

# Terms and Conditions for Consulting and Cyber Security Services

These terms and conditions (the “**Terms**”) govern the supply of services by us to you; please read these Terms carefully.

## 1. Definitions 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.

**Change Order:** is a document setting out the proposed changes and the effect that those changes will have on:

- (a) the Services;
- (b) ETAS’ existing charges;
- (c) the anticipated schedule of the Services; and
- (d) any of the terms of the Contract.

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

**Customer:** means any business, company, corporation, partnership, or other legal entity that purchases 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.

**Deliverables:** means all work created individually by ETAS for the Customer, in particular documents, project outlines, presentations and the associated draft versions as specified in the Contract including any other documents, products and materials provided by ETAS to the Customer in relation to the Services.

**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, inventions, copyright and related rights, trade marks, trade names, rights to goodwill or to sue for passing off rights in designs, rights in computer software, database rights, rights in confidential information (including know-how), 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.

**Penetration Test:** means services whereby ETAS attempts to breach some or all of the Customer’s

system's security, using the same tools and techniques as an adversary might.

**Services:** means the consulting and cyber security services (such as e.g. penetration testing, security risk analysis, security concept creation) supplied by ETAS to the Customer as set out in the Order.

**Specification:** means any specification for the Services that is produced by ETAS.

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

**WEEE Directive:** means EC Directive 2002/96/EC on waste electrical and electronic equipment (WEEE) and shall include any applicable laws or regulations which implement the Directive in England and Wales.

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, include, in 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 20.2, 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 any future provision of Services to the Customer, even if not expressly agreed.

2.2. The Order constitutes an offer by the Customer to purchase 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 supplies the Services to the Customer, 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 (if any) shall not form part of the Contract.

2.5. Any quotation 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 28 Business Days from its date of issue.

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

## 3. Supply of Services

3.1. ETAS shall provide the Services to the Customer in accordance with the Specification in all material respects.

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

- 3.3. The Services are intended for the agreed purpose as defined in the Service description and only for the target market in which ETAS offers the Services. ETAS shall not be responsible for achieving a certain economic success or particular results; searches for or licences to use third party "Intellectual Property Rights" are not part of the Service.
- 3.4. 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.
- 3.5. ETAS has the right to have the Services performed in whole or in part by third parties (including affiliates of ETAS) as subcontractors.
- 3.6. 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, and ETAS shall notify the Customer in any such event.
- 3.7. Unless the activity requires presence at a specific location, ETAS shall provide the Services from a location of its choice.
- 3.8. ETAS shall be solely responsible for supervising and instructing its employees, even if the Services are performed at the Customer's premises.

#### **4. Penetration Tests**

- 4.1. It is the Customer's responsibility to clearly define the scope and requirements of the Penetration Test. As Penetration Tests are limited in time and budget, they may not reveal all the vulnerabilities of the product or IT system being tested. In addition, the security landscape is constantly changing, and new vulnerabilities and gaps may subsequently be discovered that were not visible at the time of the penetration test.

- 4.2. The provision of a Penetration Test does not include the elimination of vulnerabilities in the product or IT system. At the Customer's request, ETAS may provide an additional quote for such remediation.
- 4.3. The Customer expressly consents to the measures necessary for the performance of the Penetration Test. In particular, this shall include access to data by ETAS, if necessary, by overcoming any access restrictions to the systems specified by the Customer and/or by means of a non-public data transmission and/or by means of the electromagnetic radiation of a data processing system. The Customer is obligated to obtain in advance all necessary consents from third parties in writing to whose confidential data ETAS may gain access in the course of the Services and to present them to ETAS upon request.

#### **5. Customer's Obligations**

- 5.1. The Customer shall:
  - 5.1.1. ensure that the terms of the Order are complete and accurate;
  - 5.1.2. co-operate with ETAS in all matters relating to the Services;
  - 5.1.3. 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 provide the Services, including the free provision of infrastructure and work materials such as the necessary workstations, computers, telephones, internet connection and printers; the Customer shall at all times remain responsible for compliance with all legal obligations to maintain safety;
  - 5.1.4. provide ETAS with such information and materials as ETAS may reasonably require to supply the Services, and

