

OWNER TERMS AND CONDITIONS

1 Governing Terms and Conditions

- 1.1 The rental service known as Drive My Car is provided by Carly Car Subscription Pty Ltd. These Owner Terms and Conditions (Terms and Conditions), the Website Terms & Conditions and the Privacy Policy constitute the contract with the Owner (Owner Contract) which creates binding and enforceable legal obligations between DriveMyCar and the Owner and together with the DriveMyCar Rental Agreement (Rental Agreement) and the Renter Contract creates binding and enforceable legal obligations with the Renter.
- 1.2 The obligations imposed by the Owner Contract will be strictly enforced for the mutual benefit of DriveMyCar, the Owner and Renters in creating a safe and trusted peer to peer community.
- 1.3 The failure by the Owner or DriveMyCar to enforce any provision of the Owner Contract is not to be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.
- 1.4 The Australian Consumer Law confers rights that are not affected by these Terms and Conditions and no clause in the Terms and Conditions excludes, restricts or modifies any implied terms, guarantees or rights under that law or any other similar Federal, State or Territory legislation.

2 Appointment of Agent

- 1.1 Subject to these Terms and Conditions, the Owner appoints DriveMyCar, and DriveMyCar accepts its appointment, as the Owner's exclusive third party agent to market and procure the sale of the DriveMyCar Rental Services.
- 1.2 The Owner Contract commences on the date of the commencement of the Rental Agreement and the Owner Contract and continues in force, unless terminated earlier in accordance with these Terms and Conditions.
- 1.3 DriveMyCar enters into a Rental Agreement with a Renter as agent of the Owner with respect to payments and receipts and Insurance Cover only and DriveMyCar is not liable to any person, and the Owner will indemnify DriveMyCar, for any costs or charges which DriveMyCar incurs in its performance of its obligations to the Owner under the Owner Contract or to the Renter.
- 1.4 This Owner Contract does not imply that DriveMyCar and the Owner intend constituting a partnership, joint venture or other form of association in which any party may be liable for the acts or omissions of another, and no party has authority to pledge the credit of another.
- 1.5 The Owner warrants that the Vehicle is the Owner's property or that the Owner has the legal right to offer the Vehicle for hire by Renters under a Rental Agreement and that it is free from all security interests registered under the Personal Property Securities Act 2009 other than those disclosed to DriveMyCar at the commencement of or during the currency of the Owner Contract.

- 1.6 The Owner Contract does not imply that DriveMyCar and the Owner intend constituting a partnership, joint venture or other form of association in which any party may be liable for the acts or omissions of another, and no party has authority to pledge the credit of another.
- 1.7 The Owner warrants that the Vehicle is the Owner's property or that the Owner has the legal right to offer the Vehicle for hire by Renters under a Rental Agreement and that it is free from all security interests registered under the Personal Property Securities Act 2009 other than those disclosed to DriveMyCar at the commencement of or during the currency of the Owner Contract.

2 Additional Drivers

- 2.1 As the Owner of the Vehicle, the Vehicle may be driven at any time without a Rental Agreement, subject to ensuring the Vehicle is available for Renters with valid Rental Agreements.
- 2.2 Any Renter with a valid Rental Agreement for the Vehicle may drive the Vehicle during the Rental Period.
- 2.3 A person other than the Renter named on the front page of the DriveMyCar Rental Agreement may drive the Vehicle but only if that person is approved in writing by DriveMyCar and that person is registered in the DriveMyCar database as an **Additional Driver**.

3 Owners Obligations

- 3.1 At the commencement of this Owner Contract the Owner **must** submit a profile of the Vehicle to DriveMyCar for its approval and acceptance, which is entirely at its discretion, and the profile **must** include high definition photographs showing all aspects of the interior and exterior of the Vehicle as well as vehicle details include make, model, odometer reading and special conditions.
- 3.2 The Owner **must** make the Vehicle available for the DriveMyCar Rental Services for a minimum of 3 months in each calendar year.
- 3.3 The Owner **must** give DriveMyCar no less than seven (7) days prior written notice pursuant to clause 17 of any proposed change:
- (a) in ownership of the Owner's Vehicle;
 - (b) other change in the Owner's details (including changes in the Owner's name, address, or contact phone or fax numbers or email address).
- 3.4 Throughout the currency of the Owner Contract the Owner **must** maintain and pay:
- (a) the Vehicle's registration and compulsory third party insurance which is appropriate for the use of the Vehicle as a rental vehicle; and
 - (b) for the Vehicle to be roadworthy and regularly serviced in accordance with the manufacturer's recommendations.
- 3.5 If the Owner fails to comply with the Owner's obligations under clause 4.4:
- (a) the Owner **must** pay, and the Owner indemnifies the Renter, for any fines or monetary penalties incurred by the Renter; and
 - (b) the Owner acknowledges that the Renter will not be obligated to pay the DriveMyCar Rental Fee for any days that the Vehicle is not available for rental.

