



## CAR DEALER + USED CAR WARRANTY + ADMINISTRATION AGREEMENT

### SUMMARY AND RECITALS

Warrantywise is a UK based used car warranty provider and has developed an expertise in the marketing, management and administration of used car warranty repairs for all current EU vehicle make and models, throughout a UK network of repair garages and specialists repairers including franchised main dealers.

Warrantywise has also developed a recognised, professional and valuable public brand image that the Dealer wishes to be associated with and take advantage of.

The basis of this agreement is that the dealer agrees to use Warrantywise on an exclusive basis for all its used car warranty services and agrees to pay Warrantywise for the use of its system and services. The charges required by Warrantywise will include amounts to provide for dealer forecourt marketing materials, customer sales information, roadside breakdown services, independent inspection reports, repair claims administration, cash repair payments and will also include a margin to Warrantywise.

The above sets out the basic the proposed relationship between WARRANTYWISE and the DEALER and is background information only. The AGREEMENT (each as defined below) between the parties shall be subject to the terms and conditions set out below.

### TERMS AND CONDITIONS

1. In this AGREEMENT (as defined below):

1.1 the following words and expressions have the following meanings and, in addition, any words and expressions defined in any clause will have the same meaning when used in any other clause:

**AGREEMENT**  
**CUSTOMER**

has the meaning given to it in clause 1.2;  
has the meaning given to it in paragraph 1.1,  
Schedule 1;

<b>DEALER</b>	has the meaning given to it in paragraph 1.1, Schedule 1;
<b>DEALERNET</b>	on-line Internet portal booking facility used by WARRANTYWISE and the DEALER to administer their relationship pursuant to the terms of this AGREEMENT;
<b>EARNED ACCOUNT</b>	the amount of funds in the earned account shall be calculated as follows:  (i) Funds actually paid by the DEALER to WARRANTYWISE to cover the performance of the SERVICES in relation to the DEALER'S WARRANTYWISE PLANS  MINUS  (ii) outgoings incurred by WARRANTYWISE in performing the SERVICES, including but not limited to payments made to CUSTOMERS for FAILURES and administration costs.
<b>FAILURES</b>	has the meaning given to it in paragraph 1.1, Schedule 1;
<b>LIABILITY</b>	liability arising out of or in connection with this AGREEMENT, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including (without limitation) any liability under an indemnity contained in this AGREEMENT and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of a party's obligations under this AGREEMENT, in each case howsoever caused including (without limitation) if caused by negligence;
<b>MARKETING MATERIALS</b>	has the meaning given to it in clause 1.10;
<b>SERVICES</b>	are set out in Schedule 1;
<b>TERM</b>	has the meaning given to it in clause 1.6;
<b>VEHICLE</b>	has the meaning given to it in paragraph 1.1, Schedule 1;
<b>WARRANTYWISE</b>	has the meaning given to it in clause 1.2; and
<b>WARRANTYWISE PLANS</b>	has the meaning given to it in paragraph 1.1, Schedule 1.

1.2 Under this Car Dealer Used Car Warranty Administration Agreement (the AGREEMENT) Warrantywise (WARRANTYWISE) will provide the SERVICES.

### **1.3 The Administrator**

1.3.1 Subject to receiving all payments which are payable in connection with this AGREEMENT, WARRANTYWISE, whose registered office address is at The Rocket Centre, Trident Park, Blackburn, Lancashire, BB1 3NU, will manage and administer the WARRANTYWISE PLANS within the terms of this AGREEMENT on behalf of the DEALER.

1.3.2 Discretion is an important aspect of how the WARRANTYWISE PLANS are administered and, as a consequence, WARRANTYWISE will make all decisions in relation to the management and administration, including the authorisation of the repairs and the payments associated with that, of each WARRANTYWISE PLAN in its absolute discretion.

1.3.3 The DEALER hereby acknowledges and agrees that WARRANTYWISE is not a party to the sale of any VEHICLE to a CUSTOMER or any of the WARRANTYWISE PLANS, which are direct contractual relationships between the DEALER and each CUSTOMER. Therefore, for the avoidance of doubt, WARRANTYWISE, its employees and its agents shall have no LIABILITY in respect of any damage or loss suffered by the DEALER or CUSTOMER or any third party in connection with the any WARRANTYWISE PLAN or the sale of any VEHICLE.

### **1.4 Exclusions**

Subject to any other exclusions contained in this AGREEMENT, WARRANTYWISE will not be required to manage:

1.4.1 the costs of any FAILURE that is not covered or included under the terms of the relevant WARRANTYWISE PLAN selected by the DEALER;

1.4.2 the refund of any payment made by the DEALER on an ex-gratia or without prejudice basis unless otherwise agreed in writing by WARRANTYWISE;

1.4.3 the costs of any FAILURE which at the time of its occurrence is insured by or would but for the existence of this AGREEMENT be covered by any other warranty policy or guarantee;

1.4.4 the costs of any repairs made beyond the extent of this AGREEMENT;

1.4.5 the costs of any FAILURE which occurred prior to the respective WARRANTYWISE PLAN start date;

1.4.6 the costs of any FAILURE which becomes apparent in relation to the VEHICLES after the respective WARRANTYWISE PLAN has expired, terminated or otherwise ended; and

1.4.7 the costs of any repairs carried out before the commencement date of any WARRANTYWISE PLAN.

