any of its suppliers, clients, customers, agents, distributors, shareholders or management, whether or not such information (if in anything other than oral form) is marked confidential.

**Contract:** means the contract between ETAS and the Customer for the supply of Services in accordance with these Terms.

**Customer:** means the person or firm who purchases the Goods and/or Services from ETAS.

**Customer Materials:** means all documents, information, items, equipment, hardware, tools, systems, cabling, and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to ETAS in connection with the Services.

**Data Protection Laws:** means any applicable law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of personal data to which a party is subject, including without limitation (i) the Data Protection Act 2018; (ii) the UK General Data Protection Regulation as it forms part of the law in the UK by virtue of section 3 of the European Union Withdrawal Act 2018; (iii) the UK Privacy and Electronic Communications Regulations 2003; and,

where relevant, (iv) the EU General Data Protection Regulation 2016.

**Engineering Services:** means the development and creation of Software which is tailored to the Customer’s business needs.

**Force Majeure Event:** means any event beyond a party’s reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes, failure of energy sources or transport network, raw material shortages, acts of God, war, terrorism, civil commotion, malicious damage, breakdown of plant or machinery, fires, floods, storms, earthquakes, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

**Intellectual Property Rights:** means any patents, rights to inventions, copyright and related rights, trademarks, trade names, rights to goodwill or to sue for passing off rights in designs, unfair competition rights, rights in computer software, database rights, rights in confidential information (including know-how), utility models 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.

**Order:** means the Customer’s order for the supply of Services in whatever form.

**Services:** means the engineering services, support services, hardware repair and calibration services, software maintenance services or any other services provided by ETAS to the Customer set out in the Order.

**Software:** means the ETAS software to which the Services relate. This may be standard ETAS Software or customised Software (as the case may be).

**Software Maintenance:** means the software maintenance services provided by ETAS to the Customer set out in the Order.

**Statement of Work:** means any specification for the Services (as applicable) that is produced by ETAS including any related plans and drawings.

**Terms:** means the terms and conditions set out in this document (as amended by ETAS and notified to the Customer from time to time).

1.2. In addition to the specific meanings of the words detailed above, the following rules apply to the general construction of these Terms:

1.2.1. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted; and includes any

subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2. Any phrase introduced by the Terms including particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.3. Subject to clause 18.2., a reference to writing or written includes e-mails.

1.2.4. An obligation on a party not to do something includes an obligation not to allow that thing to be done.

## 2. The Application of these Terms

2.1. These Terms apply to the Contract and any quotation of ETAS to the exclusion of any other terms that the Customer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing. These Terms shall also apply to all future provision of Services to the Customer, even if they are not explicitly agreed.

2.2. The Order constitutes an offer by the Customer to purchase the Services in accordance with these Terms which ETAS may accept or reject in its absolute discretion. The Customer shall ensure that the terms of the Order are complete and accurate and that the Order incorporates the terms of the quotation given by ETAS.

2.3. The Order shall be deemed to be accepted by ETAS when ETAS issues a written acceptance of the Order or performs the Services to the Customer in accordance with these Terms, whichever takes place earlier, at which point the Contract shall come into existence on these Terms.

2.4. Any samples, drawings, descriptive matter, or advertising issued by ETAS and any descriptions or illustrations contained in ETAS' catalogues or brochures shall not form part of the Contract.

2.5. No variation or alteration to the Contract shall be effective unless it is made in writing and signed by the parties (e.g. via DocuSign).

2.6. A quotation for the Services given by ETAS shall not constitute an offer. Unless otherwise agreed in writing or withdrawn earlier by ETAS in writing, a quotation shall only be valid for a period of 30 days from its date of issue. Cost estimates are non-binding and shall be subject to change, unless expressly agreed otherwise.

2.7. In case of conflict between these Terms and the provisions of any supplemental trading terms agreed between the parties, the supplemental trading terms shall prevail.

## 3. Supply of Services

3.1. ETAS shall provide the Services to the Customer in accordance with the Statement of Work and these Terms in all material respects.

3.2. ETAS shall use all reasonable endeavours to meet any performance dates agreed for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

3.3. ETAS has the right to have the Services performed in whole or in part by third parties (including affiliates of ETAS) as subcontractors.

3.4. ETAS shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, including the (partial) replacement of products with technically equivalent or better products, and ETAS shall notify the Customer in any such event.

