

AUGSCAPE LIMITED / CAR KEY NETWORK

TERMS & CONDITIONS FOR THE SUPPLY OF SERVICES

BACKGROUND

- (A) Augscape supplies vehicle security services and Parts and labour required to provide bespoke replacement keys that are cut and, if necessary, programmed to enable vehicles to be accessed and started.
- (B) The parties have agreed that Augscape shall supply Services to the Customer.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following definitions apply:

“1Link Service Network”	means the online vehicle technology solutions platform provided by epyx(™) 1 Link Service Network;
“Affiliate”	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
“Augscape”	means Augscape Limited (trading as Car Key Network) (Company Number 09786940) whose registered address is Hedley Court, Boothferry Road, Goole, East Yorkshire, DN14 6AA, VAT NUMBER GB229574675;
Authorised Contacts	means persons within the Customer’s organisation who are authorised to place Orders on behalf of the company;
“Bribery Laws”	means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption;
“Business Day”	means a day other than a Saturday, Sunday or bank or public holiday in England;
“Conditions”	means Augscape’s terms and conditions of supply set out in this document;
“Confidential Information”	means all confidential information (however recorded or preserved) disclosed by a party (as defined below) to the other party in connection with a Contract, including but not limited to: <ul style="list-style-type: none"> (a) any information that would be regarded as confidential by a reasonable business person relating to: <ul style="list-style-type: none"> (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party; (b) any information developed by the parties in performing their obligations under, or otherwise pursuant to the Contract; and (c) any information that has been identified as confidential.
“Contract”	means the agreement between Augscape and the Customer for the supply and purchase of Services incorporating these Conditions and the Order;
“Control”	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company;
“Controller”	shall have the meaning given to it in applicable Data Protection Laws from time to time;
“Corporate Billing Accounts”	means credit accounts provided by the Company to The Customer;
“Customer”	means the person who purchases the Services from Augscape and whose details are set out in the Order;
“Data Protection Laws”	means, as binding on either party or Services, all applicable data protection and privacy legislation in force from time to time in the UK including: <ul style="list-style-type: none"> (a) the General Data Protection Regulation ((EU) 2016/679) (“GDPR”); (b) the Data Protection Act 2018 (“DPA”); (c) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC); (d) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; (e) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and (f) any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
“Data Subject”	shall have the meaning given to it in applicable Data Protection Laws from time to time;
“Engineer”	shall mean engineers used by, and approved by Augscape;
“Force Majeure”	means an event or sequence of events beyond a party’s reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving Augscape’s or its suppliers’ workforce, but excluding the Customer’s inability to pay or circumstances resulting in the Customer’s inability to pay;
“Intellectual Property Rights”	means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case: <ul style="list-style-type: none"> (a) whether registered or not; (b) including any applications to protect or register such rights;

	(c) including all renewals and extensions of such rights or applications;
	(d) whether vested, contingent or future;
	(e) to which the relevant party is or may be entitled, and
	(f) in whichever part of the world existing;
"International Organisation"	shall have the meaning given to it in applicable Data Protection Laws from time to time;
"Location"	means the address (es) for performance of the Services as set out in the Order;
"Modern Slavery Policy"	means Augscape's anti-slavery and human trafficking policy in force and notified to the Customer from time to time;
"MSA Offence"	has the meaning given in clause 14.1.1;
"Order"	means the order for the Services from Augscape placed by the Customer which will specify the bespoke services required by the Customer from Augscape and shall include, without limit, orders made by telephone to 03334441908, by email at bookings@carkeynetwork.co.uk , by completing a booking form request via our website carkeynetwork.co.uk , the website autolocksmithworknet.co.uk , or using online platforms such as 1-Link Service Network;
"Parts"	shall mean such parts, accessories and equipment for vehicles as are required by Augscape to facilitate its performance of Services and shall include keys;
"Personal Data"	shall have the meaning given to it in applicable Data Protection Laws from time to time;
"Personal Data Breach"	shall have the meaning given to it in applicable Data Protection Laws from time to time;
"Price"	has the meaning set out in clause 3.1;
"processing"	has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including "process" , "processing" , "processed" , and "processes" shall be construed accordingly);
"Processor"	shall have the meaning given to it in applicable Data Protection Laws from time to time;
"Protected Data"	means Personal Data received from or on behalf of the Customer in connection with the performance of Augscape's obligations under the Contract;
"Services"	means the key replacement, vehicle security and related services set out in the Order or understood by the parties to be included in the Services and to be performed by Augscape for the Customer;
"Special Order Items"	shall mean Parts exceeding £100.00 ordered specifically for a Booking on behalf of the Customer.
"Specification"	means the description or specification of the Services set out or referred to in the Order and confirmed in writing in a confirmation of order
"Sub-Contractor"	means sub-contractors approved and used by Augscape including but not limited to Engineers;
"Sub-Processor"	means any agent, Sub-Contractor or other third party (excluding its employees) engaged by Augscape for carrying out any processing activities on behalf of the Customer in respect of the Protected Data;
"Augscape Personnel"	means all employees, officers, staff, other workers, agents and consultants of Augscape, its Affiliates and any of their Subcontractors who are engaged in the performance of the Services from time to time; and
"VAT"	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Services.

