

## HPI Terms and Conditions

These terms and conditions (the "Conditions") shall apply in respect of your use of all HPI Services and/or NMR Services after 1<sup>st</sup> February, 2016, in relation to the HPI Check, NMR Check or the Cesar Check.

### 1. General

1.1 In these Conditions and the Agreement except where the context otherwise requires the following expressions shall have the following meanings and any expression defined in the Agreement shall have the same meaning in these Conditions:-

**"we"/ "us"/ "our"** means or refers to HPI Limited, a company registered in England with number 4068979 whose registered office is at Capitol House, Bond Court, Leeds, Yorkshire LS1 5EZ

**"you"/ "your"** means or refers to you, the company or business named in the Agreement to receive HPI Services and/or NMR Services;

**"Actual Value"** means the value of the Vehicle as determined by an independent assessment arranged by us not accounting for any item of improvement, including additions or alterations made to the Vehicle by you;

**"Agreement"** means the contractual document entitled HPI Services Agreement between you and us for the supply of the Services which is made subject to these conditions and any other documents listed therein.

**"CESAR Check"** means a check against the Cesar construction and agricultural machine provenance database relating to the vehicle;

**"Commencement Date"** means the date set out in the Agreement for commencement of the Services (or if none, the date on which the Services actually commence);

**"Data"** means any data, image or other information we supply to you in the course of providing the Services or otherwise under the Agreement;

**"Data Caching"** means the temporary or permanent storage of Data

**"Data Protection and Consumer Credit Legislation"** means the Data Protection Act 1998 (including the data protection principles set out therein); and the Consumer Credit Act 1974;

**"HPI Check"** means an enquiry made by you and forming part of the HPI Services;

**"HPI Member"** means a person who has elected to become an HPI Member as set out in condition 3.1.2 and has paid the relevant HPI joining fee and "HPI Membership" shall be construed accordingly;

**"HPI Services"** means information services supplied by us relating to the Vehicle or other asset recorded on our electronic database concerning or in relation to the existence, description and/or status of such motor vehicle or other asset (but excluding the NMR Services);

**"Initial Term"** means the period as outlined in the HPI services agreement, starting from the commencement date

**"Main Registers"** means the principal registers of Data incorporated in our electronic database in relation to HPI Services, namely the Outstanding Finance Register, the Security Watch Register, the Stolen Vehicles Register and the Condition Alert Register;

**"Rolling Contract"** means a perpetual contract with no Initial Term until terminated in accordance with this Agreement.

**"Warranty Limit"** means the limit of our liability in respect of the Data relating to HPI Services as set out in the Agreement or as selected by you each time you make a HPI Check, but subject to the "Maximum Warranty Limit". The Warranty Limit may not exceed £12,000 in respect of any HPI Check unless you provide both the Vehicle Identification Number (VIN) and the Vehicle Registration Mark (VRM) at the time you order the HPI Check. Unless a specific Warranty Limit has been agreed, the Warranty Limit will be deemed to be £nil;

**"Maximum Warranty Limit"** means £50,000 or such other sum as may be notified by us from time to time;

**"NMR Services"** means National Mileage Register information services supplied by us relating to vehicle mileages (including without limitation NMR Checks (being a look-up service which provides a view on vehicle odometer reading authenticity) and NMR Investigations (being a service which seeks to verify mileage readings by contacting previous owners), but excluding the HPI Services);

**"NMR Member"** means a person who has elected to become an NMR Member as set out in condition 3.1.4 or 3.2.3 and has paid the relevant NMR joining fee and "NMR Membership" shall be construed accordingly;

**"Security Watch Register"** refers to the register of that name incorporated in our electronic

database;

**"Services"** means (as the case may be) the HPI Services and/or the NMR Services (as specified in the Agreement);

**"Software"** means or refers to any computer software which may be supplied by us to you to enable you to access the Services subject to these Conditions;

**"Third party"** means an end user receiving HPI services, but not directly from us. Normally this is through a "Third Party System"

**"Third Party System"** means any system that is not directly supplied by us but used with our consent to supply to or access Data for an end user

**"Trade Value"** means the price paid for the vehicle, or (if lower) an average of the trade values given by Glass's Guide and CAP, adjusted (in each case) for mileage and physical condition at the time of acquisition;

**"Vehicle"** means any motor vehicle that you and we have agreed will participate in the HPI and/or NMR Services; and

**"Year"** means the period of 12 months from the Commencement Date and each consecutive period of 12 months thereafter during the life of the Agreement.

**1.2** In these Conditions unless the context otherwise requires:-

**1.2.1** headings are used for ease of reference only and do not affect the construction of any of the provisions

**1.2.2** references to any person include references to any human being, company, body corporate, association, joint venture, partnership, trust and any entity capable of suing and being sued;

**1.2.3** references to any statute, enactment, order, regulation or other similar instrument shall be construed as references to the statute, enactment, order, regulation or instrument as from time to time amended, consolidated, modified, extended, re-enacted or replaced;

**1.3** The Agreement and all Services provided after the Commencement Date shall be subject to these Conditions which apply to the exclusion of all other terms, or conditions which you purport to apply with any written order, confirmation of order, specification or other document.