3.5. Information contained in ETAS brochures, catalogues, or similar sales documents, as well as descriptions and advertising statements (including those of third party manufacturers) are for informational purposes only and do not constitute a warranty.

3.6. Unless otherwise provided by law, the Services shall include consultancy services only to the extent expressly agreed in the Contract.

3.7. ETAS warrants to the Customer that the Services will be provided using reasonable care and skill.

3.8. If the Services are Engineering Services, the 'General Terms and Conditions for the Supply of Hardware and Software Products', which can be found under the following link [\[T&C for ETAS UK\]](#) or are available on request, shall apply in addition to these Terms. In the event of any conflict or contradiction, these Terms shall prevail.

3.9. In the event that ETAS shall provide Services at the Customer's premises, ETAS shall use reasonable endeavours to observe all health and safety and security requirements that have been communicated to it under **Error! Bookmark not defined.**6.1.4., provided that ETAS shall not be liable under these Terms if, as a result of such observation, ETAS is in breach of any of its obligations under these Terms.

## 4. Software Maintenance Services

4.1. The mere purchase of a software licence from ETAS does not include Software Maintenance Services. The Customer shall only be entitled to the Software Maintenance Services described in this clause 4 if a separate and explicit Software Maintenance Contract is concluded with ETAS together with the licence agreement for the respective Software.

- 4.2. Unless otherwise agreed in writing, the term of the Software Maintenance Contract shall be one (1) year beginning with the delivery of the Software, or, in the event of an extension of the Software Maintenance Contract, with the anniversary of this delivery.
- 4.3. The Software Maintenance Services described below are only provided for the latest programme version of the Software to be maintained, unless otherwise agreed in writing.
- 4.4. Unless otherwise agreed in writing in the individual Software Maintenance Contract, the Software Maintenance includes:
  - delivery of generally available programme updates and new versions, which may contain error corrections, functional enhancements or adaptations to technical framework conditions;
  - delivery of patches and fixes to eliminate or bypass critical errors;
  - provision of information on restrictions, error corrections or error avoidance.
- 4.5. Software Maintenance Services do not include support with
  - the integration of the Software and any consequences for third-party products resulting from the integration;
  - design and development of applications that utilise the Software;
  - use of the Software outside the agreed or specified environment;
  - problems and errors caused by a product not supplied by ETAS.
- 4.6. Entering into a Software Maintenance Contract does not constitute a commitment or promise by ETAS regarding the availability and/or reliability of a system. The Customer shall remain responsible for the results achieved with the Software and the Services.
- 4.7. Agreed Software Maintenance Services shall be provided exclusively to the Customer; it is not permitted to transfer the service to third parties, even if the software concerned is transferred to a third party.

## 5. Hardware Repair and Calibration Services

- 5.1. Hardware repair Services are aimed at the resolution and elimination of the reported hardware defects/problems. If, during the repair process, ETAS determines that the repair effort is not economically

justifiable or technically feasible, ETAS will suspend the Services and notify the Customer in writing.

- 5.2. Unless otherwise agreed in writing, Hardware repair Services are carried out in Germany. The Customer shall bear the risk and costs for the packing and transport of the Hardware to the location specified by ETAS, including customs clearance and export control.
- 5.3. Cables are generally not repaired, but only replaced as a whole.
- 5.4. ETAS reserves the right to install the latest firmware version valid for the respective hardware during the repair, and to subcontract the ordered Service to qualified subcontractors or calibration laboratories.

## 6. Customer's Obligations

- 6.1. The Customer shall:
  - 6.1.1. ensure that the terms of the Statement of Work are complete and accurate;
  - 6.1.2. co-operate with ETAS in all matters relating to the Services;
  - 6.1.3. provide ETAS, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by ETAS to deliver the Services, including the free provision of infrastructure such as the necessary workstations, work materials and tools; the Customer shall at all times remain responsible for compliance with all legal obligations to maintain safety;
  - 6.1.4. provide ETAS with such information and materials as ETAS may reasonably require to supply the Services, including, if necessary, programme codes, configurations, log data and the like, and ensure that such information is accurate and complete;
  - 6.1.5. prepare the Customer's premises for the supply of the Services and enable (remote) access to the system where required;
  - 6.1.6. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - 6.1.7. in the case of Services to be provided at other premises than the Customer's, ensure that the goods are properly packaged for shipment. In particular, the Customer must ensure that certain hardware, such as ETAS ETK and VME cards, require antistatic packaging;

