

ETI (EUROPE) - MEMBERSHIP AGREEMENT

NOW IT IS AGREED as follows:

1 SCOPE

1.1 These Terms and Conditions shall govern

- (a) your Application to join ETI Europe; and
- (b) once an Application has been accepted by ETI Europe, your Membership of ETI Europe.

1.2 A Membership shall include all Affiliates of the Member who operate in the Territory in relation to the goods and/or services which are provided by that Member to its customers.

1.3 Any company which is a member of ETI US shall require a separate membership of ETI Europe so as to be able to benefit from the benefits of membership of ETI Europe and vice versa

2 DEFINITIONS AND INTERPRETATION

2.1 When used in these Terms and Conditions, the following terms shall have the meanings ascribed to them below:

"Affiliate"	means in relation to the Member, any business entity which has a registered office in the United Kingdom or any member state of the European Union or the European Free Trade Area which is, from time to time Controlling or Controlled by or under common Control with the Member.
"Agreement"	means these Terms and Conditions together with the By law and the Policies.
"Applicable Laws"	means any applicable laws or regulations in any part of the Territory.
"Applicant"	means any entity which applies to join ETI Europe.
"Application"	means an application by the Applicant to join ETI Europe.
"Application Fee"	means ETI Europe's fee for processing an Application, the prevailing fee being made available by ETI Europe to the Applicant on request at the time the Applicant makes their Application
"Approval Procedure"	means the procedure described in Section 4 of Article III of the By Laws.
"Associate Member"	means a member of that class of members that enjoy the benefits and services of Associate Membership as describe in Section 2 of the By Laws.

"Authorised Purpose"	means the use of Confidential Information by the Member to develop, manufacture and/or sell vehicle diagnostic service tools and/or to perform of vehicle diagnosis and related tests,
"Business Day"	means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
"By Laws"	means the By Laws of ETI Europe, the latest version of which is published on the website of ETI Europe from time to time, the current version of which is available at www.ertools.org/key-documents/
"Competition Compliance Policy"	means ETI Europe's competition compliance policy, the latest version of which is published on the website of ETI Europe from time to time, the current version of which is available at www.ertools.org/key-documents/
"Control"	means, in relation to a company, the power of a person to secure that the affairs of the company are conducted in accordance with the wishes of that person: <ul style="list-style-type: none"> (a) by means of the holding of shares, or the exercise of voting power, in or in relation to that or any other company; or (b) by virtue of any powers conferred by the constitutional or corporate documents, regulating that or any other company, or any other document, and a "Change of Control" , in relation to that company, occurs if a person who Controls it ceases to do so or if another person acquires Control of it.
"Confidential Information"	means, in relation to any Party, confidential information (whether oral, graphic or written, or in electronic form or any other form) belonging to or relating to that Party, its Affiliates, it's or their business, clients, customers, business plans, affairs or activities including: <ul style="list-style-type: none"> (a) any of the Library Materials; (b) any know how, trade secrets and other information of a confidential nature, including without limitation, all proprietary, technical, industrial and commercial information and techniques in whatever form (including computer disks and tapes) that information may be recorded or stored; and (c) any document marked "Confidential" or any information which the recipient Party has been informed is confidential or which it might reasonably expect the other Party would regard as confidential, but excluding any Excluded Information.
"Data Protection Legislation"	means all applicable data protection and privacy legislation in force from time to time anywhere in the world, including: in the UK, the Data Protection Act 2018, the UK GDPR (as defined in the Data Protection Act 2018) and the Privacy and Electronic Communications Regulations 2003; and, in the EU, the General Data Protection Regulation ((EU) 2016/679), the Privacy and

"Data Subject Request"	Electronic Communications Directive 2002/58/EC and any national laws of members states of the European Union that relate to privacy and/or the processing of Personal Data. means in connection with this Agreement: (i) a request by or on behalf of a Data Subject to exercise that data subject's rights under Data Protection Legislation in respect of that data subject's Personal Data, including, without limitation, the right to access, correct, amend, transfer, obtain a copy of, object to the Processing of, block or delete such Personal Data; or (ii) a complaint from a Data Subject in relation to either Party's incompliance with Data Protection Legislation in relation to the Processing of their Personal Data.
"Effective Date"	means the date on which ETI Europe signs this Agreement following a prior signature by the Company.
"ETI Europe"	means ETI Europe Limited, a registered England & Wales not for profit corporation (company registration number: 15839516).
"ETI US"	mean the Equipment and Tool Institute, a registered Illinois not for profit corporation.
"Excluded Information"	means any: (a) information and/or data which becomes public knowledge through no breach of this Agreement or any fault, action or omission or intervention of the recipient; and/or (b) information and/or data which the recipient is able to demonstrate: and/or (c) information and/or data which was already lawfully in the recipient's possession or knowledge without any obligation of confidence prior to receipt from the discloser; and/or (d) information and/or data which was generated independently by the recipient without breach of this Agreement or use of any Confidential Information received from the discloser.
"Force Majeure Event"	means any event beyond the reasonable control of a Party to the Agreement, excluding any event that the affected Party, acting in accordance with best industry practice, could reasonably have been expected to have foreseen and taken steps to avoid the impact on this Agreement.
"Founding Member"	means a member of that class of members that enjoy the benefits and services of a Founding Member as communicated by ETI Europe to any such Member from time to time.
"Full Member"	means a member of that class of members that enjoy the benefits and services of a Full Member as describe in Section 2 of the By Laws.
"Full Member with Enhanced Data Access"	means a member of that class of members that enjoy the benefits and services of a Full Member with Enhanced Data Access as describe in Section 2 of the By Laws.

