



Shan Car Rentals Pty Ltd (ACN 653 465 313)
trading as Top End Car Rentals & Campervan Hire
ABN 16 653 465 313

Terms & Conditions (Effective 1 April 2024)

1. Agreement

- 1.1 This contract between You and Shan Car Rentals Pty Ltd (**We/Us**) to rent the Vehicle consists of:
- (a) Rental Agreement; and
 - (b) Terms & Conditions; (collectively, this **Agreement**).
- 1.2 If there is any inconsistency between any part of this Agreement, the Rental Agreement will prevail to the extent of that inconsistency.
- 1.3 Your consumer rights under the Australian Consumer Law are not excluded, restricted or modified by this Agreement and any provision in this Agreement is subject to the specific protections and guarantees in that and any corresponding Territory legislation.
- 1.4 We reserve the right to refuse any rental on reasonable grounds.

2. Rental Period

- 2.1 We agree to rent the Vehicle to you for the Rental Period in exchange for the Rental Charges and subject to this Agreement.
- 2.2 If, during the Rental Period, You wish to change the Return Location and/or extend the Rental Period, you must obtain our prior written approval and additional charges may apply. We may withhold our approval for any reason, including availability of the Vehicle.
- 2.3 The extra cost of an extended rental must be paid by Credit Card over the telephone or at our office immediately on confirmation of the rental extension. The additional days will be at the daily standard gross rental charge for the Vehicle applicable at the time of the extension.
- 2.4 Minimum rental periods apply. If you wish to rent a vehicle for less than the minimum rental period applicable at the time of booking, and We agree, the daily charge will be the number of hire days in the minimum rental period multiplied by the applicable daily rental rate. Minimum rental periods are subject to change.

3. Vehicle Collection and Return

- 3.1 When collecting the Vehicle, You must:
- (a) Physically present yourself and any Authorised Driver. Electronic presentation is not acceptable;
 - (b) Present Your driver's licence, and that of any Authorised Driver, and permit Us to take and keep a copy of each driver's licence;
 - (c) inspect the Vehicle; and

- (d) record all existing damage to the Vehicle in the Vehicle Condition Report in the Rental Agreement. Subject to clauses 22 and 24, any damage which has not been noted in the Vehicle Condition Report will constitute Loss or Damage which has occurred subsequent to the commencement of this Agreement for which You will be charged, unless it is a result of our negligence or wilful act or omission.
- 3.2 You must return the Vehicle:
- (a) to the Return Location by the Return Time;
 - (b) without alternation or addition and in the same condition that it was in when it was provided to You (except for ordinary wear and tear), as noted on the Vehicle Condition Report;
 - (c) together with all tools, tyres, accessories and equipment provided with the Vehicle; and
 - (d) lock the Vehicle, give the keys back to one of our staff and provide reasonable notice to that staff member that the vehicle has been returned.
- 3.3 If You fail to return the Vehicle by the Return Time, We may report the Vehicle as stolen.
- 3.4 Subject to clause 3.8, if You return the Vehicle:
- (a) after the Return Time without our prior written consent, you will be charged a late fee of \$165 including GST; or
 - (b) to a different location to the Return Location, We may charge you for:
 - (i) costs associated with transporting or towing the Vehicle to the Return Location; and
 - (ii) a relocation charge of up to \$770 including GST.
- 3.5 Public holidays:
- (a) Our office is closed on Christmas Day, New Year's Day, Good Friday and Australia Day public holidays.
 - (b) An additional fee of \$110 including GST will apply to all rentals picked up and/or dropped off on public holidays in the Northern Territory.
- 3.6 If You attempt to return the Vehicle to the Return Location after the Return Time and the Return Location is not open for business at the time You return the Vehicle:
- (a) the Vehicle will be deemed to have been returned at the time when that Return Location next opens for business;
 - (b) the Rental Period continues until that time;
 - (c) You remain fully responsible for the Vehicle, unless other arrangements have been agreed to in writing by Us; and
 - (d) You will be charged:
 - (i) the then current daily rental charge for the Vehicle for each 24-hour period or part thereof until the Vehicle is returned;
 - (ii) the then current daily rate charge applicable to Your chosen Damage Excess Waiver; and
 - (iii) a late return fee of \$165 including GST.
- 3.7 If the odometer is deliberately broken or otherwise tampered with during the Rental Period, You must pay any costs associated with repairing or replacing the odometer.
- 3.8 If You are unable to return the Vehicle to the Return Location by the Return Time due to road closures caused by cyclones, bushfires, flash floods and other acts of God, We will use commercially reasonable efforts to accommodate delays.