- 6.1.8. keep and maintain all materials, equipment, documents and other property of ETAS (“**ETAS Materials**”) at the Customer’s premises in safe custody at its own risk, maintain ETAS Materials in good condition until returned to ETAS, and not dispose of or use ETAS Materials other than in accordance with ETAS’ written instructions or authorisation;
- 6.1.9. appoint a permanent contact person who is authorised to provide and receive information relevant to the execution of the contract, to receive Software deliveries and to enter complaints and notices of defects; and
- 6.1.10. provide any other cooperation or assistance reasonably required by ETAS.
- 6.2. As part of the Services, a reset to factory settings may be required. This may result in the deletion or modification of Customer-specific data and instrument settings. Therefore, the Customer must ensure a comprehensive backup of Customer-specific data and save or record the settings made by it before handing over any hardware to ETAS.
- 6.3. If ETAS’ performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (“**Customer Default**”):
  - 6.3.1. ETAS shall, without limiting its other rights or remedies, have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays ETAS’ performance of any of its obligations;
  - 6.3.2. ETAS shall, if the Customer does not fulfil its obligations to cooperate or provide materials within a reasonable period of time, be entitled without limiting its other rights or remedies, to terminate the Contract without notice;
  - 6.3.3. ETAS shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from ETAS’ failure or delay to perform any of its obligations as set out in this clause 6.3., or by terminating the Contract in accordance with clause 10.1.; and
  - 6.3.4. the Customer shall reimburse ETAS on written demand for any costs or losses sustained or incurred by ETAS arising directly or indirectly from the Customer Default.

## 7. Acceptance Testing

- 7.1. Insofar as the parties have agreed to the conduction of Acceptance Testing in the Contract (e.g. in the case of

Engineering Services), the Customer shall, within a period of two (2) weeks from delivery of the Software or from performance of the relevant Services (as applicable), or such other period as agreed in writing between the parties, test whether the Software or other work results/output of the Services (as applicable) comply in all material respects with the Specification (**Acceptance Testing**) and notify ETAS accordingly in writing.

- 7.2. If the initial Acceptance Testing fails, ETAS shall, at its cost, correct the errors so disclosed, and the parties shall agree a new period for the subsequent Acceptance Testing. If the subsequent Acceptance Testing fails, ETAS shall, at its discretion, be entitled to

- 7.2.1. terminate the Contract in accordance with clause 10.1.6.; or

- 7.2.2. reduce the Price in accordance with clause 8.

- 7.3. The Customer shall be deemed to have accepted the Software or other work results/output of the Services (as applicable) if:

- 7.3.1. ETAS does not receive any notification of the Customer within the period specified in clause 7.1; or

- 7.3.2. the Customer commences operational use of the Software or other work results/output of the Services (as applicable).

- 7.4. In the case of delivery of the Software in instalments or partial Services that form separate work packages, ETAS shall be entitled to partial Acceptance Testing.

## 8. Prices and Payment Terms

- 8.1. Unless otherwise agreed in writing, the price of the Services shall be the price as set out by ETAS.

- 8.2. ETAS shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom ETAS engages in connection with the Services including, but not limited to, travelling expenses, subsistence and any associated expenses, and for the cost of services provided by third parties and required by ETAS for the performance of the Services, and for the cost of any materials.

- 8.3. ETAS may, by giving 30 days’ prior written notice to the Customer (or immediately on written notice in circumstances beyond ETAS’ control) at any time before delivery, increase the price of the Services. Circumstances beyond ETAS’ control that may necessitate an increase in the price of the Services on immediate written notice may include unforeseen increases in ETAS’ external production and supply costs, which may include, but are not limited to, the costs of warehousing, transportation, utilities and energy supply, raw materials, components and foreign currency

exchange; payment of applicable taxes, customs and duties; and the cost of complying with changes in applicable laws.

