

CLAIMWATCH TERMS AND CONDITIONS (Edition 3)

1. Interpretation

In these Terms and Conditions ("Conditions") unless the context otherwise requires

1.1 The following words and expressions shall have the following meanings:

"Company" - Claimwatch Limited

"Client" - the party with whom the Company has contracted to supply the Service

"Bodyshop" - the specific premises or part of premises specified in the Contract

"Contract" - the contract formed by the acceptance of the Company's Quotation by the Client or any other agreement between the Company and the Client for the supply of the Service including these Conditions

"Service" - the version of the Company's motor vehicle repair status monitoring service specified in the Contract (or as subsequently varied under these Conditions) as described in the User Guide

"Upgrade" - any new version of the Service being marketed generally on a commercial basis by the Company but not (for the avoidance of doubt) any bespoke variations or improvements supplied by agreement to specific clients

"Major Upgrade" an Upgrade that is designated with a new Version number excluding changes in the numbers following the decimal point

"Start Date" - the date specified in the Contract which is the date that the Client requires the Company to begin setting up the Service for the Client.

"Commencement Date" - the date for the commencement of the Term being the date on which the Client Website is set up for the Service

"Term" - the initial period for the supply of the Service specified in the Contract

"User Guide" - the Company's User Guide applicable to the Service from time to time in force and available on the Company's website

"User Instructions" - the User Guide as supplemented or varied by any instructions relating to the Service from time to time issued by the Company

"Authorised Person" - any person authorised by the Client to use the Service

"Client Information" - the information to be supplied by the Client in order to receive the Service as specified in the User Instructions

"Client Data" - any data relating to the repair of vehicles being repaired by the Client supplied by the Client or its customers or an Authorised User to the Company for the provision of the Service

"Client Website" - the website set up by the Company for the Client to receive the Service and to host the Client's database for the Service

"LOGIN" - the user name and password (and any replacements) required to access the Service

"List Prices" - the Company's standard prices for the Service from time to time in force

"Business Day" - any day except Saturday or Sunday or a statutory or public holiday in England

"Business Hours" - between 9.00am and 5.00pm on Business Days "Intellectual Property Rights" - any rights conferred anywhere in the world in

respect of patents, copyright, designs, trade marks or names, database rights and all other rights which may subsist anywhere in the world in respect of confidential information and inventions including rights to apply for any of the foregoing

"Payment Facility" - the online Payment Facility described in Condition 11

1.2 words denoting the singular shall include the plural and vice versa; words denoting any gender shall include any other; "person" or "party" means and includes any legal entity

2. Term

2.1 The Company shall supply and the Client shall accept the Service for vehicles being repaired in the Bodyshop from the Commencement Date subject to Condition 8 for the Term and then after the Term unless and until terminated by either party giving the other not less than 3 months notice

2.2 Subject to compliance with Conditions 4.1 and 5.1 (a)(i) the Company shall endeavour to set up the Client Website and supply the initial LOGIN to the Client within 10 Business Days of the Start Date or as soon as practicable thereafter

3. The Service

3.1 The Company shall provide the Service using reasonable care and skill

3.2 Subject as provided in the Contract the Service will be available to the Client at all times

3.3 The Company shall support the Service by:

(a) providing a free telephone support line for reasonable use by the Client to resolve Faults (as defined in Condition 3.5) during Business Hours

(b) "backing up" Client Data daily on Business Days

3.4 The Company shall supply the initial LOGIN to the person specified in the Contract or any other person nominated in writing by the Company to receive same

3.5 In the event of any defect in or malfunction of the Service ("Fault") the Company shall use reasonable endeavours to rectify the Fault within 24 Business Hours of same being reported to it by the Client and the obligations of the Company under this Condition 3.5 shall be the sole and exclusive remedy of the Client in the event of a Fault

3.6 The Company shall offer the Client the opportunity of changing the Service to include any Upgrade as soon as practical after same is available at its List Price for Major Upgrades but otherwise without charge but may in any event (in its discretion) change the Service to include any Upgrade or Major Upgrade without charge

3.7 The Company may suspend the Service to incorporate Upgrades, to carry out repairs and maintenance to its equipment, systems and services and to the Clients Website ("Works") in which event the Company where practicable shall give the Client at least 24 hours notice of its intention to carry out Works and carry out Works outside Business Hours

3.8 The Company shall also supply any additional services the Company and the Client may agree ("Additional Services") which shall be deemed to include any additional work the Company carries out in performing its obligations under the Contract as a result of any breach or default of the Client or any Authorised Person

4 Client's Obligations

The Client shall :

4.1 supply the Client Information on or before the Start Date and such further information and assistance the Company may require from time to time to supply the Service



