

## Car Genie Terms and Conditions from 7 September 2018

**AUTOMOBILE ASSOCIATION DEVELOPMENTS LIMITED**, is a limited company incorporated in England and Wales (registration number 01878835) having its registered office at Fanum House, Basing View, Basingstoke, RG21 4EA

You should ensure that You read these Terms and Conditions carefully, as they set out our and Your legal rights in relation to Car Genie. **Your attention is specifically brought to the limitations and exclusions of liability contained within Clause 11 below and the requirements of Clauses 5, 6 and 7.**

**IMPORTANT: The Car Genie Hardware will send live data whilst it remains connected to a compatible vehicle until this Agreement is cancelled by You.**

### 1. Definitions and Interpretation

1.1 In these Terms:

**The AA** means Automobile Association Developments Limited;

**Agreement** means these Car Genie Terms and Conditions;

**Annual Fee(s)** refers to the annual fee charged for the provision of the Services and which auto-renews on an annual basis on the anniversary of the date of activation of the App;

**App** means the program on Your Smartphone which is expressly associated with the Car Genie Services;

**Data Reports** are on line reports containing Your vehicle's telemetry data including Vehicle data, location data, technical details of the Vehicle, faults identified and driving behaviour, accessed through the App;

**Firmware** means the AA's management software installed within the Hardware;

**Hardware** refers to the telematics unit which is installed in a Vehicle and includes Firmware and a SIM card necessary to provide network connectivity;

**Intellectual Property** means any patent, registered or unregistered design right, trade mark or other proprietary rights inherent in the Hardware, Software, App or any other product supplied by the AA and any copyrights and database rights, all other similar or equivalent intellectual or commercial rights or property subsisting under the laws of each and every jurisdiction throughout the world whether registered or not, and whether vested, contingent or future and all reversions, renewals, revivals and extensions of any of the foregoing, and all rights under licences, consents, orders, statutes or otherwise in relation to any of the foregoing;

**Joining Fee** a one off fee additional to the Annual Fee which may be charged by the AA on initial sign up to the Services;

**OBD Port** means a specific On Board Diagnostics Port which is fitted to Your Vehicle. The AA will carry out an eligibility check when You purchase the Services to make sure the Hardware can work in your make/model of Vehicle;

**Member and Membership** means (i) Personal Membership (as defined by the AA), the person to whom the membership documentation is addressed and who has purchased or been given membership; and (ii) Vehicle Membership (as defined by the AA), the person to whom the membership documentation is addressed, who has purchased or been given membership and whose address is recorded with the AA as the home address of the vehicle registered under the relevant vehicle membership;

**Privacy Notice** means the AA's standard privacy notice, a copy of which can be accessed via the App and which is available at <https://www.theaa.com/privacy-notice>;

**Self Install** or **Self Installation** means installation of the Hardware via the OBD Port by You;

**Services** means the services provided to You, by the AA as set out more fully in clause 2.2 below;

**SIM** refers to the Subscriber Identity Module card contained within the Hardware providing network connectivity for the transmission of Your telematics data;

**Smartphone** means Your Apple or Android personal mobile phone which should have internet access and an operating system capable of running the downloaded App;

**Software** means the Firmware and third party licensed software where applicable which is required to provide You with the Services;

**Vehicle** means the vehicle used by You in connection with the Services;

**You/Your** the person to whom the Car Genie is registered.

## **2. These Terms and the Services**

- 2.1 By requesting, paying for and using the Services, You agree to be bound by this Agreement to the exclusion of all other terms and conditions.
- 2.2 The Services shall consist of: i) the provision of Data Reports through the App and ii) access to the AA's Technical Advice Service helpline.
- 2.3 In addition to the provision of the Services, the AA may in its absolute discretion send an AA Patrol to provide assistance to You in response to a fault identified by the Hardware/App.
- 2.4 The AA is under no obligation to send an AA Patrol to provide assistance save where one is requested legitimately within the terms of the Membership Policy to attend a breakdown or accident (please note such an attendance will be performed under the Membership Policy and therefore falls entirely outside of the terms of this Agreement). Any decision by the AA whether to send an AA Patrol to provide assistance to you in any other circumstance (e.g. under clause 2.3 above) will be taken in that absolute discretion of the AA.
- 2.5 If the AA exercises its discretion to send an AA Patrol to assist You (e.g. under clause 2.3 above), the assistance provided by the AA Patrol shall be limited to that necessary to address the fault code identified by the Hardware/App (where possible).
- 2.6 To the greatest extent permitted by law, the AA will not be liable for any losses in any way arising from or connected with: (a) the failure by an AA Patrol to identify, address or rectify

either a fault code or the fault connected with it; and/or (b) the need for remedial action, or further remedial action, to be taken following the attendance of an AA Patrol.