1.2 In these Conditions, unless the context requires otherwise:

- 1.2.1 any clause, schedule or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of the Conditions;
- 1.2.2 a reference to a **'party'** includes that party's personal representatives, successors and permitted assigns;
- 1.2.3 a reference to a **'person'** includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a **'company'** includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.5 a reference to a gender include each other gender;
- 1.2.6 words in the singular include the plural and vice versa;
- 1.2.7 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.8 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (excluding email);
- 1.2.9 without prejudice to the provisions of clause 19, a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time; and
- 1.2.10 without prejudice to the provisions of clause 19, a reference to legislation includes all subordinate legislation made from time to time under that legislation.

2. APPLICATION OF THESE CONDITIONS

- 2.1 These Conditions apply to and form part of the Contract between Augscape and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed upon, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that Augscape otherwise agrees in writing.
- 2.3 No variation of these Conditions or amendment to an Order once placed, or to the Contract shall be binding unless expressly agreed in writing by a duly authorised signatory on behalf of Augscape.
- 2.4 Each Order by the Customer to Augscape shall be an offer to purchase Services subject to these Conditions.
- 2.5 Without prejudice to the Customer's cancellation rights pursuant to clauses 9.5 to 9.12, an Order may be withdrawn or amended by the Customer at any time provided that notice in writing of such withdrawal or amendment by the Customer is received by Augscape before acceptance by Augscape. If Augscape is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.
- 2.6 The offer constituted by an Order shall remain in effect and be capable of being accepted by Augscape until withdrawn by the Customer.