4.2 pay the Company the fees and expenses specified in Condition 5 for providing the Services on the dates therein specified and (if requested by the Company) pay the Service Fee by bankers standing order

4.3 ensure that its computer(s), software and systems are at all times suitable to receive the Service and (if requested by the Company) permit the Company to test or inspect same

4.4 use the Service in conformity with and comply with the User Instructions

4.5 use the LOGIN solely for the purpose of receiving the Service and disclose same only to responsible persons who need to know same to enable the Client to receive the Service

4.6 use the Service solely in relation to vehicles being repaired at the Bodyshop

4.7 ensure that any data, other information or materials supplied by the Client or any Authorised User do not infringe the Intellectual Property Rights or any other rights of any other person or include defamatory or illegal material or any viruses or worms or other harmful elements

4.8 be responsible for the security of the LOGIN and ensure that the LOGIN is disclosed to Authorised Users only and that same use the Service in accordance with the provisions of the Contract

4.9 (notwithstanding the provisions of paragraph 3.3. (b)) back up Client Data daily on Business Days

4.10 procure the consent of any third party required for the use of Client Data by the Company or any party authorised by the Company both for the provision of the Service or otherwise as authorised by the Contract

5 Fees and Expenses

5.1 The Client shall pay the Company:

(a) for providing the Service:

(i) the Set Up Fee specified in the Contract which shall be paid on or before the Start Date and any further fee payable in respect of any Upgrade due under these Conditions or agreed between the parties which shall be paid on or before the change to such Upgrade

(ii) the Service Fee at the monthly rate specified in the Contract which shall be paid monthly in advance from the Commencement Date and on the same date ("SF Payment Date") in subsequent months and any increase in respect of any Upgrade due under these Conditions or agreed by the parties which shall be paid with effect from the first SF Payment Date after the change to such Upgrade

(iii) for SMS Texts in advance in batches of 1000 at the rate specified in the Contract or as varied in accordance with these Conditions

(iv) for the Payment Facility (if applicable) in accordance with Condition 11

(b) for Additional Services such fees and expenses the parties may agree otherwise at the Hourly Rate plus any costs and expenses properly incurred by the Company in relation thereto which shall be paid at the times agreed by the parties or otherwise within 14 days of the Company's Invoice. "Hourly Rate" means £85 per person per hour plus VAT or as varied in accordance with these Conditions

5.2 The Company may charge its List Prices from time to time in lieu of the fees specified in Condition 5.1 after the end of the Term provided that any rate of increase shall not exceed 10 per cent in any calendar year

5.3 All payments to be made under this Agreement are exclusive of any applicable Value Added Tax (which is payable additionally at the prevailing rate) and if not paid on the date agreed for payment ("Due Date") shall carry interest at the rate of 10 per cent per annum from the Due Date until actual payment

6 Proprietary Rights of the Parties/Confidentiality/Data Protection:

6.1 All Intellectual Property Rights in the Service including the LOGIN, the User Instructions, the content and design of the Client Website (except any business or trade name of the Client) and the name ClaimWatch ("Name") are and shall remain the sole and exclusive property of the Company

6.2 (For the avoidance of doubt) if the Company develops any new or improved feature or facility for the Service or any variant thereof all Intellectual Property Rights in same will belong to the Company who may supply same to any other person

6.3 The Company will use reasonable endeavours to prevent persons who are not Authorised Persons gaining access to Client Data provided that (1) the Company shall have no liability for the disclosure of Client Data as a result of any breach of obligation by the Client or any Authorised User or as a result of any unlawful activity by any person and (2) the Company or any party authorised by the Company may use Client Data in a non attributable form for statistical or analogous purposes

6.4 The Client shall :

(a) keep the Company's Confidential Information secret and confidential and not to disclose it to any other person nor use it except for the due performance of or as strictly permitted by the Contract "Confidential Information" shall mean any information which is by its nature clearly confidential or proprietary or identified by the Company as such but not information which is or subsequently becomes generally available to the public other than through a breach of contract or negligence of the Client or any Authorised User or is lawfully obtained by the Client from another person without restrictions as to its use.

(b) not use the Name or any name which may be confused with the Name for any purpose whatsoever;

(i) during the continuance of the Contract other than on the Client Website or in the Client's promotional literature referring to the fact that the Client has the benefit of the Service in each case on terms first approved in writing by the Company

(ii) at any time after the termination of the Contract (for whatever reason)

6.5 The Company may with the consent of the Client permit third parties to view and use Client Data

6.6 If the Service has facilities which enable the Client to make any Client Data available to third parties the Client shall obtain such consents (if any) as may be required by parties affected by the disclosure of such Client Data

6.7 Subject to these Conditions the Company shall use Client Data in conformity with the Data Protection Act 1998

7. General

7.1 The Contract may be signed in one or more parts and contains the whole agreement between the parties relating to its subject matter and supersedes all prior representations and agree-

ments relating to same and no variation of it shall be effective unless agreed in writing by duly authorised representatives of both parties

7.2 The Client shall not assign or sub-contract any of its rights or obligations under the Contract without the prior written consent of the Company

7.3 The Company may assign the Contract sub-contract the provision of the Service or part thereof on terms that the Company will remain fully liable to the Client for any breach of the provisions of this Agreement by any sub-contractor.

