

By accessing the TEXTAR brake academy, you are agreeing to and are bound by these Terms.

## **1. TERMS OF WEBSITE USE**

### **PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE USING THIS SITE**

These Terms of Website Use (together with the documents referred to in it) tells you the terms of use on which you may make use of our website <https://textar.lightspeedvt.com> (**our site**), whether as a trial user or a subscribed user. Use of our site includes accessing, browsing, or subscribing to use our site.

- 1.1 Please read these terms of use carefully before you start to use our site, as these will apply to your use of our site. We recommend that you print a copy of this for future reference.
- 1.2 By using our site, you confirm that you accept these terms of use and that you agree to comply with them.
- 1.3 If you do not agree to these terms of use, please do not use our site.

## **2. OTHER APPLICABLE TERMS**

- 2.1 These terms of use refer to the following additional terms, which also apply to your use of our site:
  - 2.1.1 Our Privacy Policy, which sets out the terms on which we process any personal data we collect from you, or that you provide to us. By using our site, you consent to such processing and you warrant that all data provided by you is accurate.
  - 2.1.2 Our Cookie Policy, which sets out information about the cookies on our site.
- 2.2 If you subscribe to use our site, our Subscription Terms and Conditions will apply to the subscription.

## **3. INFORMATION ABOUT US AND HOW TO CONTACT US**

<https://textar.lightspeedvt.com> is a site operated by TMD Friction UK Limited (**We**). We are registered in the UK under company number 04330235 and have our registered office at United Kingdom. Our VAT number is GB875643378/000. We are a limited company. To contact us please email [technicaltraining@tmdfriction.com](mailto:technicaltraining@tmdfriction.com).

## **4. CHANGES TO THESE TERMS**

- 4.1 We may revise these terms of use at any time by amending this page.

- 4.2 Every time you wish to use our site, please check these terms to ensure you understand the terms that apply at that time, as they are binding on you.

## **5. CHANGES TO OUR SITE**

- 5.1 We may update our site from time to time and may change the content at any time. However, please note that any of the content on our site may be out of date at any given time, and we are under no obligation to update it.
- 5.2 We do not guarantee that our site, or any content on it, will be free from errors or omissions.

## **6. ACCESSING OUR SITE**

- 6.1 We do not guarantee that our site, or any content on it, will always be available or be uninterrupted. Access to our site is permitted on a temporary basis. We may suspend, withdraw, discontinue, restrict or change the availability of all or any part of our site for business or operational reasons without notice. We will not be liable to you if for any reason our site is unavailable at any time or for any period.
- 6.2 You are responsible for making all arrangements necessary for you to have access to our site.
- 6.3 You are also responsible for ensuring that all persons who access our site through your internet connection are aware of these terms of use and other applicable terms and conditions, and that they comply with them.
- 6.4 You may use our site only for lawful purposes. You may not use our site in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect. You also agree not to access without authority, interfere with, damage or disrupt:
- 6.4.1 any part of our site;
  - 6.4.2 any equipment or network on which our site is stored;
  - 6.4.3 any software used in the provision of our site; or
  - 6.4.4 any equipment or network or software owned or used by any third party.

## **7. YOUR ACCOUNT AND PASSWORD**

- 7.1 If you are provided with a username, password or any other piece of information as part of our security procedures, you must treat such information as confidential. You must not disclose it to any third party.
- 7.2 We have the right to disable any username or password at any time, if in our reasonable opinion you have failed to comply with any of the provisions of these terms of use.