"General Materials"	Library	means any materials, other than any OEM Data, which is made available for use by Members via ETI Europe's "TEK-NET Library".
"Group"		means, in relation to the Customer, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.
"Initial Period"	Membership	means the period of twelve (12) months from the Membership Commencement Date plus the number of months from the expiry of such period to 31 December in that year less a sum equal to the Application Fee.
"Intellectual Rights"	Property	means all intellectual and industrial property rights (whether registered or unregistered) including any patents, rights in inventions, discoveries or processes, copyrights, rights in Confidential Information, know-how, registered designs, utility models, design rights, industrial designs, trademarks, trade names, domain names, goodwill, rights to prevent passing off for unfair competition, database rights and topography rights, throughout the world and including all registrations and pending registrations and applications and pending applications of the aforementioned and whether such rights are existing or to come into existence, in any country or jurisdiction in the world.
"Member"		means any Applicant whose Application for Membership is Approved by ETI Europe pursuant to the Approval Process.
"Membership"		mean's the Member's membership of ETI Europe in accordance with this Agreement.
"Membership Commencement Date"		means the date on which ETI Europe informs the Applicant that the Applicant's application for Membership may commence following ETI Europe's approval of the Application pursuant to the Approval Procedure
"Membership Fee"		means the fee which is charged by ETI Europe in each year of the Term for a Membership.
"Membership Period"		means the Initial Membership Period together with any subsequent 12-month period starting on 1 January in relation to which ETI Europe and the Member agree the Member's Membership should continue.
"New Member"		means any entity that is introduced by the Member to ETI Europe as a potential new member, which entity is then accepted for Membership by ETI and subsequently joins ETI Europe.
"New Member Referral Programme"	Referral	means the programme described in clause 7 pursuant to which the Member is encouraged to refer other entities to ETI Europe who may be interested in becoming New Members.
"OEM"		means an original equipment manufacturer.
"OEM Data"		means vehicle specifications and vehicle information required for the use of diagnosis, service and repair of vehicles, as well as

	data generated by the vehicle for use in diagnosis, service and repair of that vehicle.
"Party"	means ETI Europe and/or the Applicant/Member (as the case may be) and references to "Parties" means both ETI Europe and the Applicant/Member together.
"Policies"	means the Competition Compliance Policy and all other policies of the ETI Europe which are published on ETI Europe's website from time to time.
"Probationary Member"	shall have the meaning set out in Article III, Section 5 of the By Laws.
"Renewal Periods"	means each twelve (12) month period following the Initial Subscription Period.
"Sub-processor"	means a subcontractor engaged by ETI Europe (acting as Processor) that will Process Personal Data in connection with the terms of this Agreement.
"Supervisory Authority"	means any data protection authority or other regulatory, governmental or supervisory authority with authority over all or any part of: (a) the provision or receipt of the Services; and/or (b) the Processing of Personal Data in connection with the Services, including for the avoidance of doubt the UK Information Commissioner's Office.
"Term"	means the Initial Term as may be extended by subsequent Renewal Periods pursuant to this Agreement.
"Territory"	means the geographic areas comprising the United Kingdom or any member state of the European Union or the European Free Trade Area
"Terms and Conditions"	means these terms and conditions, as amended from time to time.
"Third Party Data Licence"	means the separate licences that the Member will be required to agree by an OEM or any other third party that owns any of the OEM Data or any of the Library Material (as the case may be) before the Member is able to access specific items of OEM Data and/or other Library material (as the case may be) via the ETI Europe's "TEK-NET Library" which may be accessed by Members.
"Tuning"	means the modification of ECUs for the purpose of increasing power output, removal of emissions related controls or any other modification that would be deemed to be against OEM homologated specifications and legislation requirements.

2.1 The By Laws and the Policies shall be incorporated into this Agreement.

2.2 The following rules of interpretation shall apply to this Agreement:

- 2.2.1 unless the Agreement otherwise requires, words in the singular shall include the plural and vice versa;
- 2.2.2 a “person” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 2.2.3 a reference to a “company” shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 2.2.4 a reference to legislation or a legislative provision is a reference to it as amended, re-enacted or replaced. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision;
- 2.2.5 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 2.2.6 any obligation imposed on the Member shall also be treated as an obligation on the Member to procure that its employees, agents, consultants and subcontractors shall also comply with the obligation;
- 2.2.7 any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to any similar or comparable action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing which approximates in that jurisdiction to the English legal term;
- 2.2.8 headings to the clauses are for ease of reference only and will not affect its interpretation; and
- 2.2.9 the terms and conditions of this Agreement shall apply to the exclusion of any other terms or conditions issued by the Member.