- 3.6 The Owner authorises DriveMyCar to pay up to \$1,000 to secure the safety of the Vehicle or ensure its ongoing suitability for rental if DriveMyCar is unable to contact the Owner. The Owner agrees to immediately reimburse DriveMyCar for any expenses incurred on their behalf.
- 3.7 The Owner **must** pay for all Roadside Assistance costs, including the call out fee, towing fees and replacement parts, if:
- (a) due to fair wear and tear:
 - (i) the Vehicle's battery requires replacement (in which case the Owner will be charged the cost of the battery);
 - (ii) the Vehicle is immobilised for any reason and requires towing further than 30 kilometers from the breakdown site (in metro regions) or to a service centre that is not the closest service centre (in country areas); or

4 DriveMyCar Obligations

- 4.1 DriveMyCar will during the term of this Owner Contract:
- (a) promote the DriveMyCar Services on its website and through advertising;
 - (b) develop opportunities through its customer base; and
 - (c) administer, as agent of the Owner, the DriveMyCar Services.
- 4.2 DriveMyCar is not liable to the Owner for:
- (a) the condition of the Vehicle;
 - (b) any information or content provided by the Renter or the Owner;
 - (c) death or personal injury to any person;
 - (d) any damage to any property, or damage to or loss of any Vehicle;
 - (e) any damage or loss of any belongings left in any Vehicle;
 - (f) any fuel costs;
 - (g) any incidental expenses;
 - (h) any charges, tolls or fines mentioned in clause 10;
 - (i) any theft or breakdown of any Vehicle;
 - (j) any failure of the Renter to honour the Renter Terms and Conditions; or
 - (k) any failure of the Owner to honour these Terms and Conditions.
- 4.3 DriveMyCar is not liable to the Owner under or in connection with these Terms and Conditions whether for negligence, breach of contract, misrepresentation or otherwise, for:
- (a) loss or damage incurred by the Owner in connection with any claims made by the Renter or a third party;
 - (b) loss of profit, goodwill, business opportunity or anticipated saving suffered by the Owner; or

- (c) any indirect or consequential loss or damage suffered by the Owner.
- 4.4 DriveMyCar will use its best endeavours to verify the identity of each Renter, their suitability to be a DriveMyCar Renter and the ability of that Renter to pay rental charges associated with the Vehicle rental, but it makes no warranty to the Owner that the Renter has:
- (a) a satisfactory driving record;
 - (b) a current and valid licence to drive; or
 - (c) the financial ability to pay the rental charges.
- 4.5 If the owner requests DriveMyCar to perform any action or function required of the Owner by these Terms and Conditions, DriveMyCar may at its option and in the capacity as agent of the Owner do so provided that:
- (a) the Owner will pay DriveMyCar a processing fee of \$40 or such other fee as specified in writing for each request; and
 - (b) the Owner will pay DriveMyCar the full costs and expenses incurred on the Owner's behalf by DriveMyCar.

5 Handover Procedures

- 5.1 The Owner **must** confirm with the Renter that suitable arrangements have been made for the payment of tolls that may be incurred during the Rental Period. Subject to this confirmation the Owner should remove any electronic toll device or e-tag and **must** remove the Vehicle from the Owner's toll account and the Owner **must not** reinstate the Vehicle onto their toll account or reinstate any toll device or e-tag until after the Vehicle has been returned to the Owner by the Renter at the end of the Rental Period.
- 5.2 Prior to the handover of the Vehicle to the Renter at the Designated Collection Location, the Owner **must** ensure that:
- (a) the Vehicle's registration and compulsory third party insurance are current and will remain valid for the duration of the Rental Period;
 - (b) the Vehicle is in a roadworthy, serviceable and in a safe condition;
 - (c) the Vehicle's spare tyre is roadworthy and inflated;
 - (d) the jack and tyre replacement tools are in the Vehicle;
 - (e) all Vehicle fluids such as fuel, transmission, oil, coolant, brake and power steering fluid and wiper wash are full;
 - (f) the Vehicle is clean; and
 - (g) all personal belongings are removed from the Vehicle.
- 5.3 The Owner **must** deliver the Vehicle and its keys to the Designated Collection Location at the time and date agreed between the Owner and the Renter.
- 5.4 At the handover of the Vehicle to the Renter:
- (a) the Owner and Renter **must** complete and sign:
 - (i) the Handover Inspection Report; and
 - (ii) the Handover Checklist;

