

## **BEST BIKE BID LTD – DEALER TERMS AND CONDITIONS**

### **1. INTERPRETATION**

The following definitions and rules of interpretation apply in these Conditions.

#### **1.1 Definitions:**

**Administration Fee:** Best Bike Bid's standard administrative charge as set out on the Platform.

**Agreed Purpose:** means the purpose(s) for which the parties require to use the Shared Data as set out in the Data Sharing Agreement.

**Agreement:** the agreement for the Subscription, incorporating these Conditions, the Website Terms of Use and such other documentation as may be referred to in these Conditions.

**Application:** means the submission by the Dealer of online application to Best Bike Bid for the receipt of the Services, via its completion of the subscription form on the Platform.

**Applicable Laws:** means primary and secondary legislation, retained EU law (as defined in section 6(7) of the European Union (Withdrawal) Act 2018), regulations, regulatory policies, guidelines or industry codes which apply from time-to-time.

**Best Bike Bid:** Best Bike Bid Ltd, a company registered in England and Wales with company number 14747171 and whose registered office is at Acorn Barn Oak Mount Farm, Ribchester Road, Clayton Le Dale, Blackburn, Lancashire BB1 9EY.

**Bids:** means the offering of a sum (in pounds sterling) by a Dealer to the Vendor on the Platform in consideration for the purchase of a Vehicle, whether submitted automatically or manually.

**Bidding Period:** means the total duration of time displayed on the Platform during which the Dealer has the option to place a Bid.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 09:00 to 17:00 pm on any Business Day.

**Commencement Date:** has the meaning given in clause 2.4.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause **Error! Reference source not found.**

**Confidential Information:** means any and all confidential information (whether in oral, written or electronic form) imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, services, software, products, solutions and Dealers (but excluding Tenants, to the extent applicable under these Conditions), including without limitation information relating to manufacturing or other processes, management, financial, marketing, technical and other arrangements or operations of any person, firm, or organisation associated with that party.

**Dealer:** means the dealership business detailed in the Application, which wishes to access the Services in accordance with this Agreement.

**Dealer Materials:** any content, text, logos or other materials uploaded to Platform by the Dealer or otherwise used by the Dealer in connection with the receipt of the Services.

**Data Protection Legislation:** means the Data Protection Act 2018 ("DPA 2018"), the UK General Data Protection Regulation ("UK GDPR"), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner including any amending or replacement legislation in force from time to time. The terms **Personal Data**, **Special Category Data**, **Processing**,

**Controller, Processor, Consent, Subject Access Request, technical and organisational measures, and Personal Data Breach** have the same meanings as defined in the Data Protection Legislation.

**Data Protection Principles:** means the principles set out in Article 5 of the UK GDPR.

**Data Security Breach:** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Data.

**Data Sharing Agreement:** means the agreement executed between the parties and incorporating these Conditions, and as may be amended by the parties from time to time, in writing.

**DVLA:** means the government Driver and Vehicle Licensing Agency.

**Fee:** means the fee payable by the Dealer to Best Bike Bid as determined under clause 6.2.

**Finance Arrangement:** means any third-party finance arrangement granted over a Vehicle.

**Force Majeure Event:** has the meaning given to it in clause 14.

**HPI:** means HPI Limited, a company registered in England and Wales with registered number 04068979 and whose registered office is at Capitol House, Bond Court, Leeds, LS1 5EZ.

**Incorrect Bid:** any Bid submitted by the Dealer which is significantly below or above the determined value of that Vehicle.

**Initial Period:** shall have the meaning given to it in clause 2.4.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighboring and related rights, moral rights, trade-marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Introductory Pack:** key information about a Vehicle made available on the Platform, as provided by the Vendor, which may include descriptions, photographs, details of any imperfections, damage or defects, and/or any information or documentation detailing the Vehicle's history.

**Loss:** means any actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, interest, liabilities, losses, penalties, proceedings and settlements and **Losses** shall be construed accordingly.

**Maintenance Window:** the daily maintenance window taking place between 05:00 and 06:00am, and the weekly window for scheduled maintenance carried out each Sunday from 00:00 to 06:00.

**Nominated Authorised Representatives:** means the person respectively designated as such by the parties, as set out in the Data Sharing Agreement.

**Platform:** the Vehicle-marketplace accessible via [www.bestbikebid.com](http://www.bestbikebid.com) (or such other domain(s) or applications as may be facilitated by Best Bike Bid from time to time) and which is or are used by Best Bike Bid for the delivery of the Services, as updated or amended from time to time.

**Pro Forma Invoice:** means a draft invoice.

**Invoice:** means a commercial document issued by a seller or service provider to a buyer relating to a sale transaction and indicating the products, quantities, and agreed-upon prices for products or services the seller had provided the buyer. Payment terms are usually stated on the invoice.

**Privacy Notice:** means Best Bike Bid's privacy notice, a copy of which is available here: <https://bestbikebid.com/privacy-policy/>.