### **3. Product Eligibility**

3.1 To be eligible for this product, You must:

- a) (i) be a minimum of 17 years old; (ii) be in possession of a full valid UK driving licence for a passenger car; (iii) be in possession of a Smartphone with a live mobile number which You agree to provide to the AA; (iv) be a Member of the AA at the commencement of the Agreement; and (v) have permission from the owner of the Vehicle in which the Hardware is installed;
- b) inform the AA as soon as reasonably practicable if significant changes to Your circumstances occur, including: (i) cancellation or non-renewal of Your Membership; (ii) change to the address under which Your Membership is registered; (iii) the sale, theft or loss of the Vehicle in which the Hardware is installed; or (iv) the unauthorised use of the Vehicle in which the Hardware is installed;
- c) agree not to use the App on Your Smartphone under any circumstances whilst driving the Vehicle; and
- d) inform other drivers of the Vehicle about the installation of the Hardware and bring this Agreement in full to their attention. You must make other drivers aware that the Hardware records and transmits data to a central data hub (which is held by a third party part owned by the AA), and Your Smartphone and consequently has the capacity to track the location and movement of the Vehicle.

3.2 Please note that if You cease to be a Member at any time the Services and any other provision of assistance to You may be limited.

### **4. Agreement Fees**

4.1 The AA shall lease the Hardware to You free of charge for the duration of the Agreement.

4.2 The first Annual Fee shall be taken from You on purchase. All subsequent Annual Fees shall be collected on the anniversary of the date You first activated the App unless the AA subsequently agrees a later date with you (in which case subsequent Annual Fees will be collected on the anniversary of that agreed date).

4.3 The AA may charge a Joining Fee on initial sign up to the Services. This is not a charge for or connected to, the Hardware.

4.4 Annual Fees shall be collected on an auto-renewal basis for the provision of the Services. The AA shall contact You prior to renewal to advise You of the Annual Fee for the following year and to give You the opportunity to cancel the Services.

4.5 Please note that as You pay under continuous payment authority, if Your account and/or card details change, the AA will approach the Your card provider/bank for, or receive from the Your card provider/bank, updated details to help continue to provide the Services requested.

4.6 The Hardware remains the property of the AA at all times and therefore at the end of the Agreement You must return the Hardware to the AA using the prepaid, addressed package supplied.

- 4.7 If You cancel the Services and/or fail to pay the Annual Fee this Agreement will be terminated and notwithstanding termination, clauses 8.6, 9, and 10.3-10.5 shall apply.

## 5. Delivery & Installation of the Hardware

- 5.1 Unless otherwise agreed:
- a) the AA will deliver the Hardware to Your requested address;
  - b) the AA will be responsible for arranging postage or carriage for the Hardware;
  - c) You will be responsible for Self-Installation of the Hardware in accordance with the accompanying instructions;
  - d) on delivery of the Hardware to You, You will assume responsibility for loss, theft, damage or destruction of the Hardware.
  - e) **the Hardware must not be used with any other vehicle without the prior approval of the AA.** If You wish to obtain approval to use the Hardware in another vehicle contact us on the technical support email address or phone number set out at clause 14.
- 5.2 Any date(s) the AA give to You for the delivery of the Hardware will be an estimate and the AA shall have no responsibility to You for late delivery of the Hardware.