- (b) the Owner **must** take high definition digital photographs of the Vehicle, using flash if the handover is not in daylight, showing its internal and external condition including:
 - (i) the bonnet and boot;
 - (ii) the front and rear;
 - (iii) each of the wheels;
 - (iv) the sides; and
 - (v) the front and rear seats and the dashboard of the interior; and
 - (c) the Owner **must** inspect the Renter's Driver's Licence and ensure that the details match those contained in the DriveMyCar Rental Agreement and the photograph is an accurate likeness of the person accepting Handover of the Vehicle. If the details do not match, the Owner **MUST NOT** handover the Vehicle.
- 5.5 If at the time of hand over to the Renter the Owner fails to sign the Handover Inspection Report or the Handover Check List or take the photographs required by clause 6.4(b), the Owner forfeits the right to claim for any Damage allegedly caused by the Renter during the Rental Period.
- 5.6 If at the time of hand over by the Owner the Renter fails to sign the Handover Inspection Report or the Handover Check List the Renter forfeits the right to dispute any claim for Damage allegedly caused during the Rental Period.
- 5.7 Within 48 hours of the commencement of the Rental Period, the Owner **must** return to DriveMyCar the signed **Handover Inspection Report** and **the Handover Check List** and all digital photographs, otherwise the Owner forfeits the right to claim for any Damage allegedly caused by the Renter during the Rental Period.
- 5.8 Any personal belongings left in the Vehicle after handover to the Renter are left entirely at the Owner's risk and DriveMyCar has no liability for any loss or damage to them.
- 5.9 If the Owner fails to deliver the Vehicle to the Designated Collection Location at the agreed time the Owner **must** pay the following fees:
- (a) 2 – 24 hours late \$100; or
 - (b) more than 24 hours late \$100 per day,

and if the Renter chooses not to proceed with the Rental Agreement due to the late or non-availability of the Vehicle, DriveMyCar will terminate the DriveMyCar Rental Agreement and the Owner **must** pay the cancellation fees as per Clause 9. The Owner **must** also pay the Late Fees until the time of the cancellation.

6 Conditions of Vehicle Use by the Renter

- 6.1 Subject to clause 3, the Vehicle **must** only be driven by the Renter named on the front page of the DriveMyCar Rental Agreement or Additional Drivers.
- 6.2 The Vehicle is rented by the Owner to the Renter subject to the Renter's acceptance and compliance with the Renter Terms and Conditions.
- 7.3 The Renter must pay the DriveMyCar Road side Assistance access fee and, subject to clause 4.7, the Renter must pay for all Road side Assistance costs, including the call-out fee, towing fees and replacement parts, including if they:
- (a) loses or misplaces car keys or lock the car keys inside the Vehicle; or

- (b) causes the windscreen to be shattered or cracked in such a way as to require replacement (in which case the Renter will be charged the cost of the windscreen); or
- (c) leaves any lights or accessories switched on while the Vehicle engine is not running, resulting in a flat battery or other damage.

2 Financial obligations

- 2.7 The Renter **must** pay DriveMyCar the Total Rental Fee shown on the DriveMyCar Rental Agreement which includes:
- (a) the Owner Rate;
 - (b) DriveMyCar Fee;
 - (c) Damage Cover;
 - (d) Roadside Assistance Access Fee;
 - (e) GST; and
 - (f) Credit card fee.
- 2.8 DriveMyCar is not liable to the Owner for payment of the Owner Rate unless the Total Rental Fee has been paid by the Renter to DriveMyCar, and DriveMyCar acts solely in the capacity of agent for the Owner for the receipt of the Total Rental Fee and payment to the Owner of the Owner Rate.
- 2.9 If the Renter exceeds the excess kilometres specified in the DriveMyCar Rental Agreement, the Renter must pay DriveMyCar the excess rate per excess kilometre or other such amount as is shown in the DriveMyCar Rental Agreement. Excess kilometre charges, when collected, are paid to the Owner by DriveMyCar. The owner is required to calculate the excess kilometres and submit a claim to DriveMyCar within 48 hours of the return of the vehicle.
- 2.10 If the Owner is required to pay DriveMyCar any amount under these Terms and Conditions:
- (a) that amount **must** be paid to DriveMyCar on or before the due date;
 - (b) interest **must** be paid on any overdue amounts which accrues daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at DriveMyCar's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment; and
 - (c) the Owner indemnifies DriveMyCar from and against all costs and disbursements incurred by DriveMyCar in recovering the debt, including internal administration fees, collection agency costs, bank dishonour fees and reasonable legal costs.
- 2.11 DriveMyCar uses the market value of the vehicle, as determined by www.redbook.com.au to calculate the Owner Rate. The Owner Rate is updated according to the current market value of the vehicle on a quarterly basis. DriveMyCar may reduce the Owner Rate by up to 10% to achieve a Rental Fee that is more likely to secure bookings (for example during periods of low seasonal demand or competitor price discounting) without prior consultation with the Owner. The Owner Rate may also be increased (for example during periods of higher demand and higher competitor prices). The applicable Owner Rate is specified in the Rental Agreement which the owner may accept before each rental booking is confirmed. All rates are at DriveMyCar's discretion.

3 Cancellation

- 3.7 DriveMyCar may cancel a Rental Agreement without penalty to it or the Owner if the Vehicle is unavailable as a result of unforeseen circumstance, such as it having been involved in a prior accident.