**Promotional Materials:** means the Platform and any other sales, promotional, or advertising literature or materials published by Best Bike Bid regarding the Services.

**Publish:** means to make available in legible or audible form to third parties specifically or generally in any format or medium, including the production of hard copy materials, soft and/or electronic copies, emails, posting online and any other medium or technology now or in future existing.

**Purchase Price:** means the sum as agreed between the Vendor and the Dealer for the sale and purchase of the Vehicle, being either the qualifying final:

- (a) Bid accepted by the Vendor in accordance with clause 4.5; or
- (b) Second Chance Offer accepted by the Dealer in accordance with clause 4.6.

**Renewal Period:** shall have the meaning given to it in clause 2.4.

**Second Chance Offer:** means an offer made by the Vendor to the Dealer for the sale of the Vehicle.

**Seller:** means the individual listing their Vehicle for sale via the Platform.

**Services:** the right to access the Platform in its business capacity and make use of the online bidding services provided and facilitated by Best Bike Bid via the Platform.

**Shared Data:** means all Data shared by the parties under the terms of this agreement including Personal Data, Special Category Data, Non-Personal Data and/or pseudonymised and de-identified Data.

**Subscription:** the subscription for the Services.

**Subscription Term:** the period for which the Agreement remains in force, as determined by clause 2.4.

**Vehicle:** means any motorbike, car or other vehicle offered by Vendors and made available on the Platform from time to time.

**Vehicle Documents:** has the meaning given to it in clause 4.11.

**Vehicle Information:** means any information provided by the Vendor, the Introductory Pack, and any third party and/or any CAP HPI tool in respect of the Vehicle.

**Vehicle Sales Contract:** means the sales contract between the Vendor and the Dealer for the purchase of the Vehicle (whether written or oral).

**Vendor:** means the seller of any Vehicle as identified on the Platform.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Vulnerability:** any weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

**Website Terms of Use:** means Best Bike Bid's website terms of use policy, available at [www.bestbikebid.com](http://www.bestbikebid.com), as amended from time to time.

**Working Day:** means Monday to Friday inclusive except for English public holidays, and **Working Days** shall be construed accordingly.

1.2 Interpretation:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors and permitted assigns.

1.2.3 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

1.2.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to **writing** or **written** includes emails.

2. **BASIS OF CONTRACT**

2.1 These Conditions apply to the Contract to the exclusion of any pre-contractual discussions or any other terms that the Dealer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 Where the Dealer wishes to access the Services, it shall be first required to submit an Application for the consideration of Best Bike Bid and at which point it shall be required to signify its agreement to these Conditions.

2.3 The Application constitutes an offer by the Dealer to access the Services in accordance with these Conditions. The Dealer is responsible for ensuring, and warrants that, the Services and any terms outlined in any Promotional Materials are complete, accurate and suited for the Dealer's intended use.

2.4 Best Bike Bid may reject any Application at its absolute discretion and for any reason whatsoever. The Application shall only be deemed to be accepted on the earlier of Best Bike Bid:

2.4.1 providing written confirmation to the Dealer of its acceptance; or

2.4.2 granting the Dealer access to the Services,

("Commencement Date") and at which point the Agreement shall be deemed to have been formed. The Agreement shall continue, unless otherwise terminated in accordance with clause 11, for a period of 12 months from the Commencement Date ("**Initial Period**") and shall automatically renew for successive 12 month periods (each a "**Renewal Period**") unless either party notifies the other party of termination in writing at least 30 days before the end of the Initial Period or any Renewal Period (as the case may be), in which case the Agreement will terminate upon the expiry of the applicable Initial Period or Renewal Period.

2.5 Any Promotional Materials produced by Best Bike Bid are produced for the sole purpose of giving an approximate idea of the Services. They shall not form part of the Agreement nor have any contractual force.

2.6 Best Bike Bid's employees or agents are not authorised to make any representations concerning the Services unless confirmed by Best Bike Bid in writing. In entering into the Agreement, the Dealer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.7 Subject to clause 6, the Dealer shall not be liable to pay any Fees for the Subscription.

### **3. GRANT OF LICENCE**

3.1 Subject to the Dealer not being in breach of any of its obligations and the restrictions under this Agreement, Best Bike Bid hereby grants the Dealer a non-exclusive, non-transferable, non-sublicensable licence to receive the Services and use the Platform during the Subscription Term.

3.2 The Dealer may search, access and use the Platform strictly for business purposes associated with searching for Vehicles, placing Bids and acquiring Vehicles.

3.3 The Dealer hereby agrees, warrants and undertakes that it has all necessary permissions to perform its obligations under this Agreement.

### **4. PROVISION OF THE BIDDING SERVICES**

4.1 Best Bike Bid warrants that it shall provide the Services with reasonable care and skill, and substantially in accordance with these Conditions. During the applicable Subscription Term, the Dealer warrants that it will use the Platform in accordance with these Conditions.