4. Drivers

- 4.1 You acknowledge and agree that:
- (a) only You or an Authorised Driver may drive the Vehicle;

- (b) You must not, and must take reasonable steps to ensure that each Authorised Driver does not, refuse or fail to take any blood analysis, breath test or drug impairment assessment requested by the police or as required by law; and
- (c) You and each Authorised Driver:
 - (i) are 25 years of age or older but not more than 75 years of age;
 - (ii) have not given a false name, age, address or driver's licence detail;
 - (iii) hold a current a valid licence (not being a learner's, provisional or probationary licence) to drive vehicles of the same class as the Vehicle, which You or the Authorised Driver is able to produce in hardcopy at the time of hire, or an international licence (with a valid International Driving Permit or an approved translation into English if the licence is not issued in English);
 - (iv) have not had your driver's licence cancelled or suspended within the last three years.

4.2 Additional Authorised Driver fees are included in the daily vehicle rates.

5. Use of Vehicle

5.1 You must not:

- (a) operate the Vehicle:
 - (i) whilst intoxicated or under the influence of drugs or alcohol, or with a blood alcohol content or drug concentration that exceeds the legal limit set by law in the Northern Territory; or
 - (ii) in a dangerous, wilful or reckless manner; or
 - (iii) whilst using a mobile phone in the following situations:
 - (A) to make or receive a phone call, perform any audio function or as a navigational device, unless the Vehicle is stationary and the body of the phone is secured in a mounting affixed to the Vehicle and its use does not require manual operation of the phone; or
 - (B) to send a text message, video message, email or similar communication unless the Vehicle is parked, or
 - (iv) whilst the Vehicle is unsafe or in an unroadworthy condition unless directed by a government authority; or
 - (v) between 6.30pm and 6.30am from May to September, and between 7.00pm to 6.00am from October to April, outside city limits unless authorised by Us in writing; or
- (b) use the Vehicle:
 - (i) for any illegal purpose;
 - (ii) in any area where applicable travel restrictions of clause 14 of this Agreement apply unless authorised by Us in writing;
 - (iii) for carrying persons for hire, gain or reward, or to carry any inflammable, explosive or corrosive materials, fuel or generators;
 - (iv) for pushing or towing any Vehicle, trailer, boat or other object;
 - (v) for carrying any greater load and/or more persons and/or for a purpose for which the Vehicle is not designed and constructed;
 - (vi) for racing, pace making, reliability trials, speed trials, hill climbing or being tested in preparation for those activities;
 - (vii) for illicit drug use or carrying illegal substances, product or drug paraphernalia;
 - (viii) for commercial purposes or financial gain;

- (ix) for carrying passengers when You, any Joint Renter or Authorised Driver are not appropriately licensed;
- (x) for carrying any pets or animals except Assistance Animals or
- (xi) for subletting or hiring the Vehicle to any other person,
- (c) smoke in the Vehicle and must prevent any other person from doing so;
- (d) modify or make any alteration to the Vehicle;
- (e) damage the Vehicle deliberately or recklessly or allow anyone else to do so; or
- (f) sell, rent, lease or dispose of the Vehicle.

5.2 You must:

- (a) keep the Vehicle locked when not in use and keep the keys in Your possession;
- (b) take reasonable care of the Vehicle and drive the Vehicle in a safe and legal manner; and
- (c) turn all the Vehicle lights off when the Vehicle is parked or otherwise not in use.