- 3.8 Rental Agreements may only be cancelled by the Owner in accordance with this clause 9.
- 3.9 For the purposes of this clause, 'Commencement of Rental' occurs 24 hours prior to the pick-up time and date specified on the DriveMyCar Rental Agreement.
- 3.10 The Owner may cancel a DriveMyCar Rental Agreement after they have signed the DriveMyCar Rental Agreement subject to a cancellation fee pursuant to the following conditions:
- (a) If a DriveMyCar Rental Agreement is cancelled before Commencement of Rental, the Owner **must** pay \$200 to DriveMyCar.
 - (b) If a DriveMyCar Rental Agreement is cancelled after the Commencement of Rental the Owner **must** pay 30% of the remaining Owner Rate to DriveMyCar, which the Owner agrees is a genuine pre-estimate of the loss which DriveMyCar suffers as a consequence of the cancellation, and which amount the Owner agrees to pay to DriveMyCar immediately on cancellation;
 - (c) As an alternative to complying with clause 9.4(b), the Owner may provide the Renter and DriveMyCar with two months' written notice in accordance with clause 17. No cancellation fee is incurred if the Owner gives notice in accordance with this clause 9.4(c), although a \$150 administration fee applies and is payable to DriveMyCar.
- 3.11 If the Owner cancels a DriveMyCar Rental Agreement after the Commencement of Rental and the Renter is not in arrears, the Owner agrees that, in addition to the Owner being bound by the cancellation terms in clause 9.4, the Renter may keep the Vehicle until such time as DriveMyCar has found a replacement Vehicle.

4 Traffic Offences, Fines and Fees

- 4.7 The Renter **must** pay all fines, penalties, traffic infringements, tolls and costs incurred during the Rental Period or any period outside the Rental Period in relation to which the Renter remains in possession of, or is responsible for, the Vehicle.
- 4.8 The Renter **must** notify DriveMyCar and the Owner in writing in accordance with clause 17 as soon as the Renter becomes aware that a fine, penalty, traffic infringement or toll has been incurred.
- 4.9 Upon receipt of a fine, penalty, traffic infringement or toll notice the Owner **must** complete the required documentation to absolve themselves from liability (including a statutory declaration stating that they were not the driver) and return the documentation and statutory declaration to the responsible authority that issued the notice within 24 hours of receipt of the notice. It is the Owners responsibility to ensure that all notices related to the vehicle are sent to an address whereby the notices can be received and actioned promptly.
- 4.10 The Owner **must** notify any responsible authority, including registration and licensing authorities and any toll operator, of any change of particulars as required by clause 4.3.

5 Vehicle Condition and Return

- 5.7 The Renter **must** return the Vehicle to the Owner at the Designated Return Location on or before the time and date agreed between the Owner and the Renter.
- 5.8 The Renter remains responsible for the Vehicle until it is returned to the Owner in accordance with clause 11.1 and these Terms and Conditions continue to apply, regardless of whether it is returned during, at the end of, or after the expiry of the relevant Rental Period.
- 5.9 Subject to clause 9, if the Renter returns the Vehicle to the Owner before the end of the Rental Period the Renter **must** pay DriveMyCar the amounts in clause 8.1 for the duration of the Rental Period unless otherwise agreed in writing by the Owner and DriveMyCar.

- 5.10 At the time of hand over at the Designated Return Location:
- (a) the Owner and the Renter **must** inspect the interior and exterior of the Vehicle and the Owner **must** check that:
 - (i) the Vehicle (with its keys or keyless start device and all parts and accessories, including manuals, audio equipment, GPS unit, tools and wheel locking nuts) is returned to the Owner in the same condition as it was at the beginning of the Rental Period, save for any reasonable wear and tear;
 - (ii) the Vehicle has been cleaned prior to hand over to the Owner; and
 - (iii) the Vehicle is returned with at least the same amount of fuel as was present at the commencement of the Rental Period;
 - (b) the Owner and the Renter **must** sign the Handover Inspection Report; and
 - (c) the Owner **must**:
 - (i) take photographs of the Vehicle that are taken as close as practicable to those areas photographed at the handover to the Renter at the Commencement of the Rental Period and in the manner required by clause 6.4(b); and
 - (ii) complete and sign the Handover Inspection Report and forward the completed Vehicle Inspection Report and photographs to DriveMyCar within 48 hours of the return of the Vehicle.
- 5.11 If at the time of handover by the Renter the Owner fails to sign the Handover Inspection Report or take, or have taken, the photographs required by clauses 6.4(b) or 11.4(c)(i), the Owner forfeits the right to claim for any Damage allegedly caused by the Renter during the Rental Period.
- 5.12 If at the time of handover to the Owner the Renter fails to sign the Handover Inspection Report the Renter forfeits the right to dispute any claim for Damage allegedly caused during the Rental Period.
- 5.13 If there is a disagreement over fuel levels at the handover of the Vehicle, the Owner and Renter **must** use their best endeavours to resolve that dispute between themselves.
- 5.14 If the Vehicle is not returned at the time and date specified in the DriveMyCar Rental Agreement or as agreed between the Owner and the Renter the Vehicle may immediately be reported as stolen and may be de-registered.

