

**By using this website the user is agreeing to be bound by the terms of
this Confidentiality Agreement**

PARTIES

- (1) **Modulus Management Consultancy Limited**, incorporated and registered in England and Wales with company number 02181500 whose registered office is at 188 Washway Road, Sale, Cheshire, M33 6RN (**Modulus**).
- (2) The user of this website (**the User**).

BACKGROUND

Modulus is party to various agreements with motor vehicle manufacturers whereby Modulus provides information enabling staff within companies providing data to fleet and leasing companies and fleet and leasing companies, to quote their customers the lifetime costs of vehicles and the inclusive prices for a range of service and repair jobs.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Confidential Information: has the meaning given in clause 2.2.

Control: in relation to a body corporate, the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person (or persons):

(a) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate; or

(b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating that or any other body corporate,

and a **Change of Control** occurs if a person who controls any body corporate ceases to do so or if another person acquires control of it.

Copies: copies of Confidential Information including any document, electronic file, note, extract, analysis, study, plan, compilation or any other way of representing or recording and recalling information which contains, reflects or is derived or generated from Confidential Information.

Group: in relation to a company, that company and any company of which it is a Subsidiary (its holding company) and any other Subsidiaries of any such holding company. Unless the context otherwise requires, the application of the definition of Group to any company at any time shall apply to the company as it is at that time.

Permitted Purpose: to allow the User to prepare whole life vehicle costs and the costs for a range of service and repair jobs for the fleet automotive market and to make such costs and associated information available to fleet operators and to the fleet automotive market.

Subsidiary: in relation to a company wherever incorporated (a holding company), means a "subsidiary" as defined in section 736 of the Companies Act 1985 and any other company which is a subsidiary (as so defined) of a company which is itself a subsidiary of such holding company. Unless the context otherwise requires:

- (a) the application of the definition of Subsidiary to any company at any time shall apply to the company as it is at that time; and
- (b) references to **Subsidiary** or **Subsidiaries** are references to a subsidiary or subsidiaries of the Company.

Termination Date: shall have the meaning as set out at clause 4.1

- 1.2 Clause and schedule headings do not affect the interpretation of this agreement.
- 1.3 A **person** includes a corporate or unincorporated body.
- 1.4 A reference to a law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 **Writing or written** includes faxes but not e-mail.
- 1.6 Words in the singular include the plural and in the plural include the singular.

2. USER'S OBLIGATIONS

- 2.1 In return for Modulus making Confidential Information available to the User by granting the User website access to the Confidential Information the User shall:
 - (a) use the Confidential Information only for the Permitted Purpose;
 - (b) not directly or indirectly disclose the Confidential Information (or allow it to be disclosed), in whole or in part, to any person or make Copies unless permitted by this agreement;
 - (c) use its best endeavours to ensure that no person gets access to Confidential Information from the User, its officers, employees or agents unless authorised and for the Permitted Purpose;
 - (d) inform Modulus immediately on becoming aware, or suspecting, that an unauthorised person has become aware of Confidential Information; and
 - (e) not directly or indirectly use the Confidential Information to develop products and/or services which compete with Modulus' products and/or services.

- (f) For the avoidance of doubt, under no circumstances will it be a breach of this Confidentiality Agreement when the user uses the confidential information for the Permitted Purpose.

2.2 **Confidential Information** means:

- (a) the fact that Modulus is supplying Confidential Information to the User and the existence and contents of this agreement; and
- (b) all information in whatever form (including, without limitation, in written, oral, visual or electronic form, or on tape or disk) developed by Modulus, that is directly or indirectly disclosed, whether before or after the date of this agreement, to the User or any of its representatives by any agent or employee of Modulus' Group, or which comes to the User's attention in connection with the Permitted Purpose and shall, without limitation, include any information in whatever form which is developed by Modulus and Modulus allows the User to access via the internet,

but excludes the information in clause 2.3.

2.3 Information is not Confidential Information if:

- (a) the information is, or subsequently becomes, public knowledge other than as a direct or indirect result of the information being disclosed in breach of this agreement; or
- (b) the User can establish, to the reasonable satisfaction of Modulus, that it found out the information from a source not connected with the User or its Group and that such source is not under any obligation of confidence in respect of that information; or
- (c) the User can establish, to the reasonable satisfaction of Modulus, that the information was known to the User before the date of this agreement and that it was not under any obligation of confidence in respect of that information; or

2.4 The User may disclose Confidential Information only:

- (a) to such officers and employees of its Group as are strictly necessary for the Permitted Purpose;
- (b) to professional advisers or consultants engaged to advise the user in connection with the Permitted Purpose;
- (c) to the relevant Manufacturer who has asked Modulus to disclose Confidential information to the User and
- (d) to the extent permitted by clause 3.