- 7.3 If you know or suspect that anyone other than you knows of your username or password, you must promptly notify us at [technicaltraining@tmdfriction.com](mailto:technicaltraining@tmdfriction.com)

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 We are the owner or the licensee of all intellectual property rights in our site, and in the material published on it. Those works are protected by copyright laws and treaties around the world. All such rights are reserved.
- 8.2 You are prohibited from copying Content pursuant to our Subscription Terms and Conditions. Except for such prohibition, you may draw the attention of others within your organisation to content posted on our site.
- 8.3 You must not modify the paper or digital copies of any materials you have printed off or downloaded in any way, and you must not use any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text.
- 8.4 Our status (and that of any identified contributors) as the authors of content on our site must always be acknowledged.
- 8.5 You must not use any part of the content on our site for commercial purposes without obtaining a licence to do so from us or our licensors.
- 8.6 If you print off, copy, share, report or download any part of our site in breach of these terms of use, you forfeit your right to use our site and your right to use our site will cease immediately and you must, at our option, return or destroy any copies of the materials you have made.

## **9. NO RELIANCE ON INFORMATION**

- 9.1 Except for the subscription services, the content on our site is provided for general information only. It is not intended to amount to advice on which you should rely. You must obtain professional or specialist advice before taking, or refraining from, any action on the basis of the content on our site.
- 9.2 Although we make reasonable efforts to update the information on our site, we make no representations, warranties or guarantees, whether express or implied, that the content on our site is accurate, complete or up to date.

## **10. LIMITATION OF OUR LIABILITY**

- 10.1 Nothing in these terms of use excludes or limits our liability for death or personal injury arising from our negligence or the negligence of our employees, agents or subcontractors, or our fraud or fraudulent misrepresentation, or any other liability that cannot be excluded or limited by English law.

- 10.2 To the extent permitted by law, we exclude all conditions, warranties, representations or other terms which may apply to our site or any content on it, whether express or implied.
- 10.3 We will not be liable to any user for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with:
- 10.3.1 use of, or inability to use, our site; or
- 10.3.2 use of or reliance on any content displayed on our site.
- 10.4 If you are a business user, please note that in particular, we will not be liable for:
- 10.4.1 loss of profits, sales, business, or revenue;
- 10.4.2 business interruption;
- 10.4.3 loss of anticipated savings;
- 10.4.4 loss of business opportunity, goodwill or reputation; or
- 10.4.5 any indirect or consequential loss or damage.
- 10.5 If you are a consumer user, please note that we only provide our site for domestic and private use. You agree not to use our site for any commercial or business purposes, and we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 10.6 We will not be liable for any loss or damage caused by a virus, distributed denial-of-service attack, or other technologically harmful material that may infect your computer or other device equipment, computer or other device programs, data or other proprietary material due to your use of our site or to your downloading of any content on it, or on any website linked to it.
- 10.7 We assume no responsibility for the content of websites linked on our site. Such links should not be interpreted as endorsement by us of those linked websites. We will not be liable for any loss or damage that may arise from your use of them.
- 10.8 Different limitations and exclusions of liability will apply to liability arising as a result of the supply of any goods by use to you, which will be set out in our Subscription Terms and Conditions.

## 11. **VIRUSES**

- 11.1 We do not guarantee that our site will be secure or free from bugs or viruses.

- 11.2 You are responsible for configuring your information technology, computer or other device programmes and platform in order to access our site. You should use your own virus protection software.
- 11.3 You must not misuse our site by knowingly introducing viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful. You must not attempt to gain unauthorised access to our site, the server on which our site is stored or any server, computer or database connected to our site. You must not attack our site via a denial-of-service attack or a distributed denial-of service attack. By breaching this provision, you would commit a criminal offence under the Computer Misuse Act 1990. We will report any such breach to the relevant law enforcement authorities and we will co-operate with those authorities by disclosing your identity to them. In the event of such a breach, your right to use our site will cease immediately.

## 12. **LINKING TO OUR SITE**

- 12.1 You may link to our home page, provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it.
- 12.2 You must not establish a link in such a way as to suggest any form of association, approval or endorsement on our part where none exists.
- 12.3 You must not establish a link to our site in any website that is not owned by you.
- 12.4 Our site must not be framed on any other site, nor may you create a link to any part of our site other than the home page.
- 12.5 We reserve the right to withdraw linking permission without notice.
- 12.6 If you wish to make any use of content on our site other than that set out above, please contact [technicaltraining@tmdfriction.com](mailto:technicaltraining@tmdfriction.com)
- 12.7 Third party links and resources in our site
  - 12.7.1 Where our site contains links to other sites and resources provided by third parties, these links are provided for your information only. Such links should not be interpreted as approval by us of those linked websites or information you may obtain from them.
  - 12.7.2 We have no control over the contents of those sites or resources.