6. Rental Charges and Payments

- 6.1 At the start of the Rental Period, You must provide Us with an acceptable credit card or debit card (Bank Card).
- 6.2 We accept Visa, MasterCard and American Express. Surcharge fees are contained in the Rental Agreement and are subject to change.
- 6.3 You authorise Us (acting reasonably) to charge the Bank Card for Rental Charges and any other amounts under the Agreement.
- 6.4 If any additional Rental Charges are incurred or charged after the Rental Period (for example, parking charges or infringement notices received after the Rental Period), We will charge the Bank Card with prior notification (where you have provided a valid email address). You acknowledge that this clause is reasonably necessary for Us to protect its interests.
- 6.5 If you wish to dispute any amounts charged to the Bank Card, please contact Us on: enquiries@topendcarrentals.com.au.
- 6.6 All amounts due under this Agreement must be paid in Australian Dollars. Cash payments will not be accepted in any circumstances.
- 6.7 If You wish to pay Rental Charges by bank transfer, these must be received by Us at least 21 days prior to commencement of the Rental Period. Bank transfers are not acceptable for the Security Bond.
- 6.8 Due to exchange rate fluctuations, in some instances there may be some variance between the amount initially debited against the Bank Card and the amount refunded at the expiration of the Rental Period. Any such variation does not entitle You to a refund.
- 6.9 Refunds by credit card including Security Bond refunds can take up to 14 business days depending on the terms and conditions adopted by Your nominated financial institution.

7. Fine, Infringements and Legal Action

- 7.1 You are liable for and must pay for all:
 - (a) fines, infringements and penalties arising from parking, clamping, towing, or release of the Vehicle from compounds;
 - (b) speeding and traffic fines, infringements and penalties arising from the use of the Vehicle; and
 - (c) court fees or costs arising from the above.
- 7.2 If We receives a notice from any regulatory or enforcement authority in relation to any fines, infringements and penalties in relation to the Vehicle during the Rental Period, We will supply

Your details to any regulatory or enforcement authority to enable the enforcement authority to issue the infringement notice and any reminder notice directly to You as soon as practicable, in which case an administrative fee of \$55 including GST may apply.

7.3 If We pay any amount for which You are liable pursuant to clause 7.1, You must pay Us that amount, together with an administrative fee of \$55 including GST per charge, fine or infringement.

7.4 You must:

- (a) immediately upon receipt, provide Us with every summons, complaint or paper in relation to any accident or loss involving the Vehicle; and
- (b) make yourself available to assist Us in any legal action mentioned in this Agreement that may arise out of Your hire of the Vehicle.

8. Fuel

8.1 The Vehicle must be returned with the amount of fuel equal to that recorded at the start of the Rental Period. If the Vehicle is returned with less fuel, the difference will be charged to You at a rate of \$4.40 including GST per litre (which includes a service component).

8.2 You must:

- (a) only use the fuel type specified by the manufacturer of the Vehicle; and
- (b) not use any bio-diesel, ethanol or any organic hybrid fuel (except for E10, which is acceptable).

8.3 You will be liable for any costs associated with Loss or Damage to the Vehicle caused by Your use of the wrong fuel.

9. Vehicle Cleaning

9.1 Vehicles must be returned in a reasonable state of cleanliness, completely free of mud, rubbish and pet hair.

9.2 A cleaning fee of \$110 including GST will be charged if the vehicle is returned in an unreasonable state of cleanliness and/or should the vehicle need deodorising as a result of smoking.

10. Kilometre Allowance

10.1 All 2WD Vehicles have unlimited kilometres included per rental day.

10.2 For rental periods of less than 5 days, all 4WD Vehicles have 200 kilometres included per rental day. Thereafter a charge of \$0.55 including GST per kilometre will apply.

10.3 For rental periods for 5 days or more, all 4WD Vehicles will have unlimited kilometres included per rental day.

11. Travel Restrictions

11.1 You must tell us in the Rental Agreement the locations you will be taking the Vehicle.

11.2 The Vehicle must not be taken more than 500kms from the Rental Location.

11.3 You must not, and must ensure that each Authorised Driver does not, operate the Vehicle on:

- (a) roads that are prone to flooding or are flooded;
- (b) beaches, streams, rivers, creeks, dams and floodwaters;
- (c) any road where the police or an authority has issued a warning;
- (d) any road that is closed; and
- (e) any road where it would be unsafe to drive the Vehicle.

- 11.4 If the Vehicle is a two-wheel drive, You must not, and must ensure that each Authorised Driver does not, operate the Vehicle on any unsealed road:
- 11.5 If the Vehicle is a four-wheel drive vehicle, You must not, and must ensure that each Authorised Driver not, operates the Vehicle in 2WD mode on sealed roads.
- 11.6 We may notify you of additional travel restrictions for any reason including adverse road or weather conditions either at the time of collection or by email if an update occurs after the Rental Period has started.