2.5 The User shall:

- (a) inform any person to whom it discloses the Confidential Information that the information is confidential; and
 - (b) procure that any person to whom it discloses the information (other than disclosures under clause 3) complies with this agreement as if they were the User and, if Modulus so requests, procure that they enter into a confidentiality agreement with Modulus on terms equivalent to those contained in this agreement.
- 2.6 The User may make only such Copies as are strictly necessary for the Permitted Purpose and shall:
- (a) clearly mark all Copies as confidential;
 - (b) ensure that all Copies made by it can be separately identified from its own information; and
 - (c) use its best endeavours to ensure that all Copies within its control are protected against theft or unauthorised access and that no person discovers Confidential Information from the User unless authorised.
- 2.7 The User shall, immediately on Modulus' written request, supply Modulus with a list showing, to the extent reasonably practical:
- (a) all Copies that have been made by the User or the persons to whom it has disclosed the Confidential Information (except where the Copies contain insignificant extracts from or references to Confidential Information) and where they are held; and
 - (b) the names and addresses of every person to whom Confidential Information has been disclosed and a copy of the confidentiality agreements signed by them complying with clause 2.5(b).
- 2.8 If Modulus so requests in writing at any time (whether prior to or after the Termination Date), a senior officer of the User shall immediately:
- (a) return to Modulus all the Confidential Information received by the User;
 - (b) destroy or permanently erase all Copies supplied to it or made by it, or by the persons who have received Confidential Information; and
 - (c) use best endeavours to remove Confidential Information from any of the User's applications used to deliver the Permitted Purpose.
- 2.9 The User shall, immediately on the request of Modulus, confirm in writing (such confirmation to be signed under oath by a director of the User) that it has complied with its obligations under clause 2.8.
- 2.10 Confidential Information shall be delivered by Modulus to the User by the User accessing this website and viewing, printing off or downloading data.

3. FORCED DISCLOSURE

- 3.1 Subject to clause 3.2, the User may disclose Confidential Information to the minimum extent required by:
- (a) any order of any court of competent jurisdiction or any competent judicial, governmental or regulatory body; or
 - (b) the rules of any listing authority or stock exchange on which the shares of any company in the User 's Group are listed or traded; or
 - (c) the laws or regulations of any country with jurisdiction over the affairs of any company within the User's Group.
- 3.2 Before the User discloses any information under this clause 3, the User shall (to the extent permitted by law) use its best endeavours to:
- (a) inform Modulus of the full circumstances of the disclosure and the information that will be disclosed, and take all such steps as may be reasonable and practicable in the circumstances to agree the contents of such disclosure with Modulus before making the disclosure;
 - (b) consult with Modulus as to possible steps to avoid or limit disclosure and take those steps where they would not result in significant adverse consequences to the User;
 - (c) gain assurances as to confidentiality from the body to whom the information is to be disclosed; and
 - (d) where the disclosure is by way of public announcement, agree the wording with Modulus in advance.
- 3.3 The User shall co-operate with Modulus if Modulus decides to bring in any legal or other proceedings to challenge the validity of the requirement to disclose Confidential Information (at Modulus' cost and expense).
- 3.4 If the User is unable to inform Modulus before Confidential Information is disclosed, the User shall (to the extent permitted by law) inform Modulus immediately after the disclosure of the full circumstances of the disclosure and the information that has been disclosed.

4. TIME AND TERMINATION

- 4.1 This agreement shall continue in force until the User ceases to be allowed access to this website by Modulus giving the User one week's written notice, the expiry of such notice being referred to as the **Termination Date** or at Modulus's sole discretion on a Change of Control of the User (where the User is obliged to notify Modulus at least 7 days before a Change of Control takes place) where the date of the Change of Control shall constitute the Termination Date.

4.2 The obligations contained in this agreement shall end ten years from the Termination Date, but without affecting the liability of either party for breach of this agreement before then.

5. RESTRICTIONS ON THE USER

5.1 The User shall not, and shall procure that no company in the User's Group shall, during the course of this agreement and for a period of 12 months after the Termination Date, without the prior written agreement of Modulus, directly or indirectly, engage in or have contact of any kind with any of the officers or employees of Modulus, or any company in Modulus' Group, except in the ordinary course of business between the parties.