- 2.7 Augscape may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Services shall arise, until the earlier of:
- 2.7.1 Augscape's written acceptance of the Order; or
 - 2.7.2 Augscape performing the Services or notifying the Customer that they are ready to be performed (as the case may be).
- 2.8 Rejection by Augscape of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.9 Augscape will issue quotations to the Customer from time to time following a booking request. Quotations are invitations to treat only. They are not an offer to supply Services and are incapable of being accepted by the Customer.
- 2.10 Marketing and other promotional material relating to the Services including any samples, drawings, descriptive matter or advertising issued by Augscape, and any descriptions or illustrations contained on Augscape's website and on any online platforms used by Augscape, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 3. PRICE**
- 3.1 The price for the Services ("**Price**") shall be advised by Augscape to the Customer in a quotation before Augscape's written confirmation that an Order is accepted.
- 3.2 Prices are exclusive of:
- 3.2.1 the costs for Parts, including Special Order Items which shall be charged separately, and in addition, at Augscape's standard rates, and
 - 3.2.2 VAT (or equivalent sales tax).
- 3.3 The Customer shall pay any applicable VAT to Augscape upon receipt of a valid VAT invoice.
- 3.4 Augscape may increase the Prices for Services not yet performed at any time by giving the Customer not less than 10 Business Days' notice.
- 3.5 Notwithstanding clause 3.4, Augscape may increase the Prices for Services not yet performed with immediate effect by written notice to the Customer where there is an increase in the direct cost to Augscape of supplying the relevant Services which exceeds 5% and which is due to any factor beyond the control of Augscape.
- 4. CORPORATE BILLING ACCOUNTS**
- 4.1 Corporate Billing Accounts may be provided at Augscape's sole discretion to Customers on an individual basis.
- 4.2 Augscape may set and vary credit limits of Corporate Billing Accounts from time to time and withhold all further supply of Services if the Customer exceeds such credit limit.
- 4.3 Subject to clause 4.4 Augscape reserves the right to terminate or suspend a Corporate Billing Account at any time.
- 4.4 Augscape shall notify Customers with Corporate Billing Accounts by email of its intention to suspend or terminate their Corporate Billing Accounts no later than 30 days before such suspension or termination shall take effect.
- 4.5 Any balances outstanding in respect of terminated or suspended Corporate Billing Accounts will remain payable until payment is received in accordance with the provisions of clause 5 below.
- 5. PAYMENT**
- 5.1 Clauses 5.3 and 5.4 shall only apply to Customers with Corporate Billing Accounts.
- 5.2 Augscape shall invoice the Customer for the Services at any time or in accordance with any invoicing schedule (if any) agreed with that Customer when setting up the Corporate Billing Account.
- 5.3 In addition to invoices, Augscape shall provide billing statements ("**Billing Statements**") to Customers with Corporate Billing Accounts. Billing Statements shall be generated on the last day of each month and shall be sent to the billing email addresses provided by the Customers to Augscape at the point of registration.
- 5.4 The Customer shall pay all invoices:
- 5.4.1 in full without deduction or set-off, in cleared funds within 30 days of the date of each invoice;
 - 5.4.2 by credit card or debit card; or
 - 5.4.3 to the bank account nominated by Augscape.
- 5.5 Augscape's payment details shall be set out on the face of its invoice and here https://www.autolocksmithworknet.co.uk/payment_details.html. Augscape shall notify the Customer by post or telephone of any change to its bank details. A notification sent pursuant to this clause 5.5 shall be sent to the billing address and/or billing telephone number provided at the point of registration.
- 5.6 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
- 5.6.1 Augscape may, without limiting its other rights, charge interest on such sums at 5% a year above the base rate of Barclays Bank plc from time to time in force, and
 - 5.6.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 5.7 Advance payment for Services ("**Advance Payment**") must be made in full from Customers without Corporate Billing Accounts. Augscape shall not supply Services to such Customers until after it receives Advance Payment, following which it shall supply the relevant Customer with a VAT receipt.
- 5.8 Failure to make payment pursuant to this clause 5 when due may result in legal action and/or termination and suspension of a Corporate Billing Account.
- 6. PARTS/SPECIAL ORDER ITEMS**
- 6.1 Unless otherwise stated within an Order or within the email from Augscape confirming an Order, all Services are performed using genuine original equipment manufacturer and/or approved Parts.
- 6.2 Unless stated otherwise within the email from Augscape confirming acceptance of an Order all Services are performed in accordance with the manufacturer's recommended maintenance schedule.
- 6.3 Augscape will inform the Customer in advance of performance of the Services in the event that only aftermarket Parts are available.
- 6.4 Customers with a Corporate Billing Account may be required to pay for Special Order Items before Augscape can perform the Services or accept an Order. Special Order Items are charged at cost price to the Customer.
- 7. AUGSCAPE'S OBLIGATIONS**
- 7.1 Augscape shall:
- 7.1.1 perform its obligations in accordance with the terms of these Conditions;
 - 7.1.2 use its reasonable endeavours to cooperate with Customer in all matters arising under these Conditions or otherwise relating to the performance of the Services;
 - 7.1.3 provide the Services in a reasonably timely manner;

- 7.1.4 inform the Customer in a timely manner of any matters (including any health, safety or security requirements) which it reasonably believes may delay or negatively impact its ability to perform its obligations pursuant to these Conditions;
- 7.1.5 use reasonable endeavours to comply with health and safety laws and regulations;
- 7.1.6 take reasonable care to avoid and/or minimise damage to the Customer's property including buildings, flooring, walls, roofs, equipment, signage, safety equipment, vehicles and vehicle parts;
- 7.1.7 provide feedback to the Customer relating to completed Services. Such feedback may include defect and damage reports, vehicle registration number(s), photographs of any damage including pre-existing damage to vehicle(s), mileage readings, and other photographic evidence; and
- 7.1.8 comply with relevant Data Protection Laws.