6 Insurance Cover

- 6.7 During the term of this Owner Contract the Owner **must** have and maintain a statutory or compulsory third party insurance policy that provides cover for claims involving personal injury or death arising out of the use of the Vehicle as a Rental Vehicle according to the legislative requirements of the state in which the Vehicle is registered. This may require the Owner amending the registration or compulsory third party insurance to 'business' or 'commercial'. It is the Owners responsibility to check the requirements for their specific Vehicle with their State vehicle registration authorities.
- 6.8 The Owner may elect to accept, and DriveMyCar may grant, automatic damage cover as a nominated party on DriveMyCar's Motor Fleet Insurance Policy (**DriveMyCar Policy**) that provides the Owner with cover for Damage to the Vehicle, its theft and third party loss that occurs during the Rental Period:
- (a) whilst the Vehicle is being used by:
 - (i) a Renter with a valid Rental Agreement; or

- (ii) an Additional Driver; or
 - (b) when the Vehicle is legally parked and secured.
- 6.9 As an alternative to the DriveMyCar Policy, the Owner may have their own policy of comprehensive motor insurance with an insurer approved by DriveMyCar that provides the Owner, any Additional Driver and the Renter with:
- (a) cover for damage to the Vehicle or its theft up to the market value of the Vehicle; and
 - (b) indemnity for third party loss.
- 6.10 If the Owner elects to accept the cover offered under the DriveMyCar Policy under clause 12.2, that cover is subject to, and conditional upon, compliance with the terms and conditions of that policy and the Owner acknowledges that any insurance payout under the DriveMyCar Policy shall be on the basis of the market value of the Vehicle (less GST) as determined by DriveMyCar's Insurer.
- 6.11 Cover for the Renter and any Additional Driver under the DriveMyCar Policy is subject to:
- (a) a valid DriveMyCar Rental Agreement;
 - (b) payment (per incident) of the applicable Damage Liability Charge;
 - (c) compliance with the Renter Terms and Conditions;
 - (d) the Renter not being covered under their own policy of insurance; and
 - (e) the Renter providing all reasonable information and assistance that may be requested and, if necessary, authorising the DriveMyCar's Insurer (or its nominee) to bring, defend or settle legal proceedings, and the Renter agrees that DriveMyCar's Insurer has the sole conduct of any legal proceedings.
- 6.12 The Renter is responsible for paying for the Damage Liability Charge which will be charged to the Renter by DriveMyCar immediately upon notification of an accident. Insurance repair work will not commence until DriveMyCar has received payment of the Damage Liability Charge from the Renter and the insurance claim has been approved by the Insurer
- 6.13 If the Vehicle is damaged or stolen and provided that the Renter has not committed a Major Breach of the Renter Terms and Conditions, DriveMyCar may at its option:
- (a) cancel the DriveMyCar Rental Agreement and, subject to the availability of a similar vehicle at a similar rental fee, grant the Renter the option of entering into a new rental agreement for a term no less than the remaining term of the original DriveMyCar Rental Agreement; or
 - (b) cancel the DriveMyCar Rental Agreement if no similar vehicle is available at a similar rental fee.
- 6.14 If the DriveMyCar Rental Agreement is cancelled under clause 12.7 and notwithstanding clause 9, the Agreement is deemed to have been terminated by mutual consent and no action for damages or penalties will accrue to either DriveMyCar or the Owner as the result of that cancellation. The Owner shall not be entitled to any Payments after the Termination Date.
- 6.15 The Renter **must** report all claims in writing to DriveMyCar and the Owner within 24 hours of any damage to the Vehicle in accordance with clause 17.
- 6.16 The Owner authorises DriveMyCar as the Owner's agent to:
- (a) provide all necessary information required by DriveMyCar's Insurer and do all things necessary to ensure that the cover for the Vehicle under the DriveMyCar Policy is valid and enforceable;

- (b) create and complete all necessary forms required to give full effect to the cover for the Vehicle provided by DriveMyCar Policy; and
 - (c) manage the DriveMyCar Policy.
- 6.17 The Owner's cover for Damage and third party loss under DriveMyCar's Policy is conditional upon:
- (a) Damage and third party loss occurring during the Rental Period; and
 - (b) the Owner not being in Material Breach of the Owner Terms and Conditions.
- 6.18 If the Damage is less than \$5,000 at DriveMyCar's option, and subject to receiving the Damage Liability Charge from the Renter, DriveMyCar may elect to pay the reasonable cost of repairing the Vehicle without making a claim on the DriveMyCar Policy. If DriveMyCar makes that election, the Owner is bound by and **must** comply with the Owner's obligations under clause 13.4.
- 6.19 The Owner has no cover for claims involving personal injury or death if the legal liability is not covered under or indemnified by, or has been denied by, a statutory or compulsory insurance policy, scheme or fund because the Owner failed:
- (a) to register or insure the Vehicle;
 - (b) to comply with a term or condition or requirement of such a policy, fund or scheme; or
 - (c) to lodge a claim under that scheme within the time limits required for that lodgment.
- 6.20 The Owner **must** tell DriveMyCar of the interests of all parties, such as credit providers, who will be entitled to cover under the DriveMyCar Policy and in the event of the cash settlement of a claim for Damage DriveMyCar's Insurer **must** pay the credit provider in full or part in settlement of the claim.