## 13. **APPLICABLE LAW**

- 13.1 If you are a consumer, please note that these terms of use, its subject matter and its formation, are governed by English law. You and we both agree that the courts of England and Wales will have non-exclusive jurisdiction. However, if you are a resident of Northern Ireland you may also bring proceedings in Northern Ireland, and if you are a resident of Scotland, you may also bring proceedings in Scotland.

- 13.2 If you are a business, these terms of use, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. We both agree to the exclusive jurisdiction of the courts of England and Wales.

14. **CONTACT US**

- 14.1 To contact us, please email:

[technicaltraining@tmdfriction.com](mailto:technicaltraining@tmdfriction.com)

or contact us by post:

PO Box 18 Titan Business Centre, Central House, Victoria Court, Cleckheaton, BD19 3UJ, United Kingdom

or contact us by telephone on: +44 7880 186976

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If you were the purchaser or subscriber of any of our plans at <https://textar.lightspeedvt.com> , this explains your legally binding agreement between you and TMD Friction UK Ltd.

## **1. SUBSCRIPTION TERMS AND CONDITIONS**

- 1.1 This page (together with Our Terms of Website Use, Privacy Policy and Cookie Policy) tells You information about Us and the legal terms and conditions (Terms) on which we provide the Services listed on Our Site to You.
- 1.2 These Terms will apply to any contract between us for the supply of Services to You. Please read these Terms carefully and make sure that you understand them, before subscribing for the supply of Services from Our Site. Please note that before subscribing you will be asked to agree to these Terms. If you refuse to accept these Terms, You will not be able to subscribe for any Services from Our Site. Your and/or Your Authorised User's use of the Services constitutes acceptance of these Terms.
- 1.3 You should print a copy of these Terms or save them to your computer or other device for future reference.

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## **3. SUBSCRIPTION FEES**

- 3.1 You can pay for the Services through Direct Debit (GoCardless), Commercial Invoice, debit card or credit card. We accept Visa and MasterCard.
- 3.2 The credit card holder's account is automatically charged on the same date as the original transaction date on each corresponding month or on the final day of the month if there is no corresponding date (January 31, 2022 subscription renews on February 28, 2022).

- 3.3 Discounts, rebates or other special offers may only be valid for the initial term; subscriptions renew at the then-current full subscription rates.
- 3.4 TMD Friction may terminate the subscription and these terms if it is unable to renew the subscription based on inaccurate or outdated credit card information.
- 3.5 Right of access granted under these Terms is effective only upon payment of the subscription fees.
- 3.6 TMD Friction may increase subscription fees for a subsequent subscription period at any time and for any reason, provided, however, that TMD Friction provides notice at least thirty (30) calendar days prior to the expiration of the subscription.

#### 4. **CANCELLING YOUR ACCOUNT**

- 4.1 You can cancel your subscription at any time from your 'My Billing Profile' page or through contacting us directly.
- 4.2 Once you cancel your membership subscription, you will not lose access immediately.
- 4.3 Your membership will continue through the end of your current charge cycle. For example: If your credit card is charged on the 10th of the month and you cancel on April 25<sup>th</sup> 2022, you will not lose access until May 10<sup>th</sup> 2022.

#### 5. **REFUNDS**

Subscription fees are non-refundable.

#### 6. **COMPLAINTS**

Our Virtual Academy is committed to providing education, service and support of the highest standard. If you have any concerns, or are aware of any areas where we could improve, we really appreciate you letting us know. If you have a suggestion or complaint pertaining to any third party, we recommend following the suggestions and complaints procedure for the third party in question.