**1.4** You must notify us as soon as possible in the event of any change in your particulars shown in the Agreement. Any such alterations shall be deemed to take effect on the date shown in any confirmation notice we issue to you. Any changes or additions to the Agreement or to these Conditions you wish to make must be agreed in writing by us.

## **2. Use of Services, System and our Database Responsibilities**

**2.1** to complete the Service request screens in full (or provide all information requested by the HPI operator when using the Services via the HPI call-centre) so as to ensure a prompt response by us. We may upon notice to you immediately terminate the Agreement or suspend the Services and/or end your NMR Membership at any time if you provide incorrect information or persistently provide incomplete information.

**2.2** to notify us if we supply any Data which you know or suspect is incorrect or incomplete.

**2.3** You may notify us of any vehicle(s) on which you wish us to register an interest on the Security Watch Register where you reasonably believe that you have, or that you are acting on behalf of a person who has good title to such vehicle(s) and that such vehicle(s) fulfil(s) the criteria for publication on the Security Watch Register issued by us from time to time. If we reasonably believe that any interest registered on the Security Watch Register was not eligible for such registration at the time registration was made or has subsequently become ineligible, or if we become aware of a dispute as to eligibility, we shall be entitled (but not obliged) to remove such registration. We do not undertake to carry out or participate in any investigation or dispute in relation to eligibility or title and we shall not be liable for any interest or absence of an interest on or the removal or non-removal of an interest from the Security Watch Register.

**2.4** to comply with any additional requirements we may notify to you from time to time.

**2.5** Additional services provided are subject to these Conditions (and as amended) and at our standard rates .

**2.6** Save and except for any Software we may supply to you subject to these Conditions, you must ensure that you have all you need to gain access to and to use the Services (including computer hardware and software, telecommunications facilities and communications equipment).

**2.7** Whilst we take reasonable care to ensure that our computer systems used in provision of the Services ("our systems") operate properly we will not be liable for any failure of our systems or your inability to obtain access to or use the Data caused by you. We may at any time require you to disconnect your equipment or any part or parts of it and cease accessing and using our systems and/or the Data if in our

reasonable opinion such equipment is or has been the cause or is likely to be the cause of failures, interruptions, errors or defects in our systems and/or our database.

**2.8** if you supply HPI Services to a Third Party via a Third Party System:-

**2.8.1** you must sign the Agreement and return it to us allowing you to supply Data to Third Parties

**2.8.2** it shall be your responsibility to check the Third Party System operates correctly, including the complete and accurate retrieval and display of Data before releasing to your customers

**2.8.3** you may not provide Data to Third Parties until you have received HPI's written confirmation.

**2.8.4** You will keep a record of all third party customers using the service and promptly provide the same to HPI if requested (required by the DVLA).

**2.8.5.** You are required to verify the legitimacy of the Third Party when setting up a new account. You must check and verify the Third Party's VAT registration number and company registration number (where relevant). For non-VAT registered companies two proofs of trading must be provided such as bank statement or utility bill in the company name.

**2.9** During the term of this Agreement, including any notice period under clause 5.1, the customer agrees not to use any service from a third party that directly competes with the HPI Services and NMR Services.

### **3. Charges for HPI & NMR Services and Payment Terms**

#### **3.1 Advance Cash Customers (Note you are an Advance Cash Customer if so provided in the Agreement, or unless otherwise stated in the Agreement)**

**3.1.1** Unless otherwise agreed by us in writing, you will pay the charges for the HPI Services at the levels set out in our standard price list (as amended by us from time to time). Where data is provided to HPI from a Third party source, such as but not limited to Cap, we reserve the right to pass on any price increases levied to us by that Third party supplier.

**3.1.2** You agree to pay us a HPI joining fee in relation to HPI Services at the level applicable at the date of the Agreement.

**3.1.3** You agree to pay to us a subscription charge during the life of your HPI Membership at our then current rate (as amended by us from time to time) (the "HPI Subscription Charge"). The HPI Subscription Charge is payable monthly in advance and we will charge your account in respect of each monthly payment on or after the 2<sup>nd</sup> of each month.

**3.1.4** If you elect to become an NMR Member, you will be liable to pay the NMR joining fee at the level applicable at the date when your NMR membership commences. This will be invoiced as soon as possible after the date when your NMR membership commences.

**3.1.5** If we agree to hold sums of money from you on account for payment of Services not yet supplied by us (under our 'Advance Cash' scheme), it is your responsibility to ensure that you maintain an adequate balance in your Advance Cash account with us to pay for all Services you wish to use. If the balance in your Advance Cash account falls below this level, we may request you to 'top-up' your Advance Cash account (or issue 'top-up' invoices to you for this purpose) in accordance with the rules of the Advance Cash scheme from time to time. We may suspend or terminate your use of the Services if the balance in your Advance Cash account with us is not sufficient to pay for any of the Services you wish to use.