- 8.4. The price of the Services is exclusive of amounts in respect of value added tax (VAT) or any other relevant taxes. The Customer shall, on receipt of a valid VAT invoice from ETAS, pay to ETAS such additional amounts in respect of VAT as are chargeable on the supply of the Services.
- 8.5. ETAS shall invoice the Customer in accordance with the Statement of Work.
- 8.6. The Customer shall pay each invoice in pounds sterling (unless another denomination is agreed in writing) in full and cleared funds within 30 days of the date of the invoice.
- 8.7. Payment shall be made to the bank account nominated in writing by ETAS. Time of the Customer's payment is of the essence.
- 8.8. Without prejudice to any other rights or remedies it may have, if the Customer fails to make any payment due to ETAS under the Contract by the due date for payment, then ETAS may:
  - 8.8.1. suspend future supply of the Services under the Contract and under any other contract for the supply of goods and/or services from ETAS to the Customer; and
  - 8.8.2. charge the Customer interest on the overdue amount at the rate of 5% per annum above Barclays Bank's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date for payment until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
  - 8.8.3. require all unpaid invoices to become immediately due for payment.
- 8.9. Without prejudice to any other rights or remedies it may have, in the event ETAS makes available credit facilities to the Customer and the credit limit is reached, ETAS may suspend future supply of the Services under the Contract and under any other contract for the supply of goods and/or services from ETAS to the Customer unless and until the Customer satisfies all or part of the credit as ETAS may demand, at its absolute discretion.
- 8.10. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against ETAS in order to justify withholding payment of any such amount in whole or in part. ETAS may at any time, without limiting any other rights or remedies it may

have, set off any amount owing to it by the Customer against any amount payable by ETAS to the Customer.

- 8.11. If the Contract is terminated for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to ETAS. If ETAS agrees that the Customer can amend or cancel an Order, the Customer's liability to ETAS shall be limited to payment of all costs reasonably incurred by ETAS in fulfilling the Order up until the date of deemed receipt of the amendment or cancellation; except where the amendment or cancellation results from ETAS' failure to comply with its obligations under this Contract.

## 9. Customer's Insolvency or Incapacity

- 9.1. If the Customer becomes subject to any of the events listed in clause 9.2, or ETAS reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to ETAS, ETAS may cancel or suspend all further supplies under the Contract or under any other contract between the Customer and ETAS without incurring any liability to the Customer, and all outstanding sums in respect of Services supplied to the Customer shall become immediately due.
- 9.2. For the purposes of clause 9.1., the relevant events are:
  - 9.2.1. the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
  - 9.2.2. the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer; or
  - 9.2.3. (being an individual) the Customer is the subject of a bankruptcy petition or order; or
  - 9.2.4. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or



- 9.2.5. (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or
- 9.2.6. a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- 9.2.7. the other party applies to court for, or obtains a moratorium under Part A1 of the Insolvency Act 1986; or
- 9.2.8. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2.1. to clause 9.2.7. (inclusive); or
- 9.2.9. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- 9.2.10. (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
- 9.2.11. the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

## 10. Termination

- 10.1. Without prejudice to any other rights or remedies it may have, ETAS may immediately terminate the Contract if:
  - 10.1.1. the Customer commits a serious breach of the Contract and, in the case of a breach which is capable of remedy, fails to remedy the breach within ten (10) Business Days of receiving notice from ETAS giving details of the breach and requiring it to be remedied; or
  - 10.1.2. the Customer fails to pay any amount due under the Contract on the due date and remains in default for not less than five (5) Business Days after being notified to make such payment; or
  - 10.1.3. there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010); or

- 10.1.4. ETAS becomes aware or is of the reasonable opinion that the Customer is in breach of the Bribery Act 2010; or
- 10.1.5. the Customer commits any act or omission that in the sole opinion of ETAS adversely affects ETAS' goodwill, damages the reputation of ETAS or otherwise brings ETAS into disrepute; or
- 10.1.6. if ETAS reasonably believes that the performance of the Contract is legally, technically or economically not or no longer feasible, or if the subsequent Acceptance Testing according to clause 7.2 fails.

10.2. Termination of Contract shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

10.3. On termination of the Contract for any reason:

10.3.1. the Customer shall immediately pay to ETAS all outstanding unpaid invoices and interest, and in respect of Services supplied but for which no invoice has been submitted, ETAS shall submit an invoice, which shall be payable by the Customer immediately on receipt; and

10.3.2. the Customer shall promptly:

- (a) return to ETAS all equipment, materials and property belonging to ETAS that the Customer has in its custody;
- (b) return to ETAS all documents and materials (and any copies) containing ETAS' Confidential Information;
- (c) erase all of ETAS' Confidential Information from its computer systems (to the extent possible); and
- (d) on request, certify in writing to ETAS that it has complied with the requirements of this clause.