5.2 The User shall not, and shall procure that no company in the the User's Group shall, during the course of this agreement and for a period of 12 months after the Termination Date, without the prior written agreement of Modulus:

- (a) employ or offer to employ, or enter into a contract for the services of, any individual who was, at any time during the aforementioned period, an employee of Modulus or any company in Modulus' Group (**Key Employee**) or entice, solicit or procure any such person to leave the employment of Modulus or company in the Modulus' Group (or attempt to do so) whether or not that person would commit any breach of contract in leaving such employment; or
- (b) procure or facilitate the making of any such offer or attempt by any other person.

5.3 The placing of an advertisement of a post available to a member of the public generally and the recruitment of a person through an employment agency shall not constitute a breach of clause 5.2, provided that no company in the User 's Group, or any of their respective officers and employees, encourages or advises such agency to approach any Key Employee.

5.4 The User shall not, and shall procure that no Company in the Users Group shall during the course of this Agreement and for a period of 12 months after the Termination Date, deal with or seek the custom of any person who is or was a client or customer of Modulus, if the type of goods or services in respect of which the client or customer is solicited were supplied to the client or customer by Modulus during the course of this Agreement.

5.5 The User shall not, and shall procure that no Company in the Users Group shall during the course of this Agreement and for a period of 12 months after the Termination Date, deal with or seek the custom of any person in respect of contracts for products or services as supplied by Modulus from time to time where such person operates in the automotive industry whether

as a manufacturer or as part of an automotive distribution chain, as automotive data comparators or in the fleet and leasing market.

- 5.6 The undertakings in this clause 5 apply to actions carried out by the User in any capacity and whether directly or indirectly, on its own behalf, on behalf of any other person or jointly with any other person.
- 5.7 Each of the covenants in this clause 5 are considered fair and reasonable by the parties.
- 5.8 For the avoidance of doubt, the User and any Company in the Users Group may deal with or seek the custom of any person who is or was a client or customer of Modulus or of any person in the automotive industry, whether as a manufacturer or as part of an automotive distribution chain, as automotive data comparators or in the fleet and leasing market, provided that the products and services offered or supplied are not products and services offered or supplied by Modulus during the course of this agreement.

6. INDEMNITY

- 6.1 The User shall (in addition to, and without affecting, any other rights or remedies Modulus may have whether under statute, common law or otherwise) indemnify, and keep indemnified, Modulus, each company in Modulus' Group, and their respective officers, employees, advisers or agents (each an **Indemnified Person**) from and against all actions, claims, demands, liabilities, damages, losses, costs, charges and expenses (including, without limitation, consequential losses, loss of profit and loss of reputation and all interest, penalties and legal and other professional costs and expenses) that an Indemnified Person may suffer or incur in connection with, or arising (directly or indirectly) from, any breach or non-performance by the User, or any person to whom it has disclosed or given access to any part of the Confidential Information or any Copies, of any of the provisions of this agreement.
- 6.2 In no event shall the User's total liability under clause 6.1 exceed one million pounds sterling (£1,000,000).

7. WHOLE AGREEMENT AND CONDUCT OF NEGOTIATIONS

- 7.1 This agreement is the whole agreement between the parties and supersedes any arrangements, understanding or previous agreement between them relating to the subject matter covered by this agreement.
- 7.2 The Confidential Information may not be accurate or complete and Modulus makes no representation or warranty as to the accuracy, completeness or

reasonableness of the Confidential Information and no such representation or warranty shall be implied. Modulus is not liable to the User or to any person to whom the User discloses the Confidential Information if it is relied on.

7.3 Nothing in this clause 7 operates to limit or exclude any liability for fraud.

8. ASSIGNMENT

8.1 The User may not assign any of its rights under this agreement or any document referred to in it without the prior consent in writing of Modulus.

8.2 Modulus may assign its rights to any third party who shall be entitled to enforce this agreement as if they were Modulus.

9. THIRD PARTY RIGHTS AND INTELLECTUAL PROPERTY

9.1 Except as provided in clause 8.2 and this clause 9, this agreement is made for the benefit of the parties to it and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

9.2 The parties may terminate, rescind or vary this agreement without the consent of any person who is not a party to this agreement.

9.3 None of the Confidential Information is the property of the User. The disclosure to the User of any Confidential Information shall not give the User any licence or other rights whatsoever in respect of any part of such Confidential Information beyond the rights contained in this agreement. All intellectual property rights in the Confidential Information shall remain with and belong to Modulus.

10. SEVERANCE

10.1 If any court or administrative body of competent jurisdiction finds any provision of this agreement to be invalid, unenforceable or illegal, the other provisions of this agreement shall remain in force.

10.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to make it valid, enforceable and legal.

11. GOVERNING LAW AND JURISDICTION

- 11.1 This agreement and any disputes or claims arising out of, or in connection with, its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- 11.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its formation (including non-contractual disputes or claims).