12. Seat Belts and Child Restraints

- 12.1 You must comply with, and ensure that all passengers in the Vehicle comply with, all laws regarding seat belts and child restraints.
- 12.2 We give no warranty as to the appropriateness, correctness or adequacy of any child restraints fitted in the Vehicle and You accept full responsibility for the fitting and suitability of any such restraints fitted.

13. Vehicle maintenance

- 13.1 You must report to Us as soon as possible, where the oil is above or below the recommended level or the warning indication light is illuminated.
- 13.2 You must add water/coolant to the cooling system and an appropriate Australian Society of Automotive Engineers rated oil for petrol or diesel powered vehicles (as applicable) to the engine if the indicator level is below minimum.
- 13.3 You agree to maintain the Vehicle in these conditions and acknowledge that any mechanical damage occasioned as a result of Your failure to maintain the Vehicle in accordance with this clause must be paid by You.

14. Breakdowns and Repairs

- 14.1 If:
- (a) a dashboard warning light or fault message appears;
 - (b) You see or become aware of low engine or brake oils, engine coolant levels or tyre pressures; or
 - (c) the Vehicle or any equipment experiences a fault, failure or breakdown during the Rental Period, You must:
 - (d) notify Us as soon as practicable; and
 - (e) not use the Vehicle unless We or a government authority authorises You to do so.
- 14.2 If You fail to notify Us and continue to use the Vehicle, You will be responsible for Loss or Damage resulting from such use and any cost incurred in You traveling to Our Rental Location is Your responsibility unless it is a result of Our negligence or wilful act or omission.
- 14.3 If the Vehicle cannot be driven as a result of a breakdown, We will refund an amount equal to the Rental Charges applicable during the time that the Vehicle was not available for use. Subject to availability, We will provide a replacement vehicle.
- 14.4 You must not let anyone work on the Vehicle or arrange or undertake any repairs to the Vehicle or towing or salvage of it unless We have given You our prior authority.
- 14.5 If repairs are required to the Vehicle and such repairs:
- (a) cost less than \$100 including GST, you may proceed with such repairs without our prior approval; and
 - (b) cost \$100 or more including GST, you must obtain our prior written approval before letting anyone work on the Vehicle or arrange or undertake any repairs to the Vehicle or towing or salvage of it.

- 14.6 You must keep and produce to Us the original tax invoices and receipts for any repairs, towing or salvage and You will be reimbursed only if these expenses have been authorised by Us (unless the amount is less than \$100 including GST). Any entitlement to reimbursement is subject to there being no Substantial Breach.
- 14.7 You acknowledge and agree that:
- (a) the failure of accessories such as air-conditioners do not constitute a breakdown and no amount is payable by Us to You;
 - (b) We are not responsible for any accommodation charges, meals, change of itinerary or out of pocket expenses resulting from a breakdown of the Vehicle or as a result of any accident unless it is a result of our negligence or wilful act or omission; and
 - (c) it can often be difficult to carry out repairs during weekends and holiday periods and/or in remote areas due to limited opening times and/or spare parts.
- 14.8 If You request roadside assistance to assist with a circumstance arising due to negligence or wilful misconduct by You or an Authorised Driver (for example, keys being locked in the Vehicle or flat batteries caused by lights having been left on), You may be charged the cost of such roadside assistance (unless the roadside assistance is required due to our negligence or wilful act or omission).

15. Tyre and Windscreens

- 15.1 You must obtain our prior written approval to replace any tyres or windscreens.
- 15.2 You are responsible for replacing damaged tyres (for example, blowouts, punctures, sidewall damage, tyre staking etc.) unless caused by normal wear and tear or the actions of a third party where the details of that third party are provided to Us.
- 15.3 You must maintain tyre pressures as per the Vehicle manufacturer's manual and You must only purchase new steel radial tyres of the same size and ply rating as are fitted to the Vehicle. If You purchase tyres of a different size or ply rating We will not refund You for the purchase cost.