10.4. On termination of the Contract, clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 11. Liability

- 11.1. Nothing in these Terms shall limit or exclude ETAS' liability under the Contract for:
  - 11.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
  - 11.1.2. fraud or fraudulent misrepresentation; or

- 11.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
  - 11.1.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - 11.1.5. any matter in respect of which it would be unlawful for ETAS to exclude or restrict liability.
- 11.2. Subject to clause 11.1, ETAS shall not be liable to the Customer for any:
- 11.2.1. loss of profit (whether direct or indirect) whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract; or
  - 11.2.2. indirect or consequential loss whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract; or
  - 11.2.3. ex gratia or other compensatory payments made to a third party by the Customer or on the Customer's behalf, arising under or in connection with the Contract.
- 11.3. In the event of loss of or damage to data and/or programmes, ETAS shall not be liable for the cost of restoring them. The Customer is responsible for regular data and programme backups.
- 11.4. Subject to clauses 11.1. to 11.3., ETAS' total liability to the Customer in respect of all other losses (including indemnified losses) arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the price paid for the corresponding work package(s) under the Statement of Work in the twelve (12) months prior to the event giving rise to the liability.
- 11.5. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12. Intellectual Property Rights**
- 12.1. No Intellectual Property Rights of either party are transferred or licensed as a result of the Contract except as stated in these Terms. The Customer shall not use or exploit ETAS' Intellectual Property Rights in any manner that is competitive with ETAS and other than as expressly set out in these Terms.
- 12.2. In relation to the Services and related work results/output of the Services (e.g., concepts, circuit diagrams, software, etc.):
- 12.2.1. ETAS and its licensors shall retain ownership of all Intellectual Property Rights in the Services and respective work results/output of the Services, excluding the Customer Materials;
  - 12.2.2. Unless expressly agreed otherwise in the Contract, ETAS grants the Customer a non-exclusive, non-sublicensable, non-transferable right to use the work results/output of the Services for the time and purpose as stated in the Contract. If, in individual cases, third-party products, in particular third-party software, are integrated and delivered by ETAS, deviating or supplementing terms of use may apply and shall become part of the Contract.
- 12.3. In relation to the Customer Materials, the Customer:
- 12.3.1. and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
  - 12.3.2. grants ETAS a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the Contract for the purpose of providing the Services to the Customer.
- 12.4. Notwithstanding clauses 12.2 and 12.3, ETAS shall in any case be permitted to use the ideas and concepts on which the Services and related work results are based as well as acquired expertise, and the like for further developments and services for other customers.
- 12.5. To the extent that fixes, patches, updates and/or new versions of ETAS software is provided within the scope of the Services, the rights of use for these are based on the licence model agreed upon for the respective licence programme.
- 12.6. The Customer shall not remove, obscure, change, supplement or otherwise tamper with any proprietary rights notices, markings or legends provided by ETAS under the Contract.
- 12.7. If any third party makes a claim, or notifies an intention to make a claim, against the Customer resulting from (alleged) infringements of Intellectual Property Rights (a "Claim"), the Customer shall
- 12.7.1. as soon as reasonably practicable, give written notice of the Claim to ETAS, specifying the nature of the Claim in reasonable detail;
  - 12.7.2. not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of ETAS;
  - 12.7.3. give ETAS and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable ETAS and its

professional advisers to examine them and to take copies (at ETAS' expense) for the purpose of assessing the Claim; and

- 12.7.4. be deemed to have given to ETAS sole authority to avoid, dispute, compromise or defend the Claim.
- 12.8. ETAS shall not be liable to the Customer:
- 12.8.1. in relation to claims for infringement of third party registered Intellectual Property Rights unless at least one Intellectual Property Right from the property right family of the same or narrower scope of the third-party Intellectual Property Right in question has been granted by the United Kingdom Intellectual Property Office or the European Patent Office designating at least one of the following countries: the United Kingdom, the Federal Republic of Germany, France, Austria or the USA;
- 12.8.2. for claims arising from the infringement of Intellectual Property Rights of third parties (hereinafter: property rights) if the Intellectual Property Right is or was owned by the Customer or by a company in which the Customer directly or indirectly holds a majority of the capital or voting rights;
- 12.8.3. if the Customer is responsible for the infringement of Intellectual Property Rights;
- 12.8.4. if the Services were provided in accordance with the Customer's specifications or instructions or if the (alleged) infringement of the Intellectual Property Right results from use in conjunction with another item not originating from ETAS or if the Services are used in a manner which ETAS could not foresee;
- 12.8.5. if the Customer does not support ETAS to a reasonable extent in the defence against claims of third parties.
- 12.9. In the case of clauses 12.8.2 to 12.8.4., the Customer shall indemnify ETAS and keep ETAS indemnified from and against all claims, damage, losses, costs (including all reasonable legal costs), expenses, demands or liabilities arising out of or in connection with any Claim.
- 12.10. If ETAS or a third party alleges or suspects that the Service infringes a third party right, ETAS shall be entitled, at its own discretion and taking the interests of the Customer into account, to replace or modify the Service while retaining the agreed functionalities in order to remedy the alleged or suspected infringement. If this is not possible for ETAS under reasonable conditions or within a reasonable period of time, either party shall be entitled to terminate the Contract with immediate effect. The rights of ETAS under this clause 12.10 apply regardless of whether the infringement of