## **1.5 Cancellation, Termination and Post-Termination**

1.5.1 Within the first 14 days of this AGREEMENT, you will be entitled to cancel this AGREEMENT by:

(a) providing written notice to WARRANTYWISE; and

(b) immediately returning all MARKETING MATERIALS or other documentation received from WARRANTYWISE in accordance with clause 1.10,

in which case all arrangements will be cancelled and any monies remaining on account which do not relate to outstanding obligations in relation to any particular WARRANTYWISE PLAN will be returned to you in full by WARRANTYWISE, provided that no repairs have been registered or authorised by WARRANTYWISE.

1.5.2 You will be entitled to terminate this AGREEMENT after the first 14 days of this AGREEMENT by providing 30 days' written notice of the same to WARRANTYWISE, in which case there will be no refund of any monies already paid to WARRANTYWISE pursuant to the terms of this AGREEMENT or any WARRANTYWISE PLAN.

1.5.3 WARRANTYWISE will be entitled to terminate this AGREEMENT with immediate effect by providing 30 days' written notice of the same to you.

1.5.4 WARRANTYWISE reserves the absolute right to terminate this AGREEMENT immediately and without notice in the event that:

(a) the DEALER fails to comply with its obligations under the terms of this AGREEMENT;

(b) the DEALER otherwise provides WARRANTYWISE with any misleading or false information in order to secure the services of WARRANTYWISE within the terms of this AGREEMENT or within the terms of any WARRANTYWISE PLAN; or

(c) the DEALER is unable to pay its debts as they fall due or the value of its assets are less than its liabilities, including its contingent and prospective liabilities.

1.5.5 In the event of cancellation or termination of this AGREEMENT and in respect of WARRANTYWISE PLANS issued by the DEALER prior to the cancellation or termination date and accepted by WARRANTYWISE, such WARRANTYWISE PLANS will not be affected in any way and WARRANTYWISE will continue to administer those WARRANTYWISE PLANS within the terms of this AGREEMENT until the respective WARRANTYWISE PLANS expiry dates, unless:

(a) the aggregate of payments on account made by the DEALER up until and including the date of cancellation or termination are deemed by WARRANTYWISE in its absolute discretion as being insufficient to continue to administer the AGREEMENT; or

(b) the WARRANTYWISE PLANS are otherwise cancelled in accordance with the terms of the WARRANTYWISE PLANS.

1.5.6 In the event that WARRANTYWISE ceases to administer any WARRANTYWISE PLANS pursuant to clause 1.5.5 above:

(a) the DEALER shall accept all LIABILITY for the administration of the WARRANTYWISE PLANS;

(b) all costs associated with the WARRANTYWISE PLANS shall rest with the DEALER; and

(c) WARRANTYWISE will provide notice to all CUSTOMERS so affected.

Following the termination of this AGREEMENT this clause 1.5.6 shall remain in force.

## **1.6 Term**

This AGREEMENT will remain in force until cancelled or terminated by either party in pursuant to clause 1.5 above or otherwise terminated in accordance with the terms of this AGREEMENT (the TERM).

## **1.7 Process for authorising Repairs**

1.7.1 Subject to clause 1.5.6, all valid requests for repairs made by a CUSTOMER pursuant to and in accordance with the terms of the relevant WARRANTYWISE PLAN are to be handled by WARRANTYWISE.

1.7.2 In the event that a CUSTOMER contacts you directly in relation to a WARRANTYWISE PLAN, you should refer that CUSTOMER to WARRANTYWISE via the direct repairs input page [www.warrantywise.co.uk/repairs](http://www.warrantywise.co.uk/repairs) or on the following number: 01254 355102.

## **1.8 Complaints Process**

1.8.1 In the event that you have any questions or queries, these should be directed to your Account Manager, as notified to you by us from time to time, by telephoning 01254 355104.

1.8.2 WARRANTYWISE will use reasonable endeavours to ensure that your query is acknowledged whilst you are on the phone with your Account Manager pursuant to clause 1.8.1 above or by return of post or by email.

1.8.3 If you require a review of any amount we have agreed to pay towards a repair authorised under a WARRANTYWISE PLAN please telephone 01254 355102 and speak to the Repairs Department.

1.8.4 WARRANTYWISE will use reasonable endeavours to ensure that your query is acknowledged whilst you are on the phone with the Repairs Department or by return of post or by email within 5 working days.