**3.1.6** Unless we hold sufficient money from you on account under the Advance Cash scheme from which to deduct payments for HPI Services or NMR Services (or we agree otherwise with you in writing) we are entitled to invoice you following the end of each month in which the HPI Services or NMR Services were provided, or at such other times we may agree with you in writing. NMR Members are entitled to a reduction in our standard charges for NMR Services at a level agreed between you and us from time to time.

#### **3.2 Sales Ledger Customers (Note you are a sales ledger customer if so provided in the Agreement)**

**3.2.1** You agree to pay us a HPI joining fee in relation to HPI Services at the level applicable at the date of the Agreement.

**3.2.2** You agree to pay us a subscription charge in respect of HPI Services in each Year during the term of the Agreement at our then current rate (as amended from time to time) (the "HPI Subscription Charge"). This is payable monthly in advance, or as otherwise shown in the Agreement invoiced up to 30 days in advance.

**3.2.3** If you elect to become an NMR Member, you will be liable to pay the NMR joining fee at the level applicable at the date when your NMR membership commences.

**3.2.4** If you are an NMR Member you also agree to pay to us a monthly membership charge in respect of the NMR Services (at our rates as amended by us from time to time) (the "NMR Membership Fee"). The

NMR Membership Fee is payable monthly in advance will be invoiced as soon as possible after the date when your NMR Membership commences. In respect of each subsequent month, we may invoice you in advance at any time in the month to which the subscription relates.

**3.2.5** Fixed fee customers - if in the Agreement we have agreed to provide Services on a Committed Volume basis:

**3.2.5.1** you will pay us the fees in respect of your usage of those Services specified in the Agreement in respect of your usage up to the Committed Volumes which you have committed to pay for as set out in the Agreement. The fees payable in each calendar month will be calculated by reference to your monthly Committed Volumes for each Service chargeable at the rates set out in the Agreement, or (if none) at our standard list prices for those Services. From time to time we may increase these fees, to the extent necessary to reflect changes to the costs charged to us by our third party suppliers, on giving you not less than 30 days written notice to be given at any time.

**3.2.5.2** you will also pay us additional fees ("Additional Fees") in respect of your usage of any Excess Volume (being any usage in excess of your Committed Volumes and taking account of any agreed overrun levels) of any specified Services at the unit rate applicable to the relevant Services in the Agreement, or (if none) at our standard list prices from time to time; and

**3.2.5.3** Additional Fees will be invoiced at any time following the end of each month in which Services were provided or at such other times as we may agree with you in writing.

**3.2.6** Any Services which you have not agreed to pay for on a Committed Volume basis shall be chargeable at the unit rate applicable to the relevant Services calculated by reference to our standard list prices from time to time.

### **3.3 All Customers**

**3.3.1** If we provide any services to you in addition to those Services specified in the Agreement and for which any charge, fees or additional fees are payable, we shall do so subject to these Conditions (and any other standard terms applicable to those services as may be amended or replaced from time to time) and are payable at our standard rates from time to time

**3.3.2** We reserve the right to review and (at our discretion) increase our fees, including without limitation our standard charges, list prices, or any rates set out in the Agreement for our Services (and accordingly the levels of our fees and Additional Fees and our other charges payable by you) at any time upon not less than 30 days written notice to you, to the extent necessary to reflect changes to the costs charged to us by our third party suppliers,.

**3.3.3** HPI further reserves the right to review (and at our discretion) increase our fees, including without limitation our standard charges, list prices and Additional Fees and our other charges payable by you including adding charges to our price lists for additional or new services that we may offer to you or you may request from us including without limitation charges for paper invoices, non-payment by DDM and charges to postal certificates on giving you 1 month prior written notice at any time.

**3.3.4** Unless otherwise agreed by us in writing, all our charges and any other sums payable by you under the Agreement are due (without any set-off or other deduction) within 30 days of the date of our invoices. If you have elected to pay our charges by direct debit, we will deduct any amounts specified in our invoices to you on the dates specified for payment in the relevant invoices.

**3.3.5** If payment of any of our charges, fees or Additional Fees is not made on the due date, we shall be entitled, without limiting any other rights we may have, to charge you interest (both before and after any judgement) on unpaid sums at the rate of 3% per annum above the Barclays Bank plc base rate from time to time accruing on a daily basis from the due date until full payment in cleared funds is made.

**3.3.6** All our charges, fees and Additional Fees are exclusive of any Value Added Tax, for which you shall be additionally liable at the applicable rate from time to time.