Intellectual Property Rights has already been legally determined by a court or acknowledged by ETAS.

- 12.11. The Services and or related work results/output of the Services may make use of integrated electronics and/ or software components implementing Standards, and/ or may comprise or make use of related software, supplied or provided by sub-suppliers. These integrated electronics, software components and/ or related software may make use of third-party Intellectual Property Rights. Unless otherwise agreed, licences for the use of these third party Intellectual Property Rights and corresponding indemnification from third party claims against the Customer on the basis of infringement of these third party Intellectual Property Rights are not part of ETAS' contractual services. The Customer must obtain licences for the use of these third party Intellectual Property Rights directly from their owners.
- "Standards" means a technical specification or function that (i) has been adopted by a standardisation body (e.g. ETSI or IEEE), (ii) has been defined by a research institution, industrial companies or other market participants in order to ensure technical conformity or compatibility, or (iii) has been established by common practice in a specific technical field.
- In the event of alleged infringements of third party Intellectual Property rights by Customer's use of the work results/output of the Services, ETAS shall on request provide Customer with relevant information against such allegations to reasonable degree. This includes the provision of any documents, which ETAS controls and is entitled to provide to Customer.
- 12.12. In the event of alleged infringements of third party Intellectual Property Rights through the use of components contained in the Services that implement standards, integrated electronics and/or associated software by the Customer, ETAS will provide the Customer with relevant information on these allegations to a reasonable extent upon request and at the Customer's cost. This includes the forwarding of documents to which ETAS has access and which ETAS is authorised to forward to the Customer.

### 13. Force Majeure

- 13.1. Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event (save for the Customer's obligation to pay for the Services).
- 13.2. In the event a Force Majeure Event takes place, the time for performance of any obligations impacted by the Force Majeure Event shall be extended accordingly.
- 13.3. If the Force Majeure Event prevails for a continuous period of more than 28 days, ETAS may terminate the Contract by giving 20 Business Days' written notice to the Customer. On the expiry of this notice period, the



Contract will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach occurring prior to such termination.

Notwithstanding the foregoing, both parties anticipate that, for the purposes of the Contract, in most instances, the Customer and ETAS shall each be a Controller of the Common Data in common with the other.

#### 14. Confidentiality

- 14.1. The Customer shall not at any time use, duplicate, commercially exploit or disclose to any person any Confidential Information, except as permitted by clause 14.2.
- 14.2. The Customer may disclose ETAS' Confidential Information:
  - 14.2.1. to those of its employees who need the Confidential Information in order to make use of the Services in the ordinary course of the Customer's business; or
  - 14.2.2. if the Customer has obtained prior written consent from ETAS; or
  - 14.2.3. as may be required by law, court order, governmental or regulatory authority.
- 14.3. The Customer shall ensure that its employees whom it discloses ETAS' Confidential Information comply with this clause 14.
- 14.4. At ETAS' reasonable request, the Customer shall immediately return, destroy or erase all Confidential Information (including any copies) it holds about ETAS.
- 14.5. Without prejudice to any other rights or remedies that ETAS may have, the Customer acknowledges and agrees that damages alone would not be an adequate remedy for any breach of this clause 14 by the Customer. Accordingly, ETAS shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of this clause 14.

#### 15. Data Protection

- 15.1. In this clause 15, the terms "**Controller**", "**Data Subject**", "**Personal Data**", "**Personal Data Breach**", "**Processing**" and "**Processor**" shall have the meanings given to them in the Data Protection Laws, and "**Process**" and "**Processed**" shall be construed accordingly.
- 15.2. The Customer and ETAS shall each Process Personal Data in order to perform their respective obligations under the Contract. This Personal Data shall include the names, job titles and contact details of relevant personnel of the Customer and ETAS (the "**Common Data**").
- 15.3. The Customer and ETAS acknowledge that the factual arrangement between them dictates the role of each party in respect of the Data Protection Laws.