##### 6.1 Making a suggestion

We welcome all suggestions and feedback about Our Virtual Academy and will be sure to keep you updated on actions we take in response to your feedback. You can give us feedback:

[technicaltraining@tmdfriction.com](mailto:technicaltraining@tmdfriction.com)

or contact us by post:

PO Box 18 Titan Business Centre, Central House, Victoria Court, Cleckheaton, BD19 3UJ, United Kingdom



or contact us by telephone on: +44 7880 186976

## 6.2 Making a complaint

We aim to handle complaints quickly, effectively and in a fair and honest way. We take all complaints seriously and investigate our procedures and services thoroughly to make sure the Textar Virtual Academy continues to meet your needs. We treat all complaints in confidence.

## 6.3 How you can make a complaint

You can complain:

[technicaltraining@tmdfriction.com](mailto:technicaltraining@tmdfriction.com)

or contact us by post:

PO Box 18 Titan Business Centre, Central House, Victoria Court, Cleckheaton, BD19 3UJ, United Kingdom

or contact us by telephone on: +44 7880 186976

## 6.4 Anonymous complaints

We deal with anonymous complaints under the same procedure; however, it is better if you can provide contact details so we can tell you the outcome of our investigation.

## 6.5 How we handle complaints

6.5.1 One of our Management Team will investigate your complaint. We will acknowledge a complaint within 3 working days and give you the name and contact details of the person investigating it.

6.5.2 We will keep you informed about the progress of the investigation. We aim to have all complaints finished within 28 working days unless we agree a different time scale with you.

6.5.3 When we have finished investigating, we will arrange to speak with you to discuss the outcome, and inform you of:

- (a) details of the findings;
- (b) any action we have taken; and
- (c) our proposals to resolve your complaint.

## 6.6 Time limits

**YOU SHOULD COMPLAIN AS SOON AS YOU CAN AFTER THE DATE ON WHICH THE PROBLEM OCCURRED OR CAME TO YOUR NOTICE.**

## 7. DEFINITIONS

**Agreed Purposes:** the provision of Services under the terms of this Agreement.

**Agreement:** the applicable online order form, the terms and conditions set out on this page, Our Terms of Website Use, Our Privacy Policy, Our Cookie Policy, any variations agreed between Us and any additional terms notified before use of applicable Content or Services.

**Authorised Users:** if You are a business providing automotive service and repair and technical activities, or are otherwise actively involved in the provision of or education in automotive technical activities, all directors, members, partners, employees or students in the business, educational establishment or other outlet covered are Authorised Users (up to the maximum number of users as determined by the Subscription Fee You select). In any other case, Authorised Users means any person that We have agreed with You is or are to benefit from the subscription.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 14.

**Content:** know-how provided by Us via Our Site to You under this Agreement, being the content of the Textar Interactive Training System comprising videos, guided instructions, tutorials, information, hand-out materials and related documents, materials, files and presentation slides.

**Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures:** as set out in the Data Protection Legislation in force at the time.

### **Data Protection Legislation:**

- (a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data.
- (b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer or Provider is subject, which relates to the protection of personal data.

**EU GDPR:** the General Data Protection Regulation ((EU) 2016/679)

**Interactive Tool Services:** the services We provide to allow You to access and use interactive services on Our Site, such as the manager tool and the progress tracker tool.

**Our Site:** <https://textar.lightspeedvt.com>

**Permitted Recipients:** the parties to this agreement, the employees of each party and any third parties engaged to perform obligations in connection with this agreement.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**Us, We, or Our:** TMD Friction UK Ltd.

**Services:** the subscription services provided on Our Site which includes provision of Content and Interactive Tool Services, as the context requires.

**Shared Personal Data:** the personal data to be shared between the parties under clause 17 of this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

- (c) the names of current and potential customers of customers;
- (d) their geographical and email address;
- (e) title, their home or mobile telephone numbers; and
- (f) country
- (g) their learning progress.