## 6. Ownership and Use of the Hardware

- 6.1 The Hardware will at all times remain the property of the AA and You will have no right, title or interest in or to the Hardware (save for the right to use the Hardware in accordance with these Terms).
- 6.2 You agree that You will ensure that no charge, lien or other encumbrance is created over the Hardware.
- 6.3 You will ensure that the Hardware is not sold or transferred under any circumstances to a third party (including as part of the sale or transfer of the Vehicle to a third party).
- 6.4 You will notify the AA straight away in the event of any misuse, loss, accident, theft or damage to the Hardware and/or its SIM card. **It is Your responsibility to notify the AA straight away if the Hardware is no longer in Your possession for any reason. Where the AA suffers financial loss as a result of Your no longer being in possession of the Hardware as a direct result of an action You take or fail to take, You will be responsible for compensating the AA for such losses.**
- 6.5 Do not attempt to remedy any issues You have with installation or operation of the Hardware, or use of the App, without the AA's assistance via the contact details at clause 14.
- 6.6 You will ensure that the Hardware is not removed or disconnected from the Vehicle, unless such removal is strictly necessary (for example, where the Vehicle is being sold or transferred or for safety reasons). **The AA recommends that the Hardware is removed prior to any routine maintenance or repairs being carried out on the Vehicle.**
- 6.7 If You notice any change in the Vehicle or are in any doubt as to proper functioning or safety of the Hardware then You should remove the Hardware from the Vehicle as soon as

possible. The AA may in its sole discretion use a third party to investigate any suspected issues with the Hardware.

- 6.8 If You remove the Hardware from the Vehicle, for any reason, You must contact the AA immediately and securely store the Hardware until You can re-install it in the Vehicle or return it to the AA in accordance with clause 4.6.
- 6.9 The Hardware under normal operating conditions will incur a maximum network data usage of 5Mb per month. These data charges are included within the Annual Fee for the Software. Any costs for accessing and using the App are not included and shall be incurred by You.

## **7. Your use of the App**

- 7.1 The AA grants to You for the duration of the Agreement a right to access and browse the contents of the App on the following basis:
- (i) You will not copy, modify, publish, transfer, sell, reproduce or in any way exploit the App (or any part of it) or any associated or underlying software in connection with the App;
  - (ii) You will not under any circumstances utilise the AA's trademarks or trade names in any way.
- 7.2 You agree to ensure that the Hardware is only used in accordance with this Agreement and You will not attempt to dismantle the Hardware or use it in any other way except as contemplated by this Agreement.
- 7.3 You agree to comply with all reasonable instructions or conditions relating to the use of the App as may be posted on the App or otherwise communicated to You from time to time by the AA.
- 7.4 When using the App, You will not, nor will You permit any third party to: (i) post or transmit to the App any material that is threatening, defamatory, obscene, indecent, offensive, pornographic, abusive, liable to incite racial hatred, discriminatory, in breach of confidence or privacy, which may cause annoyance or inconvenience, or which constitutes or encourages conduct that would be considered a criminal offence or would give rise to civil liability; (ii) knowingly post or transmit to the App any material that is technically harmful (including computer viruses, corrupted data or other malicious software or harmful data); (iii) misuse or violate any aspect of the App or any associated or underlying software, including deliberately breaching security or authentication measures; (iv) attempt to interfere with a service to any other user, host or network of the App, including by means of 'mail bombing' or 'crashing'; or (v) attempt to modify or reverse engineer any software used in connection with the App.
- 7.5 You acknowledge and agree that:
- (i) the availability of the App (or relevant parts thereof), including the Data Reports, is dependent upon systems and technologies and other factors which are beyond the AA's control including but not limited to; mobile communication networks, Global Positioning System technologies (GPS) and General Packet Radio Service technologies (GPRS) operated by third party providers, the Internet and interconnected systems. Due to the nature of such technologies, systems and other factors, problems including but not limited

to, connection failures, power difficulties, network overload, signal degradation, topographic, electromagnetic and other interferences may have an adverse effect on the availability of the App and/or the Data Reports.

- (ii) the Services provided in connection with the Hardware and the App can be partially or wholly limited by poor mobile network or GPS reception, which can be affected by geographical and weather conditions, the position of the Vehicle and the presence of any physical obstacles (e.g. bridges and buildings); and
- (iii) the AA cannot guarantee the accuracy of the data that is collected by the Hardware and subsequently transmitted to You via the App. You therefore agree not to rely on the content of the App in any circumstance.