1.8.5 If you are unhappy with how we have exercised our discretion in relation to any repair decision which has been declined or approved and wish to have a further review you need to do so in writing within 14 days to: Customer Services Appliance Warranty Limited, 3 Trident Way, Trident park, Blackburn BB1 3NU or by email to: [customerservices@warrantywise.co.uk](mailto:customerservices@warrantywise.co.uk). WARRANTYWISE will use reasonable endeavours to ensure that your query is acknowledged by return of post or by email and answered within 5 working days.

1.8.6 Any attempts to complain using other forms of communication will not be considered and all such complaints should be issued in writing or via email pursuant to clause 1.8.5 above.

1.8.7 If you are not completely satisfied with the outcome of any review, please write to the Director & Actuary at: [ak@warrantywise.co.uk](mailto:ak@warrantywise.co.uk) or via post to the registered office address of WARRANTYWISE listed above in clause 1.8.5. WARRANTYWISE will use reasonable endeavours to ensure that your query is acknowledged by return of post or by email and answered within 5 working days.

1.8.8 In the event that you have exhausted all complaints options available to you in clauses 1.8.1 – 1.8.7 above, you can ask for your case to be reviewed personally by Quentin Willson via email at: [quentinwillson@warrantywise.co.uk](mailto:quentinwillson@warrantywise.co.uk). WARRANTYWISE will use reasonable endeavours to ensure that your query is acknowledged by return of post or by email and answered within 5 working days.

1.8.9 In the event that WARRANTYWISE contacts you via telephone, calls may be recorded for quality and training purposes.

## **1.9 Fraud**

1.9.1 If, in the opinion of WARRANTYWISE (to be exercised in its absolute discretion), you, your CUSTOMERS or a repairer engaged pursuant to the terms of a WARRANTYWISE PLAN have or are suspected to have provided WARRANTYWISE (or any Independent Vehicle Examiner) with any:

(a) false;

(b) dishonest; and/or

(c) exaggerated information or statement,

in order to obtain lower repair costs then WARRANTYWISE will be entitled to suspend any repair authorisation under the WARRANTYWISE PLANS until a fraud investigation has been completed.

1.9.2 WARRANTYWISE will use reasonable endeavours to provide you with a final response or advise you when a response will be issued within four (4) weeks of the investigation pursuant to clause 1.9.1 above starting.

### **1.10 Return of Documents**

In the event of cancellation or termination of this AGREEMENT and in respect of all merchandising materials, point of sale materials or other such materials, that WARRANTYWISE may have supplied to the DEALER pursuant to Schedule 2 (the MARKETING MATERIALS), the DEALER will, within 7 days of the cancellation or termination of this AGREEMENT:

(a) return the MARKETING MATERIALS to WARRANTYWISE; or

(b) in the event that it cannot or will not return the MARKETING MATERIALS pursuant to clause 1.10 (a) above, pay the cost price listed in Schedule 1 for each of the MARKETING MATERIALS provided to the DEALER by WARRANTYWISE or such other current costs as WARRANTYWISE may reasonably specify to replace the MARKETING MATERIALS.

Following the termination or cancellation of this AGREEMENT this clause 1.10 shall remain in force.

## **2.0 THIS AGREEMENT**

### **2.1 Requests for repairs**

2.1.1 It is hereby agreed that subject to the terms, definitions, exclusions and conditions contained herein or endorsed hereon WARRANTYWISE will administer, in its absolute discretion and at the DEALER'S cost and expense, payments to CUSTOMERS under each WARRANTYWISE PLAN, for all WARRANTYWISE PLANS which are:

(a) issued by the DEALER during the period of this AGREEMENT; and

(b) accepted by WARRANTYWISE under the terms of this AGREEMENT.

2.1.2 The DEALER hereby acknowledges and agrees that, subject to clause 2.1.1 above, WARRANTYWISE may in its absolute discretion, make 'goodwill' payments as it deems appropriate to a CUSTOMER for an event or FAILURE which is not covered pursuant to and in accordance with terms and conditions of a WARRANTYWISE PLAN, provided that, unless such payments are agreed with the Dealer, any such payments are made at the cost and expense of WARRANTYWISE and in particular when deemed necessary to preserve and maintain the goodwill and reputation of WARRANTYWISE.

2.1.3 In the event that WARRANTYWISE makes a goodwill payment to a CUSTOMER for an event or FAILURE which is not covered by the terms and conditions of a WARRANTYWISE PLAN, pursuant to clauses 2.1.1 or 2.1.2 above, such a payment will not set any precedent and WARRANTYWISE will have no obligation to make similar payments to other CUSTOMERS or in relation to other WARRANTYWISE PLANS.

2.1.4 WARRANTYWISE will be under no obligation to:

(a) consider a request for payment under a WARRANTYWISE PLAN;

(b) administer a WARRANTYWISE PLAN following a request for the same from the DEALER; or

(c) provide the SERVICES,

where the DEALER'S EARNED ACCOUNT with WARRANTYWISE is in deficit or where sufficient funds are not in place and projected to cover the cost of such a payment.