4.2 Best Bike Bid shall use reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

4.2.1 planned maintenance taking place during the Maintenance Window, or as informed to the Dealer via the Platform; and

4.2.2 unscheduled maintenance performed outside of Business Hours, provided that Best Bike Bid shall use reasonable endeavours to provide the Dealer with at least 3 hours' notice in advance (such notice not being required in the event of an emergency),

however, given the nature of the Services and reliance upon third-party providers (for example, network providers), Best Bike Bid makes no warranty and provides the Dealer with no assurance that the Services will remain fault free and uninterrupted throughout the Subscription Term.

4.3 Where the Dealer wishes to make a Bid on a Vehicle, it shall be required to submit a Bid on the Platform. The Dealer hereby acknowledges and agrees that:

4.3.1 it is solely responsible for:

4.3.1.1 satisfying itself as to the nature, quality and legitimacy of a Vehicle and the Vendor; and

4.3.1.2 verifying a Bid, including its accuracy and completeness;

4.3.2 it has sufficient funds to satisfy the Bid;

4.3.3 any Bid is an offer to the Vendor to purchase the Vehicle, which is capable of acceptance at any time during the Bidding Period; and

4.3.4 Best Bike Bid does not verify the nature and identity of the Vendor or the Vehicle and that it is not a party to any Vehicle Sales Contract, not responsible or liable for the performance of or failure to perform any of its terms.

4.4 The Dealer may only withdraw its Bid in certain circumstances, providing always that it has not been accepted pursuant to clause 4.5. If the Dealer wishes to withdraw its Bid, it can only do so where:

4.4.1 there is a minimum of 24 hours left in the Bidding Period; and

- 4.4.2 there has been a substantial change in the Vehicle Documentation; or
- 4.4.3 the Dealer has submitted an Incorrect Bid, provided such Bid is withdrawn within 24 hours of submission,  
by making a written request to withdraw its Bid to [dealer@bestbikebid.com](mailto:dealer@bestbikebid.com).
- 4.5 Where the Vendor accepts a Bid placed by the Dealer, it shall communicate acceptance of the Bid via the Platform, and notification will be made to the Dealer in writing, at which point the:
  - 4.5.1 the Vehicle Sales Contract shall come into existence between the parties; and
  - 4.5.2 A Pro-Forma Invoice for the Fees shall be created.
- 4.6 At the end of a Bidding Period, the Vendor may (at its sole discretion), issue to the Dealer a Second Chance Offer. The Second Chance Offer is an offer capable of acceptance, which the Dealer may accept (at its sole discretion). In the event that the Dealer accepts the Second Chance Offer, a Vehicle Sales Contract shall then come into existence between the parties.
- 4.7 The Dealer shall immediately (and as requested by Best Bike Bid) provide Best Bike Bid with a written email confirmation of the Vehicle Sales Contract, (or where the Vehicle Sales Contract is agreed on an oral basis, written confirmation of its terms) to Best Bike Bid's nominated email address at [dealer@bestbikebid.com](mailto:dealer@bestbikebid.com). The Dealer hereby warrants and represents that any Vehicle Sales Contract shall:
  - 4.7.1 comply with all Applicable Laws;
  - 4.7.2 incorporate any reduced Purchase Price, in accordance with clause 7 of these Conditions;
  - 4.7.3 not grant either party with rights or obligations more favourable than those set out in these Conditions;
  - 4.7.4 not entitle either party to terminate the Vehicle Sales Contract (unless either party has committed a material breach); or
  - 4.7.5 not incorporate or seek to incorporate Best Bike Bid as a party thereto, nor make any representations or warranties for and on behalf of Best Bike Bid.
- 4.8 Best Bike Bid shall not be responsible for, and shall not verify any Vehicle Information, and makes no warranties or assurances in respect of the suitability, truth, accuracy or completeness of such Vehicle Information. The Dealer hereby acknowledges that it shall be independently responsible for verifying the condition of the Vehicle and the truth, accuracy or completeness of any Vehicle Information, and that any reliance placed on any Vehicle Information, whether published on the Platform or otherwise, shall be entirely at its own risk.
- 4.9 The Dealer shall immediately notify Best Bike Bid of the agreed and final Purchase Price, and:
  - 4.9.1 unless otherwise agreed between the parties in writing, pay the Purchase Price no less than 5 Business Days from entering into a Vehicle Sales Contract;
  - 4.9.2 Vehicle is subject to any Finance Arrangement, the Dealer hereby agrees and acknowledges to pay any outstanding sum due any finance company or third party (as applicable); and

for the purposes only of the relationship between the Vendor and the Dealer, the Vendor shall be deemed to have reduced the Purchase Price to reflect any sums paid.
- 4.10 The Dealer shall, where requested from the Vendor and/or Best Bike Bid, provide written evidence that it has satisfied any Finance Arrangement (where applicable).
- 4.11 Best Bike Bid shall not be responsible for the delivery or transport of any Vehicle, or any documentation relating to the service history, proof of MOT, V5C vehicle log book, vehicle handbooks or any other documentation (legal or otherwise) relating to the Vehicle ("**Vehicle Documents**") and the Dealer:

- 4.11.1 agrees to make any appropriate collection or delivery arrangements of the Vehicle, together with the Vehicle Documents, with the Vendor, entirely at the Dealer's own cost; and
  - 4.11.2 shall not be entitled to recover any Vehicle delivery costs from Best Bike Bid or the Vendor.
- 4.12 The Dealer shall collect the Vehicle and all Documents within 5 days of receiving confirmation that its Bid was successful, and it shall notify Best Bike Bid within 1 Business Day of the delivery of the Vehicle, whether the delivery takes place via a third-party courier, collection, or delivery from the Vendor.
- 4.13 Where the Dealer experiences any technical issues regarding the Services, it shall contact Best Bike Bid at dealer@bestbikebid.com. Best Bike Bid shall use reasonable endeavors to respond to any such contact within a reasonable period following its receipt, provided that it shall not be required to reply outside of Business Hours.
- 4.14 Where the Dealer commences the process for preparing a bid on the Platform, but does not complete and/or submit the bid, Best Bike Bid may contact the Dealer from time to time, to bring the incomplete bid to the Dealer's attention.

## **5. DEALER OBLIGATIONS**

### **5.1 The Dealer shall:**

- 5.1.1 co-operate with Best Bike Bid in all matters relating to the Services and where it has entered into a Vehicle Sales Contract with the Vendor;
- 5.1.2 be responsible for verifying the identity of the Vendor and that they are permitted to sell the Vehicle;
- 5.1.3 be responsible for verifying all Vehicle Information prior to placing a Bid, including but not limited to:
  - 5.1.3.1 the condition of the Vehicle;
  - 5.1.3.2 whether the Vehicle is subject to any Finance Arrangement;
  - 5.1.3.3 its MOT and service history;
  - 5.1.3.4 the Vehicle's mileage;
  - 5.1.3.5 DVLA records and Vehicle identifications;
  - 5.1.3.6 Vehicle registration plates; and
  - 5.1.3.7 insurance details (including theft and/or damage).
- 5.1.4 Make contact with the Vendor within 24 hours of their offer being accepted.
- 5.1.5 comply with all Applicable Laws connected with its receipt of the Services and dealings with Vendor(s).

### **5.1.6**

### **5.2 The Dealer undertakes that:**

- 5.2.1 it shall keep a secure password for their use of the Services and Platform, that such password shall be changed from time to time (or immediately in the event of a suspected breach), and it shall keep its password confidential at all times; and
- 5.2.2 where necessary, it shall permit Best Bike Bid or Best Bike Bid's auditor to audit the Services in order to establish the name and password of the Dealer and the Dealer's data processing facilities to audit compliance with these Conditions. Each such audit may be conducted no more than once per quarter, at Best Bike Bid's expense, and



this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Dealer's normal conduct of business.

- 5.3 The Dealer further undertakes that it shall, comply at all times with the Website Terms of Use. The Dealer's breach of this undertaking is a material breach of these Conditions (which will allow Best Bike Bid, at its discretion, to terminate the Agreement).
- 5.4 The Dealer undertakes that it shall not:
- 5.4.1 provide any information, facts, omissions, statements or materials as part of the Services which is falsified or found to be inaccurate, untrue or misleading;
  - 5.4.2 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services in any form or media or by any means;
  - 5.4.3 access all or any part of the Services in order to build a product or service which competes with the Services; or
  - 5.4.4 use the Services and/or Platform to provide services to third parties; or
  - 5.4.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party; or
  - 5.4.6 introduce or permit the introduction of, any Virus or Vulnerability into the Platform and Best Bike Bid's network and information systems.
- 5.5 The Dealer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Best Bike Bid.

## **6. FEES AND PAYMENT**

- 6.1 The Dealer agrees that it shall pay the Fees to Best Bike Bid in connection with each Vehicle which it agrees to purchase in accordance with this Agreement.
- 6.2 The Fees payable shall be notified to the Dealer on the Platform.
- 6.3 The applicable Fee will be notified to the Dealer on the Platform in advance of it submitting a Bid for that Vehicle
- 6.4 Once the Vendor confirms acceptance of the successful Bid on the Platform, the Dealer will receive notification that the Vendor has accepted its bid, and Best Bike Bid shall create a pro forma invoice in respect of the agreed fee amount. A full invoice shall be created either 14 days after the Vendor confirms acceptance of the successful Bid on the Platform or upon confirmation from either the Vendor or Dealer that the vehicle has been handed over. Payment is required within 7 days of the invoice being raised.
- 6.5 Subject to clause 6.3, the Dealer shall pay the Fees online via the Platform or via BACS Transfer within the issued payment term, as notified to it via the Platform or otherwise in writing. Time for payment shall be of the essence of the Agreement.
- 6.6 All amounts payable by the Dealer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Best Bike Bid to the Dealer, the Dealer shall, on receipt of a valid VAT invoice from Best Bike Bid, pay to Best Bike Bid such additional amounts in respect of VAT as are chargeable on the supply of the Services.
- 6.7 If the Dealer fails to make a payment due to Best Bike Bid under the Agreement by the due date, then, without limiting Best Bike Bid's remedies under clause 11, the Dealer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.8 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.