## **4. Warranty and Liability Limits in respect of Data and in respect of the Services**

HPI Accounts are not automatically set up with a Warranty. You must make an application for your HPI Account to be set up with a Warranty and the application must be approved by us. Until such time as confirmation is received by you in writing, confirming that your Warranty is in place no claims under such warranty will be considered by HPI

### **4.1 Warranty relating to HPI Services Data**

Subject to the limitation of liability in condition 4.2 and to the exclusions of liability set out in conditions 4.5 and 4.6, and to this condition 4 generally, we warrant that the Data supplied to you when providing the HPI Services is true, accurate and complete at the time we supply it to you and that we shall use reasonable care and skill in providing the HPI Services to you.

## **4.2 Warranty Limit for HPI Services Data**

Our liability in respect of the HPI Services and the Data relating to HPI Services and any cause of action arising out of or in connection therewith (whether for breach of contract, in negligence or any other tort under statute or otherwise at all) shall not exceed the Warranty Limit.

## **4.3 Definition of "Loss"**

In the event of a claim relating to HPI Services under the warranty, "Loss" shall be determined as follows:

**4.3.1** where the Vehicle is subject to a total loss claim which was not recorded on the Condition Alert Register at the time of your HPI Check, the difference between the Trade Value or value paid, (whichever the lower) and the Actual Value of the Vehicle, (as determined through sale at auction) or 50% of the trade value of the Vehicle (whichever the higher). or

**4.3.2** in the event of a failure by you or your purchaser to acquire good title to the Vehicle as a result of inaccurate or incomplete information supplied by us in the HPI Check, either (at our sole option):-

**4.3.2.1** the lower of the Vehicles final sale or Trade Value at the time of sale; or

**4.3.2.2** a sum necessarily paid or payable to acquire good title to the Vehicle.

**4.3.3** We reserve the right to inspect any Vehicle which becomes the subject of a claim under the warranty, at our own cost. Our decision on mileage and/or condition of the Vehicle is final.

**4.3.4** If a Loss arises as set out in Condition 4.3.1 above, we will arrange for an independent assessment of the Vehicle's current trade value in the light of the total loss claim (the "Actual Value" as defined above) to be undertaken and you will be entitled to recover the difference between the Actual Value and the Trade Value, subject to the Warranty Limit.

**4.3.5** Liability in respect of Condition 4.3.2 above is limited to 90% of the Loss calculated above, subject to the Warranty Limit.

## **4.4 Liability for NMR Services and otherwise under the Agreement**

We warrant that the NMR Services and any other services we may provide from time to time in respect of the Agreement shall be provided with reasonable care and skill. Our liability in respect of NMR Services, any other services we may provide from time to time or in respect of the Agreement, other than as set out in Condition 4.1 and 4.2 (whether for breach of contract, in negligence or any other tort under statute or otherwise at all) shall be limited to (at our option):

**4.4.1** supplying the NMR Services or other services again; or

**4.4.2** payment of the cost of having the NMR Services or other services supplied again; or

**4.4.3** repaying to you the amount you paid in respect of the NMR Services or other services in relation to which liability has arisen.

## **4.5 Exclusions of Liability relating to HPI Services and HPI Services Data.**

In relation to the HPI Services and any Data supplied in relation thereto, we shall not be liable for any loss you suffer arising out of, in respect of, or in relation to:

**4.5.1** any information contained in any of the following registers or products

4.5.1.1 National Mileage Register or,

4.5.1.2 Valuations service or

4.5.1.3 any descriptive information we provide;

4.5.1.4 any information contained within or omitted from our Specification "Spec Check" register.

4.5.1.5 any information contained within the cesar register of construction and agricultural machines unless you have also purchased the specific Cesar Check, whether or not the HPI Check indicates that additional information may be recorded or available on the Cesar database .

**4.5.2** any entry (other than a "clear" result) on one or other of the Main Registers or the Plate Transfer Register revealed by your HPI Check in relation to a Vehicle (except as provided in condition 4.5.15);

**4.5.3** any HPI Check you conduct after buying the Vehicle;

**4.5.4** any event which occurred in relation to a Vehicle after the time of your HPI Check;

**4.5.5** any Vehicle acquired outside Great Britain or not registered in Great Britain at the time of the HPI Check (for example if you source the Vehicle from Northern Ireland or elsewhere in Europe) or in respect of which no vehicle data is supplied to us by the DVLA, or any event which occurred prior to the first registration of any Vehicle in Great Britain or during any period when the Vehicle ceased to be registered in Great Britain and in each case whether or not the HPI Check result displays an import marker;

**4.5.6** any Vehicle which was not purchased by you in the ordinary course of your business;

**4.5.7** any Vehicle which was paid for in part or in full by cash;

**4.5.8** any Vehicle which was acquired from a person who is not a member of the motor trade and not the keeper of the Vehicle identified in the vehicle registration document (V5);

**4.5.9** any Vehicle which you have sold (without having obtained our prior written permission) after the time where you became aware of the possibility of an interest on one of our Main Registers;

**4.5.10** any claim where you had prior actual knowledge of any information which ought to have been present as an entry on one or other of the Main Registers, or which involves any other fraudulent action on your part;

**4.5.11** any HPI Check where you provide a vehicle identification number which does not correspond with the stated vehicle registration mark;