- ensure that such information is accurate and complete;
- 5.1.5. if ETAS shall provide the Services at the Customer's premises, provide ETAS with all relevant health and safety and security requirements;
- 5.1.6. prepare the Customer's premises for the supply of the Services and provide an adequate hardware and software environment;
- 5.1.7. ensure that all Customer Material is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant standards or requirements;
- 5.1.8. to take appropriate precautions in the event that a software does not function properly in whole or in part (e.g. daily data backups, error diagnosis, regular checking of data processing results). If the Customer does not expressly inform ETAS to the contrary in advance, ETAS may assume that all data of the Customer with which it comes into contact is backed up;
- 5.1.9. 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;
- 5.1.10. take appropriate measures to prevent data loss due to software problems (e.g. daily data backups, error diagnosis, regular checking of data processing results);
- 5.1.11. 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;
- 5.1.12. thoroughly test the Deliverables before using them to ensure that they are free from defects and, if necessary, that they can be used in the existing hardware and software configuration;
- 5.1.13. provide ETAS with access to the Services for the purpose of troubleshooting and error correction, at ETAS's discretion, directly and/or via remote access; and
- 5.1.14. provide any other assistance reasonably required by ETAS.
- 5.2. 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**"):
- 5.2.1. 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;
- 5.2.2. 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 5.2; and
- 5.2.3. 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.
- 5.3. If ETAS' performance of any of its obligations in respect of the Services is prevented as a result

of an inability to source spare parts for the Customer's equipment on which the Services are due to be performed then, ETAS may terminate this Contract without liability to the Customer for any costs or losses sustained or incurred by the Customer arising directly or indirectly from ETAS' failure to perform the Services.

## 6. Change Requests

- 6.1. The Customer may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a Change Order has been signed by both parties.
- 6.2. If the Customer wishes to make a change to the Services:
  - 6.2.1. it shall notify ETAS in writing and provide as much detail as ETAS may reasonably require, including the timing of the proposed changes; and
  - 6.2.2. ETAS shall, as soon as reasonably practicable after receiving the information at clause 6.2.1, provide a draft Change Order to the Customer.
- 6.3. If the parties:
  - 6.3.1. agree to a Change Order, they shall sign it and that Change Order shall amend the Contract; or
  - 6.3.2. are unable to agree a Change Order, the Contract remains in force without any changes.
- 6.4. During the decision-making process on the Change Order, ETAS shall continue to perform the Services under the Contract unless the Customer notifies ETAS in writing that the Services shall be suspended until a decision has been made.
- 6.5. ETAS may charge for the time spent on preparing and negotiating Change Orders on a time and material basis at the rates as agreed

with the Customer, or, if not rates are agreed, at ETAS's then current hourly rates.

## 7. Price and Payment

- 7.1. If the charges for Services shall be on a time (hourly) and materials basis, then the charges shall be set out in ETAS' valid quotation and/ or Specification. ETAS shall provide the Customer with monthly statements of the hours or days worked for the respective previous month.
- 7.2. If the charges for Services shall be on a fixed price basis then, the total price for the Services shall be the amount set out in ETAS' valid quotation and/ or Specification.
- 7.3. 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.
- 7.4. 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.
- 7.5. 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.
- 7.6. In respect of Services, ETAS shall invoice the Customer on or in advance of performance of the Services, unless otherwise agreed in writing.
- 7.7. The Customer shall pay each invoice in the currency stated on the invoice in full and cleared funds within 30 Business Days of the date of the invoice.



- 7.8. Payment shall be made to the bank account nominated in writing by ETAS. Time of the Customer's payment is of the essence.
- 7.9. 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:
  - 7.9.1. suspend future supply of Services under the Contract and under any other contract for the supply of goods and/ or services from ETAS to the Customer; and
  - 7.9.2. 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
  - 7.9.3. require all unpaid invoices to become immediately due for payment..
- 7.10. 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.
- 7.11. 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.

- 7.12. If the Contract is terminated for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to ETAS. If the Customer amends or cancels an Order, its 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.

## **8. Customer's Insolvency or Incapacity**

- 8.1. If the Customer becomes subject to any of the events listed in clause 8.2, 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.
- 8.2. For the purposes of clause 8.1, the relevant events are:
  - 8.2.1. 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

- 8.2.2. 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
- 8.2.3. (being an individual) the Customer is the subject of a bankruptcy petition or order; or
- 8.2.4. 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
- 8.2.5. (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
- 8.2.6. (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
- 8.2.7. 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
- 8.2.8. 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 8.2.1 to clause 8.2.7 (inclusive); or

- 8.2.9. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- 8.2.10. (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.