6.8 All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6.9 In the event that the Dealer does not enter into a Vehicle Sales Contract it shall notify Best Bike Bid. Subject to Best Bike Bid's verifying the legitimacy of such notice and if required, Best Bike Bid shall issue the Dealer with a credit or refund of the Fees paid to it within 28 days, subject to the deduction of its Administration Fee.

## **7. REFUND PROCESS**

7.1 If the Dealer has made a successful Bid and carries out an inspection of the Vehicle, and the inspection reveals any damage or defects to the Vehicle which were not disclosed in the Vehicle Information, the Dealer shall be required to submit a Price Adjustments & Cancellation form via the Portal ("Price Adjustments & Cancellation form"), which must include:

7.1.1 photographic evidence together with detailed reasons for the Refund Request;

7.1.2 confirmation of the reduced Purchase Price agreed with the Vendor; and

7.1.3 a digital receipt of the banking transaction evidencing the reduced Purchase Price has been paid to the Vendor,

following which Best Bike Bid will review the Refund Request and determine whether any refund of all or part of the Fee shall be made to the Dealer, and communicate its final decision to the Dealer.

7.2 Following acceptance of a Refund Request, Best Bike Bid shall calculate the Fee in accordance with clause 6.2 and the new agreed reduced Purchase Price. Best Bike Bid may then refund the difference between any Fees paid by the Vendor as applicable, subject to the deduction of its Administration Fee.

7.3 If Best Bike Bid determines that the damage or defects to the Vehicle which gave rise to the Refund Request were disclosed to the Dealer within the Vehicle Information or otherwise before the Bid was made, Best Bike Bid reserve the right to reject the Refund Request and no Refund shall be due and payable to the Dealer.

## **8. INTELLECTUAL PROPERTY RIGHTS**

8.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Dealer Materials) shall be owned by Best Bike Bid.

8.2 Best Bike Bid hereby grants a non-exclusive, royalty-free, revocable licence to the Dealer to make use of the Intellectual Property Rights referred to in clause 8.1 strictly for and limited to making use of the Services in accordance with this Agreement.

8.3 All Intellectual Property Rights in any Dealer Materials belonging to the Dealer shall be owned by the Dealer and the Dealer warrants and undertakes that it has all rights, title and interest in its Dealer Materials as is necessary in order to grant the licence to Best Bike Bid pursuant to clause 8.4.

8.4 The Dealer hereby grants a non-exclusive, royalty-free, irrevocable licence to Best Bike Bid to use the Dealer Materials for the following purposes:

8.4.1 performance of the Services;

8.4.2 operation of the Platform;

8.4.3 promotional and marketing purposes on behalf of Best Bike Bid; and

8.4.4 any further internal purpose of Best Bike Bid.

8.5 The Dealer shall prevent any infringement of Best Bike Bid's Intellectual Property Rights and shall promptly report to Best Bike Bid any such infringement that comes to its attention. In particular the Dealer shall:

- 8.5.1 ensure that any employee or representative, before starting to use the Services, is made aware that it is proprietary to Best Bike Bid and that it may only be used in accordance with these Conditions; and
  - 8.5.2 implement suitable disciplinary procedures for employees who make unauthorised use or copies of the Services, save to the extent provided for by these Conditions.
- 8.6 The Dealer warrants, represents and undertakes to Best Bike Bid that the Dealer Materials do not infringe the rights (including Intellectual Property Rights) of any third party and shall indemnify Best Bike Bid, keep Best Bike Bid indemnified and hold Best Bike Bid harmless in full and on demand from and against any Losses suffered or incurred by Best Bike Bid arising out of or in connection with any claim that the Dealer Materials breach any third party's rights (including Intellectual Property Rights).
- 9. DATA PROTECTION**
- 9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 9.2 Any Personal Data controlled or otherwise processed by Best Bike Bid under the Agreement shall be dealt with in accordance with the Privacy Notice.
- 9.3 This clause 9 set out the framework for the sharing of Personal Data between the parties as Controllers. It defines the principles and procedures that the parties shall adhere to and the responsibilities the parties owe to each other and should be read in conjunction with the Data Sharing Agreement, which forms the written agreement by the parties, to adhere to this clause 9.
- 9.4 This clause 9 sets out the purposes for which each party shall process the Shared Data and the types of Personal Data likely to make up the Shared Data. Each party shall only process Shared Data for the Agreed Purpose. Each party must seek agreement under a new Data Sharing Agreement for processing Shared Data for purposes other than the Agreed Purpose. Each party shall ensure that access to the Shared Data under this clause 9 will only be granted to those staff who 'need to know' the information and with the requisite data protection training.
- 9.5 Each party shall ensure that only those staff with valid credentials and reasons are given access to the Shared Data and that they only access/view necessary parts of the Shared Data.
- 9.6 Each party shall appoint a Nominated Authorised Representative who will work together to reach an agreement with regards to any issues arising from the data sharing and ensure the effectiveness of this data sharing initiative. The Nominated Authorised Representatives for each of the parties are as set out in the Data Sharing Agreement.
- 9.7 The subject matter, nature and purpose of processing Shared Data and the Personal Data categories and Data Subject types is as stated within the terms of this clause 9.7.
  - 9.7.1 The purpose of data sharing is the Agreed Purpose.
  - 9.7.2 The types of Personal Data that will form part of the Shared Data are as follows:
    - 9.7.2.1 Details of the Seller's Vehicle, including but not limited to the Vehicle Information, the Vehicle Documents, technical and/or model information, and images;
    - 9.7.2.2 Seller's basic contact details including email address, telephone number, and address;
    - 9.7.2.3 Information obtained from HPI including information relating to the Vehicle including but not limited to its finance and MOT history;
    - 9.7.2.4 Information obtained from the DVLA including vehicle data and checks.
  - 9.7.3 The parties will process Shared Data as per Article 6(1)(b) of the UK GDPR.