- 15.4. In respect of the Common Data, the Customer and ETAS shall each:

- 15.4.1. comply with their respective obligations under the Data Protection Laws;
- 15.4.2. use all reasonable efforts to assist the other to comply with such obligations as are respectively imposed on them by the Data Protection Laws; and
- 15.4.3. ensure that all fair processing notices have been given (and / or, as applicable, consents obtained) and are sufficient in scope to enable the other party to Process the Common Data as required in order to obtain the benefit of its rights, and to fulfil its obligations, under the Contract in accordance with the Data Protection Laws.

- 15.5. ETAS may monitor and record information relating to the Customer's business and trade performance. ETAS may make such information available to credit referencing agencies who may share that information with other businesses in assessing applications for credit and fraud prevention. To the extent such information contains Personal Data, the Customer acknowledges and agrees that ETAS will Process its data for these purposes.
- 15.6. The Customer acknowledges and agrees that ETAS may approach any referees nominated by the Customer.
- 15.7. So far as permitted by law, the Customer shall reply to ETAS in relation to any credit enquiries regarding its trade or business.

#### 16. Health and Safety

- 16.1. Where necessary, ETAS will provide the Customer with information and/or written conditions for the safe and proper use of the Software and/or other work results/output of the Services.
- 16.2. The Customer shall:
  - 16.2.1. ensure that any information and/or written conditions provided by ETAS are communicated to users of the Software and/or other work results/output of the Services (or products in which these are a component);
  - 16.2.2. provide all assistance required by ETAS with any recall or service action in relation to the Software and/or other work results/output of the Services; and that, as far as is practicable, the Software and/or other work results/output of the Services

can be properly used safely and without risk to health.

16.3. **It may be possible to influence or control an electronic system with ETAS Software and/or products or work results/output of the Services. These actions can lead to damage to body and life or property. The Software and/or products or other work results/output of the Services must therefore be exclusively operated by specialised personnel.**

16.4. When using ETAS Software and/or products or work results/output of the Services for safety-relevant interventions in the vehicle behaviour (such as by stimulating the bus systems of the vehicle, e.g. CAN, or by bypass interventions in control units of the vehicle, e.g. control units of the drive train, the chassis or the body) and when using ETAS Software and/or products or work results/output of the Services together with control units that pose a risk to life and body due to malfunctions, the Customer must ensure that devices are installed that allow the system to be switched to a safe state in the event of danger (e.g. to emergency stop or emergency running mode).

16.5. The Customer must take all necessary and reasonable measures to prevent or limit the consequences of damage caused by defects in the Software and/or products or work results/output of the Services, including, but not limited to regular data and programme backups.

## 17. Foreign Trade

17.1. Each Party is entitled to refuse to perform its obligations under the Contract insofar as the foreign trade law, including, without limitation, national and international (re-)export control and customs regulations, including embargos and other sanctions, which is applicable to the Contract and/or the performance of the Contract (hereinafter "Foreign Trade Law") render impossible or prohibit the fulfilment of obligations under the Contract. In such cases, either Party is entitled to terminate the Contract in whole or in part to the extent that the Foreign Trade Law makes it impossible or prohibits the proper fulfilment of obligations under the Contract. If, in the event of partial termination, a partial performance is excluded for technical or legal reasons or if one party has no interest in a partial performance, the termination will end the Contract in its entirety.

17.2. In case of delay in the performance of obligations under the Contract caused by licensing, authorisation or similar requirements under Foreign Trade Law (hereinafter "Authorisation"), the agreed deadlines and dates shall be extended/postponed by the period between the conclusion of the Contract and the granting of the Authorisation. In the event an Authorisation be denied or not granted within 12 months after filing the application, either Party is entitled to terminate or rescind from the Contract in whole or in part insofar as the performance of the obligation requires this

Authorisation. If a partial performance is excluded for technical or legal reasons or if one Party has no interest in a partial performance, the termination will end the Contract in its entirety.

17.3. Each Party shall notify the other Party within a reasonable time period upon becoming aware of a Foreign Trade Law, which may prohibit or render impossible performance according to clause 17.1, or delay performance according to clause 17.2.