16. Accidents

- 16.1 In the event of an accident, You must:
- (a) record the Time/Date/Location;
 - (b) take reasonable steps to record the other parties full names, addresses, vehicle registrations, car types as well as any property damage in circumstances where the accident did not involve another motor vehicle;
 - (c) take reasonable steps to record the name of the other party's insurance company;
 - (d) take reasonable steps to not admit liability;
 - (e) notify the police immediately by calling 131444 and file a police report;
 - (f) notify Us by phone or email within 24 hours of the accident
- 16.2 In the event of an accident, the towing and retrieval of the Vehicle to our Rental Location is at Your expense up to the amount of Your Security Bond where it applies or for the full amount where it does not apply. There is no refund for monies paid for the unused portion of the rental period unless it is a result of our negligence or wilful act or omission.
- 16.3 In the event of an accident in which there is Loss or Damage to the Vehicle, the availability of a replacement Vehicle is not guaranteed and its provision is subject to availability, Your location, remaining hire duration and whether the accident was the result of a Substantial Breach. Additional charges may be incurred.
- 16.4 If a replacement Vehicle is required as a result of an accident:
- (a) You are responsible for making Your own way to our Rental Location at Your own cost unless it is a result of our negligence or wilful act or omission;

- (b) We may offer You the option of paying a "Replacement Vehicle Relocation Fee" to send a driver to deliver the replacement vehicle to Your location; and
- (c) You must pay for any costs relating to delivery of a replacement Vehicle as a result of any vehicle accident unless it is a result of our negligence or wilful act or omission. This charge applies irrespective of any Damage Excess Waiver taken.

17. Personal Injury

- 17.1 The Vehicle is provided with third party personal injury insurance cover.
- 17.2 Depending on the circumstances of the accident, You may be entitled to claim for Your personal injury against the third party personal injury insurance of the party which is responsible for the accident. We will provide you details of the third party personal injury insurer if requested.

18. Property Loss and Damage

- 18.1 You are liable to pay Us up to the amount of the applicable Security Bond set out in Rental Agreement for Loss or Damage to the Vehicle and for damage to third party property unless it is a result of our negligence or wilful act or omission, or you have purchased a Damage Excess Waiver and it has not been, or will not be, applied to an earlier claim.
- 18.2 Regardless of whether cover is extended to You by our insurer, You will remain responsible for the costs of the Vehicle being unavailable for the period the Vehicle is unavailable due to repairs. Any such costs recovered from any negligent third party will be refunded to You upon its recovery.
- 18.3 Payment of the amount up to the Security Bond applies in respect of each claim, not per rental.
- 18.4 The Damage Excess Waiver applies in respect of each claim, not per rental.
- 18.5 In the event of a claim, We require that You pay a second Security Bond equivalent to the applicable liability if You are continuing with the rental.
- 18.6 Payment of the Security Bond is applicable regardless of who is at fault and must be paid at the time the accident/incident is reported to Us, not at the completion of the rental period.
- 18.7 We are not liable for any personal belongings left in the Vehicle which are damaged, stolen or lost. We recommend that You do not leave items of value in the Vehicle and that You take out Your own Personal Travel Insurance.

19. Security Bond and Security Bond Payment Consent

- 19.1 You hereby give Us Your express consent to deduct the Security Bond from the Bank Card.
- 19.2 The Security Bond is payable at pick-up by a Bank Card. The Security Bond cannot be paid with a pre-paid card, cash or bank transfer.
- 19.3 The Bank Card holder must be present and be able to sign for the Security Bond upon collection of the Vehicle.
- 19.4 The Bank Card holder is jointly and severally liable for any damage to the Vehicle.
- 19.5 The Security Bond is fully refundable including the credit card administration fee when the Vehicle is returned to the Return Location on time, is full of fuel, with no damage (which did not exist at the time of collection or unless We caused or contributed to the damage) and all other terms of this Agreement have been complied with.
- 19.6 If there is Loss or Damage to the Vehicle, the Security Bond will be used to cover the cost of such damage up to the amount of the relevant Security Bond except where there has been no breach of the Agreement and it is determined by the relevant insurance company that You were not at fault.
- 19.7 However, if there is a Substantial Breach and the Security Bond is insufficient to cover the Loss and Damage then any extra cost will be charged to You.
- 19.8 Security Bond refunds to the Bank Card may take up to 14 business days depending on Your financial institution.