3 CONCLUSION OF AGREEMENT

- 3.1 The Applicant (and, on the acceptance of any Application by ETI Europe, the resulting Member) accepts that these Terms and Conditions, the By Laws and the Policies shall apply to its Application and to any resulting Membership. Accordingly, the submission of an Application by any Applicant shall constitute an offer by the Applicant to join ETI Europe as a Member in accordance with these Terms and Conditions, the By Laws and the Policies. In so doing, the Applicant acknowledges that ETI may accept or reject any such Application pursuant to the Approval Process.
- 3.2 At the time of submitting an Application, the Applicant shall:
 - 3.2.1 indicate its preferred class of Membership; and

- 3.2.2 submit its Application Fee.
- 3.3 Following the submission of an Application by an Applicant, the Applicant shall provide ETI Europe with any additional information and/or answers to questions which ETI Europe may raise and/or request whilst considering the Application in accordance with the Approval Procedure.
- 3.4 Once ETI Europe has considered an Application in accordance with the Approval Procedure, ETI Europe shall inform the Applicant of any approval (including on a provisional basis) or rejection of the Application by ETI Europe. In so doing, ETI Europe may approve or reject an Application in its sole discretion.
- 3.5 If the Applicant is approved by ETI Europe (including on a provisional basis), ETI Europe shall:
 - 3.5.1 inform the Applicant that its Application is approved by ETI Europe;
 - 3.5.2 inform the Applicant of the proposed Membership Commencement Date, being the first day of the month following the month in which the Application is Approved;
 - 3.5.3 inform the Applicant of the Membership Fee that shall be due and payable by the Applicant for the Initial Membership Period;
 - 3.5.4 submit an invoice for the Membership Fee of the Initial Membership Period to the Applicant.
- 3.6 If the Applicant still wishes to become a Member, the Applicant shall pay the Membership Fee for the Initial Membership Period and, with effect from the payment of the Initial Membership Fee, the Applicant shall become a Member at the level approved by ETI Europe.
- 3.7 If the Applicant is approved on a probationary basis, ETI Europe shall inform the applicable Applicant of any restrictions that will apply during the Initial Membership Period.
- 3.8 If the Application is rejected by ETI Europe, the Applicant accepts that ETI Europe will retain the Application Fee.
- 3.9 No individuals shall be entitled to apply to join ETI Europe.
- 3.10 These Terms and Conditions, the By Laws and the Policies shall apply to and be incorporated into this Agreement to the exclusion of:
 - 3.10.1 any inconsistent terms and conditions in, or referred to in, any documents submitted by an Applicant/Member to ETI Europe in connection its Application and/or Membership; and

3.10.2 any terms and conditions which may otherwise be implied By Law, trade custom, practice or course of dealing.

4. By Laws and Policies

- 4.1 The Applicant/Member has reviewed, hereby approves and agrees to abide by the By Laws and Policies.
- 4.2 ETI Europe shall notify the Member of any updates to the By Laws at least four (4) weeks prior to the date on which such updates are to take effect.
- 4.3 To the extent that any changes to the By Laws reflect the impact of changes in law and/or are of a minor operational nature, the Member accepts that such changes will come into effect on the date on which ETI Europe informs the Member that the changes are to come into effect.
- 4.4 To the extent that any updates to the By Laws have a material adverse impact on the Member, the Member may inform ETI Europe that it wishes to discuss the impact of any such change with ETI Europe prior to the date on which the applicable change is to come into effect. If, following any such discussions, the Member and ETI Europe can not agree on the proposed change, such change shall not take effect whilst ETI Europe may terminate this Agreement with effect from the date on which it otherwise required the change in the By Laws to take effect.

5. Memberships

- 5.1 The benefits of each type of Membership shall be as described in the By Laws.
- 5.2 The Initial Membership Period shall commence on the Membership Commencement Date and shall continue until the expiry of such period unless this Agreement is otherwise terminated by either Party in accordance with this Agreement.
- 5.3 Unless otherwise terminated by either Party, ETI Europe shall send the Member a renewal notice at least sixty (60) days prior to the end of the then current Term. Any such renewal notice shall include details of any changes to this Agreement that ETI Europe wishes to implement with effect from the start of the next Renewal Period together with the Membership Fee for the next Renewal Period.
- 5.4 The provisions of clause 4.2 above shall apply to any other changes to this Agreement as apply to a change to any of the By Laws.
- 5.5 If the Member does not want to renew its Membership for any reason, it may inform ETI Europe in writing at least thirty (30) days prior to the expiry of the then current Term.
- 5.6 If the Member is first appointed as a Probationary Member:
 - 5.6.1 the benefits of Probationary Membership are as set out in the By Laws;