7 Damage and Insurance claims

- 7.7 The Owner has cover for Damage to the Vehicle and third party loss arising during the Rental Period, subject to:
- (a) payment of the applicable Damage Liability Charge;
 - (b) there being no Material Breach by the Owner of these Terms and Conditions; and
 - (c) there being no breach by the Owner of DriveMyCar's Policy.
- 7.8 If there is Damage to the Vehicle, it is stolen or there is third party loss, as principal the Owner authorises DriveMyCar as the Owner's agent to:
- (a) lodge a claim with DriveMyCar's Insurer;
 - (b) manage the claim on the Owner's behalf; and
 - (c) approve and authorise repairs if required to do so.
- 7.9 If there is Damage to the Vehicle or it is stolen during the Rental Period, DriveMyCar will:
- (a) arrange for a quotation for the repairs to the Vehicle and where appropriate an assessment of it;
 - (b) arrange for the completion of the Damage Report Form;
 - (c) collect the Damage Liability Charge from the Renter, if the Vehicle was being used pursuant to a Rental Agreement when the Damage or theft occurred; and

- (d) pay the applicable excess to DriveMyCar's Insurer.
- 7.10 If there is Damage to the Vehicle, it is stolen or there is third party loss whilst the Vehicle is being used by any Renter or Additional Driver, the Owner **must** also:
- (a) make the Vehicle available for inspection or assessment;
 - (b) promptly forward any communication or documents the Owner receives concerning the accident or theft, including from any other party, the police or any Court;
 - (c) assist DriveMyCar in any negotiation, defence or settlement of the claim, including attending Court; and
 - (d) allow DriveMyCar's insurer (or its nominee) to bring, defend or settle legal proceedings and the Owner agrees that DriveMyCar's Insurer shall at all times have sole conduct of any legal proceedings.

8 Material Breach of these Terms and Conditions

- 8.7 If there is Damage to the Vehicle, it is stolen or there is third party loss and the Owner has committed a Material Breach of these Terms and Conditions, the Owner has no cover for the Damage, theft or third party loss, and the Owner **must** also pay all repossession charges, administrative and associated legal costs.
- 8.8 For the purposes of the Terms and Conditions, a Material Breach is a breach of any of clauses 4.4, 6.2(a), 6.2(b), or 12.1.
- 8.9 If the Damage or third party loss occurred whilst the Vehicle was being used by a Renter or Additional Driver and the breach or conduct occurred without the Owner's knowledge or consent, clause 14.1 does not apply.

9 Termination of the DriveMyCar Rental Agreement & Repossession

- 9.7 DriveMyCar may terminate the DriveMyCar Rental Agreement without penalty at any time if the Owner commits a Material Breach of these Terms and Conditions and DriveMyCar **must** notify the Owner and the Renter, in accordance with clause 17, immediately of the termination of the DriveMyCar Rental Agreement.
- 9.8 If, within 14 days of notification pursuant to clause 15.1, the Owner fails to remedy the Material Breach, DriveMyCar may terminate the Owner Contract by notice to the Owner pursuant to clause 17.
- 9.9 DriveMyCar may terminate the DriveMyCar Rental Agreement at any time if the Renter commits a Major Breach of the Renter Terms and Conditions and DriveMyCar **must** notify the Renter and Owner, in accordance with clause 17, immediately of the termination of the DriveMyCar Rental Agreement.
- 9.10 The Owner may terminate the DriveMyCar Rental Agreement at any time if the Renter commits a Major Breach of the Renter Terms and Conditions and the Owner **must** notify the Renter and DriveMyCar in accordance with clause 17, immediately of the termination of the DriveMyCar Rental Agreement.
- 9.11 Notwithstanding clause 15.4, the Owner is entitled to immediately repossess the Vehicle without notice to the Renter if:
- (a) the Renter has illegally parked the Vehicle for longer than 7 days;
 - (b) The Renter has committed a reckless breach of road or traffic legislation;