20. Insurance

- 20.1 Subject to this Agreement, You will receive the benefit of our insurance with our insurer for Loss or Damage of the Vehicle and damage to any third-party property for any property in Your physical or legal control (except for any property owned by You or any friend, relative, associate or passenger), provided:
- (a) You have paid the Security Bond set out in Rental Agreement;
 - (b) there is no Loss or Damage to the Vehicle as a result of a Single Vehicle Rollover unless You have purchased a Damage Excess Waiver and it applies;
 - (c) there has not been a Substantial Breach and You have not caused any other person to have acted in a manner which is a Substantial Breach;
 - (d) You are not covered under any other policy of insurance; and
 - (e) You have provided such information and assistance as may be requested by Us or our insurer.
- 20.2 If cover is extended to You by our insurer:
- (a) You authorise our insurer, at its sole discretion, to defend or settle any legal proceedings;
 - (b) Our insurer has the sole conduct of any proceedings; and
 - (c) any such proceedings shall be brought or defended in Your name or the name of the Joint Renter.

21. Damage Liability Exclusion

- 21.1 Notwithstanding any other clause of this Agreement, if You commit a Substantial Breach, You will:
- (a) be liable for any of the following resulting from such breach:
 - (i) Loss or Damage to the Vehicle, and
 - (ii) damage to third party property or personal injury or death; and
 - (b) have no entitlement to the benefit of our insurance under this Agreement, irrespective of the liability cover, or Damage Excess Waiver purchased.
- 21.2 You acknowledge and agree that You are responsible for all costs incurred in relation to the following:
- (a) Overhead Damage or damage to the underbody of the Vehicle regardless of cause, except to the extent caused by a third-party and such third-party details are provided to Us or where You have purchased 4WD Additional Cover and it applies;
 - (b) a Single Vehicle Rollover occurs regardless of cause, except where You have purchased Single Vehicle Rollover Option cover and it applies;
 - (c) replacing keys that have been lost, damaged or stolen;
 - (d) Loss or Damage to the Vehicle due to:
 - (i) Your wilful or reckless action, including:
 - (A) damage caused by falling asleep whilst driving; and
 - (B) sitting or standing on the bonnet or roof of the Vehicle;
 - (ii) loading and unloading (fair wear and tear excepted);
 - (iii) the Vehicle being left unlocked, the keys being left in the Vehicle;
 - (iv) the Vehicle being totally or partially immersed in any water;
 - (v) Your failure to maintain all fluid, fuel and oil levels of the Vehicle or a failure to immediately rectify or report to Us any defect in the Vehicle of which You become or ought to have become aware;

- (vi) the wrong fuel type or contaminated fuel was used or where water or AdBlue being put in the fuel tank;
- (vii) fuel or other contaminants such as Adblue being put in the water tank;
- (viii) if the Vehicle is a 4WD, is driven in 4WD mode on sealed roads;
- (ix) driving with the handbrake on;
- (e) Loss or Damage to the Vehicle while it is being:
 - (i) transported over water; or
 - (ii) loaded or unloaded on a watercraft and/or tow truck;
- (f) damage to the tyres, excluding normal wear and tear, except where You have purchased an Additional Cover or 4WD Additional Cover and it applies;
- (g) damage to the windscreen of the Vehicle, except where You have purchased an Additional Cover or 4WD Additional Cover and it applies;
- (h) damage to the interior of the Vehicle, except where there is a collision with another vehicle;
- (i) recovering (including towing) the Vehicle if it is bogged;
- (j) the Vehicle running out of fuel;
- (k) loss of the fuel, oil or water caps; or
- (l) Loss or Damage to personal property owned by You or others left in the Vehicle, or which is received, handled or stored by Us at any time before, during or after the Rental Period, except to the extent caused by our negligence.

22. Our Responsibilities and Disclaimers

- 22.1 We will provide a Vehicle that is of acceptable quality and in good working order for the Rental Period.
- 22.2 If the Vehicle breaks down during the Rental Period because of Our negligence, We will recover and repair the Vehicle as soon as possible. If the Vehicle cannot be repaired, We will use its best endeavours subject to availability to provide a replacement Vehicle of an equivalent size and standard to the previous Vehicle for the remainder of the Rental Period.
- 22.3 Subject to the Australian Consumer Law, We are only responsible for any direct loss You suffer as a result of our breach of this Agreement. We are not responsible for missed flights, disrupted travel or holiday plans, loss of enjoyment or opportunity, indirect or consequential loss.
- 22.4 You acknowledge and agree that:
- (a) We have not in any way represented itself to You as an entity carrying on the business of insurance; and
 - (b) Our brochures, websites and other advertising material contain only representations of its vehicles, and such pictures, illustrations, descriptions and measurements of the vehicles may be different to the Vehicle offered to You due to modifications and/or upgrades.
- 22.5 To the extent permitted by law, You irrevocably release Us and our employees and agents for any loss or damage incurred by You relating to Your rental, possession of the Vehicle to the extent it is caused or increased by You.
- 22.6 Nothing in this Agreement is intended to limit Your rights under the *Competition and Consumer Act 2010* (Cth), the Australian Consumer Law and any other applicable law which cannot be excluded or under which liability cannot be limited, which shall prevail over the terms of this Agreement in the event (and to the extent) of any inconsistency.