- 5.6.2 the Member acknowledges that ETI Europe may terminate this Agreement at any time with prior written notice to the Member during the Probationary Period if it considers, in its reasonable opinion, and as agreed with the Member, that the Member is not complying with the terms and conditions of this Agreement (including the By Laws or any of the Policies) in any way;
- 5.6.3 the Member may terminate its Probationary Membership at any time during the Probationary Period;
- 5.6.4 ETI Europe will, by the first anniversary of any Probationary Membership, inform the Member as to whether or not:
- 5.6.4.1 the Member's Probationary Membership is to be converted into any other category of Membership (as per the Member's original Application) in which case:
- (a) the Membership shall be so converted with effect from the first anniversary of the Membership Commencement Date; and
 - (b) the Membership shall then run to 31 December of that year and shall then be capable renewal on an annual basis from 1 January in each subsequent year subject to the payment of all applicable Membership Fees for such periods and subject to no other termination rights being exercised by either Party; or
- 5.6.4.2 the Member's Probationary Membership and this Agreement is to be terminated at the end of the first anniversary of this Agreement for any reason.
- 5.6.5 If this Agreement is terminated by either Party during the Probationary Period, the Member shall still be obligated to pay all Membership Fees and any other sums which accrued prior to the effective date of any termination, expiration or cancellation of their Probationary Membership. In addition, ETI Europe shall not be required to refund any Membership Fees or other sums which have been paid by Probationary Member prior to termination of this Agreement and/or any Probationary Membership.
- 5.6.6 The Member accepts that all determinations under this Agreement as to whether Probationary Member has complied with this Agreement (including the By laws and all Policies) shall be based upon ETI Europe's sole and unfettered discretion.
- 5.7 The following conditions shall apply to each Member:
- 5.7.1 the Member shall:

- 5.7.1.1 adhere to the terms and conditions of this Agreement together with the By Laws and each of the Policies in all respects;
- 5.7.1.2 comply with all Applicable Laws
- 5.7.1.3 if it develops or offers products that support key, security or immobilizer functionality, it must either:
 - (a) certify compliance and provide sufficient evidence demonstrating that it follows and abides by OEMs Vehicle Security Data Compliance Policies and Protocols pertaining to such functions; or
 - (b) if the Member is not currently able to certify and make this demonstration, it must do so before ETI will grant Full Membership to the Member.
- 5.7.2 the Member shall not:
 - 5.7.2.1 engage in any other conduct which may reasonably be considered to be prejudicial to the interests of ETI Europe or its members;
 - 5.7.2.2 not engage in any behavior which may breach any competition laws in any part of the Territory;
 - 5.7.2.3 misuse or violate any Intellectual Property Rights of any OEM or any other third party which subsists in any of the OEM Data;
 - 5.7.2.4 misuse or violate any Intellectual Property Rights of ETI Europe or any third party (including any OEM Data) which subsists in any of the Library Materials ETI and/or the Intellectual Property Rights of any other members;
 - 5.7.2.5 disclose and/or misuse any of ETI's, its members' or any OEMs' private, proprietary or Confidential Information or violate the Privacy and Security requirements set forth in Exhibit A;
 - 5.7.2.6 disclose or transmit any Confidential Information to any Members without the permission of the entity which owns that Confidential Information;
 - 5.7.2.7 violate any OEM License Agreements or other similar contractual obligations pursuant to which the OEM may permit the Member to access and/or use any OEM Data;
 - 5.7.2.8 develop or offer products for the purpose of "tuning";
 - 5.7.2.9 utilize a vehicle security gateway mechanism not validly authorized or licensed for use in the United Kingdom or European Union;

- 5.7.2.10 openly criticize any ETI Europe policy or actions;
- 5.7.2.11 act in any way detrimental to the reputation, image, and workings of ETI Europe or ETI US
- 5.8 A Member may resign its Membership at any time.
- 5.9 If a Member resigns its Membership part way through a Membership Period, the Member shall not be entitled to any rebate on the Membership Fee for that Membership Period.
- 6. Membership Fees.**
- 6.1 The Member acknowledges that the Membership Fees shall be determined by ETI Europe based on the turnover of the Member and its Affiliates.
- 6.2 For such purposes:
 - 6.2.1 ETI Europe shall inform the Member of the Membership Fee for each Renewal Period around 6 months in advance of the start of the applicable Renewal Period;
 - 6.2.2 the Member shall declare its and its Affiliates turnover to ETI Europe as part of its Application and then, for its most recent annual accounting period, as at 31 October in each year of its Membership. Such reported turnover shall then be issued by ETI Europe to calculate the Membership Fee for the next year.
- 6.3 The Membership Fee shall be due and payable as follows:
 - 6.3.1 for the first year of Membership, the Membership Fee shall be due and payable on the Membership Commencement Date;
 - 6.3.2 on the first anniversary of the Membership Commencement Date, a further Membership fee will be due and payable. This payment will be calculated on a pro rata basis to reflect the number of months remaining in that calendar year;
 - 6.3.3 on or before 1 January in relation to each of the following calendar years in respect of which this Membership continues
- 6.4 ETI may also establish and/or levy reasonable additional fees or charges for participation in meetings, events and/or for other benefits of Membership.
- 6.5 The Member shall pay all sums which may become due in connection with its Membership within 30 days of the date of ETI Europe's invoice or, in the case of any attendance at any events, before the date of the event.
- 6.6 The Member shall bear its own costs and expenses for participation in ETI Europe, such as travel, employee compensation, and incidental expenses.