8. CUSTOMER OBLIGATIONS

8.1 The Customer shall:

- 8.1.1 perform its obligations in accordance with the terms of these Conditions;
- 8.1.2 pay the Price(s) for the Services in accordance with the provisions of clause 3;
- 8.1.3 cooperate with Augscape in all matters relating to the performance of the Services;
- 8.1.4 provide Augscape with all information, documents, materials, data or other items Augscape requires to allow it to perform the Services in a timely manner, including but not limited to:
 - 8.1.4.1 its legal and trading name(s);
 - 8.1.4.2 its billing address;
 - 8.1.4.3 its billing telephone number;
 - 8.1.4.4 its billing email Address;
 - 8.1.4.5 its billing department name and contact name (s);
 - 8.1.4.6 its purchase order requirements;
 - 8.1.4.7 its website;
 - 8.1.4.8 Specification(s);
 - 8.1.4.9 its company registration number (if applicable);
 - 8.1.4.10 its registered business address(s);
 - 8.1.4.11 its VAT registration number (if applicable); and
 - 8.1.4.12 any other information required by Augscape to enable it to perform the Services, including but not limited to details of Authorised Contacts;
 - 8.1.4.13 details of, and proof of identity of vehicle owners, and/or proof of ownership of vehicles, and/or proof of vehicle rental for the purpose of ensuring that the Customer is entitled to authorise Augscape to perform the Services.
- 8.1.5 inform Augscape in a timely manner of any matters which come to its attention (including any health, safety or security requirements) which it reasonably believes may prevent Augscape from performing the Services at all, or in a timely manner; and
- 8.1.6 ensure that it provides Augscape with accurate Specifications.
- 8.1.7 ensure that it is registered with Augscape or an approved third party billing platform such 1 Link Service Network before it places an Order.

9. PERFORMANCE

9.1 An Order shall specify whether the Services are to be:

- 9.1.1 performed at the Location; or
- 9.1.2 performed at an alternative premises set out in the Order (as the case may be).

9.2 The Customer shall make, or shall procure that such Location or alternative premises are made available for Augscape so that Augscape is able to make the Services available in a timely matter.

9.3 Customers may book a date and time slot for Augscape to perform the Services. Time slots are subject to availability, and shall not be confirmed until Augscape provides the Customer with written confirmation by email that it can supply the Services on the requested date(s) and time slot(s). Should a Customer's first choice of date(s) and time slot(s) be unavailable, alternative date(s) and time slot(s) will be offered.

9.4 Augscape may offer the following target time slots which may be amended from time to time:

- 9.4.1 a morning time slot: 8 am – 12pm;
- 9.4.2 an afternoon time slot: 12pm – 5pm; or
- 9.4.3 an evening time slot: 5pm - 8pm.

9.5 Augscape shall notify the Customer by email and/or telephone as soon as reasonably possible if Augscape cancels an Order, or Augscape cancels or reschedules a time slot booked pursuant to clause 9.3. The Customer may cancel, without charge, any time slot Augscape reschedules for it pursuant to this clause 9.5. Any Customer whose Order is cancelled, or whose appointment is rescheduled pursuant to this clause 9.3 shall be entitled to a full refund of fees it has prepaid for Services not yet performed.

9.6 If a prepaid Order is cancelled or rescheduled by the Customer more than 12 hours before Augscape is due to perform the Services, the Customer shall only be entitled to a refund of the payment received by Augscape as prepayment, less the total costs of any Special Order Parts purchased in anticipation of supplying the Services, and the cost of shipping the Special Order Parts to the Customer pursuant to clause 9.8. Proof for the purchase of Special Order Parts will be provided to the Customer on request.

9.7 If any order that is not a prepaid Order is cancelled or rescheduled by the Customer more than 12 hours before Augscape is due to perform the Services, the Customer may only be charged (whether to their Corporate Billing Account or otherwise) for the cost of Special Order Parts purchased in anticipation of Augscape supplying the Services, and the cost of shipping the Special Order Parts to the Customer pursuant to clause 9.8. Proof for the purchase of Special Order Parts will be provided to the Customer on request.

9.8 Following a refund under clause 9.6, where the cost of Special Order Parts is deducted from a sum to be refunded, or a charge under 9.7 which is paid by the Customer, the Special Parts shall become the property of the Customer and may shipped to the Customer via secure tracked mail within 7 working days to an address nominated by the Customer. Tracking information for such shipments shall be disclosed to the Customer upon request.

9.9 If any Order is cancelled or a time slot is rescheduled by the Customer less than 12 hours before the time slot for performance of the Services, with the exception of Services booked for same day performance, Augscape reserves the right to retain all payments received in relation to the associated Order, or to charge the full Order Price to the relevant Customer's Corporate Billing Account.