23. Title to Vehicle

- 23.1 You acknowledge and agree that:
- (a) the Vehicle is the sole property of Us;
 - (b) this Agreement creates a bailment between Us and You in respect of the Vehicle and Your interest in the Vehicle is as a bailee only; and
 - (c) nothing contained in this Agreement shall be construed as granting or entitling You to any ownership right or any other inconsistent proprietary right in or to the Vehicle.
- 23.2 You must not to part with possession, sell, lease, dispose of, encumber or assign any right or interest in the Vehicle and not create any security interest or any lien over the Vehicle (including in respect of repairs) other than security interests granted in favour of Us.
- 23.3 We may take possession of the Vehicle without prior demand to You, and at Your expense, if there has been a Substantial Breach of this Agreement. In such circumstances, You irrevocably authorise Us, our employees and agents to enter any property where the Vehicle is situated.

24. Electronic Tracking and Dashboard Cameras

- 24.1 We may use Global Positioning System (GPS) tracking or other electronic tools (tracking device) to enable the geographical location of our Vehicles to be tracked or located for the following purposes:
- (a) to provide police or other authorities in the event that the Vehicle is stolen or is not returned at the end of the Rental Period;
 - (b) in the event of an accident or incident relating to the Vehicle during the Rental Period, e.g. to verify the location of the Vehicle at the time of the alleged accident;
 - (c) to identify the exact location of the Vehicle in the event of a recorded breakdown and to provide that location to breakdown responders (e.g. AANT);
 - (d) to locate the Vehicle in an emergency; and/or
 - (e) for any other purpose allowed under the *Privacy Act 1988* (Cth) or any other law.
- 24.2 We may use Dashboard cameras (dash cams) including dual or 'two channel' dash cams which record both the front and rear of the vehicle for the following purposes:
- (a) in the event of an accident or incident relating to the Vehicle during the Rental Period, e.g. to provide evidence to the police and/or our insurer regarding the circumstances of an accident;
 - (b) to provide evidence of where and when the Vehicle was driven in circumstances where the vehicle is alleged to have been taken outside the area, or used outside the time, prescribed under this Agreement; and/or
 - (c) for any other purpose allowed under the *Privacy Act 1988* (Cth) or any other law.
- 24.3 You expressly consent, and will procure that each Authorised User consents, to Our use of tracking devices and dash cams.

25. General

- 25.1 This Agreement including the schedules and annexures to it, contain the entire understanding of the parties with respect to its subject matter and supersedes all prior agreements and undertakings between the parties in connection with it.
- 25.2 This Agreement is governed by the laws of the Northern Territory of Australia. The parties submit to the exclusive jurisdiction of the courts of the Northern Territory of Australia in respect of any actions, claims, demands or suits arising out of or in respect of this Agreement.
- 25.3 Except as expressly provided in this Agreement:
- (a) nothing in this Agreement is intended to constitute a fiduciary relationship, employment relationship or an agency, partnership or trust; and