2.2 The DEALER should complete together with each CUSTOMER an application via the DEALERNET for each WARRANTYWISE PLAN and shall ensure that it obtains an appropriate consent from each CUSTOMER to pass WARRANTYWISE the personal data it requires for all purposes set out in the data protection clause in the WARRANTYWISE PLAN;.

2.3 WARRANTYWISE shall confirm in writing to each CUSTOMER that the WARRANTYWISE PLAN is effective and shall issue a schedule which confirms the terms of the WARRANTYWISE PLAN prior to the WARRANTYWISE PLAN becoming effective.

2.4 Only those WARRANTYWISE PLANS confirmed in writing by WARRANTYWISE with the issue of a schedule pursuant to clause 2.3 above will be included under the terms of this AGREEMENT.

### **3.0 Limitations of Liability**

3.1 Subject to clause 3.3, WARRANTYWISE and its employees and agents shall not have any LIABILITY to the DEALER or its CUSTOMER under any circumstances save to the extent that such LIABILITY arises as a direct result of WARRANTYWISE breaching its obligations under this AGREEMENT.

3.2 WARRANTYWISE and its employees and agents shall not have any LIABILITY to the DEALER for the following:

3.2.1 loss of profit (whether direct, indirect or consequential);

3.2.2 loss of revenue, loss of production or loss of business (in each case whether direct, indirect or consequential);

3.2.3 loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct, indirect or consequential);

3.2.4 loss of anticipated savings or loss of margin (in each case whether direct, indirect or consequential);

3.2.5 loss of bargain (whether direct, indirect or consequential);

3.2.6 liability of the WARRANTYWISE to third parties (whether direct, indirect or consequential);

3.2.7 loss of use or value of any data or software (whether direct, indirect or consequential);

3.2.8 wasted management, operational or other time (whether direct, indirect or consequential);

3.2.9 indirect, consequential or special loss; or

3.2.10 any cost where the DEALER or VEHICLE manufacturer makes an ex gratia or without prejudice settlement or which has not specifically been agreed in writing by WARRANTYWISE,

subject always to clause 3.3.

3.3 Nothing in this AGREEMENT will operate to exclude or restrict WARRANTYWISE'S liability (if any) to the DEALER:

3.3.1 for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable; and

3.3.2 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

### **3.4 Other warranties**

This AGREEMENT does not cover any FAILURE which at the time of the breakdown is insured by or would but for the existence of this AGREEMENT be insured or covered by any other policy guarantee or warranty and WARRANTYWISE is not therefore liable or responsible to the DEALER or the CUSTOMERS in respect thereof.

### **3.5 Loss of Use**

WARRANTYWISE are not liable for any costs or out of pocket expenses of the DEALER howsoever arising or any loss arising out of any CUSTOMER'S loss of use of their VEHICLE or any part thereof.

### **3.6 Extent of this Agreement**

3.6.1 The SERVICES provided within the terms of this AGREEMENT and within the terms of the WARRANTYWISE PLAN are in addition (and not any substitute) to any rights the CUSTOMER may have against the DEALER under applicable laws or regulations including the Sale of Goods Act 1979, Sale and Supply of Goods to Consumer Regulations 2002 and the Consumer Rights Act 2015. WARRANTYWISE will not be liable for the management or administration of any repairs which are required to be made beyond the extent of this AGREEMENT.

3.7 Subject to clause 3.3, WARRANTYWISE'S maximum aggregate LIABILITY to the DEALER, will be limited to the DEALER'S EARNED ACCOUNT balance at the point in time such LIABILITY is incurred.

3.8 The maximum amount WARRANTYWISE will be required to pay to a CUSTOMER under the terms of any WARRANTYWISE PLAN in respect of any one repair will not normally exceed £5,000 (including VAT) and in the aggregate will not exceed the retail value of the VEHICLE (including VAT) during the period of each WARRANTYWISE PLAN or any other amount as may be specified from time to time in the individual application or documentation of the WARRANTYWISE PLAN.

3.9 Any costs of repairs required to be paid that are in excess of the limits under the WARRANTYWISE PLANS shall be the sole responsibility and at the expense of the DEALER.

3.10 This AGREEMENT is a service agreement and nothing herein constitutes a contract of insurance. The DEALER therefore agrees to maintain its account with WARRANTYWISE in receipt of sufficient funds as WARRANTYWISE may determine, in its absolute discretion, from time to time, as are required to settle all requests for repairs under the WARRANTYWISE PLANS and to enable WARRANTYWISE to provide and maintain the SERVICES.