**4.5.12** any HPI Check in respect of which we have not received payment, or where monies have not been paid in accordance with the terms of any credit facilities we agree with you as set out in the Agreement or in these Conditions;

**4.5.13** any HPI Check carried out for you after your Agreement with us has ceased for whatever reason; or

**4.5.14** any HPI Check where you intentionally supplied us with incorrect or incomplete information, or if you do not co-operate with us and our agents (and, in any case involving stolen vehicles, the police);

**4.5.15** any HPI Check where one or more interests are shown as registered on one or more of the Main Registers, except that the warranty set out in condition 4.1 (the "Warranty") shall apply in the following cases:

**4.5.15.1** if an interest is recorded on the Outstanding Finance Register or Condition Alert Register and the other two Main Registers are clear, the Warranty will apply other than in respect of that recorded interest. If we subsequently establish that the interest was not or is no longer valid, the Warranty will extend to apply also in respect of that interest;

**4.5.15.2** if an interest is registered only on one or both of the Stolen Vehicles Register or Security Watch Register, the Warranty will not apply at all unless it is subsequently established by HPI that all such interests were not valid at the time they were made or are no longer valid, in which event the Warranty will apply in respect of each of the Main Registers including that interest;

**4.5.15.3** the provisions of 4.5.15.1 and 4.5.15.2 above also apply to the Vehicle in respect of all its previous registration marks in the case of a recorded interest on the Plate Transfer Register; and

**4.5.15.4** if a Vehicle is recorded on our Condition Inspected Register, you cannot make a claim under the Warranty based on any deemed reduction in the value of that Vehicle as a result of that Vehicle being included on that Register, or its prior inclusion on the Condition Alert Register, or arising from any event that resulted in that Vehicle being included on either of these Registers;

**4.5.16** any claim where you should, by virtue of the nature of your business, have had access to the Vehicle and vehicle registration document (V5), except where there is corroboration between all information included in the V5 and the Vehicle itself in respect of the manufacturer, model, date of first registration, colour, engine size, transmission, fuel type and door plan;

**4.5.17** any claim unless you have recorded (and provide to us upon request) details of the identity of the seller of the Vehicle, together with sufficient evidence of purchase and payment for the Vehicle, and maintained a proper stock book;

**4.5.18** any claim unless you co-operate fully with us and any claims administrators we appoint in connection with that claim;

**4.5.19** any claim unless at the time you ordered the HPI Check you were in possession of a valid motor traders' insurance policy;

**4.5.20** any claim in relation to a Vehicle that has been written off as a total loss for insurance purposes unless you are able to demonstrate to HPI's reasonable satisfaction that you have taken all reasonable precautions and exercised all due diligence (as those expressions are construed in connection with the 2008 Consumer Protection from Unfair Trading Regulations) to identify total loss Vehicles and have duly recorded this process in an appropriate manner;

**4.5.21** any vehicle where you have not had access to a full V5 and not verified that the seller is the legal owner of the vehicle

**4.5.22** any claim where you have already made a claim hereunder in relation to the same Vehicle (whether in relation to the same or a separate HPI Check);

**4.5.23** any claim in relation to a Vehicle where any loss arises from a fraudulent transaction which prevents good title being passed from the vendor; or

**4.5.24** any claim unless you have made reasonable efforts to contact the vendor of the Vehicle (either by telephone, or if a dealer purchase, by visiting the premises) in order to resolve the issue and recover the loss, unless expressly requested not to do so by the Police. We reserve the right to withhold settlement of any claims until all reasonable efforts have been taken.

**4.5.25** HPI does not cover certain vehicle types against cloning, if the vehicle you are purchasing is excluded from cover against cloning you should use extra care when purchasing and ensure you are confident the vehicle is genuine, Vehicles currently not covered against cloning:

- All Motor Homes, as classified in floor plan type according to our records
- All twin cab commercial pick up vehicles

If you are unsure if your vehicle is covered against cloning please contact HPI before progressing with the purchase

**4.5.26** any data inaccurately or incompletely supplied via a third party system.

**4.5.27** any vehicle not registered on the "Condition Alert" if the nature of your business is in "vehicle salvage" or "parts"

**4.5.28** any vehicle purchased in a damaged state;

**4.5.29** where you have purchased a Cesar Check, HPI will use reasonable care to ensure data is presented in a fair and accurate manner but does not accept any liability for any untrue, incomplete or inaccurate data recorded in the Cesar database.

#### **4.6 Exclusions of Liability Generally**

**4.6.1** You agree that we shall not in any circumstances (including if we have been negligent) be liable for any indirect or consequential loss of damage at all, or for any loss of business, capital, profit, reputation or goodwill whether caused by us, our servants or agents arising out of or in connection with the Agreement of its subject matter.

**4.6.2** We do not limit or exclude our liability for death or personal injury arising from our negligence or that of our employees or agents.