- (b) no party has authority to bind any other party.
- 25.4 No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted. Failure to exercise or delay in exercising a right or remedy under this Agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.
- 25.5 In this Agreement, unless the context otherwise requires:
- (a) a reference to the singular includes the plural and vice versa;
 - (b) other grammatical forms of defined words or expressions have corresponding meanings;
 - (c) headings and sub-headings are used for convenience only and do not affect interpretation;
 - (d) wherever “include”, “for example”, or any form of those words or similar expression is used, it means including without limitation;
 - (e) a reference to “person” includes a natural person, partnership, body corporate, association, government or local authority, agency and any body or entity whether incorporated or not;
 - (f) a reference to a party is to a party to this Agreement and a reference to a party to a document includes the party’s executors, administrators, successors and permitted assigns and substitutes (including by novation);
 - (g) if something is to be or may be done on a day that is not a business day then it must be done on the next business day;
 - (h) a reference to “month” means calendar month and the word “year” means 12 months;
 - (i) money amounts are stated in Australian currency;
 - (j) a reference to a time of day is a reference to the prevailing time in Darwin, Australia;
 - (k) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
 - (l) if a party must do something under Agreement on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day;
 - (m) any agreement, representation, warranty or indemnity in favour of two or more parties (whether those parties are included in the same defined term or not) is for the benefit of them jointly and severally;
 - (n) any agreement, representation, warranty or indemnity by two or more parties (whether those parties are included in the same defined term or not) binds them jointly and severally; and
 - (o) a provision of this Agreement must not be interpreted against a party just because that party prepared the provision.

26. Definitions

- 26.1 **Agreement** has the meaning given in clause 1.1.
- 26.2 **Assistance Animal** means 'Assistance Animal' as defined in the *Disability Discrimination Act 1992* (Cth).
- 26.3 **Australian Consumer Law** means the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- 26.4 **Authorised Driver** means any driver approved by Us, including as noted in Rental Agreement as an authorised driver.
- 26.5 **Bank Card** has the meaning given in clause 6.1.
- 26.6 **Damage Excess Waiver** means a Damage Excess Waiver purchased by You to reduce potential liability as described in clause 21.

- 26.7 **Joint Renter** means any person who is noted as a renter with any other person in Rental Agreement Part A. A Joint Renter is jointly and severally liable for all of the obligations under this Agreement;
- 26.8 **Loss or Damage** means any loss or damage to the Vehicle, which is not noted on the Vehicle Condition Report, including that caused by theft of the Vehicle or by adverse weather events, that requires repair or replacement including the loss of use of the Vehicle, legal expenses, assessment fees, towing and recovery costs, storage, service charges and any appraisal fees of the Vehicle.
- 26.9 **Overhead Damage** means any damage to the Vehicle or to any third-party property that is caused by:
- (a) contact between any part of the Vehicle that is at or above the level of the top of the front windscreen with objects overhanging or obstructing its path;
 - (b) the Vehicle hitting a signed height restricted structure such as but not limited to bridges, car parks and drive throughs; or
 - (c) objects being placed on the roof of the Vehicle;
- 26.10 **Rental Charges** means the fees, costs, amounts and charges payable under this Agreement, including as listed in Rental Agreement and Terms & Conditions.
- 26.11 **Rental Location** means 7/143 Coonawarra Road Winnellie NT 0820.
- 26.12 **Rental Period** means the period commencing on the date shown in the Rental Agreement and ending on the date You return the Vehicle to Us.
- 26.13 **Rental Agreement** means the document titled Rental Agreement.
- 26.14 **Repair Event** means each individual event where repairs are required in respect of the Vehicle.
- 26.15 **Return Location** means the location from which the Vehicle was hired and which is shown in Rental Agreement.
- 26.16 **Return Time** means the time and date by which the Vehicle must be returned, as shown in Rental Agreement, or such other time and date agreed with Us in writing.
- 26.1 **Security Bond** means the amount for which You will be liable to pay in the event of Loss or Damage to the Vehicle as set out in Rental Agreement , which may be reduced by purchase of Damage Excess Waivers subject to the terms and conditions of this Agreement.
- 26.2 **Single Vehicle Rollover** means any incident where there is Loss or Damage to the Vehicle that does not involve an impact between the Vehicle and another vehicle and is caused by the Vehicle rolling, tipping or overturning whilst being driven or used by You.
- 26.3 **Substantial Breach** means a breach of any of the following clauses: 4.1, 5, 8.2, 11.1, 11.2, 11.3, 11.4 or 23.2.
- 26.1 **Terms & Conditions** means this document.
- 26.2 **Vehicle** means the vehicle identified in Rental Agreement Part A including all its accessories, tools, tyres and equipment as well as any replacement vehicle.
- 26.3 **Vehicle Condition Report** means the pre-existing condition diagram contained in the Rental Agreement – Part A provided to You when You collect the Vehicle identifying any pre-existing damage that there may be to the Vehicle.
- 26.4 **You** means the party renting the Vehicle, as identified in Rental Agreement, and includes any Joint Renter.