7.6 While the AA endeavours to ensure that the App is available 24 hours a day and will use reasonable efforts to avoid the circumstances in Clause 7.5 occurring, except as otherwise expressly set out in this Agreement, the AA will not be liable for any losses suffered as a result of any such circumstances.

7.7 Nothing in these Terms will limit the AA's right to temporarily suspend access to the App (in whole or in part) at any time for the purposes of maintaining or repairing the App and/or to make changes to the functionality, presentation, features, modes of access and material content of the App without notice;

7.8 From time to time the AA will release new and updated Software. You should receive notification through your app provider when such updates are available and it is Your responsibility to ensure You use the latest version to take advantage of the full functionality available.

7.9 Notwithstanding clauses 7.7 and 7.8 changes will not be made to the content of the App which would result in the App no longer conforming to the description of it that the AA provided to You before You downloaded the App.

## **8. Warranties & Licences**

8.1 AA warrants that:

- (a) the Hardware and Software will be of satisfactory quality. Other than the limited warranty under this Clause 8, all other warranties whether express or implied are excluded to the maximum extent permitted by law; and
- (b) the Hardware will comply with all laws, rules and regulations applicable in England and Wales.

8.2 The AA grants You a non-exclusive, limited, fixed term licence ("Licence") to use the Software. Except for the limited rights granted to You, the AA retains all proprietary rights and title inherent in the Software.

8.3 All grants of Licence under this Clause 8 are strictly conditional upon You not disassembling, decompiling, reverse engineering or otherwise attempting to change or modify the Software.

8.4 The AA shall not be liable for any of the warranties under this Agreement in respect of Hardware where You, or any other unauthorised third party attempts to; dismantle, impede,

de-install, tamper with or repair such Hardware or attempts to remove or replace the SIM card of the Hardware or You fail to comply with the requirements of Clause 5.

- 8.5 Where the AA is not liable for a breach of the warranties as per Clause 8.4 or otherwise then the AA will charge You the reasonable costs incurred in respect of any repair, service call out and/or supply of replacement Hardware.
- 8.6 The Data Reports in respect of data received from the Hardware installed in Your vehicle will be available on the App for as long as this Agreement remains in place between You and the AA and for 28 days after termination of the Agreement (as per clause 10.3). After this Agreement ends, we will delete the data when we no longer need it. This does not affect Your right to request erasure, which You can ask for as part of Your privacy rights.

## **9. Telematics Data and Data Protection**

This section provides a summary of how we use your personal information, including additional details that are specific to this product. For full details on how we will process Your personal data please refer to the Use of Your Personal Data section of your Membership Booklet. This includes full details of what data we collect and why, what we use it for, who it may be shared with, and details of Your choices and rights (such as Your right to access a copy of the data we hold).

- 9.1 a) The AA will at all times use Your data only in accordance with the terms and conditions set out in Your Membership booklet and this Agreement.
- b) Subject to any choices we offer, the data that will be collected from the Hardware connected to Your Vehicle will include: (i) location data and details of trips You make (including as time, date, duration, and average speed); (ii) telemetry data such as vehicle diagnostics faults and general vehicle status, where available; (iii) driving behaviour data (to include the Vehicle's acceleration, braking, deceleration, lateral forces, fuel consumption, and cornering). This data will be used for the uses set out in our Privacy Notice and in this section. These uses include analytics to provide the Services, to manage other products and services You have with us, to develop new products and services and model, and to support marketing to You,
- c) In order that the AA can provide the Services or other discretionary assistance, it will be necessary for the AA to obtain and use certain location data and Vehicle data (as explained more fully in clause 9.1(b) above). This data will be forwarded via the Hardware to a central data hub and the App and will be used by the AA for the performance of the Services and the development of future products and services.
- d) The AA may approach You to ask You to participate in monthly online surveys, online discussion forums, ad hoc telephone surveys and focus groups. The AA will use the information collected from such surveys for the development of its products and services. If You do not wish to be contacted by the AA in connection with such surveys then please notify the AA when entering into this Agreement or at any time thereafter in accordance with the "opt-out" mechanism provided in each survey or correspondence that is sent to You, or via the email address in clause 14 of these Terms.
- e) The AA will capture information on your usage and activity recorded on the App. This includes information on the number of times certain functions are accessed, how many times buttons are tapped and information relating to the device that was used e.g. make and model of smartphone, operating system installed and the screen resolution. The AA may use Google Analytics to capture this data.
- f) We may reward safe drivers with discounts or offer a better price for insurance based on the data obtained as a result of Your use of this product.