## **9. Intellectual Property**

- 9.1. The Customer shall not assert or attempt to assert any rights in relation to ETAS' Intellectual Property Rights. The Customer shall not use or exploit ETAS' Intellectual Property Rights other than as set out in these Terms or as agreed with ETAS in writing.
- 9.2. In relation to the Deliverables:
  - 9.2.1. ETAS and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;
  - 9.2.2. Upon full payment of the agreed fee, ETAS grants the Customer a non-exclusive, perpetual right to use the Deliverables for the purpose of receiving and using the Services and the Deliverables in its business, unless expressly agreed otherwise 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.
  - 9.2.3. the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 9.2.2 to any third parties (including affiliates) without ETAS' prior written consent.

9.3. In relation to the Customer Materials, the Customer:

9.3.1. and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and

9.3.2. 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.

9.4. Notwithstanding clauses 9.2 and 9.3, ETAS shall in any case be permitted to

a) (re-)create, distribute and use work results that are comparable to the Services and the Deliverables and have the same functionalities; and

b) use the ideas and concepts on which the Services and Deliverables are based as well as acquired expertise and the like for further developments and services for other customers.

9.5. 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.

## 10. Open Source Software

10.1. In the event ETAS includes Open Source Software (OSS) components in the Services or Deliverables, it shall provide the Customer with a list of the OSS included and the applicable OSS licence conditions.

10.2. The Customer is entitled to use the OSS components to the extent described in clause 9.2.2. Any further use (e.g. sublicensing or transfer of the OSS components to third parties) requires that the Customer obtains a corresponding licence directly from the OSS licensor, whereby the respective OSS licence conditions apply exclusively to this use.

10.3. If the OSS licence terms of the delivered OSS components contain an obligation to provide the respective source code, ETAS will provide the source code at the Customer's request within a reasonable period of time on the appropriate medium for use and distribution in the manner required by the respective OSS licence terms.

## 11. Third Party IP Claims

11.1. 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:

11.1.1. as soon as reasonably practicable, give written notice of the Claim to ETAS, specifying the nature of the Claim in reasonable detail;

11.1.2. not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of ETAS;

11.1.3. 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

11.1.4. be deemed to have given to ETAS sole authority to avoid, dispute, compromise or defend the Claim.

11.2. ETAS shall not be liable to the Customer:

11.2.1. 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;

11.2.2. 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;

11.2.3. if the infringement results from the use of Customer Materials in the development of, or the inclusion of the Customer Materials in any Deliverable;

11.2.4. if the infringement results from any modification of the Deliverables or Services, other than by or on behalf of ETAS;

11.2.5. 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;

11.2.6. if the Customer does not support ETAS to a reasonable extent in the defence against claims of third parties.

11.3. 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

11.3.1. any Claim in the case of clauses 11.2.2 to 11.2.5; and

11.3.2. the performance of Penetration Tests, including but not limited to claims of third parties arising from the infringement of Intellectual Property Rights and/or personal rights as well as criminal and/or administrative charges.

11.4. If ETAS or a third party alleges or suspects that the Services and/or Deliverables infringe a third party right or the law, ETAS shall be entitled, at its own discretion and taking the interests of the Customer into account, to (a) obtain a right of use for the Services and/or Deliverables infringing the third party right, or (b) replace or modify the Services and/or Deliverables 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 11.4 apply regardless of whether the infringement of Intellectual Property Rights has already been legally determined by a court or acknowledged by ETAS.

## 12. Limitation of Liability

12.1. Nothing in these Terms shall limit or exclude ETAS' liability for:

12.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or

12.1.2. fraud or fraudulent misrepresentation; or

12.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

12.1.4. any matter in respect of which it would be unlawful for ETAS to exclude or restrict liability.

12.2. Subject to clause 12.1, ETAS shall not be liable to the Customer for any:

12.2.1. 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

12.2.2. 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

12.2.3. 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.

12.3. In the event of Penetration Tests, ETAS shall not be liable to the Customer for any damage to or loss, destruction or failure of the tested product or IT system (including but not limited to damage to or loss of data, system failure, operational disruptions, damage to or destruction of products). 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 the performance of Penetration Tests.

12.4. Subject to clauses 12.1 to 12.3, 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 Services in the twelve (12) months prior to the event giving rise to the liability.

12.5. 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.

12.6. This clause 12 shall survive termination of the Contract.

### **13. Force Majeure Events**

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.