**Software:** the software provided by Us or by Our suppliers which enables You to use the Services.

**Start Date:** the date the Subscription Period starts.

**Subscription Fee:** the subscription plan fee for the Services to be provided under this Agreement, as determined by the number of Authorised Users and selected by You in the online order form.

**Subscription Period:** the period in respect of which a Subscription Fee is payable for the Services, being either monthly or one-time, as selected by You in the online order form.

**Writing:** includes email.

**You or Your:** the party entering into this Agreement with Us by accepting these Terms. Where the context so requires, You or Your includes your Authorised Users.

**Your Data:** the data input by You (and anyone authorised by You) for use in conjunction with the Services and any data produced by the Interactive Tool Services relating to You.

## 8. **HOW THE AGREEMENT IS FORMED BETWEEN YOU AND US**

- 8.1 You confirm that you have authority to bind any business on whose behalf you use Our Site to subscribe for the Services.
- 8.2 Our pages will guide you through the steps You need to take to subscribe for the Services. Our subscription process allows You to check and amend any errors before submitting your request to Us. Please take the time to read and check Your request at each stage of the subscription process.
- 8.3 Our acceptance of Your subscription request will take place when We confirm Our acceptance to You by sending an enrolment email that confirms Our acceptance of Your subscription request.

## 9. **HOW TO PAY**

- 9.1 You can pay for the Services through Direct Debit (GoCardless), Commercial Invoice, debit card or credit card. We accept Visa and MasterCard.
- 9.2 Unless agreed otherwise between You and Us in writing, payment for the Services shall be made in advance of each Subscription Period in full (either monthly or annually as the case may be). Subject to clause 18.1 once a Subscription Period has commenced, payment for that period will not be refundable (unless We otherwise agree).

## 10. **AUTHORITY AND LICENCE FOR USE OF CONTENT**

- 10.1 We authorise You and Your Authorised Users to use the Content for which You agree to pay Us the Subscription Fee.
  - 10.1.1 This Agreement (including the licences hereunder) starts on the Start Date. Unless terminated earlier upon the occurrence of the following events:
    - (a) the end of the relevant Subscription Period where You have given Us written notice in advance of the end of the relevant Subscription Period that You do not want to renew this Agreement; or
    - (b) termination of this Agreement under clause 18.
- 10.2 This Agreement shall continue and shall automatically extend for another Subscription Period and for each successive Subscription Period thereafter.

You may:

- 10.2.1 search and view Content for Your own business purposes;
- 10.2.2 use Content for the purposes of internal training;

- 10.2.3 copy and print out material within the “Resources” section of Content for Your own business purposes or for the purposes of any project on which You are working.
- 10.3 Except as provided in clause 10.2 above, You shall not record, scan (through the use of screen grab software or otherwise), capture, download, stow or otherwise copy or retain any Content without our prior express written consent.
- 10.4 You shall not:
  - 10.4.1 attempt to duplicate, reproduce, modify, disclose, upload, transmit, display, distribute or in any other way exploit the Content or any portion of it; or
  - 10.4.2 attempt to obtain, or assist others in obtaining, access to the Content, other than as provided under this Agreement; or
  - 10.4.3 reveal any user name, password or other such account access details for the Services to anyone other than Authorised Users.

## **11. LICENCE FOR USE OF SOFTWARE**

- 11.1 We hereby grant You on the terms and conditions of this Agreement a non-exclusive, non-transferable, revocable licence to access the Software and to use the Software solely for Your business purposes (and for the avoidance of doubt, nothing in this Agreement grants to You any rights whatsoever in or relating to the source code of the Software).
- 11.2 You shall not:
  - 11.2.1 attempt to duplicate, modify, disclose or distribute any portion of the Software; or
  - 11.2.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any of the Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or
  - 11.2.3 transfer, temporarily or permanently, any rights or obligations under this Agreement, or
  - 11.2.4 attempt to obtain, or assist others in obtaining, access to the Software, other than as provided under this Agreement.
- 11.3 We confirm We have all the rights in relation to the Software that are necessary to grant all the rights We purport to grant under the terms of this Agreement.