- 9.10 Augscape shall not make any refund to the Customer, and shall in the case of Customers with Corporate Billing Accounts charge to such accounts the full Price for the relevant Orders, if any Order is cancelled or rescheduled by Augscape at or around the expected time for performance due to the Customer providing Augscape with incorrect:
- 9.10.1 vehicle registration, make, model, year of manufacture, specification;
 - 9.10.2 key type information;
 - 9.10.3 location information; and/or
 - 9.10.4 Information material to the performance of Services.
- 9.11 The Customer shall be entitled to a refund if any Order or time slot for performance is cancelled or rescheduled by Augscape at the time for performance of the Services (including instances after an Engineer arrives at the Location or alternative premises for performance) due to Augscape's error.
- 9.12 The Customer may cancel an Order or Contract any time after Augscape has begun performance of the Services provided that the Customer shall pay the full Price for any Services cancelled pursuant to this clause 9.12. For avoidance of doubt, a Customer that cancels an Order pursuant to this clause 9.12 shall not be entitled to any refund.
- 9.13 The Price due from a Customer shall not increase if it reschedules a time slot for performance of the Services more than 24 hours before the Services were due to be performed, and if the rescheduled the time slot and date for performance falls within 14 working days of the original date for performance,
- 9.14 Notwithstanding the provisions of clause 9.13, Augscape reserves the right to charge a Customer rescheduling a time slot/ performance of the Services a one off admin charge of £.00 before accepting a request for a later performance.
- 9.15 Each scheduled time slot for performance must be rescheduled separately.
- 9.16 The Services shall be deemed performed on completion of the performance of the Services as specified in the Order.
- 9.17 Augscape may perform the Services in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 9.18 Each performance of the Services shall be accompanied by a performance note stating:
- 9.18.1 the date of the Order;
 - 9.18.2 the relevant Customer and Augscape details;
 - 9.18.3 the category, type and quantity of Services performed;
 - 9.18.4 vehicle mileage reading where possible;
 - 9.18.5 photographs of work carried out (where possible);
 - 9.18.6 photographs of any pre-existing damage to vehicles or property (where applicable and possible); and
 - 9.18.7 any special instructions.
- 9.19 Augscape shall use its reasonable endeavours to perform the Services on the dates scheduled for performance.
- 9.20 Augscape shall not be liable for any delay in or failure of performance caused by:
- 9.20.1 the Customer's failure to: (i) make the Location available, (ii) prepare, or procure that the Location is prepared as required for performance of the Services or (iii) provide Augscape with adequate instructions for performance of the Services; make relevant vehicle and/or equipment available for Augscape to enable it to perform its obligations under these Conditions.
 - 9.20.2 Force Majeure.
- 10. SUBCONTRACT**
- 10.1 Augscape may hire or engage one or more Subcontractors to perform any or all of its obligations pursuant to these Conditions, provided, however, that:
- 10.1.1 such Sub-Contractor shall use the same degree of care in providing the Services as Augscape is obligated to use pursuant to these Conditions; and
 - 10.1.2 such Subcontractor shall in all cases remain primarily responsible for all of its obligations pursuant to these Conditions with respect to the scope of the Services and the standard for Services.
- 10.2 All Engineers hired or engaged by Augscape shall undergo annual compliance checks by Augscape ("**Annual Compliance Checks**") which shall involve:
- 10.2.1 verification of each Engineer's identity using photographic identification;
 - 10.2.2 proof of each Engineer's address;
 - 10.2.3 proof of each Engineer's right to work in the UK;
 - 10.2.4 obtaining evidence of each Engineer's public liability insurance;
 - 10.2.5 operating vehicle identity; and
 - 10.2.6 obtaining evidence of each Engineer's industry accreditations.
- 10.3 Only Engineers meeting the Annual Compliance Checks requirements shall be hired or engaged to perform the Services.
- 11. REFUNDS**
- 11.1 Refunds will be processed within 30 days of written confirmation to the Customer by Augscape that a refund is due, and shall be made by bank transfer only using banking details provided by the Customer by email sent to accounts@carkeynetwork.co.uk. Augscape will only make refunds to bank accounts in the same name as the Customer. Augscape may at its sole discretion issue a refund to an account not bearing the Customer's details only if that Customer provides it with a signed letter from that Customer's Director or Legal Officer explaining why bank a payment may be made to another account.
- 12. WARRANTY**
- 12.1 Augscape warrants that, at the time of performance, the Services shall:
- 12.1.1 conform in all material respects to their description, and the Specification;
 - 12.1.2 be free from material defects;
 - 12.1.3 be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II s 13.
- 12.2 Augscape shall, at its option, remedy, re-perform or refund the Services that do not comply with clause 12.1, provided that:
- 12.2.1 the Customer serves a written notice on Augscape not later than five Business Days from performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from performance in the case of latent defects; and
 - 12.2.2 such notice specifies that some or all of the Services do not comply with clause 12.1 and identifies in sufficient detail the nature and extent of the defects; and
 - 12.2.3 the Customer gives Augscape a reasonable opportunity to examine the claim of the defective Services.