**4.6.3** Save as set out in condition 4.1 our entire liability (except for death or personal injury arising from our negligence or that of our servants or agents) in respect of any cause of action arising out of or in connection with the Agreement or its subject matter (whether for breach of contract, in negligence or any other tort, under statute or otherwise at all) shall be limited to the amount of the Maximum Warranty Limit.

**4.6.4** We shall not be liable for any claims arising under the Agreement or in relation to its subject matter unless written notice of the claim is given to us either within 3 months from when you became aware of the circumstances giving rise to such a claim or within 3 months of such time when you ought reasonably to have become aware of such circumstances and in any event within 1 year (or as specified on the Agreement) following the date of the HPI Check.

**4.6.5** Except as expressly provided in the Agreement, all other conditions, terms and warranties, express or implied by statute or otherwise are excluded to the fullest extent permitted by law. In particular, but without limitation, we exclude any representation, condition or warranty that the operation of the Services will be uninterrupted or that the operation of any Software will be uninterrupted or error free.

**4.6.6** The exclusions and limitations contained in these Conditions shall apply for the benefit of HPI Limited and any person or business supplying any part of the Data to us whether or not mentioned in the Agreement or in any marketing or descriptive documentation relating to the Services.

#### **4.7 Basis of Limitations and Exclusions of Liability**

You acknowledge:

**4.7.1** the Data we supply to you when providing the HPI Services and/or the NMR Services includes a large amount of information which has been supplied to us voluntarily by third parties over whom we have no control, such as the police, the DVLA, insurance and finance companies and those involved in the motor industry;

**4.7.2** the volume and the nature of the data on our database makes it impractical for us to verify it and, if we were to attempt to do so, we would only be able to offer our services at a significantly increased cost;

**4.7.3** we provide the Services at a price that does not reflect any benefit you may obtain from them, including any profit that you may make or the amount of any credit that you may give;

**4.7.4** each provision of this Condition 4 is to be construed as a separate limitation applying and surviving even if for any reason one or other of the said provisions is held inapplicable or unreasonable in any circumstances; and

**4.7.5** we accordingly consider it reasonable (and you agree) for us to limit our liability on the basis set out in this Condition.

**4.7.6** we shall not be held responsible for any data inaccurately or incompletely presented via a Third Party System,

**4.7.7** it is the responsibility of any third party to regularly check the presentation and accuracy of any data supplied to their clients

4.7.8 The Specification "Spec check" data we supply is not a comprehensive database of vehicle specifications.

## **5. Term, Suspension & Termination**

**5.1** The Agreement shall come into effect on the Commencement Date specified in the Agreement and, subject to the remaining terms of the Agreement, shall run for the duration of the Agreement. Thereafter the agreement shall continue indefinitely until terminated by either you or us giving not less than 12 month's prior written notice to the other. For the avoidance of doubt the Service Agreement takes priority over these terms and conditions

**5.1.1** If under the Agreement you have agreed to pay any HPI and/or NMR joining fees, HPI Subscription Charge, NMR Membership Fee, or fees in respect of Committed Volumes, or any other agreed pre-payment or fee for any fixed or minimum period and you terminate the Agreement (or if we terminate the Agreement pursuant to condition 2.1, 5.2.1- 5.2.3 or 5.4) before expiry of such period, you will remain liable to pay these and HPI will not refund of any of these (whether or not you ask us to provide any Services).

**5.2** We may at any time by notice to you immediately terminate the Agreement, or without notice suspend any Services if:

**5.2.1** any charges due from you under the terms of the Agreement are unpaid;

**5.2.2** you use the Services or any Data for any purpose not expressly permitted in these Conditions;

**5.2.3** you are (in our reasonable opinion) otherwise in material breach of the Agreement or any of these Conditions; or

**5.2.4** you undergo a change of ownership to which we reasonably object.

**5.3** Suspension of the Services by us pursuant to Condition 5.2 above shall not affect any of your obligations under the Agreement (including any obligation to make any payment).

**5.4** Either you or we may end the Agreement at any time by notice to the other if the other party convenes a meeting of its creditors or a proposal is made in relation to the other party for a voluntary arrangement under Part 1 of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with (or assignment for the benefit of) the other party's creditors or the other party is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the assets of the other party or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding-up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

**5.5** When the Agreement ends for whatever reason the balance of any charges or other monies payable by you to us under the Agreement shall (despite any other provision in the Agreement) become immediately due and payable.

**5.6** When the Agreement ends for whatever reason, you shall:

**5.6.1** immediately cease all use of the Services, the Data and any Software;

**5.6.2** return to us any Software (including all back-up and security copies, the user guides and any other documentation relating to the Services) which we may have provided to you and delete or otherwise destroy any copies of any Software which are in your possession or control;

**5.6.3** return to us any marketing or promotional materials which we have provided to you in relation to the promotion of any of the Services; and

**5.6.4** immediately cease all use of any of our trade names and service marks (including "HPI" and "NMR") in your marketing, promotional or advertising activities.