6.7 Unless otherwise agreed between the Parties in writing, all amounts payable by the Member are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under this Agreement by ETI Europe to the Member, ETI Europe shall add the additional amounts in respect of VAT to the relevant invoice.

6.8 If the Member fails to make any payment due to ETI Europe by the due date for payment, then the Member shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest shall accrue on a daily basis at 2% a year above the Bank of England's base rate from time to time.

7. Introductions of New Members

7.1 Each Member is encouraged to propose new entities to ETI Europe who may be interested in becoming a New Member. In return, for each successful application by a referred entity to become a New Member, ETI Europe will provide a reward (with a value of at least £150/) to whichever of your employees initiated the referral.

7.2 In order for a reward to be payable by ETI Europe to you on behalf of the referring employee, the following conditions must be satisfied:

7.2.1 your employee must complete our designated referral form, a copy of which is available on our website;

7.2.2 the entity being referred must provide us with details of your employee who initiated the referral;

7.2.3 the referred entity must not be an entity with whom ETI Europe is in active discussions regarding that entity becoming a New Member;

7.2.4 the referred entity must be accepted by ETI as a New Member

7.3 ETI Europe will be required to pay the referral reward to the Member within 30 days of the New Member becoming a member of ETI Europe. For such purposes, the Member agrees that ETI Europe may send the referral reward directly to the employee that initiated the referral of the New Member.

7.4 There is no limit to the number of referrals that your employees can make.

7.5 The Member accepts that ETI Europe may vary, suspend or cancel the arrangements set out in this clause 7 at any time with regard to the application of these arrangements to future referrals.

7.6 ETI Europe may refuse to accept any referrals from the Member or any individual employees if ETI Europe has any concerns with regard to:

- 7.6.1 the manner in which any referrals are being obtained;
 - 7.6.2 the manner in which ETI Europe is being represented to non-members and/or
 - 7.6.3 the manner in which the Member is otherwise behaving.
- 7.7 Any disputes regarding the referral program will be determined by ETI Europe in its sole discretion.

8. Use of ETI Europe Name and Logo.

- 8.1 During the Term, ETI Europe grants the Member a nonexclusive, non-assignable and non-transferable limited license to use the ETI Europe name and logo only in strict compliance with ETI's Logo Use Policy found at <https://www.ertools.org/ETILogos>.
- 8.2 The Member agrees that the ETI Europe name and logo may not be otherwise used, copied, reproduced or altered in any manner. Nothing in this Agreement, or in Member's use of the ETI name and logo, will give Member any right whatsoever in the ETI name and logo, or in any similar marks, beyond the limited right granted in this Agreement.
- 8.3 Upon any termination, expiration, cancellation or suspension of Member's membership or the Term of this Agreement, Member shall discontinue all use of the ETI name and/or logo. Furthermore, ETI has an absolute right to terminate, cancel, suspend or withdraw Member's limited license to use the ETI name and logo at any time.
- 8.4 The ETI name and logo contain intellectual property exclusive to ETI. All right, interest, title to, and ownership and intellectual property rights in, the ETI name and/or logo and all copies remain with ETI.

9. Antitrust Policy.

- 9.1 The Member agrees to comply with all applicable antitrust laws pertaining to Member's participation in the activities of ETI Europe.
- 9.2 Nothing in this Agreement shall be construed to require or permit conduct that violates any applicable antitrust law.

10. Confidential Information, Privacy and Security.

- 10.1 The Member acknowledges that:
- 10.1.1 certain OEMs may provide proprietary OEM Data to ETI Europe for inclusion in the TEK-NET Library, and

- 10.1.2 other third parties may provide other proprietary Library Material to ETI Europe for inclusion in the TEK-NET Library.
- 10.2 The Member acknowledges and agrees with ETI Europe (acting on behalf of itself and the applicable OEM or other third party that owns the applicable items of OEM Data or Library Material) that:
- 10.2.1 all OEM Data and all Library Material shall be treated by the Member as Confidential Information;
- 10.2.2 the Member shall not be entitled to access or use any of the OEM Data and/or certain other items of Library Material until the Member has agreed to be bound by the terms and conditions of the Third Party Data Licence that relates the specific items of OEM Data or Library Material in question;
- 10.2.3 the Member shall not be entitled to use any of the OEM Data for any purpose other than as expressly set out in the Third Party Data Licence that relates to the item of OEM Data in question;
- 10.2.4 the Member shall not be entitled to use any of the General Library Materials for any purpose other as expressly set out in the Third Party Data Licence that relates to the item of OEM Data in question of, if no explicit Third Party Data Licence is required to access an item of General Library Material, for any purpose other than to develop their own products and systems using the item of General Library Material in question
- 10.2.5 the acceptance of the applicable Third Party Data Licence by the Member shall be a pre-condition for the release of the applicable OEM Data or other Library Material to the Member via the TEK-NET Library;
- 10.2.6 the mechanism by which the Member shall be required to communicate its agreement to each Third-Party Data Licence with the OEM or the proprietor of the other Library Material shall be as explained in the TEK-NET Library; and
- 10.2.7 by agreeing to a Third-Party Data Licence, the Member agrees that the OEM or other third party owner of any Library Material will have direct rights to enforce the applicable Third Party Data Licence against the Member.
- 10.3 The Member agrees that the information it receives in connection with its membership in ETI Europe (including via the TEK-NET Library or any other ETI Europe repository) shall constitute Confidential Information and shall be maintained in confidence by the Member.
- 10.4 Save as anything to the contrary in any Third-Party Data Licence, ETI Europe and the Member acknowledge that Confidential Information shall not include (as can be established by documentary evidence) any information which:

- 10.4.1 is already in the possession of or known to the Member prior to the time of disclosure;
 - 10.4.2 is or becomes publicly known, other than through a wrongful act of Member or its representatives in breach of this Agreement or any Third-Party Data Licence;
 - 10.4.3 is or becomes available to the Member on a non-confidential basis from a third-party source; or
 - 10.4.4 is or was independently developed by the Member without use of, or reference to, the Confidential Information furnished hereunder.
- 10.5 In addition to the provisions of any Third-Party Data Licence, the Member agrees that:
- 10.5.1 any Confidential Information which is disclosed to it by ETI Europe in connection with this Agreement shall not be used by the Member for any purpose other the Authorised Purpose.
 - 10.5.2 the Member shall:
 - 10.5.2.1 treat as confidential the Confidential Information and protect the Confidential Information in the same manner and at a minimum with the same degree of care that Member protects its own trade secrets and other confidential business information;
 - 10.5.2.2 not alter, modify, disassemble, reverse engineer or decompile any of the Confidential Information;
 - 10.5.2.3 not, directly or indirectly, disclose, report or transfer Confidential Information to any third party without ETI's prior written consent, except as explicitly provided herein; and
 - 10.5.2.4 not, directly or indirectly, disclose, report or transfer Confidential Information to employees, directors or agents of Member, except for those employees, directors or agents who must have the information in order to accomplish the Authorized Purpose and who owe a duty or contractual obligation of confidentiality to Member in respect of the Confidential Information. The Member may not reproduce for distribution or use outside Member any copyrighted materials provided to Member under this Agreement without the permission of the copyright owner.
- 10.6 The Member agrees to comply with all Data Privacy and Security Requirements set forth in Exhibit A, which is hereby incorporated into and forms part of this Agreement.
- 10.7 The Member represents and warrants that it will maintain appropriate technical and organizational measures consistent with industry standards and applicable law to protect

the Confidential Information from unauthorised access or disclosure and that it will promptly notify ETI Europe of any failure to comply with any applicable law of which it becomes aware in relation to the Confidential Information in the Member's possession, custody or control.

- 10.8 The Member shall promptly delete and deliver upon ETI Europe's request all Confidential Information and all copies thereof to ETI Europe at any time upon request made by ETI Europe, on the expiration or termination of this Agreement, and at any point at which Member ceases to be a member in good standing of ETI Europe for any reason.
- 10.9 Subject to the terms and conditions of each Third-Party Data Licence, the Member shall not be obliged to maintain in confidence Confidential Information to the extent required to be disclosed to government agencies, authorities or bodies or pursuant to court order, but only to the extent that such disclosures are so required by any applicable law. In such instances, the Member shall, before making such disclosure and to the extent legally permitted, immediately provide written notice of such required disclosure to ETI Europe in order to permit ETI Europe to protect its interests in preserving the confidentiality of the Confidential Information.
- 10.10 The Member acknowledges and agrees that it has read and understood ETI's Privacy Policy, the current version in respect of which is available at <https://www.ertools.org/privacy-policy-2/> and the Member agrees that it shall promptly provide such privacy notice (and any updated version thereof received from or made available by ETI Europe from time to time) to those of its employees, directors, agents and other staff whose personal data Member provides to ETI Europe under or in connection with this Agreement and/or Member's membership.
- 10.11 Without prejudice to the provisions of any Third-Party Data Licence, the Member acknowledges and agrees that:
 - 10.11.1 all OEM Data and all other Library Material that is proprietary to a third party has been made available to ETI Europe for the purposes of making the same available to each Member once the Member as communicated its acceptance of the applicable Third Party Data Licence to the proprietor of such OEM Data or other Library Material;
 - 10.11.2 the Confidential Information provided and/or made available to the Member under this Agreement by ETI Europe is provided and/or made available by ETI Europe "as is" and without any liability on the part of ETI Europe of any nature;
 - 10.11.3 no material (including all Library Material) which is being made available for use by the Member via the TEK-NET Library has been checked or validated by ETI Europe for any purpose;
 - 10.11.4 ETI Europe may remove any OEM Data or other Library Material from the TEK-Net Library if it has any concerns regarding any such material including any

suspicion that any such material may infringe the intellectual property rights of any third party;

10.11.5 If the Member becomes aware that any Library Material may infringe the intellectual property rights of any third party, the Member shall:

10.11.5.1 as soon as reasonably practicable, provide written notice of the concern to ETI Europe and the proprietor of the applicable Library Content, specifying the nature of the concern in reasonable detail;

10.11.5.2 not making any admission of liability, agreement or compromise in relation to the concern without the prior written consent of the proprietor or the Library Content in question;

10.11.5.3 cooperate directly with the proprietor of any such Library Content as may be reasonably required the proprietor in relation to its conduct of any proceedings arising in relation to any resulting claims.