## **12. YOUR OBLIGATIONS**

- 12.1 You will, take reasonable steps to ensure that Authorised Users will, comply with the terms of use of the Services in this Agreement. You will, take reasonable steps to ensure that Authorised Users do not:
  - 12.1.1 copy, print out, download, publish, transmit, display, create derivative works based on or otherwise reproduce or exploit any Content nor any material relating to part of the Services, except as permitted under this Agreement or authorised by Us in writing;
  - 12.1.2 make any part of the Content or of the Services available to anyone, except as permitted under this Agreement or authorised by Us in writing;
  - 12.1.3 subject to clause 10.2 above, alter or modify any part of the Content or Services; or
  - 12.1.4 purport to assign or otherwise dispose of Your rights under this Agreement.
- 12.2 You will take reasonable steps to ensure that nobody other than Authorised Users accesses the Content or Services using accounts created with Your username and password. You will be responsible for the use of any accounts provided to or created by Us granting access to the Services. You must notify Us immediately if any unauthorised use of the Services.
- 12.3 You acknowledge and agree that We and Our licensors own all intellectual property rights in the Software, the Content and the Services. Except as expressly stated in this Agreement, this Agreement does not grant You any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Content, Services or any related documentation.
- 12.4 You are solely responsible for the appropriate use, professional consideration and adaption of Our Content for Your own use and in Your provision of services and advice to Your customers.
- 12.5 Subject to clause 13 (Our obligations), You will defend, indemnify and hold Us harmless against claims, actions, proceedings, losses, damages, expenses and all costs arising out of or in connection with Your misuse of the Software or Services, provided that:
  - 12.5.1 You are given prompt notice of any such claim;
  - 12.5.2 We provide reasonable co-operation to You in the defence and settlement of such claim, at Your expense; and
  - 12.5.3 You are given sole authority to defend or settle the claim.
- 12.6 You will maintain adequate and appropriate liability insurance in relation to any services You provide.

- 12.7 You are responsible for configuring, maintaining and updating Your information technology hardware and software, telecommunications equipment, internet service, computer or other device programmes and platform (including browsers) in order that it is sufficient and compatible to access the Services. Notwithstanding clause 13.5, You should use Your own virus protection software.
- 12.8 By submitting any individual's personal information to Us or Our affiliates, service providers and agents, You agree, and confirm Your authority from such other individual, to Our collection, use and disclosure of such personal information in accordance with Our Privacy Policy.

### 13. **OUR OBLIGATIONS**

- 13.1 We warrant that You will not infringe any third party intellectual property rights by using the Content and We will indemnify You against losses, costs or expenses You may incur as a result of any claim that the use by You of the Content infringes any third party intellectual property rights, provided You notify Us within a reasonable time of any such claim being made. This warranty and indemnity are unlimited.
- 13.2 In relation to any part of the Software owned by Us We shall defend You against any claim that Your use of the Software infringes any patent, copyright, trade mark, database right or right of confidentiality, and shall indemnify You for any amounts awarded against You in judgment or settlement of such claims, provided that:
- 13.2.1 We are given prompt notice of any such claim;
- 13.2.2 You provide reasonable co-operation in the defence and settlement of such claim, at Our expense; and
- 13.2.3 We are given sole authority to defend or settle the claim.
- 13.3 In the defence or settlement of the claim, We may at Our discretion obtain for You the right to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement without liability to You. We shall have no liability if the alleged infringement is based on:
- 13.3.1 a modification of the Software by anyone other than Us; or
- 13.3.2 Your use of the Software in a manner contrary to the instructions given to You by Us; or
- 13.3.3 Your use of the Software after notice of the alleged or actual infringement from Us or any other person.
- 13.4 The foregoing states Your sole and exclusive rights and remedies, and Our entire obligations and liability, for infringement of any patent, copyright, trademark, database right or right of confidentiality.