### **3.11 Force Majeure**

WARRANTYWISE will not be in breach of this AGREEMENT or otherwise liable to the DEALER for any failure to perform or delay in performing its obligations under this AGREEMENT to the extent that such failure or delay is due to any event or circumstance that it is beyond the reasonable control of WARRANTYWISE, including but not limited to: war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolutions, insurrection, military or usurped power, riot, civil commotion, strikes, lockout, terrorism, malicious intent or vandalism, confiscation or nationalisation of or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

## **4.0 CONDITIONS**

### **4.1 Payments**

The DEALER shall pay WARRANTYWISE the charges listed on the DEALERNET, together with any other interim charges as may be required from time to time by WARRANTYWISE in order to maintain the DEALER'S account with WARRANTYWISE

### **4.2 Variation of Services and Payments**

WARRANTYWISE will be entitled to make, and the DEALER agrees to accept, any amendments or alterations to the SERVICES detailed in Schedule 1 and/or charges detailed in Schedule 2 which have been determined as necessary by WARRANTYWISE from time to time acting in its absolute discretion in order to provide and maintain the SERVICES at the levels required by the DEALER and, in particular, in order to redress any

deficit balances of the DEALER'S account with WARRANTYWISE by providing the DEALER with 30 days' notice in writing of the same.

### **4.3 Sales Declaration and Collection of Payment**

4.3.1 On a daily basis or at such other intervals as WARRANTYWISE may require as noted to the DEALER from time to time, the DEALER will use the DEALERNET booking facilities to send WARRANTYWISE copies of all application forms completed by the DEALER in respect of each WARRANTYWISE PLAN provided to a CUSTOMER during the TERM of this AGREEMENT.

4.3.2 WARRANTYWISE will prepare a report of the DEALER'S account as and when requested by the DEALER or at intervals as may be determined by WARRANTYWISE acting in its absolute discretion. The reports will contain details of the costs incurred in administering the WARRANTYWISE PLANS pursuant to the terms and conditions of this AGREEMENT, and shall include in particular details of all:

- (a) repairs completed;
- (b) administration expenses;
- (c) requests for repairs handling;
- (d) payments made;
- (e) deficits incurred; and
- (f) surpluses projected by WARRANTYWISE.

4.3.3 On a monthly basis or at such other intervals as WARRANTYWISE may require as noted to the DEALER from time to time, the DEALER shall pay WARRANTYWISE within 30 days of receipt of the report referred to in clause 4.3.2 the total amount of payments due by the due date (including VAT) and the DEALER shall either:

- (a) forward cheque payment to WARRANTYWISE by post; or
- (b) pay WARRANTYWISE directly by BACS; or
- (c) pay WARRANTYWISE by credit card or direct debit.

4.3.4 In the event that the DEALER'S account with WARRANTYWISE is in deficit, as referred to in clause 4.2 above, WARRANTYWISE shall notify the DEALER of the same in writing and following the service of this written notice on the DEALER:

- (a) the DEALER shall have 30 days from the receipt of the written notice to agree a suitable method of redress in order to reach a position of settlement of the deficit balance with WARRANTYWISE. This redress may include without limitation the following:

- (i) reducing the level of the SERVICES provided;
- (ii) increasing the charges payable pursuant to 4.2; or
- (iii) the DEALER paying a lump sum equal to the deficit in the DEALERS account with WARRANTYWISE; and

(b) WARRANTYWISE will be entitled to cease performing the SERVICES with immediate effect should the DEALER'S account with WARRANTYWISE remain in a deficit situation for any continuous period of 90 days.

4.3.5 In the event that the DEALER does not comply with its obligations pursuant to clause 4.3.4(a) above, WARRANTYWISE will be entitled to terminate this AGREEMENT with immediate effect.

#### **4.4 Amendment of WARRANTYWISE PLAN**

In the event that WARRANTYWISE wishes to make alterations to any future WARRANTYWISE PLAN terms it shall notify the DEALER of the proposed changes by providing 14 days' notice of the same.

#### **4.5 Indemnity**

4.5.1 The DEALER shall indemnify WARRANTYWISE against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by WARRANTYWISE arising out of or in connection with:

(a) the DEALER failing to settle its deficit balance with WARRANTYWISE pursuant to clause 4.3.4(a) above; and

(b) the DEALER not meeting its liability obligations in relation to the respective WARRANTYWISE PLANS pursuant to clauses 1.5.5 and 1.5.6 above.

4.5.2 Following the termination or expiry of this AGREEMENT this clause 4.5 shall remain in force.

### **5 GENERAL**

5.1.1 This AGREEMENT shall only apply in respect of repairs made to VEHICLES that have been accepted by WARRANTYWISE within the terms of the WARRANTYWISE PLAN.

5.1.2 The DEALER is responsible for completing a pre-sale inspection and servicing check (see 7.2.1) on behalf of WARRANTYWISE as required and in a format as provided herein in order to satisfy our requirements that the VEHICLE is:

(a) in a road worthy condition in line with the Road Traffic Act, Sale of Goods Act 1979, Sale and Supply of Goods to Consumer Regulations 2002; and

(b) is free from any mechanical or electrical defects covered by the WARRANTYWISE PLAN; and

(c) is not in need of any immediate servicing within the time and mileage recommended by the VEHICLE manufacturer or as outlined within the WARRANTYWISE PLAN; and

(d) has at least 6 (six) months MOT remaining before the DEALER completes the sale of the VEHICLE to a CUSTOMER,

and the DEALER shall complete, at its own cost, any rectification work that is necessary to meet these requirements before or after the sale of the VEHICLE.

