

# LICENCE AGREEMENT

## Inter-Est TERMS AND CONDITIONS

### 1. Definitions

In this Agreement, the following terms should have the following meanings:-

"Inter-Est" means Inter-est (UK) Limited;

"Background" means the current background statements issued by Thatcham in relation to the Thatcham's Data.

"Charges" means Inter-Est's Charges for access to the Service as are agreed between the parties in writing (or in default of such written agreement as are set out on the Website) from time to time;

"Conditions" means these terms and conditions (as amended from time to time under clause 5);

"Customer" means you, at whose request Inter-Est agrees to provide the Service under the terms of this Agreement;

"Hardware" means any Hardware used by the Customer in accessing the Service;

"Hit" means each occasion that an estimate is created using the Service (access to the Service having been obtained by use of the Customer's Unique ID and Password);

"ISP" mean any internet service provider used by the Customer in accessing the Service;

"Information" means information obtained by use of the Service and includes the means of accessing such information;

"Method Manual" means the current Method Manual(s) produced by Thatcham advising how the Thatcham's Data should be used.

"Password" means such Password used in conjunction with the Unique ID as is required to access the Service, this will be allocated to the Customer initially by Inter-Est, and which may be changed thereafter from time to time by the Customer or Inter-Est;

"Service" means the provision by Inter-Est of an on-line estimating tool and interface allowing access to the Thatcham's Data;

"Software" means any Software programs used by the Customer for the purpose of accessing the Service;

"Thatcham" means the Motor Insurance Repair Research Institute;

"Thatcham's Data" means the Thatcham Times System Database and Thatcham Parts System Database (as updated from time to time by Thatcham) to which access is provided under this Agreement;

"Unique ID" means the personal identification names or numbers as may be allocated to the Customer by way of unique user identification from time to time;

"Website" means either the Website at <http://www.inter-est.net> or <http://www.inter-est.co.uk> (or such other Website as Inter-Est advises the Customer from time to time) through which the Service may be accessed;

"Website Gateway" means the Website page that requires the Customer to confirm that it has accepted the terms and conditions of such Agreement before proceeding to gain access to the Service and to the Thatcham's Data.

## **2. Conditions Applicable**

Provision of the Service shall be subject to Inter-Est acceptance, shall be upon the terms and conditions contained herein (except as varied in writing by both Inter-Est and the Customer) and shall be subject to Inter-Est receiving a duly completed and acceptable authority from the Customer to debit a bank account of the Customer with the relevant Charges each time the Customer makes use of the Service.

## **3. Use of the Service and Charging Structure**

3.1 The Customer (using the Unique ID and Password) may access the Service via the Website and obtain Information for the purpose of assisting the Customer in effecting repairs individual motor vehicles. Under no circumstances may the Customer reproduce the Service (or a service similar to it) using the Information and the Customer shall not circulate or make any use of the Information (including any printouts or other copies of it), save for the purposes of repairing the individual motor vehicle for which a relevant Hit has been obtained.

3.2 A separate charge shall be made for each Hit and each occasion upon which the Customer accesses the Service shall constitute a separate and severable contract between the parties for the provision of Service upon the Conditions.

## **4. Duration**

The Service shall be provided by Inter-Est to the Customer from the date of acceptance by Inter-Est of the Customer's request for provision of the Service and shall continue to be provided subject to the terms of this Agreement unless terminated by either party giving to the other not less than seven days prior written notice to the last business address of the other known to it (and in the case of notices given by Inter-Est, any sent by first class post shall be deemed received when posted).

## **5. Updating of this Agreement**

If Inter-Est sends the Customer or places a revised version of this Agreement at the Website Gateway and the Customer makes use of the Service after such notification or placement, then the Customer will be deemed to have accepted the terms and conditions of the revised Agreement in place of the Conditions with immediate effect.