- 13.5 We will take reasonable steps to ensure that Software and data files We supply to You as part of the Services are virus-free.
- 13.6 We will use our best endeavours to ensure that Subscriber Data is maintained securely and is properly backed-up. In the event of any loss or damage to Subscriber Data, Your sole and exclusive remedy shall be that We use Our best endeavours to restore the lost or damaged Subscriber Data from the latest back up of such Subscriber Data. We shall not be responsible for any loss, destruction, alteration or disclosure of Subscriber Data caused by any third party (except those third parties sub-contracted by Us to perform services related to Subscriber Data maintenance and back-up).
- 13.7 We will use Our best endeavours to ensure that the Services are provided continuously and that access to Our website is not interrupted by any event within Our control. We will use reasonable endeavours to notify You in advance of planned downtime, which, if reasonably practicable, will be scheduled outside normal United Kingdom office hours.

#### 14. **CONFIDENTIALITY**

- 14.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- 14.1.1 is or becomes publicly known other than through any act or omission of the receiving party; or
  - 14.1.2 was in the other party's lawful possession before the disclosure; or
  - 14.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - 14.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - 14.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 14.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 14.3 Each party shall use its best endeavours to ensure that the other's Confidential Information to which it has access is not disclosed or distributed in violation of the terms of this Agreement.
- 14.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.



14.5 This clause shall survive termination of this Agreement, however arising.

## 15. **DISCLAIMER**

15.1 We give You no warranty or assurance, except as set out in clause 13 above. We declare and You acknowledge that all implied warranties and conditions are excluded to the maximum extent permitted by law.

15.2 Our policy is to conduct our business at all times in a professional manner and to best practice standards. We use our best endeavours to maintain the Content up to date and to develop Our Services to meet subscribers' needs. However, You should note in particular:

15.2.1 The Content is not intended to constitute a definitive or complete statement of the best practice standards of the automotive industry on any subject.

15.2.2 We are a provider of theoretical and practical know-how and resources pertaining to the automotive industry. The Services are designed for use by, and to complement the existing knowledge of, properly trained technicians and mechanics who have an understanding of automotive technology. We do not accept any responsibility for action taken as a result of information provided by Us. The Services are general and educational in nature, may not reflect all recent industry developments and may not apply to the specific circumstances of individual vehicles. If in doubt you should contact Us and in the meantime take no further action.

15.2.3 We give You no warranty or assurance that the Services and Our means of delivering them are compatible with Your software or computer or other device configuration.

15.2.4 We may change part or all of the Services at Our discretion.

15.2.5 Nothing in this Agreement shall be deemed to constitute a representation, guarantee or promise that a particular result will be produced due to the use of the Content or the Services.

## 16. **LIABILITY**

16.1 This clause sets out Our entire financial liability (including any liability for the acts or omissions of Our employees, agents, contributors, consultants and sub-contractors) to You in respect of:

16.1.1 any breach of this Agreement;

16.1.2 any use made by You of the Services or the Software or any part of them;  
and

- 16.1.3 any representation, statement or tortious act or omission (whether negligent or otherwise) arising under or in connection with this Agreement.
- 16.2 Except as expressly and specifically provided in this Agreement and particularly clause 13.1 and 13.2:
  - 16.2.1 You assume sole responsibility, and We shall have no liability, for results obtained from the use of the Software and the Services by You, and for conclusions drawn from such use; and
  - 16.2.2 all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 16.3 Nothing in this Agreement excludes Our liability:
  - 16.3.1 for death or personal injury caused by Our negligence; or
  - 16.3.2 for fraud or fraudulent misrepresentation.
- 16.4 Subject to clause 13.1 and clause 16.3 above:
  - 16.4.1 We shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising; and
  - 16.4.2 Our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to £1 million. You acknowledge that this limitation is reasonable.
- 16.5 Under this clause, “**our liability**” includes that of any company in Our group and Our and their respective agents, employees, contributors and consultants and sub-contractors, “**You**” includes any other party claiming through You and “**loss or damage**” includes any losses, damages, costs or expenses whatsoever or howsoever arising in connection with the Services, whether under this Agreement or other agreement or in consequence of any misrepresentation, misstatement or tortious act or omission, including negligence.
- 16.6 We shall have no liability to You under this Agreement if We are prevented from or delayed in performing Our obligations under this Agreement or from carrying on business by acts, events, omissions or accidents beyond Our reasonable control, including without limitation default of sub-contractors, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or communications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