12.3 The provisions of these Conditions shall apply to any Services that are remedied or re-performed with effect from performance of the remedied or re-performed Services.

12.4 Except as set out in this clause 12:

12.4.1 Augscape gives no warranties and makes no representations in relation to the Services; and

12.4.2 shall have no liability for their failure to comply with the warranty in clause 12.1,

and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

12.5 The Customer shall be entitled to exercise its rights under clause 12 notwithstanding that the Services were not rejected following any initial inspection.

13. ANTI-BRIBERY

13.1 For the purposes of this clause 13 the expressions “adequate procedures” and “associated with” shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.

13.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:

13.2.1 all of that party’s personnel;

13.2.2 all others associated with that party; and

13.2.3 all of that party’s sub-contractors;

involved in performing the Contract so comply.

13.3 Without limitation to clause 13.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

13.4 Each party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in this clause 13.

14. ANTI-SLAVERY

14.1 The Customer undertakes, warrants and represents that:

14.1.1 neither the Customer nor any of its officers, employees, agents or subcontractors has:

14.1.1.1 committed an offence under the Modern Slavery Act 2015 (an “MSA Offence”); or

14.1.1.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

14.1.1.3 is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

14.1.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy

14.1.3 it shall notify Augscape immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of Customer’s obligations under clause 14.1. Such notice shall set out full details of the circumstances concerning the breach or potential breach of the Customer’s obligations.

15. INDEMNITY AND INSURANCE

15.1 The Customer shall indemnify, and keep indemnified, Augscape from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by Augscape as a result of or in connection with the Customer’s breach of any of the Customer’s obligations under the Contract.

15.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under these Conditions. On request, the Customer shall supply, so far as is reasonable, evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Customer shall on request assign to Augscape the benefit of such insurance.

16. LIMITATION OF LIABILITY

16.1 The extent of the parties’ liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 16.

16.2 Subject to clauses 16.5 and 16.6, Augscape’s total liability shall not exceed the Price paid by it for Services.

16.3 Subject to clauses 16.5 and 16.6, Augscape shall not be liable for consequential, indirect or special losses.

16.4 Subject to clauses 16.5 and 16.6, Augscape shall not be liable for any of the following (whether direct or indirect):

16.4.1 loss of profit;

16.4.2 loss or corruption of data;

16.4.3 loss of use;

16.4.4 loss of production;

16.4.5 loss of contract;

16.4.6 loss of opportunity;

16.4.7 loss of savings, discount or rebate (whether actual or anticipated);

16.4.8 harm to reputation or loss of goodwill;

16.4.9 pre-existing damage to vehicles; and

16.4.10 damage to vehicles caused or made worse due to pre-existing damage to vehicles.

16.5 The limitations of liability set out in clauses 16.2 to 16.4 shall not apply in respect of any indemnities given by either party under the Contract.

16.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:

16.6.1 death or personal injury caused by negligence;

16.6.2 fraud or fraudulent misrepresentation;

16.6.3 any other losses which cannot be excluded or limited by applicable law.

17. INTELLECTUAL PROPERTY

- 17.1 Augscape shall indemnify the Customer from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that performance of benefit of the Services infringes the Intellectual Property Rights of any third party (“IPR Claim”), provided that Augscape shall have no such liability if the Customer:
- 17.1.1 does not notify Augscape in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
 - 17.1.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of Augscape;
 - 17.1.3 does not let Augscape at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
 - 17.1.4 does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;
 - 17.1.5 does not, at Augscape’s request, provide Augscape with all reasonable assistance in relation to the IPR Claim (at the Customer’s expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer.
- 17.2 If any IPR Claim is made or is reasonably likely to be made, Augscape may at its option:
- 17.2.1 procure for the Customer the right to continue receiving the benefit of the relevant Services; or
 - 17.2.2 modify or replace the infringing part of the Services so as to avoid the infringement or alleged infringement, provided the Services remain in material conformance to their Specification.
- 17.3 Augscape’s obligations under clause 17.1 shall not apply to Services modified or used by the Customer other than in accordance with the Contract or Augscape’s instructions. The Customer shall indemnify Augscape against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by Augscape in connection with any claim arising from such modification or use.