**5.7** if you are an NMR member, you may terminate your NMR membership at any time by giving at least 3 months prior written notice to us. After termination we will continue to provide the NMR service to you, but you will be liable to pay the charges at the levels set out in our standard NMR price list.

## **6. Intellectual Property, Permitted use of Data & Confidentiality**

**6.1** You agree that all and any intellectual property rights comprised in any Data, our trade names and service marks, any Software or any other aspect of the Services provided to you (including but not limited to copyright, database right and rights of confidence), shall, insofar as they belong to us, remain our exclusive property. No intellectual property rights in any of the foregoing are transferred or licensed to you, except as expressly provided in these Conditions. You also agree that the copyright, database right and other intellectual property rights in any information relating to the Vehicle which you provide to us as part of the Services will become our property when such information is stored in our database.

**6.2.1** Except as provided in the Condition 6.3 below, you acknowledge and accept that any Data provided



to you may only be used by you for the purposes of appraising, or verifying the current status of, motor vehicles or other assets prior to selling, purchasing or processing such motor vehicles or other assets in the ordinary and lawful course of your business (the "Purpose"). You agree that you will treat all Data in strict confidence and that except for the Purpose and as provided in the Condition 6.3 below, you will not use the Data or any part of it nor have any right over or access to it. In particular (and without prejudice to the generality of the foregoing) you shall not resell or (save under a statutory duty or pursuant to any court order) disclose or supply any of the Data, including but not limited to Model Variant Code, to any third party. You undertake to apply to all Data no lesser security measures and degree of care than those which you apply to your own confidential or proprietary information and which you warrant as providing adequate protection of such information from unauthorised disclosure, copying or use.

**6.2.2** In certain circumstances we are authorised by DVLA to allow disclosure of the Vehicle Identification Number (VIN) as part of a trade check. Disclosure to you of a VIN is only permitted for the Purposes as defined in clause 6.2.1 above. Should we become aware of any misuse associated with disclosure of the VIN, or are so advised by the DVLA, we reserve the right to remove this facility from your reports with immediate effect and without further notice and/or terminate this agreement in accordance with clause 5.2 above.

**6.2.3** The VIN is disclosed to assist in confirming the identity of the vehicle by validating that the vehicle registration mark searched relates to the correct vehicle or to confirm a correct VIN to be compared to the VIN displayed on the relevant vehicle. You may display the VIN on the vehicle search report / certificate, recorded within the application modules to handle vehicle inventory, recorded on the vehicle inventory, stock report, ledgers and customer database / service record and/or included in information disclosed to vehicle purchaser / owner, dealership staff, sub-contractors and auditors, but not otherwise and only providing that such use is always in accordance with the Purpose as defined in clause 6.2.1 above.

**6.2.4** We reserve the right to undertake spot check audits relating to the use and storage of the Data (including but not limited to VIN data released by the DVLA), and monitor usage volumes or patterns and respond to any indication of misuse or abuse with immediate termination of access. You must take reasonable steps to ensure measures are in place to stop unauthorised VIN disclosure,

**6.2.5** You must not retain VIN data for longer than necessary nor use it for unauthorised purposes nor must you disclose the full VIN to third parties beyond the terms of your agreement with us.

**6.2.6** Data Caching is not permitted unless specifically authorised in advance in writing by HPI in accordance with the following DVLA requirements:

**6.2.6.1** For a limited period of 24 hours only, to allow multiple hits against a single record as part of a continuous enquiry; or

**6.2.6.2** for a limited period where it is necessary to retain the results of a data record for auditing purposes / contractual issues. The data must be held in archive records and must only be retained as long as necessary for this purpose, you must not use the data to fulfil further enquiries or transactions not related to the original enquiry.

**6.2.7** Use of the Data to create an alternative database for purposes not related to the original enquiry is prohibited.

**6.2.8** You agree to destroy any Data held by you immediately where requested to do so by us.

**6.3** You are permitted to supply to your customer purchasing from you the relevant motor vehicle or asset one printed copy of the Data supplied by us under the Agreement PROVIDED ALWAYS that such Data supplied to your customer is in the written or electronic form supplied to you by us (without amendment to any of the contents) and that such supply to your customer is free of charge (whether monetary or otherwise).

**6.4** You shall indemnify us against all costs (including reasonable legal costs), claims, damages, demands and expenses arising directly or indirectly out of any claim by a third party which arises in connection with the use of the Services or the Data by you in breach of these Conditions or the Agreement or which is wholly or partly attributable to your negligence or that of your servants or agents.

**6.5** Neither you nor we may disclose the terms of the Agreement to any other person, except to your or our (as the case may be) personnel whose duties reasonably require such disclosure on condition that you or we (as the case may be) ensure that each such person to whom such disclosure is made: (a) is informed of the obligations of confidentiality under these Conditions; and (b) complies with those obligations as if they were bound by them.