5.1.3 The DEALER shall not advertise, market or promote this AGREEMENT or WARRANTYWISE in any documentation or publication other than as authorised in writing by WARRANTYWISE.

5.1.4 The DEALER should declare all material facts that may affect WARRANTYWISE'S decision to accept a VEHICLE within the context of this AGREEMENT for a WARRANTYWISE PLAN as requested by the DEALERNET booking system. Failure to disclose the correct information at the time of application for the WARRANTYWISE PLAN will be considered a breach of this AGREEMENT and WARRANTYWISE will be entitled to exercise its right to terminate this AGREEMENT with immediate effect pursuant to clause 1.5.3 above. There are examples of VEHICLES which are considered as unacceptable detailed within the WARRANTYWISE PLAN.

## **5.2 Geographical Limits**

This AGREEMENT shall only apply to FAILURES that occur within the geographical limits specified in the WARRANTYWISE PLAN.

## **5.3 Sole Provider**

The DEALER acknowledges that WARRANTYWISE will be the sole provider to the DEALER of the SERVICES and hereby agrees, subject to the rest of this AGREEMENT, to:

(a) not use any other provider to perform the SERVICES or any services which are materially similar to the SERVICES; and

(b) utilise this AGREEMENT for all qualifying VEHICLES sold and not to enter into any other warranty that is not a WARRANTYWISE PLAN.

## **5.4 Access and Inspection**

WARRANTYWISE or their representatives shall have the right at all reasonable times to have access to inspect any VEHICLES that are the subject of a WARRANTYWISE PLAN.

## **5.5 Subrogation**

WARRANTYWISE may at any time at their expense use all legal means in the name of the DEALER of securing reimbursement for loss or damage and the DEALER shall give all reasonable assistance for this purpose.

## **5.6 Observance**

The due observance and fulfilment of the terms and conditions contained in this AGREEMENT and endorsed hereon (insofar as they relate to anything to be done or complied with by the DEALER) and the truth of the statements and answers in the proposal shall be conditions precedent to any liability of WARRANTYWISE to make any payment under this AGREEMENT.

## **5.7 Contracts (Rights of Third Parties) Act 1999 Clause**

A person who is not named in this contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **5.8 Law and jurisdiction**

5.8.1 This AGREEMENT and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.

5.8.2 The courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this AGREEMENT (including in relation to any non-contractual obligations).

5.8.3 Nothing in this clause 5.8 will prevent or restrict the right of a party to seek injunctive relief or specific performance or other discretionary remedies of the court.

## 5.9 Data Protection

- 5.9.1 The terms “Data Subject”, “Personal Data”, “Process”, “Processed”, “Processing”, “Data Controller” or “Data Processor”, where capitalised, shall have the meanings in, and shall be interpreted in accordance with, the Data Protection Legislation.
- 5.9.2 The provisions of this clause 5.9 shall apply if and to the extent that one party (the “Processor”) processes Personal Data in respect of which the other party is (the “Controller”). Any such data shall be referred to as the “Agreement Personal Data”. For the avoidance of doubt, each party is a Data Controller in its own right in the course of its own business.
- 5.9.3 In addition to and notwithstanding any other right or obligation arising under this Agreement, the Processor will and will procure that all subcontractors and third parties that Process the relevant Personal Data on behalf of the Processor (“Authorised Sub-Processors”) will, with respect to all Agreement Personal Data: Process the Agreement Personal Data only on documented instructions from the Controller including this Agreement;
- b. without prejudice to clause 5.9.3 (a) above, shall ensure that Agreement Personal Data will only be used to the extent required to provide the Services. The Processor shall not without the express prior written consent of the Controller (a) convert any Agreement Personal Data into anonymised, pseudonymised, depersonalised, aggregated or statistical data; (b) use any Agreement Personal Data for “big data” analysis or purposes; or (c) match any Agreement Personal Data with or against any other Personal Data (whether Processor’s or any third party’s);
  - c. not permit any Processing of Agreement Personal Data outside the European Economic Area without the Controller’s prior written consent which may be subject to conditions at the Controller’s discretion (unless the Processor or Authorised Sub-Processors are required to transfer the Agreement Personal Data, to comply with European Union or European Member State applicable laws and such laws prohibit notice to the Controller on public interest grounds);
  - d. ensure that any person authorised to Process the Agreement Personal Data:
    - have committed themselves to confidentiality obligations or are under an appropriate statutory obligation of confidentiality;
    - Processes the Agreement Personal Data solely on written instructions from the Controller; and
    - are appropriately reliable, qualified and trained in relation to their Processing of Agreement Personal Data;