18. CONFIDENTIALITY AND ANNOUNCEMENTS

- 18.1 The Customer shall keep confidential all Confidential Information of Augscape and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 18.1.1 any information which was in the public domain at the date of the Contract;
 - 18.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 18.1.3 any information which is independently developed by the Customer without using information supplied by Augscape; or
 - 18.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract

except that the provisions of clauses 18.1.1 to 18.1.3 shall not apply to information to which clause 18.4 relates.

- 18.2 This clause shall remain in force for a period of five years from the date of the Contract and, if longer, three years after termination of the Contract.
- 18.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 18.4 To the extent any Confidential Information is Protected Data (as defined in clause 19) such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any of the provisions of clause 19.1.

19. PROCESSING OF PERSONAL DATA

- 19.1 The parties agree that the Customer is a Controller and that Augscape is a Processor for the purposes of processing Protected Data pursuant to the Contract. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to Augscape in respect of Protected Data (including the terms of the Contract) shall at all times be in accordance with Data Protection Laws. [Nothing in the Contract relieves the Customer of any responsibilities or liabilities under any Data Protection Laws.]
- 19.2 Augscape shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Contract.
- 19.3 The Customer shall indemnify and keep indemnified Augscape against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under this clause 19.
- 19.4 Augscape shall:
- 19.4.1 only process (and shall ensure Augscape Personnel only process) the Protected Data in accordance with Augscape’s Data Processing Policy which can be found here https://www.autolocksmithworknet.co.uk/privacy_policy.html and the Contract (including when making any transfer to which clause 19.10 relates), except to the extent:
 - 19.4.1.1 that alternative processing instructions are agreed between the parties in writing; or
 - 19.4.1.2 otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and
 - 19.4.2 without prejudice to clause 19.1, if Augscape believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall promptly inform the Customer and be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.
- 19.5 Taking into account the state of technical development and the nature of processing, Augscape shall implement and maintain the technical and organisational measures set out in 19.6 its Data Processing Policy which can be found here https://www.autolocksmithworknet.co.uk/privacy_policy.html to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
- 19.6 Without prejudice to its other obligations, the Augscape shall implement and maintain at least the following technical and organisational security measures to protect the Protected Data:
- 19.6.1 In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with these Conditions, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, Augscape shall implement appropriate technical and organisational security measures appropriate to the risk, including, as appropriate, those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the GDPR.
- 19.7 Augscape shall:
- 19.7.1 not permit any processing of Protected Data by any agent, sub-contractor or other third party (except its or its Sub-Processors’ own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the prior written authorisation of the Customer;
 - 19.7.2 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this clause 19 (including those relating to sufficient guarantees to implement appropriate technical and organisational measures) that is enforceable by Augscape and ensure each such Sub-Processor complies with all such obligations;

- 19.7.3 remain fully liable to the Customer under the Contract for all the acts and omissions of each Sub-Processor as if they were its own; and
- 19.7.4 ensure that all persons authorised by Augscape or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.
- 19.8 Augscape shall provide the Customer with a list of Sub-Processors via email when an Order has been accepted.
- 19.9 Augscape shall (at the Customer's cost):
 - 19.9.1 assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to Augscape; and
 - 19.9.2 taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.
- 19.10 Augscape shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the United Kingdom or to any International Organisation without the prior written authorisation of the Customer.
- 19.11 Augscape shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate Augscape's compliance with the obligations placed on it under this clause 19 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one audit request in any 12 month period under this clause 19.11).
- 19.12 Augscape shall notify the Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.
- 19.13 Augscape may use information, photographs and any information provided to it by the Customer pursuant to the Services for advertisement purposes and in its promotional materials.
- 19.14 On the end of the provision of the Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, Augscape shall either return all of the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires Augscape to store such Protected Data. This clause 19 shall survive termination or expiry of the Contract.

20. FORCE MAJEURE

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than thirty days, the party not affected may terminate the Contract by written notice to the other party.