10.11.6 TO THE MAXIMUM EXTENT PERMITTED BY LAW, ETI EUROPE EXPRESSLY DISCLAIMS LIABILITY TO THE MEMBER AND EACH OF ITS AFFILIAES IN RELATION TO:

10.11.6.1 THE CONTENT OF ANY AND ALL LIBRARY MATERIAL (INCLUDING ALL OEM DATA) WHICH IS MADE AVAILBLE TO THE MEMBER IN CONNECTION WITH ITS MEMBERSHIP;

10.11.6.1 ALL EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE REGARDING ANY LIBRARY MATERIAL OR ANY OTHER INFORMATION OR MATERIAL WHICH IS MADE AVAILABLE BY ETI EUROPE TO THE MEMBER IN CONNECTION WITH ITS MEMBERSHIP OR OTHERWISE;

10.11.6.3 ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES;

10.11.6.4 ANY LIABILITY FOR ANY LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.12 The Member acknowledges and agrees that any breach of the Confidential Information, Privacy and Security requirements applicable hereunder will cause serious and irreparable harm to the ETI Europe that could not adequately be compensated by monetary damages. The Member therefore agrees that, in addition to any of the remedies to which ETI Europe may be entitled at law or in equity, ETI Europe will be entitled to apply for an injunction to prevent further breaches or threatened breaches of this Agreement and to compel specific performance of this Agreement. Such remedies shall not be deemed to be the exclusive

remedies for a breach of this Agreement, but shall be in addition to all other remedies available at law or equity.

10.13 The obligations of this clause 10 shall survive termination of this Agreement.

11. **Representations and Warranties.**

11.1 The Member represents and warrants that it has the full power and authority to enter into and perform this Agreement.

11.2 The Member represents and warrants that it will comply with all applicable laws and regulations in connection with its membership.

11.3 The Member represents and warrants that its products, services, including all related documentation, software, and other materials do not and will not infringe upon, misappropriate, or violate any Intellectual Property Right of any third party including any OEMs or any other members of ETI Europe.

12. **Assignment and Transfer**

12.1 The Member may not assign, sub-licence or otherwise transfer any of its benefits, rights or obligations under this Agreement (including by allowing any third party to access any of the benefits of the Member's Membership) without the prior written approval of ETI Europe.

12.2 Any attempted assignment, sub-licence or transfer of any of the Member's benefits, rights or obligations in violation of clause 12.1 above is null and void.

13. **Use of Member's Name.**

ETI Europe shall have the right to include the Member's name and logo in any lists of members published by ETI Europe and to announce that the Member has joined ETI Europe. The Member may provide the usage guideline of the Member's logo with ETI Europe and ETI Europe shall follow such guideline.

14. **Notice.**

Any notice or communication permitted or required by this Agreement shall be in writing and shall become effective two business days after the mailing thereof by certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to ETI, to:

ETI Europe, Squires Lodge 17 Main Street, Nether Poppleton, York, United Kingdom, YO26 6HS

If to Member, to the person identified as the main point of contact at the time of their Application or as otherwise nominated by the Member for such purpose.

15. **No Joint Liability**

Nothing in this Agreement shall be deemed to create a joint, venture, partnership or agency relationship between ETI Europe and the Member or to make the Parties jointly liable for any obligation arising out of the activities and services contemplated by this Agreement.

16. **Governing Law and Jurisdiction**

16.1 This Agreement is drafted in the English language. If this Agreement (including any of the By Laws or Policies) is translated into any other language, the English language version shall prevail.

16.2 The construction, validity and performance of this Agreement and all non-contractual obligations arising from or connected with this Agreement shall be governed by and construed in accordance with the laws of England and Wales

16.3 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Agreement.

17. **Severability.**

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect; and a substitute, valid, and enforceable provision most nearly reflecting the original intent shall be developed in place of the invalid provision.

18. **Integration.**

This Agreement supersedes and replaces any and all prior representations, agreements and understandings relating to Member's membership in ETI, except the By Laws. In the event of a conflict between this Agreement and the By Laws, the terms of the By Laws will prevail.

19. **Member Defaults**

19.1 Without prejudice to any other rights or remedies to which it may be entitled, ETI Europe may terminate this Agreement (including the Member's Membership of ETI Europe) in its sole discretion and with immediate effect by giving written notice to the Member if:

- 19.1.1 the Member commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach (including any failure to pay any sums which are due and payable by the Member to ETI Europe pursuant to this Agreement) within a period of ten (10) days after being notified in writing to do so; or
- 19.1.2 the Member repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
- 19.1.3 the Member takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.
- 19.2 As an alternative to termination, ETI Europe may elect to suspend a Member's Membership until the Member has remedied its default.
- 19.3 In the event that ETI Europe terminates this Agreement pursuant to this clause 22, ETI Europe shall not be responsible for a refund of any fees and charges paid by Member prior to termination of this Agreement.
- 19.4 The Member agrees to indemnify and hold harmless ETI Europe, its directors, officers, employees, volunteers, agents, and contractors against any reasonable, direct costs or expenses (including legal fees and costs) resulting from claims made by third parties arising out of Member's gross negligence, willful misconduct, or material breach of this Agreement, provided that such indemnity shall not apply to any damages resulting from ETI Europe's own gross negligence or willful misconduct.