## 17. DATA PROTECTION

### 17.1 Shared Personal Data

This clause sets out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the **Data Discloser**) may disclose to the other party (the **Data Recipient**) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

### 17.2 Effect of non-compliance with Data Protection Legislation

Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.

### 17.3 Particular obligations relating to data sharing

Each party shall:

- 17.3.1 ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
- 17.3.2 give full information to any data subject whose personal data may be processed under this agreement of the nature such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
- 17.3.3 process the Shared Personal Data only for the Agreed Purposes;
- 17.3.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- 17.3.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
- 17.3.6 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
- 17.3.7 not transfer any personal data received from the Data Discloser outside the UK unless the transferor ensures that:

- (a) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or
- (b) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or
- (c) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or
- (d) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.

#### 17.4 Mutual Assistance

Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- 17.4.1 consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
- 17.4.2 promptly inform the other party about the receipt of any data subject access request;
- 17.4.3 provide the other party with reasonable assistance in complying with any data subject access request;
- 17.4.4 not disclose, block, amend, delete or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
- 17.4.5 assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner or other regulators;
- 17.4.6 notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- 17.4.7 at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;
- 17.4.8 use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- 17.4.9 maintain complete and accurate records and information to demonstrate its compliance with this clause; and

17.4.10 provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

## 17.5 Indemnity

Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it. The liability of the indemnifying party under this clause shall be subject to the limits set out in clause 16.

## 18. TERMINATION

18.1 Either party may terminate this Agreement with immediate effect by notice in writing if You or We are in material breach of any of its terms where such breach is irremediable or (if such breach is remediable) if the breach is not remedied within the period of twenty working days after written notice of it has been given to the party in breach. If We are in material breach as a result of circumstances within Our control, You will be entitled to pro-rata return of the Subscription Fee. If You are in material breach, You are not entitled to a return of any part of the Subscription Fee.

18.2 Notwithstanding clause 18.1, if payment of the Subscription Fee is not made in full by the due date(s), without prejudice to any rights or remedies otherwise available, We reserve the right to (a) charge interest on the outstanding balance of all overdue sums at the rate of 3% per annum above the current base rate at HSBC Bank plc or the maximum interest rate permitted by law, whichever is the greater; and (b) immediately withdraw access to the Services.

18.3 On termination of this Agreement for any reason:

18.3.1 all licences granted under this Agreement shall immediately terminate;

18.3.2 subject to the exceptions in this sub-clause, You will take reasonable steps to delete the Software and the Content from Your electronic media, including Your intranet and electronic storage devices so that You no longer have an electronically functional copy of the Software or any part of the Content; and

18.3.3 termination shall not affect or prejudice the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination.

## 19. **GENERAL PROVISIONS**

- 19.1 The rights provided under this Agreement are granted to You only, and shall not without Our prior written consent be considered granted to any subsidiary or holding company. You may not, without Our prior written consent, assign, transfer, charge, sub-contract, sub-licence or deal in any other manner with all or any of Your rights or obligations under this Agreement.
- 19.2 This Agreement is not intended to benefit anyone other than the parties to it and, in particular, no term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.
- 19.3 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 19.4 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 19.5 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 19.6 This Agreement and any document expressly referred to in it, the Subscription Fee and any agreed written record identifying Authorised Users constitutes the entire agreement between You and Us and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter.
- 19.7 You acknowledge that in entering into this Agreement you do not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement or any document expressly referred to in it.
- 19.8 You and We agree that neither of us shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

English law governs this Agreement and the parties submit to the non-exclusive jurisdiction of the English courts.