- (c) the Vehicle is apparently abandoned;
 - (d) payments are in arrears or are not received within 7 days of the due date; or
 - (e) the Vehicle has not been returned to the Owner at the time and date specified in the DriveMyCar Rental Agreement.
- 9.12 If DriveMyCar notifies the Owner that the Vehicle may be repossessed, the Owner may:
- (a) repossess the Vehicle; or
 - (b) request in writing that DriveMyCar as the Owner's agent repossess the Vehicle on the Owner's behalf.
- 9.13 If DriveMyCar receives a request in accordance with clause 15.6(b), DriveMyCar is not obliged in any way to agree to the Owner's request and DriveMyCar will not repossess the Vehicle unless DriveMyCar has agreed to do so by written notice to the Owner in accordance with clause 17.
- 9.14 If DriveMyCar agrees to repossess the Vehicle:
- (a) DriveMyCar does so as agent for the Owner and the Owner **must** pay the costs incurred by DriveMyCar in connection with the repossession;
 - (b) DriveMyCar will charge a processing fee of \$150.00 to the Owner, which the Owner **must** pay; and
 - (c) the Owner acknowledges that the Renter agrees to indemnify the Owner for any costs incurred by the Owner, including but not limited to the costs at (a) and (b) above in connection with repossessing the Vehicle.

10 Proper law and jurisdiction

- 10.7 The Owner Contract shall be governed by and construed in accordance with the laws of the State or Territory in which the Vehicle is registered.
- 10.8 The Owner and Renter agree to submit to the non-exclusive jurisdiction of the Courts of that State or Territory and Courts of Appeal there from for all purposes of or in connection with the Owner Contract.

11 Notices

- 11.7 Any notice to be given to the Owner, Renter or Drive My Car shall be deemed to be given upon it being posted to the address or sent by email to the email address of the Owner, Renter, or Drive My Car (as the case may be) set out in the DriveMyCar Rental Agreement.

12 Intellectual Property

- 12.7 Each party acknowledges and agrees that this Owner Contract does not transfer to either party any Intellectual Property Rights.
- 12.8 Each party acknowledges that it will have no rights and will not acquire any rights in respect of any trademarks, brands or trade names used by any other party or of the goodwill associated with them and that all such rights and goodwill are, and will remain, with the relevant owner.
- 12.9 Each party will, at the expense of the requesting party, take all such steps as a requesting party may reasonably require to assist that party in maintaining the validity and enforceability of its Intellectual Property Rights.

13 Indemnity

- 13.7 Each party indemnifies and agrees to keep indemnified the other party against any loss, claim, damage, liability, action or legal proceedings and all costs, charges and expenses (including legal fees and disbursements on a full indemnity basis) in connection with the enforcement of this Owner Contract or arising either directly or indirectly as a result of a breach by the indemnifying party of its obligations or of any warranties or representations given under this Owner Contract, including any action brought by third parties against the other party as a result, either directly or indirectly, of such breach.
- 13.8 Other than in respect of a breach of clause 18 or clause 20, neither party will be liable for any indirect loss or consequential loss, loss of profits, loss of revenue, loss of goodwill, exemplary damage or punitive damages arising in any way out of this Owner Contract however caused.

14 Confidential Information

- 14.7 Each party:
- (a) except as permitted under this clause 20, **must** keep confidential all Confidential Information of the other party;
 - (b) may use the Confidential Information of the other party solely for the purposes of this Owner Contract; and
 - (c) may disclose Confidential Information of the other party only:
 - (i) with the prior written approval of the other party;
 - (ii) to officers, employees and consultants or advisers of the party or its Related Bodies Corporate (including but not limited to the party's insurers, insurance brokers and bankers) who:
 - (A) are aware and agree that the Confidential Information **must** be kept confidential; and
 - (B) either have a need to know (and only to the extent that each has a need to know); or
 - (iii) as required to be disclosed by law or any order of any court, tribunal, authority or regulatory body.
- 14.8 Each party **must** notify the other party immediately once it becomes aware of any breach of confidentiality and **must** take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.

15 Dispute Resolution

- 15.7 A party **must** not commence any court proceedings (other than proceedings for urgent interlocutory relief) in respect of a Dispute until it has complied with this clause 21.
- 15.8 A party claiming that a Dispute has arisen **must** notify the other party in writing giving details of the Dispute.
- 15.9 Within the Initial Period each party **must**:
- (a) nominate in writing a representative of that party authorised to settle the Dispute on its behalf; and
 - (b) use its best endeavours to resolve the Dispute.

- 15.10 If the parties are unable to resolve the Dispute within the Initial Period they **must**, within an additional 10 Business Days either:
- (a) appoint a mediator and agree the terms upon which the mediator is to mediate the Dispute; or
 - (b) if the parties are unable to agree on a mediator or the terms of the mediation, refer the Dispute for mediation to a mediator nominated by the then current President of the Law Society of New South Wales upon the terms of the mediation agreement then approved by the Law Society of New South Wales,
- and the parties **must** thereafter mediate the Dispute.
- 15.11 Each party **must** bear its own costs of resolving the Dispute under this clause and, unless the parties otherwise agree, the parties **must** bear equally the costs of any mediator engaged for that purpose.