20 **Waiver of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE MEMBER HEREBY WAIVES ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, LOSSES, AND DAMAGES OF ANY KIND OR NATURE THAT IT MAY HAVE AGAINST ETI EUROPE AND/OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS ARISING DIRECTLY OR INDIRECTLY FROM MEMBER'S MEMBERSHIP OR USE OF ETI EUROPE'S SERVICES. THIS WAIVER OF LIABILITY DOES NOT APPLY TO DAMAGES ARISING FROM THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD OF ETI EUROPE OR ITS REPRESENTATIVES.

21. **Waiver and Severability**

No waiver by ETI of any term or condition set out in this Agreement shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of ETI to assert a right or provision under this Agreement shall not constitute a waiver of such right or provision.

22. Invalidity

If any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Agreement will continue in full force and effect.

22. Modifications

No modification to this Agreement is binding, unless in writing and signed by both of the Parties.

23. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

EXHIBIT A

Data Privacy and Security Requirements

Member acknowledges that it is fully responsible for the confidentiality and security of the Confidential Information in its possession, custody or control and shall indemnify, defend and hold ETI harmless from any suspected or actual breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Confidential Information processed by Member ("Data Breach"), which indemnity obligations shall, include, without limitation, direct payment and/or reimbursement of ETI's costs and expenses related to investigation, including forensic computer services or assistance.

Member shall: (a) install and maintain industry-standard data security measures for its computer and other networked systems; and (b) implement and maintain appropriate technical and organisational security measures, procedures and practices appropriate to the nature of the information, to protect all Confidential Information obtained from ETI, from Data Breaches. Member represents and warrants that it has adopted a written information security program ("WISP") to govern the protection of all Confidential Information that Member receives from ETI, and Member agrees to apply the standards and requirements of all applicable data privacy and security laws to all such Confidential Information, regardless of the jurisdiction in which the subject of the Confidential Information resides. At all times while Member is a member of ETI, and for a period of three (3) years thereafter, Member shall maintain, and provide for ETI's review, from time to time, at ETI's request: (a) the Member's WISP; and (b) other applicable security program documents, including its incident response policies, encryption standards and/or other computer security protection policies or procedures, that constitute compliance with applicable data privacy and security laws.

Member represents and warrants that no Confidential Information has been collected by Member or transferred by Member to third parties in violation of any applicable data privacy or security laws and regulations (including, where applicable, the General Data Protection Regulation (EU) 2016/679 and the "UK GDPR", as defined in the Data Protection Act 2018, as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (SI 2019/419), (together, "GDPR") and all applicable local laws and regulations which implement, supplement or otherwise provide for any derogations in respect the GDPR) and binding guidance issued by governmental or supervisory authorities, contractual obligations, or privacy policies or notices, or terms of use maintained by Member (collectively, "Data Privacy and Security Requirements"). Member represents and warrants that Member is in compliance and shall comply with all Data Privacy and Security Requirements with respect to any and all data processing activities regarding the Confidential Information in which Member engages. There are no notices, claims, investigations or proceedings pending, or, to the knowledge of Member, threatened, by national or supranational governmental or supervisory bodies, or private parties involving notice or information to individuals that Confidential Information held or stored by ETI has been compromised, lost, taken, accessed or misused. Member has not received any notice or claim regarding any violation of any Data Privacy and Security Requirements, and Member has no reason to believe that the security of any records collected or maintained by the Member containing Confidential Information that the Member maintains has been breached or potentially breached.

Subject to reasonable notice, the Member shall provide ETI the right to evaluate or audit the Member and its data protection and security processes, procedures, equipment and facilities, from time to time during the Term of the Agreement, and for a period of three (3) years thereafter, to determine whether the Member complies, has complied and has the capacity to comply with Data Privacy and Security Requirements. The Member shall cooperate fully with ETI and its designated representatives to allow ETI to make such determination.

Member shall maintain appropriate security incident management policies and procedures, and shall notify ETI without undue delay (and in any event, within 24 hours) upon Member becoming aware of a Data Breach. As part of and following such notice to ETI following a Data Breach, Member shall provide ETI with sufficient information as ETI reasonably requires and to allow ETI to meet any obligations to report or inform individuals and/or others of the Data Breach under Data Privacy and Security Requirements, including but not limited to (a) the nature of the Data Breach, including the categories of Confidential Information potentially affected and approximate number of data records concerned; (b) the status of any investigations into such Data Breach; (c) the likely consequences of the Data Breach; (d) any measures to be taken (or proposed to be taken) to address the Data Breach; and (e) the name and contact details of Member's data protection officer or other contact point where more information can be obtained. Member further agrees to provide full cooperation and assistance in identifying the cause of such Data Breach and shall take necessary action to remediate the cause. Member shall additionally provide ETI full and prompt cooperation and assistance in relation to any notifications that ETI is required to make as a result of the Data Breach.