7.3 Neither party shall have any liability to the other for any delay in performing or failure to perform its obligations under this Agreement as a result of Force Majeure meaning any of the following causes or circumstances namely, failure of power or telecommunications lines or other services, failure or breakdown of plant or equipment, suspension or interference with online access, non performance of suppliers and subcontractors and any other cause or circumstance beyond the reasonable control of the party affected by same

7.5 The undertaking given by the Client in Condition 3.5 is given in substitution for all representations or warranties (whether written or oral, express or implied by statute or otherwise) which are hereby excluded to the maximum extent permitted by law

7.6 The liability of the Company in contract or tort (including negligence or breach of statutory duty) except for death or personal injury caused by the Company's negligence shall be limited to the amount of the Set Up Fee and the Company shall have no such liability to the Client for any loss of business or profits or special, indirect or consequential loss suffered by the Client or any other party

7.7 No other person shall have any right hereunder to benefit from or enforce any provisions of this Agreement.

7.8 Obligations which are not expressed or intended to remain in force for a particular time shall remain in force without limit in time

7.9 If this Contract shall relate to more than one Bodyshop the contract for each Bodyshop shall be deemed to be separate, distinct and severable

8. Termination/Suspension

8.1 The Company may terminate the Contract by immediate notice if the Client fails to make any payment to the Company within 14 days of the Due Date; or commits a material breach of the Contract and (if remediable) on being given written notice of breach fails to take prompt and effective action to remedy the breach; or ceases to carry on business normally; or goes into liquidation receivership or administration or suffers an analogous process

8.2 The Company may by immediate notice suspend the supply of the Service at any time when the Client is in breach of the provisions of the Contract in which event the Service Fee will continue to be payable during any period of suspension.

8.4 The Client may terminate the Contract if a Major Fault except such resulting from any breach of obligation by the Client or an Authorised User persists for more than 16 Business Hours or a Major Faults persists for more than 32 Business Hours in total in any calendar month. A Major Fault is a Fault (as defined in Condition 3.5) which renders the main function of the Service inoperative

PROVIDED that the suspension, expiry or termination of the Contract (for whatever reason) shall not affect any rights or liabilities which have accrued prior to suspension or termination nor affect any provisions which are expressed or intended to continue in force following expiry or termination

9. Notices

All notices and other communications under the Contract shall be in writing in the English language and deemed to be duly given if delivered by messenger during Business Hours or if posted by pre-paid certified, recorded or registered mail to the Relevant Address of the recipient or if transmitted by email to the Relevant Email Address of the recipient. The Relevant Address and Email Address of the parties are as set out in the Contract or (for either party) such substituted details as such party shall notify to the other in writing from time to time for this purpose. Notices will be deemed given (as appropriate) if so delivered when delivered, if so posted two Business Days after posting and if so transmitted by email (transmission confirmed) at the expiry of two Business Hours from the time of transmission

10. Law/Jurisdiction

The Contract shall be governed by and construed in accordance with English Law and each party hereby agrees to submit to the exclusive jurisdiction of the English Courts as regards any claim, dispute or other matter arising under or by reference to the Contract

11. Payment Facility

This Condition shall only apply if the Contract so provides or if the Company and the Client otherwise so agree and if this Condition applies :

11.1 The Service shall include the provision of an online Payment Facility within the Client Website for the payment by the Client's customers of policy excess charges, congestion charges, fines and other payments due from or reimbursable by customers to the Client ("PF Monies") into the Company's Collection Account ("PF Account") which Facility shall include:

(a) an SMS text reminder service and

(b) a facility whereby the Client can view online all payments into and out of the Collection Account which relate to the Client

11.2 The Client shall pay the Company a fee of 7% of all PF Monies collected plus VAT ("PF Fee") when same are collected for providing the Payment Facility. The PF Fee is inclusive of current charges to the Company made by companies processing credit card and debit card payments ("CDC Charges") but the Company shall be entitled to increase the PF Fee in line with any increases in CDC Charges.

11.3 The Company shall account to the Client by BACS (into such account the Client specifies) within seven days after the end of each month for all PF Monies collected in such month after having deducting the PF Fees and any other monies then owed by the Client to the Company