16 Privacy Policy

- 16.7 As specified in clause 1.1 of these Terms and Conditions the Privacy Policy forms part of the Owner Contract.
- 16.8 The Owner consents to DriveMyCar, collecting, using and disclosing the Owner's personal information in accordance with the Privacy Policy.

17 Definitions and interpretation

17.7 Definitions

In these Terms and Conditions:

At-Fault Accident means an accident in relation to which the Renter is held legally responsible for the damages or injury.

Claim means any claim, demand, action or proceeding.

Damage means:

- (a) any damage to the Vehicle including its parts, components and accessories;
- (b) towing and salvage fees and assessing fees; and
- (c) Loss of Use as a result of that damage or theft.

Damage Liability Charge means the amount shown in the DriveMyCar Rental Agreement payable by the Renter if there is damage to or theft of the Vehicle or third party loss.

Designated Collection Location means the location specified in the DriveMyCar Rental Agreement for collection of the Vehicle, or any other location as agreed between the Owner and the Renter.

Designated Return Location means the location specified in the DriveMyCar Rental Agreement for return of the Vehicle, or any other location as agreed between the Owner and the Renter.

DriveMyCar means Drive My Car Rentals Pty Ltd ACN 075 505 494.

DriveMyCar Insurer means an APRA approved licensed insurer.

DriveMyCar Policy means Our Motor Vehicle Fleet insurance policy with Our Insurer.

DriveMyCar Rental Agreement, means the document entitled 'DriveMyCar Rental Agreement for use of the Motor Vehicle'.

DriveMyCar Services means services relating to the rental of the vehicle, including managing DriveMyCar Rental Agreements, co-ordination of the drop off of the vehicle at the Destination at the commencement and conclusion of each Rental Period, collection of rental fees from the Renter, payment of the Owner Fee and arranging damage cover and insurance over the Vehicle.

Handover Checklist means the document entitled 'Handover Checklist' which forms part of the DriveMyCar Rental Agreement.

Handover Inspection Report means the document entitled 'Handover Inspection Report' which forms part of the DriveMyCar Rental Agreement.

Loss of Use means the loss suffered because the Vehicle identified in the DriveMyCar Rental Agreement is being repaired or replaced as a result of an accident or because it has been stolen and is being replaced. The amount is calculated on a daily basis at the rate shown in the DriveMyCar Rental Agreement.

Major Breach means a breach of any of clauses 2.1, 2.2, 3.2, 3.3, 3.4, 3.5, 10.2(a), 10.2(b), 10.2(c), 10.2(g), 10.2(h), 10.2(i), or 10.2(j) of the Renter Terms and Conditions that causes Damage, theft of the Vehicle or third party loss.

Material Breach means a breach of any of the clauses listed in clause 14.2 of these Terms and Conditions.

Owner means a Person who has agreed to hire out his, her or its Vehicle to a Renter in accordance with the Owner Contract.

Owner Rate means the amount payable to the Owner as identified on the DriveMyCar Rental Agreement.

Parties means DriveMyCar, the Owner and the Renter.

Person includes an individual, the estate of an individual, a body politic, a corporation, an association (incorporated or unincorporated) and a statutory or other authority.

Privacy Policy means the privacy policy of DriveMyCar published on the Website.

Rental Period means the period of time that the Owner and Renter have agreed for use of the Vehicle as identified on the front page of the DriveMyCar Rental Agreement.

Renter means an individual, firm or company which has agreed to hire a Vehicle from the Owner in accordance with the Renter Contract or any Additional Driver as defined in clause 3.3.

Renter Terms and Conditions means the terms and conditions which govern the operation of the Renter Contract for the hire of the Vehicle.

Terms & Conditions means these terms and conditions which govern the operation of the Owner Contract.

Total Rental Fee means the amount payable by the Renter to DriveMyCar as identified on the DriveMyCar Rental Agreement.

Vehicle means one or more cars, utilities, sport utility vehicles and other automotive vehicles made available for hire by an Owner to a Renter in accordance with the Renter Contract and includes the Vehicle's parts, components and accessories.

Website means the www.DriveMyCar.com.au website and the content, features and services offered through it.

17.8 Interpretation

In these Terms and Conditions, unless the context otherwise requires:

- (a) a reference to:
 - (i) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to these Terms and Conditions and references to these Terms and Conditions include any recital, schedule or annexure;
 - (ii) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
 - (iii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
 - (iv) money (including '\$', 'AUD' or 'dollars') is to Australian currency;
- (b) headings are for convenience only and do not form part of these Terms and Conditions or affect their interpretation;
- (c) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (d) where there are two or more persons in a party each are bound jointly and severally; and

a provision of these Terms and Conditions **must** not be construed to the disadvantage of a party merely because that party was responsible for the preparation of these Terms and Conditions or the inclusion of the provision in these Terms and Conditions.