**6.6** The provisions of this Condition 6 shall survive expiry or ending of the Agreement for any reason.

## **7. Provision of Software**

**7.1** If we agree to supply Software to you:

**7.1.1** you shall be responsible for installing and maintaining the Software and configuring it for use to

access the Services; and

**7.1.2** we shall use our reasonable endeavours to ensure that, for as long as we provide the Services to you, the Software continues to operate substantially in accordance with our published documentation, but we exclude any warranty, condition or representation that the Software will be suitable for your purposes or that the Software will operate uninterrupted or error free or that the Software will interface seamlessly with any of your software.

**7.2** If we supply Software to you, we grant to you for the duration of the Agreement a non-exclusive licence to use the Software to enable you to receive and use the Services as contemplated by these Conditions. You may make as many copies of the Software as are reasonably necessary, including one copy for back-up and security purposes. This Condition is subject to any other agreement we enter into with you regarding the Software.

## **8. Security and Data Protection**

**8.1** Each party shall, to the extent necessary in relation to its activities as contemplated by the Agreement, at all times:

**8.1.1** maintain all licences and registrations under any applicable laws, including the Data Protection and Consumer Credit Legislation ; and

**8.1.2** comply with all applicable laws, including the Data Protection and Consumer Credit Legislation.

**8.2** We obtain and hold vehicle and associated data from many sources, including finance companies, insurers, vehicle owners and the police. This data is used to protect both those making searches and the owners of vehicles on the HPI registers. For that reason, you agree and consent to us disclosing relevant information about you collected by us from the information you provide to us as part of the Services (including your name, address and details of your usage of the Services) to any person to whom we consider that it would be expedient to do so, for the sole purposes of preventing, detecting or discouraging crime, for the apprehension or prosecution of offenders, or for the recovery of stolen vehicles or other property. Without limiting the foregoing, you expressly agree and consent to us disclosing any such information about you to:-

**8.2.1** a person claiming to be owner of the Vehicle against which you have requested HPI Services or NMR Services; or

**8.2.2** the police or other law enforcement authorities.

**8.3** You also therefore agree and consent to us storing any information relating to the Vehicle which you provide to us as part of the Services on our database, and reusing the same in the course of our business (including future provision of our Services).

## **9. Miscellaneous**

**9.1** Notices under the Agreement and/or these Conditions shall be in writing and sent to the Company Secretary of our registered address and to the address that your invoices are sent by second class mail.

**9.2** We shall not be liable to you for any delay in or failure to perform any of our obligations under the Agreement arising from any cause beyond our reasonable control including, without limitation, act of God, compliance with any law or governmental order, rule, regulation or direction, war, fire, flood, explosion, civil commotion, failure in telecommunication services or industrial action or failure of or disruption to any utility service including electric power.

**9.3** You may not transfer, assign or in any other way make over to any third party the benefit of the Agreement (either wholly or in part) without our prior written consent.

**9.4** We shall not be deemed to waive any of our rights under the Agreement by failing or delaying to exercise or enforce them, and no waiver by us of any breach of the Agreement by you will be considered as a waiver of any subsequent breach of the same or any other provision.

**9.5** We operate a policy of continually reviewing and developing the information services we provide, and accordingly we reserve the right, provided that we give you reasonable notice, to make any changes to any of the Services, or discontinue or substitute any of the Services or parts thereof, at any time where we deem this to be necessary to comply with any applicable statutory requirements, or in the event that such Services or parts thereof are provided by a third party and that third party withdraws, discontinues or otherwise terminates provision of those services to us, or which in our reasonable opinion do not materially affect the nature or quality of the Services. We may also vary the contents of our database from time to time in order to improve or modify services features.

**9.6** We may from time to time amend the Agreement by varying or adding to any of these Conditions by giving to you reasonable prior notice, such notice will be given via [www.hpi.co.uk](http://www.hpi.co.uk) where current conditions can also be viewed.

**9.7** If any provision of the Agreement (including these Conditions) is or becomes invalid or unenforceable

it will be severed from the rest of the Agreement so that it is ineffective to the extent that it is invalid or unenforceable and no other provision of the Agreement shall be rendered invalid, unenforceable or be otherwise affected.

**9.8** The Agreement (incorporating these Conditions) sets out the entire agreement and understanding between you and us in connection with its subject matter and supersedes any and all previous agreements between you and us relating to its subject matter. In particular, but without limitation to the generality of the foregoing, you warrant and represent that in entering into the Agreement you have not relied upon any statement of fact or opinion made by us or our officers, servants or agents which has not been included expressly in the Agreement. Nothing in this Condition 9.8 shall affect the liability of either party in respect of any misrepresentation, warranty or condition which it makes fraudulently.

**9.9** You agree that you will (at our cost and expense) do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as we may from time to time reasonably require for the purpose of giving to us the full benefit of any rights and benefits granted to us under these Conditions.

**9.10** The Agreement and these Conditions shall be governed by and construed in accordance with the laws of England, and the parties hereby submit to the exclusive jurisdiction of the English Courts. Save as set out in condition 4.5.6 no person who is not a party to the Agreement shall have any rights under it.