21. TERMINATION

- 21.1 Augscape may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:
 - 21.1.1 the Customer commits a material breach of Contract and such breach is not remediable;
 - 21.1.2 the Customer commits a material breach of the Contract which is capable of being remedied and such breach is not remedied within 14 days of receiving written notice of such breach;
 - 21.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after Augscape has given notification that the payment is overdue; or
 - 21.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 21.2 Augscape may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
 - 21.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 21.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if Augscape reasonably believes that to be the case;
 - 21.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 21.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 21.2.5 has a resolution passed for its winding up;
 - 21.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 21.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
 - 21.2.8 has a freezing order made against it;
 - 21.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
 - 21.2.10 is subject to any events or circumstances analogous to those in clauses 21.2.1 to 21.2.9 in any jurisdiction;
 - 21.2.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 21.2.1 to 21.2.10 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 21.3 Augscape may terminate the Contract at any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
- 21.4 The right Augscape has to terminate the Contract pursuant to clause 21.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to the Contract.
- 21.5 If Augscape becomes aware that any event has occurred, or circumstances exist, which may entitle the Customer to terminate the Contract under this clause 21, it shall immediately notify the Customer in writing.
- 21.6 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of Augscape at any time up to the date of termination.

22. DISPUTE RESOLUTION

- 22.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 22.
- 22.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 22.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
 - 22.3.1 within 7 days of service of the notice, the nominated senior employees (Contract Managers) of the parties shall meet to discuss the dispute and attempt to resolve it.

22.3.2 if the dispute has not been resolved within 7 days of the first meeting of the Contract Managers, then the matter shall be referred to the directors of each of the parties (or persons of equivalent seniority). The directors (or equivalent) shall meet within 7 days to discuss the dispute and attempt to resolve it.

22.4 The specific format for the resolution of the dispute under clause 22.3.1 and, if necessary, clause 22.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.

22.5 If the dispute has not been resolved within 14 days of the first meeting of the directors (or equivalent) under clause 22.3.2 then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.

22.6 Either party may issue formal legal proceedings or commence arbitration at any time whether or not the steps referred to in clauses 22.3 and 22.5 have been completed.

23. NOTICES

23.1 Unless otherwise specified, any notice or other communication given by a party under these Conditions shall:

23.1.1 be in writing and in English;

23.1.2 be signed by, or on behalf of, the party giving it except for notices sent by email; and

23.1.3 be sent to the relevant party at the address set out in the Contract

23.2 Notices may be given, and are deemed received:

23.2.1 by hand: on receipt of a signature at the time of delivery;

23.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;

23.2.3 by Royal Mail International Signed post: at 9.00 am on the fifth Business Day after posting; and

23.2.4 by email on receipt of a delivery email from the correct address.

23.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 23.1 and shall be effective:

23.3.1 on the date specified in the notice as being the date of such change; or

23.3.2 if no date is specified, three Business Days after the notice is deemed to be received.

23.4 All references to time are to the local time at the place of deemed receipt.

23.5 This clause does not apply to notices given in legal proceedings or arbitration.

24. CUMULATIVE REMEDIES

The rights and remedies provided in the Contract for Augscape only are cumulative and not exclusive of any rights and remedies provided by law.

25. TIME

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.

26. FURTHER ASSURANCE

The Customer shall at the request of Augscape, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

27. ENTIRE AGREEMENT

27.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

27.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

27.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

28. VARIATION

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of Augscape.

29. ASSIGNMENT

29.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without Augscape's prior written consent.

29.2 Notwithstanding clause 29.1, the Customer may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives Augscape prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under the Contract shall be deemed to be an act or omission of the Customer itself.

30. SET OFF

30.1 Augscape shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract.

30.2 The Customer shall pay all sums that it owes to Augscape under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

31. NO PARTNERSHIP OR AGENCY

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

32. EQUITABLE RELIEF

The Customer recognises that any breach or threatened breach of the Contract may cause Augscape irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to Augscape, the Customer acknowledges and agrees that Augscape is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

33. SEVERANCE

33.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

33.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

34. WAIVER

34.1 No failure, delay or omission by the Contract in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

34.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by Augscape shall prevent any future exercise of it or the exercise of any other right, power or remedy by Augscape.

34.3 A waiver of any term, provision, condition or breach of the Contract by Augscape shall only be effective if given in writing and signed by Augscape, and then only in the instance and for the purpose for which it is given.

35. COMPLIANCE WITH LAW

The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

36. CONFLICTS WITHIN CONTRACT

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions and any provisions relating to data processing or security measures for the purposes of the parties' data protection obligations shall prevail.

37. COSTS AND EXPENSES

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

38. THIRD PARTY RIGHTS

38.1 Except as expressly provided for in clause 38.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

38.2 Any Affiliate of Augscape shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

39. GOVERNING LAW

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

40. JURISDICTION

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract its subject matter or formation (including non-contractual disputes or claims).