17.4. Upon request, the Customer shall provide any information and documents that ETAS requires to comply with Foreign Trade Law or that authorities request from ETAS. This includes information and documentation including, without limitation, on the end user, the destination and the intended (end-)use of the deliveries, services and/or technologies. ETAS may, in its sole discretion, refuse to perform its obligations under the Contract or terminate the Contract, if the Customer does not provide ETAS with such information or documents within a reasonable time period set by ETAS.

17.5. In the event that the Customer provides to any third party (specifically including any affiliate of the Customer) any deliveries, services and/or technologies, the Customer shall comply with applicable Foreign Trade Law, insofar as Customer's non-compliance could lead to a violation of ETAS' obligations to act or to refrain under Foreign Trade Law.

17.6. ETAS is entitled to refuse to perform its obligations under the Contract to the extent that Customer's breach of duty could lead to a breach of ETAS' obligation to act or refrain under Foreign Trade Law, or to terminate the Contract for cause, if the Customer breaches this obligation.

17.7. Insofar as the Customer purchases products or technologies from ETAS that fall under the scope of Article 12g of Regulation (EU) No. 833/2014 or Article 8g of Regulation (EC) No. 765/2006 as amended, the following shall apply:

17.7.1. The Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or Belarus or for use in the Russian Federation or Belarus any goods or technology supplied under or in connection with the Contract that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014 or Article 8g of Regulation (EC) No. 765/2006, as amended from time to time.

17.7.2. The Customer shall undertake its best efforts to ensure that the purpose of clause 17.7.1. is not contravened by any third parties further down the commercial chain, including by possible resellers.

17.7.3. The Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the

commercial chain, including by possible resellers, that would frustrate the purpose of clause 17.7.1.

17.7.4. If the Customer breaches clause 17.7.1, 17.7.2 or 17.7.3., this shall entitle ETAS to immediately cease further deliveries or services to the Customer and to terminate the Contract and any contracts concluded under the Contract or these Terms at any time, insofar as these have not yet been fully performed. In this case, a previous warning letter to be issued before the termination notice shall not be required. This shall not affect other termination rights or remedies available to the parties whether under the Contract, these Terms or otherwise.

17.7.5. The Customer shall immediately inform ETAS about any problems in applying clauses 17.7.1., 17.7.2. or 17.7.3., including any relevant activities by third parties that may contravene the purpose of clause 17.7.1. The Customer shall make available to ETAS information concerning compliance with the obligations under clauses 17.7.1., 17.7.2 and 17.7.3. within two weeks of the simple request of such information.

17.8. For delivery of goods across customs borders to ETAS, the Customer is obliged to provide ETAS with all required documents and information such as commercial invoice and delivery note, for a complete and correct import customs declaration to the shipment. In the case of free of charge deliveries to ETAS, the Customer is obliged to declare a value, which reflects a fair market price as well as the note "For Customs Purpose Only" in the pro forma invoice. The value has to contain all components of the good such as hardware and respectively software.

17.9. Unless explicitly agreed otherwise in written form in the delivery or quotation documents, the customs-cross-border supply or provision of software, technology or other data (e.g. map data) shall be performed exclusively by electronic means (e.g. e-mail or download). This clause does not cover the supply of embedded software (software which is flashed on hardware).

## 18. Other Important Information

### 18.1. Assignment

18.1.1. ETAS may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

18.1.2. Unless explicitly stipulated otherwise in these Terms, the Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the

Contract without the prior written consent of ETAS.

### 18.2. Notices

18.2.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing. Termination notices and notifications of a breach shall be delivered personally, sent by pre-paid first-class post, or recorded delivery addressed to:

For ETAS Limited: c/o Robert Bosch UK Holdings Limited, C/LSR-GB, PO Box 1092, Uxbridge, UB8 9UX; and

For the Customer: at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as the Customer has specified to ETAS in writing in accordance with this clause.

18.2.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 18.2.1; or if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting.

18.2.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 18.3. Severance

18.3.1. If any court or competent authority finds that any provision of these Terms and/or the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

18.3.2. If any invalid, unenforceable or illegal provision of these Terms and/or the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

18.4. Except as expressly provided in these Terms, the rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.

18.5. A waiver of any right or remedy under these Terms and/or the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under these Terms and/or the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it

preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 18.6. A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 18.7. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 18.8. The Contract, these Terms and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.