- g) Subject to Your choice over how You would like to receive marketing from us, We may advise You of other AA products and services such as insurance or European Breakdown Cover which may be of benefit to You based on Your driving behaviours.
- h) We will use with and or send to, partners, anonymised and aggregated customer data in order to optimise the products and services and to develop new products. Some business partners may acquire anonymised and aggregated data from us.
- i) We may contact You via SMS, push notification, email or telephone to make You aware of any faults or issues with Your Vehicle which are recognised by the Hardware or in the event that the Hardware detects that Your Vehicle has been involved in an accident.
- j) We may share Your data on an aggregated basis with the relevant car manufacturer for research and development purposes.

## **10. Termination of the Contract**

- 10.1 You have the right to cancel this Agreement within 14 days starting the day after the day on which You receive the Hardware and, subsequently, within the 14 day period after each annual auto-renewal date (each a “cooling off period”) in accordance with clause 10.2 below. If you have cancelled within a cooling off period you will be reimbursed in full for the Annual Fee charged for the relevant period you wish to cancel and the Joining Fee where one has been charged and where You are cancelling in the first cooling off period after receipt of the Hardware.
- 10.2 If You no longer wish to use the Services You may terminate this Agreement upon giving notice in writing (to include email) using the email address [cargenie@theaa.com](mailto:cargenie@theaa.com). Such notice to be given prior to the next Annual Fee being incurred or within the relevant cooling off period. A model cancellation form is set out at the end of this Agreement. Where you have cancelled within the cooling off period the cancellation will be effective immediately after you notify us of your decision to cancel otherwise cancellation will be effective from the next anniversary of the date on which you activated the App.
- 10.3 On termination or expiry of this Agreement for any reason, the Licence granted hereunder shall cease 28 days after the Agreement has ended and at that point Your App will no longer receive or display data. Historic data will be available for that 28 day period as per clause 8.6 above but the Hardware will stop transferring live data immediately on termination of this Agreement.
- 10.4 Upon termination of this Agreement, You must return the Hardware to the AA within 45 calendar days of cancellation or non-renewal in accordance with the provisions of clause 4.6 of these Terms.
- 10.5 When returning the Hardware to the AA, You remain responsible for the Hardware until it is safely received by the AA.
- 10.6 The AA may withdraw the Car Genie product and Services. In such circumstances the AA will write to You providing You with reasonable notice that the AA is going to stop providing the Services and will refund any sums You have paid in advance for Services which will not be provided.

## **11. Limitations and Exclusions of Liability**

**YOU SHOULD ENSURE THAT YOU READ THE TERMS OF THIS CLAUSE 11 CAREFULLY.**

- 11.1 The AA does not exclude or limit in any way its liability to You where it would be unlawful to do so. This includes liability for death or personal injury caused by the AA's negligence or the negligence of its employees, agents or subcontractors and for fraud or fraudulent misrepresentation.
- 11.2 The limitations and exclusions of liability set out in this Clause 11:
- a) are subject to Clause 11.1;
  - b) govern all liabilities arising under the Agreement including those arising in contract, tort (including negligence) and breach of statutory duty.
- 11.3 a) Subject to 11.3 (b) below, the AA is responsible to You for foreseeable loss and damage caused by the AA. If the AA fails to comply with this Agreement, the AA is responsible for loss or damage You suffer that is a foreseeable result of it breaking this Agreement or the AA's failing to use reasonable care and skill, but the AA is not responsible for any loss or damage that is not foreseeable.
- b) The AA is not liable for business losses. The AA only supplies the Services and licenses the Hardware for domestic and private use. If You use the Services and/or Hardware for any commercial, business or re-sale purpose or in a commercial or business context, the AA will have no liability to You for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 11.4 The AA will not be responsible to You for the accuracy or completeness of the data recorded by the Hardware or displayed on the App. Not all faults are detectable by the Hardware and the AA accepts no liability for any failure of the Hardware to detect a fault with Your Vehicle.
- 11.5 The AA shall not be liable for any losses arising under any circumstances from traffic violations that You commit while using the Hardware.
- 11.6 Where You believe damage has been caused to the Vehicle by the Hardware, either via its operation or installation, then You must contact the AA as soon as possible. The AA provide a warranty for any damage caused to a compatible vehicle (as deemed by the AA) as a direct result of the Hardware. In order to claim under such warranty, You acknowledge and agree that an AA employee will need to inspect the Vehicle which the AA shall arrange at a mutually convenient time.
- 11.7 You shall not attempt, nor shall You engage any third party to attempt, to rectify any damage the Hardware may have caused to the Vehicle. Should You do so then the AA shall not be responsible for any damage caused and any such costs of repair shall be borne solely by You.
- 11.8 The AA shall have no liability to You where the installation of the Hardware voids any term of a manufacturer, or any other, warranty which applies to the Vehicle. It is Your responsibility to ensure that any such warranty is not voided by installation of the Hardware.
- 11.9 To the maximum extent allowable under the prevailing law, the AA will not accept any liability for any damage arising to a vehicle where You have not ensured compliance with the provisions of Clause 5.1 and You have allowed the Self Installed Hardware to be fitted to a vehicle not advised of and agreed to by the AA.