- a. implement (and assist the Controller to implement) technical and organisational measures to ensure a level of security appropriate to the risk presented by Processing the Agreement Personal Data, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise Processed (together, a “Data Security Incident”);
- b. notify the Controller without undue delay (and in any event no later than 24 hours) after becoming aware of a reasonably suspected, “near miss” or actual Data Security Incident. Where, and in so far as, it is not possible to provide the information at the same time, the information may be provided in phases without undue further delay, and for the avoidance of doubt, the Processor and Authorised Sub-Processor may not delay notification under this clause 5.9.3 (f) on the basis that an investigation is incomplete or ongoing, and not make or permit any announcement to any party, without the Controller’s consent, which may be subject to conditions at the Controller’s sole discretion;
- c. provide reasonable assistance to the Controller in:
  - responding to requests for exercising the Data Subject's rights under the Data Protection Legislation, including by appropriate technical and organisational measures, insofar as this is possible;
  - reporting any Data Security Incident to any supervisory authority or Data Subjects and documenting any data security Breaches;
  - taking measure to address the Data Security Breach, including, where appropriate, measures to mitigate its possible adverse effects; and
  - conducting privacy impact assessments of any Processing operations and consulting with any applicable supervisory authority or appropriate persons accordingly;
- d. at the choice of the Controller securely delete or return all Agreement Personal Data to the Controller after the end of the provision of services relating to Processing, and securely delete any remaining copies;
- e. hold Agreement Personal Data physically and electronically separate to any other records or Personal Data, Processed by the Processor or Authorised Sub-Processor other than for the performance of the Services.

5.9.4 The Processor shall make available to the Controller all information necessary to demonstrate compliance with the obligations in respect of Agreement Personal Data laid down in this clause 5.9 and allow for and contribute to audits, including inspections, conducted by the Controller or another auditor mandated by the Controller. The Processor shall immediately inform the Controller if, in its opinion, an instruction infringes this Regulation or other Union or Member State data protection provisions.

5.9.5 Where either Party acts in the capacity of Controller, it shall comply at all times with its obligations under the Data Protection Legislation.

5.9.6 Where either Party acts as a Data Controller in common (the “Collaborator”) with the other Party (the “Controller in Common”) in relation to Customer Data provided by the Controller in Common and which has been re-collected/re-confirmed by the Collaborator, the Collaborator shall comply at all times with the Data Protection Legislation and shall not by any act or omission cause the Controller in Common to be in breach. The Collaborator shall immediately notify the Controller in Common in the event it becomes aware of any actual, probable or threatened incident of accidental or unlawful destruction or accidental loss, alteration, unauthorised or accidental disclosure of or access or breach of clause 5.9.3 which impacts any data provided by the Controller in Common to the Collaborator in connection with this Agreement and shall:

- I. provide the Controller in Common with all information in relation to the breach and assistance as may be required in order for the Controller in Common to seek to mitigate the effects of the breach, comply with the Data Protection Legislation and adhere to guidance issued by the ICO with regard to security breach management and reporting;
- II. implement any measures necessary to restore the security of any compromised data;
- III. work with the Controller in Common to make any required notifications to the ICO and affected Data Subjects in accordance with applicable law and regulation; and
- IV. not do anything which may damage the reputation of the Controller in Common or the Controller in Common’s relationship with the relevant Customer, save as required by applicable law and regulation.
- V. on request, provide such information and assistance as is reasonably requested by the Controller in Common to assist the Controller in Common in complying with the Data Protection Legislation in respect of Customer Data provided under the Agreement.

## **5.10 Language**

All documents and all communications about this AGREEMENT will be in easy to understand English. No language other than English will be used. Any words relating to the male gender shall also refer to the female gender and vice-versa.

## **5.11 Section Headings and Numbering**

The headings and numbering of this AGREEMENT are for convenience only and shall not affect the construction thereof.

## **5.12 Notices**

5.12.1 Any notices required to be given to the DEALER under the terms of this AGREEMENT shall be forwarded to WARRANTYWISE'S registered office address listed in clause 1.8.5 address above by Special/Recorded Delivery Post and will be deemed to have been received by the DEALER within 3 working days from the date of posting.

5.12.2 Any notices required to be given to WARRANTYWISE under the terms of this AGREEMENT shall be forwarded to WARRANTYWISE'S registered office address listed in clause 1.8.5 address above by Special/Recorded Delivery Post and will be deemed to have been received by WARRANTYWISE within 3 working days from the date of posting.

## **5.13 Statute References**

References to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.

## **6.0 REPAIRS NOTIFICATION AND REQUIREMENTS**

### **6.1 Repairs Authority**

6.1.1 WARRANTYWISE has the authority to act in its absolute discretion to handle, negotiate and decline or accept any request for repairs made under any WARRANTYWISE PLAN issued by the DEALER during the period of this AGREEMENT and any WARRANTYWISE PLANS issued pursuant to it.

6.1.2 The DEALER accepts that any repairs which are not authorised by WARRANTYWISE will not be covered under the terms of this AGREEMENT or any WARRANTYWISE PLAN.

### **6.2 Repairs Notification**

Any repairs notified directly by a CUSTOMER to the DEALER should be immediately referred to WARRANTYWISE.