## **6. Unique ID and Password**

6.1 Inter-Est may withdraw the Unique ID and Password and forthwith allocate a new Unique ID and Password to the Customer at no extra charge where Inter-Est has reason to believe such Unique ID and Password has been discovered and/or used by any person without the knowledge, consent or permission express or implied of the Customer and on any such other occasion as Inter-Est shall deem necessary in its reasonable opinion.

6.2 Inter-Est shall have the right to withdraw the Unique ID and Password from the Customer if this Agreement or any part hereof is terminated or suspended for any reason or if in its opinion there are reasonable grounds for believing the Customer has not complied or is not complying with this Agreement.

6.3 Inter-Est shall have the right to reveal or disclose the Unique ID or Password, Customer name, address, email address and/or telephone number of a Customer to any person to satisfy the legal demand of any Court of law, government body or any competent Tribunal or under any applicable law, rule or regulation.

## **7. Unique ID and Password – Customer's Obligations**

7.1 The Unique ID and Password allocated to the Customer by Inter-Est are confidential and personal to the Customer and it is the Customer's responsibility to keep the Unique ID and Password safeguarded.

7.2 The Customer may change the Password allocated but continues to be responsible for security of access and the safeguarding of the Password. The Customer shall change the Password allocated on a regular basis in accordance with good computer security practice.

7.3 The Customer undertakes to use the Unique ID and Password in accordance with the instructions as to their use given by Inter-Est to the Customer from time to time.

7.4 The Customer shall notify Inter-Est immediately where there are grounds for suspecting that a person was discovered or is making use of the Customer's Unique ID and or Password without the knowledge consent or permission of Inter-Est or the Customer.

7.5 The Customer shall be responsible for all Charges for each and every Hit occurring during the continuance of this Agreement, irrespective of whether or not the person using the Customer's Unique ID and Password was authorised so to do by the Customer or Inter-Est.

## **8. Termination**

With prejudice to its other rights, Inter-Est will have the right forthwith to terminate this Agreement by notice in writing to the Customer and to claim on an indemnity basis for any result of losses, costs and expenses if:

8.1 the Customer fails to make payment when it is due or the Customer's bank fails to honour any debit instruction from the Customer's account; or

8.2 the Customer is in breach of any terms of this Agreement; or

8.3 or any order, arrangement, appointment or petition is issued or made relating to the Customer under the provisions of the Insolvency Act 1986 (or other relevant insolvency legislation) or if the Customer enters into an arrangement with its creditors or if a receiver or administrative receiver is appointed over any of the Customer's assets or undertakings.

## **9. Limitation of Liability**

9.1 Inter-Est shall be liable to the Customer as expressly provided in this Agreement but shall have no other obligation duty or liability whatsoever in the contract, tort or otherwise to the Customer.

9.2 Inter-Est hereby expressly excludes all liability in respect of inaccurate information obtained by the Service arising as a result of inaccuracies in the Thatcham's Data or as a result of the use of the Thatcham's Data other than in accordance with the Method Manual and with full knowledge of the Background. No warranty is given by Inter-Est (or has been given by Thatcham's to Inter-Est) that Thatcham's Data is error-free but Inter-Est hereby undertakes to advise Thatcham of any errors brought to its attention from time to time by the Customer.

9.3 Each occasion upon which the Customer accesses the Service shall be in law a separate and severable contract for the use of the Service to which the Conditions shall apply. In relation to each such contract, the maximum liability of Inter-Est whether in contract tort or otherwise relating to the provision of (or failure to provide) the Service shall be equal to the relevant Charges payable to Inter-Est in relation to that contract.

9.4 In any event Inter-Est shall not be liable in respect of loss of profits or goodwill or for any other indirect or consequential loss, howsoever arising, even if such loss is reasonably foreseeable or if Inter-Est have been advised of the possibility of the occurrence of the same.

9.5 In any event Inter-Est's liability whether in contract tort or otherwise in relation to all matters arising out of this Agreement shall not exceed the aggregate of the Charges actually paid by the Customer in the [6 months] prior to the date when such cause of action arose.