## **12. Force Majeure**

We are not responsible for delays outside our control. If our supply of the Services is delayed by an event outside our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event, but if the delay continues for more than 2 weeks you may contact us to end the contract and receive a pro rata refund for remainder of the year that you have already paid for.

### **13. General**

- 13.1 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.
- 13.2 In the event of any dispute arising in relation to any of the terms of this Agreement, both parties agree to attempt to negotiate in good faith a mutually satisfactory resolution prior to resorting to legal proceedings.
- 13.3 If any provision of this Agreement is determined by any court or other competent authority to be, in part or in full, unlawful and/or unenforceable, that provision or part thereof shall be deleted and the remainder of the provisions of this Agreement will continue in effect.
- 13.4 i) The AA may change this Agreement and the Services:
- (a) to reflect changes in and for the purpose of compliance with relevant laws and regulatory requirements; and
  - (b) to implement minor technical adjustments and improvements.
- ii) The AA may make more significant changes to this Agreement and the Services but if it does so the AA will notify You by email or via a notification on the App and You may then contact the AA to end this Agreement before the changes take effect.
- 13.5 The AA may freely assign its rights and obligations under this Agreement without Your consent.
- 13.6 Failure or delay by either party in enforcing or partially enforcing any provision of this Agreement will not be construed as a waiver of any of its rights under this Agreement. Any waiver by one party of any breach of, or any default under, any provision of the Agreement by the other party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Agreement.
- 13.7 This Agreement is governed by English law and You can bring legal proceedings in respect of the Services in the English courts. If You live in Scotland You can bring legal proceedings in respect of the Services in either the Scottish or the English courts. If You live in Northern Ireland You can bring legal proceedings in respect of the products in either the Northern Irish or the English courts.
- 13.8 The AA cannot guarantee that the Hardware will detect and record all incidents.

### **14. Technical Support and Customer Complaints**

- 14.1 The AA always endeavour to provide our customers with exceptional products and service. However, if things go wrong the AA will make all reasonable efforts to quickly resolve the issue. In the event that You are still dissatisfied with any aspect of Your experience with the Hardware or the Services please contact in the first instance our technical support team by telephone on 0800 316 4691 and electronically at [cargenie@theaa.com](mailto:cargenie@theaa.com)

14.2 If you require any technical support in using the Services please contact our technical support team by telephone on 0800 316 4691 and electronically at [cargenie@theaa.com](mailto:cargenie@theaa.com).

## **MODEL CANCELLATION FORM**

*(Complete and return this form only if you wish to withdraw from the contract)*

To the Car Genie team,

Address: Freepost CAR GENIE

Telephone number: 0800 316 4691

Email: [cargenie@theaa.com](mailto:cargenie@theaa.com)

I hereby give notice that I cancel my contract of sale of the following goods [\*]/for the supply of the following service [\*],

Ordered on [\*]/received on [\*],

Name of consumer(s),

Address of consumer(s),

Signature of consumer(s) (only if this form is notified on paper),

Date

[\*] Delete as appropriate