### **6.3 Repairs Administration**

6.3.1 WARRANTYWISE will use its reasonable endeavours to obtain the most cost effective settlement for each valid repair either directly with the CUSTOMER or with the CUSTOMER'S chosen repairer or with a repairer selected by WARRANTYWISE.

6.3.2 In the ordinary course of business and in each event where;

(a) a request for repairs is made by a CUSTOMER and administered by WARRANTYWISE; and

(b) settlement is made in full, in part or declined by WARRANTYWISE then;

WARRANTYWISE will charge the full cost of such repairs together with all associated expenses including WARRANTYWISE'S charges and administration expenses to the DEALER'S account.

6.3.3 Where WARRANTYWISE declines a repair claim or part thereof under the terms of the WARRANTYWISE PLAN, the remaining liability (if any) will rest with the DEALER.

## **6.4 Repairs Assistance**

The DEALER shall provide all reasonable assistance to WARRANTYWISE in investigating and/or negotiating any repairs made pursuant to a WARRANTYWISE PLAN.

## **7.0 Miscellaneous**

### **7.1 WARRANTYWISE PLAN**

The latest version of the standard WARRANTYWISE PLAN is available in booklet format at each WARRANTYWISE office or is available for download on the following website: [www.warrantywise.co.uk/downloads](http://www.warrantywise.co.uk/downloads).

### **7.2 Pre WARRANTYWISE PLAN checks**

7.2.1 Prior to the issue of a WARRANTYWISE PLAN the DEALER is required to ensure the following:

(a) A pre-sale inspection is carried out to ensure that the VEHICLE is ready for sale as required by the Road Traffic Act 1991, Sale of Goods Act 1979 and Sale and Supply of Goods to Consumer Regulations 2002. A pre-delivery inspection should be carried out by a qualified engineer to ensure there are no obvious mechanical or electrical faults apparent. Any faults discovered should be repaired at the DEALER'S expense; and

(b) the VEHICLE has received the servicing as detailed within the WARRANTYWISE PLAN and proof must be made available to the CUSTOMER that this servicing has been carried out previously or by the DEALER or a VAT registered garage.

7.2.2 If the previous servicing as required within the terms of the WARRANTYWISE PLAN has not been completed then the DEALER must complete the required servicing and bring the VEHICLE'S servicing up to date at its own expense or inform his CUSTOMER 'in writing' (preferably on the sales invoice) that the servicing must be completed and brought up to date by the CUSTOMER before the WARRANTYWISE PLAN will become effective.

### **7.3 Important**

You will be required to inform each CUSTOMER of the terms and conditions (and in particular the servicing requirements) of the WARRANTYWISE PLAN prior to each CUSTOMER entering into a WARRANTYWISE PLAN.

## **SCHEDULE 1 SERVICES**

- 1.1 WARRANTYWISE will manage the costs of administering, repairing and rectifying mechanical and electrical breakdowns (together, the FAILURES) that occur to motor vehicles (VEHICLES) sold by you (the DEALER) to your customers (each, a CUSTOMER) under the terms of warranties (WARRANTYWISE PLANS) issued by you during the term of this AGREEMENT.
- 1.2 In particular, WARRANTYWISE will, at its discretion, use reasonable endeavours to provide the following services to the DEALER:
  - 1.2.1 provide any CUSTOMER documentation required pursuant to the terms of this AGREEMENT or any WARRANTYWISE PLAN within 7 days of receiving a request via DEALERNET for the same from the DEALER;
  - 1.2.2 offer CUSTOMERS the option to upgrade/change as detailed in the WARRANTYWISE PLANS;
  - 1.2.3 offer any CUSTOMER the 30 day cooling off period as detailed in the WARRANTYWISE PLANS;
  - 1.2.4 process all repairs that have been authorised by WARRANTYWISE pursuant to the terms and conditions of this AGREEMENT in accordance with the Repairs Procedure of the WARRANTYWISE PLANS;
  - 1.2.5 ensure that any decisions made by WARRANTYWISE in accordance with the terms and conditions of this AGREEMENT are administered in accordance with the WARRANTYWISE PLANS;
  - 1.2.6 provide suitable independent inspections as detailed in the WARRANTYWISE PLANS;
  - 1.2.7 provide detailed reports as noted in the AGREEMENT paragraph 4.3.2;
  - 1.2.8 provide suitable merchandising materials as may be necessary for the DEALER to promote their association with WARRANTYWISE from time to time and, as appropriate, based on VEHICLE stock levels and WARRANTY PLANS purchased; together, the SERVICES.

**SCHEDULE 2  
MARKETING MATERIALS**

- 1.1** Marketing materials provided to DEALER, as detailed and available to purchase via the DEALERNET store. Current materials and prices are noted therein.
  
- 1.2** Where such Marketing materials are provided free of charge or purchased using accumulated WisePoints (as defined in the DEALERNET store), these remain the property of WARRANTYWISE and are valued at the prices noted on the DEALERNET store.

**Wwise/dealer/adminagreement/v3/14/03/2018**