Notwithstanding the above, nothing in this Agreement shall be construed in such a manner as to limit the liability of any party for death or personal injury or in respect of fraud or fraudulent misrepresentation.

## **10. Set-off**

The Customer will not be entitled to exercise a right of set-off against any claim by Inter-Est for payment for the provision of the Service under this Agreement.

## **11. Suspension of Service**

Inter-Est may at its sole discretion elect to suspend forthwith provision of the Service until further notice on notifying the Customer either orally (confirming such notification in writing) or via e-mail or on the Website or otherwise in writing in the event that:

- (a) Inter-Est is entitled to terminate this Agreement for any reason;
- (b) Inter-Est's withdraws the Customer's Unique ID and or Password under the provisions of clause 6 above;
- (c) Inter-Est is obliged to comply with an order, instruction or request of a government, an emergency service organisation or other competent administrative authority; or
- (d) Inter-Est wishes to suspend provision of the Services for a period not exceeding an aggregate of 14 days in any 60 day period for technical reasons relating to the provision of the Service.

## **12. Means of access to the Website**

12.1 The Customer is responsible for obtaining access to the Website and for the installation of any Hardware and Software (and making any arrangements with any ISP required to so do).

12.2 To the extent that any Software provided by Inter-Est is downloaded (whether in "cookie" form or otherwise) from the Website for the purpose of using the Service such software remains the property of Inter-Est or its licensor and Inter-Est grants the Customer a non-exclusive non-transferable licence to use such software for the purpose of using the Service and for no other purpose. The Customer shall not reproduce such software nor copy, modify, adapt, translate, reverse engineer, decompile and disassemble the same or create any derivative work based thereon or save for the initial acceptance of any "cookie" or similar applet software shall not merge or include such software with or in any other software. Inter-Est accepts no liability for any damage to the Customer's computer system (or consequential losses arising therefrom) arising from the transfer of any virus in software provided by Inter-Est or arising from the incompatibility of the Customer's Hardware, Software and/or ISP with the Service, Website or with software provided by Inter-Est.

## **13. Force Majeure**

Neither party shall be liable to the other for any loss or damage which may be suffered by the other party due to any cause beyond the first party's reasonable control including without limitation any act of God inclement weather, failure or shortage of power supplies, flood, draught, lightning or fire, strike, lock-out, trade dispute or labour disturbance, the act or omission of government highway authorities, other telecommunications operator or other competent authority, war or military operations of any kind.

#### **14. Severance**

In the event that any provision of the Agreement shall be found to be unlawful or unenforceable then the remainder of the provisions of this Agreement shall remain in force and effect to the fullest possible extent.

#### **15. Assignability**

15.1 The Customer shall not assign delegate or otherwise deal with all or any of its rights and obligations under this Agreement without Inter-Est's prior written consent.

15.2 Inter-Est shall be entitled to assign this Agreement in whole or in part at any time.

#### **16. Entire Agreement**

16.1 This Agreement represents the entire understanding between the parties in relation to the subject matter hereof and supersedes all other agreements and representations made by either party whether oral or written.

16.2 This Agreement shall prevail over any inconsistent terms or conditions referred to in the Customer's application or in correspondence or elsewhere in any conditions and stipulations to the contrary are hereby excluded and extinguished.

#### **17. No waiver**

Failure by either party to exercise and enforce any rights conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise of enforcement thereof of any right on any later occasion.

#### **18. Thatcham's Data**

The Customer acknowledges and accepts that;

18.1 the information contained in the Thatcham's Data is a guide only and that actual repair times may vary according to the facilities, personnel and working practices used; and

18.2 the Thatcham's Data, the information contained within it has been produced in the circumstances described in the Background and is subject to the limitations set out in Background; and

18.3 no warranty is given as to the accuracy of the Thatcham's Data.

#### **19. Governing Law**

This Agreement shall be governed by and construed and interpreted in accordance with English law, and the parties submit to the jurisdiction of the English courts.