- 9.7.4 Shared Data will be transferred between the parties using the following methods:
- 9.7.4.1 Email;
  - 9.7.4.2 Telephone;
  - 9.7.4.3 WhatsApp.
- 9.8 Each party shall process Shared Data for as long as is necessary for the Agreed Purpose and shall only retain any Shared Data for longer where and to the extent required under applicable laws.
- 9.9 Each party shall, before allowing any processor or other third party to process any Shared Data:
- 9.9.1 notify the other party in writing of the intended processor or third party and the processing to be undertaken by them;
  - 9.9.2 obtain the written consent of the other party;
  - 9.9.3 enter into a written agreement with the processor or third party which gives effect to the terms set out in this clause 9 such that they apply to the processor or third party; and
  - 9.9.4 provide the other party with such information regarding the processor or third party as they may reasonably require from time to time.
- 9.10 Each party shall remain fully liable for all acts or omissions of any processor or third party appointed by it or to which it transmits Shared Data by any means in any format.
- 9.11 Subject to clause 9.8 and the terms of any relevant Data Sharing Agreement, each party must not share Shared Data with any other organisations or individuals without the prior written agreement of the other party or unless the Shared Data is required to be disclosed by law. If a law, court, regulator, or supervisory authority requires the other party to process or disclose Shared Data, the other party must first inform the alternative party of the legal or regulatory requirement and give that party an opportunity to object or challenge the requirement.
- 9.12 Shared Data is provided to each party on the understanding that the other parties will not match it to any other datasets, even to depersonalised or aggregated datasets, unless the disclosing party gives its prior written consent.
- 9.13 Each party must not undertake any re-identification of Shared Data that is de-identified Data without the prior written consent of the other party.
- 9.14 Each party shall at all times be responsible for its own actions in ensuring that all Shared Data (including data in any electronic format) stored by it are stored securely. Each party shall take appropriate measures to ensure the security of such Shared Data and guard against unauthorised access thereto or disclosure thereof or loss or destruction while in its custody.
- 9.15 Each party will promptly and without undue delay notify the other party if any Shared Data is lost or destroyed or becomes damaged, corrupted, or unusable.
- 9.16 Each party will immediately and without undue delay notify the other party if it becomes aware of:
- 9.16.1 any accidental, unauthorised, or unlawful processing of the Personal Data;
  - 9.16.2 or any Data Security Breach.
- 9.17 Immediately following any unauthorised or unlawful Personal Data processing or Data Security Breach, each party will co-ordinate and reasonably co-operate with the other party in the handling of the matter, including:
- 9.17.1 assisting with any investigation;
  - 9.17.2 providing with physical access to any facilities and operations affected;

- 9.17.3 facilitating interviews with employees, former employees and others involved in the matter;
  - 9.17.4 making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required; and
  - 9.17.5 taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Data Security Breach or unlawful Personal Data processing.
- 9.18 Neither party will inform any third party of any Data Security Breach without first obtaining the other party's prior written consent, except when required to do so by law.
- 9.19 Each party warrants that Shared Data held by it will be deleted or otherwise destroyed and not retained longer than provided for in this clause 9.
- 9.20 Each party shall not Publish Shared Data unless the consent of the Data Subject has been obtained.
- 9.21 Each party must take such technical and organisational measures as may be appropriate, and promptly provide such information as the other party may reasonably require, to enable a party to comply with:
  - 9.21.1 the rights of Data Subjects under the Data Protection Legislation, including subject access rights, the rights to rectify and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data; and
  - 9.21.2 information or assessment notices served on either party by the Information Commissioner under the Data Protection Legislation.
- 9.22 Each party must notify the other immediately if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Shared Data or to either party's compliance with the Data Protection Legislation.
- 9.23 Each party must notify the other within 2 Working Days if it receives a request from a Data Subject for access to their Personal Data forming part of the Shared Data or to exercise any of their related rights under the Data Protection Legislation.
- 9.24 Each party will give full co-operation and assistance to the other party in responding to any complaint, notice, communication or Data Subject request.
- 9.25 Each party will not transfer Shared Data outside the UK or the European Economic Area unless the prior written consent of the other party has been obtained and the following conditions are fulfilled:
  - 9.25.1 appropriate safeguards are in place in relation to the transfer (in accordance with UK GDPR Article 46);
  - 9.25.2 the Data Subject has enforceable rights and effective legal remedies; and
  - 9.25.3 the parties comply with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Shared Data that is transferred; and
  - 9.25.4 the parties comply with any reasonable instructions between each other in advance, with respect to the processing of the Shared Data.
- 9.26 Each party shall indemnify the other party against any cost, charge, damages, expense, loss and claims arising out of any breach of this clause 9, the Data Sharing Agreement or the Data Protection Legislation and in particular, but without limitation, the unauthorised or unlawful access, loss, theft, use, destruction or disclosure by a party or its subcontractors, employees, agents or any other person within the control of the offending party of any Shared Data processed in connection with this clause 9.