### **14. Termination**

14.1. Unless a fixed term has been agreed, either party may terminate the Contract at any time by giving the other party no less than one month's written notice.

14.2. Without prejudice to any other rights or remedies it may have, ETAS may immediately terminate the Contract if:

14.2.1. 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 10 Business Days of receiving notice from ETAS giving details of the breach and requiring it to be remedied; or

14.2.2. the Customer fails to pay any amount due under the Contract on the due date

and remains in default for not less than 5 Business Days after being notified to make such payment; or

14.2.3. there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010); or

14.2.4. ETAS becomes aware or is of the reasonable opinion that the Customer has made or accepted bribes; or

14.2.5. 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.

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

14.4. On termination of the Contract for any reason:

14.4.1. the Customer shall immediately pay to ETAS all outstanding unpaid invoices and interest; and

14.4.2. 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.

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

## 15. Confidentiality

15.1. The Customer shall not at any time use, duplicate, commercially exploit or disclose to any person any Confidential Information, except as permitted by clause 15.2.

15.2. The Customer may disclose ETAS' Confidential Information:

15.2.1. 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

15.2.2. if the Customer has obtained prior written consent from ETAS; or

15.2.3. as may be required by law, court order, governmental or regulatory authority.

15.3. The Customer shall ensure that its employees whom it discloses ETAS' Confidential Information comply with this clause 15.

15.4. At ETAS' reasonable request, the Customer shall immediately return, destroy or erase all Confidential Information (including any copies) it holds about ETAS.

15.5. 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 15 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 15.

## 16. Referencing

Unless otherwise agreed, ETAS shall be entitled to include the Customer's name and company logo in its reference list and to present this list to third parties and publish it for advertising purposes. The Customer may at any time object to such use for the future. However, ETAS shall not be obliged to withdraw or amend any advertising that has already been published at the time of the Customer's objection.

## 17. Data Protection

17.1. In this clause 17, 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.

17.2. 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").

17.3. The Customer and ETAS acknowledge that the factual arrangement between them dictates the role of each party in respect of the Data Protection Laws. 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.

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

17.4.1. comply with their respective obligations under the Data Protection Laws;

17.4.2. 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

17.4.3. 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.

17.5. 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.

17.6. The Customer acknowledges and agrees that ETAS may approach any referees nominated by the Customer.

17.7. So far as permitted by law, the Customer shall reply to ETAS in relation to any credit enquiries regarding its trade or business.

## 18. Foreign Trade

18.1. 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.

- 18.2. 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.
- 18.3. 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 18.1, or delay performance according to clause 18.2.
- 18.4. 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.
- 18.5. 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.

- 18.6. 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.
- 18.7. 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:
  - 18.7.1. 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.
  - 18.7.2. The Customer shall undertake its best efforts to ensure that the purpose of clause 18.7.1. is not contravened by any third parties further down the commercial chain, including by possible resellers.
  - 18.7.3. 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 18.7.1.
  - 18.7.4. If the Customer breaches clause 18.7.1, 18.7.2 or 18.7.3., 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.

18.7.5. The Customer shall immediately inform ETAS about any problems in applying clauses 18.7.1., 18.7.2. or 18.7.3., including any relevant activities by third parties that may contravene the purpose of clause 18.7.1. The Customer shall make available to ETAS information concerning compliance with the obligations under clauses 18.7.1., 18.7.2 and 18.7.3. within two weeks of the simple request of such information.

18.8. 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.

18.9. 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).

## 19. WEEE Regulations

19.1. The Customer acknowledges that, pursuant to the WEEE Regulations, ETAS may be required

to finance the costs of collection, treatment, recovery and disposal of certain Hardware supplied to the Customer.

19.2. The Customer shall be liable for and shall indemnify ETAS against any and all claims, actions, liabilities, losses, damages, costs and expenses (including reasonable legal expenses) incurred by ETAS in complying with the WEEE Regulations in respect of the Hardware supplied in accordance with these Terms.

## 20. Other Important Information

### 20.1. Assignment

20.1.1. 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.

20.1.2. 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.

### 20.2. Notices

20.2.1. 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:

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

(b) 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.

20.2.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 20.2.1; or if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting.

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

### 20.3. Severance

20.3.1. 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.

20.3.2. 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.

20.4. 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.

20.5. 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.

20.6. A person who is not a party to the Contract shall not have any rights under or in connection with it.

20.7. 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.

20.8. 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.