- 9.27 The parties shall attempt to resolve any disagreement arising from this clause 9 informally and promptly by officers who have day-to-day responsibility for the operation of this clause 9.
- 9.28 If the disagreement cannot be resolved pursuant to clause 9.26 within fourteen (14) Working Days of it arising, the matter shall be referred to the parties Nominated Appointed Representatives.
- 9.29 Pursuant to clause 9.28, if the Nominated Appointed Representatives are for any reason unable to resolve the dispute within thirty (30) days of it being referred to them, the dispute shall be finally resolved by the courts of England and Wales in accordance with this clause 9.

## 10. ANTI-BRIBERY

- 10.1 Each party shall:
- 10.1.1 comply with all applicable laws, statutes, and regulations relating to bribery and corruption (collectively, the **Anti-Bribery Laws**) including but not limited to the UK Bribery Act 2010;
  - 10.1.2 ensure that its associated persons (as defined in the UK Bribery Act 2010 and related guidance) comply with the Anti-Bribery Laws;
  - 10.1.3 in the case of the Dealer, comply with such of Best Bike Bid's policies relating to bribery and corruption as may be notified to Best Bike Bid from time to time (the **Anti-Bribery Policies**), providing always that the Anti-Bribery Policies are:
    - 10.1.3.1 compliant with; and
    - 10.1.3.2 no more onerous than,the obligations imposed on the Dealer under the Anti-Bribery Laws;
  - 10.1.4 implement and maintain its own policies, procedures and controls, including but not limited to 'adequate procedures' (as defined in the Bribery Act 2010 and related guidance), to ensure compliance by itself and its associated persons with the Anti-Bribery Laws and the Anti-Bribery Policies, and shall enforce them where appropriate; and
  - 10.1.5 promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by Best Bike Bid in connection with its performance pursuant to the Agreement.

## 11. INDEMNITY AND LIMITATION OF LIABILITY

- 11.1 The extent of the parties' liability under or in connection with the Agreement (regardless of whether such liability arises in tort (including negligence), contract, breach of statutory duty or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause.
- 11.2 The Dealer assumes sole responsibility for results obtained from the use of the Services and for any conclusions drawn from such use. Best Bike Bid shall have no liability whatsoever to the Dealer for any Losses suffered or incurred by the Dealer as a result of its reliance on any Vehicle Information or information provided to Best Bike Bid by the Vendor in connection with the Services, or any actions taken by Best Bike Bid at the Dealer's direction.
- 11.3 Neither party may exclude or limit its liability under this Agreement in respect of:
- 11.3.1 death or personal injury;
  - 11.3.2 fraud or fraudulent misrepresentation; or
  - 11.3.3 any other Losses which cannot be excluded or limited by Applicable Law.
- 11.4 Subject to the remainder of this clause 11.3, Best Bike Bid shall not be liable to the Dealer or any third party arising out of or in connection with the Agreement:

- 11.4.1 for any:
  - 11.4.1.1 consequential, indirect or special Losses;
  - 11.4.1.2 loss of profit;
  - 11.4.1.3 loss of contract or business;
  - 11.4.1.4 loss of opportunity;
  - 11.4.1.5 loss of savings, discount or rebate (whether actual or anticipated);
  - 11.4.1.6 damage to, loss or corruption of data;
  - 11.4.1.7 harm to reputation or loss of goodwill; and/or
  - 11.4.1.8 any other Losses of a pure economic nature; or
- 11.4.2 for any Losses not otherwise excluded in clause 11.4.1, in an amount in excess of the Fee payable by the Dealer corresponding to the Vehicle to which the liability relates.
- 11.5 The Dealer shall indemnify Best Bike Bid, keep Best Bike Bid indemnified and hold Best Bike Bid harmless in full and on demand from and against any and all Losses (including any direct, indirect, special or consequential Loss, loss of profit, loss of business, contract, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Best Bike Bid arising out of or in connection with:
  - 11.5.1 the Dealer's breach of the Agreement howsoever arising;
  - 11.5.2 any wilful or negligent act or omission of the Dealer, its officers, employees, contractors or agents; and
  - 11.5.3 the Dealer's use of the Services.
- 12. TERM AND TERMINATION**
- 12.1 Without prejudice to clause 12.2, Best Bike Bid may terminate the Agreement on providing 5 Business Days' written notice to the Dealer.
- 12.2 Best Bike Bid may terminate this Agreement immediately by written notice to the Dealer in the event that:
  - 12.2.1 the Dealer commits any breach of these Conditions that is irremediable or, if remediable, is not remedied by the Dealer within fourteen (14) days' of receipt of Best Bike Bid's written notice specifying the breach and requiring its remedy; or
  - 12.2.2 any regulatory decision or governmental order requiring Best Bike Bid to suspend or terminate the provision of its obligations under these Conditions.
- 12.3 Either party may terminate this Agreement immediately by written notice to the other in the event that:
  - 12.3.1 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
  - 12.3.2 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 12.3.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the



- sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 12.3.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- 12.3.5 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 12.3.6 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 12.3.7 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
- 12.3.8 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.3(a) to clause 13.2(g) (inclusive); or
- 12.3.9 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 12.4 In any circumstance in which Best Bike Bid may terminate any or any portion of these Conditions, it may exercise its right to suspend performance of any of its obligations. Such exercise of the right to suspend shall:
- 12.4.1 be without liability to the Dealer; and
- 12.4.2 not function as a waiver of any right of termination that Best Bike Bid may have under these Conditions.
- 12.5 On termination of these Conditions by Best Bike Bid, all licences granted by Best Bike Bid under these Conditions shall terminate immediately and the Dealer shall return to Best Bike Bid the relevant licences.
- 12.6 Termination or expiry of these Conditions shall not affect any accrued rights and liabilities of any person at any time up to the date of termination and shall not affect any provision of these Conditions that is expressly or by implication intended to continue beyond termination.
- 13. CONFIDENTIALITY**
- 13.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information of the other party, except as permitted by clause 13.1.
- 13.2 Each party may disclose the other party's Confidential Information:
- 13.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 13; and
- 13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.



## **14. NOTICES**

- 14.1 Any notice or other communication given to a party under or in connection with these Conditions shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next Business Day delivery service, or by commercial courier or email.
- 14.2 A notice or other communication shall be deemed to have been received if:
- 14.2.1 delivered personally, when left at the address referred to in clause 14.1;
  - 14.2.2 sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
  - 14.2.3 delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
  - 14.2.4 sent by email, one Business Day after transmission.
- 14.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **15. FORCE MAJEURE**

- 15.1 If Best Bike Bid is prevented, hindered or delayed in or from performing any of its obligations under these Conditions by a Force Majeure Event, Best Bike Bid shall not be in breach of these Conditions or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 15.2 Best Bike Bid shall:
- 15.2.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the Dealer in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and
  - 15.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 15.3 If the Force Majeure Event prevents, hinders or delays Best Bike Bid's performance of its obligations for a continuous period of more than two (2) months, the Dealer may terminate these Conditions by giving two (2) weeks' written notice to Best Bike Bid.

## **16. NO PARTNERSHIP OR AGENCY**

- 16.1 Nothing in these Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other.
- 16.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **17. ENTIRE AGREEMENT**

- 17.1 These Conditions constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 17.2 Each party acknowledges that in entering into these Conditions it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions.
- 17.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Conditions.

## **18. VARIATION**

- 18.1 Best Bike Bid may amend or otherwise vary these Conditions from time to time on providing not less than 30 days' written notice to the Dealer, which such amendment or variation to take place from the commencement of the upcoming Renewal Period. Where the Dealer does not accept any variation pursuant to this clause 18.1, the Dealer may terminate these Conditions, which such termination taking place at the end of the Initial Period or Renewal Period (as the case may be).
- 18.2 No other variation of these Conditions or the Agreement will be valid unless it is in writing and signed by both parties (save where, for example, the Subscription is varied pursuant to these Conditions).

## **19. ASSIGNMENT AND OTHER DEALINGS**

- 19.1 These Conditions are personal to the Dealer and the rights and obligations hereunder may not be assigned, sub-contracted or transferred to a third party without the prior written approval of Best Bike Bid.
- 19.2 Best Bike Bid may assign, sub-contract or otherwise transfer its rights and obligations hereunder without the Dealer's prior written consent.

## **20. NO AUTOMATIC WAIVER**

- 20.1 No failure or delay by a party to exercise any right or remedy provided under these Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 20.2 No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **21. SEVERANCE**

- 21.1 If any provision or part-provision of these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Conditions.
- 21.2 If one party gives notice to the other of the possibility that any provision or part-provision of these Conditions is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **22. THIRD PARTY RIGHTS**

No one other than a party to these Conditions shall have any right to enforce any of its terms.

## **23. GOVERNING LAW**

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

## **24. JURISDICTION**

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