

GENERAL TERMS AND CONDITIONS

AN AGREEMENT made between Harlem Enterprises Pty Ltd (ABN 17 064 730 187) trading as Ace Rent 'A' Car (hereinafter called "Ace Rent A Car") and the party applying as Hirer on the Application for Hire (hereinafter called "the Hirer") whereby it is mutually agreed between the parties as follows:

1. AGREEMENT TO HIRE

(a) Ace Rent A Car hires to the Hirer and the Hirer rents from Ace Rent A Car the Vehicle for the hire period at the agreed rental (as per the Rental Contract including the application or quotation forming part of the Rental Contract), the Salient Features and subject to these General Terms and Conditions. Collection or acceptance of the Vehicle shall be deemed to be acceptance of these Terms and Conditions and the Rental Contract.

(b) Hirer's Warranty. The Hirer represents and warrants that: **(i)** all particulars provided relating to the Driver and the Hirer are correct; and, **(ii)** the Hirer acknowledges that it is upon reliance of the truth and accuracy of the above representations and those on the Application and associated documents including an allegedly valid driver's license, that Ace Rent A Car enters into this Agreement.

(c) In the event that a Hirer wants to extend a hire period, Ace Rent A Car reserves the right to inspect the Vehicle and call the Hirer back to the Perth Metropolitan Area to sign a new Rental Contract.

2. HIRER'S PRIMARY OBLIGATIONS

(a) The Hirer's primary obligations are: **(i)** to pay for the agreed rental; **(ii)** to take proper care of the Vehicle; **(iii)** to comply with the limitations placed on the use of the Vehicle; and, **(iv)** to restore the Vehicle to Ace Rent A Car at the end of the hiring period in the state or condition as at commencement of the hire period.

(b) For the avoidance of doubt the Hirer is responsible for returning the Vehicle to Ace Rent A Car, together with any fittings and equipment, (collectively the "Vehicle") at the end of the hire period. The Vehicle must be returned in the condition it was in when first rented, subject only to fair wear and tear. Otherwise the Hirer will be on risk for all loss, cost, damage and other liability related to the hire of the Vehicle as if the Hirer was the owner of the Vehicle.

(c) The Hirer acknowledges that the Vehicle is the property of Ace Rent A Car and that it has been received by the Hirer in good order and running condition and the Hirer covenants with Ace Rent A Car that the Vehicle will at the end of the hire period be in a roadworthy and good condition free of any damage or defect of any kind whatsoever (except fair wear and tear and any damage or defect noted on the pre-hire Vehicle Condition Docket). The Hirer indemnifies Ace Rent A Car for all losses, expenses and costs in respect of any damage to the Vehicle whether caused by the Hirer or any other person.

(d) Ace Rent A Car reserves the right to refuse hire of the Vehicle to any prospective Hirer or applicant who fails to arrive on time with all necessary documentation and with a credit card in the Hirer's name with enough available funds for the required hire as well as the deposit. In such a case, the prospective Hirer will be subject to the No show and cancellation provisions in paragraph 3.

Note: Ace Rent A Car does provide some Risk Management Programs for the Hirer to minimise or reduce or its potential liability including various insurance and indemnity options subject to the approval of and acceptance by Ace Rent A Car's senior management.

3. FEES, RATES & CHARGES GENERALLY

The parties agree the following general provisions shall apply unless expressly amended by quotation or written agreement or unless expressly provided otherwise on the Ace Rent A Car website under Rates & Charges or in the Ace Rent A Car Booking Confirmation and Rental Contract.

(a) Rental Day. The rental day is calculated from booking time on day of commencement of the rental and ceases at the same time on the following day subject to the Vehicle return being able to be processed as per paragraph (b) below.

(b) Hire period. 24 hours is the minimum hire period for which the Hirer will be charged. The hire period shall be from the date and time marked as out on the application or pre-hire Vehicle Condition Docket until the Vehicle is returned to the site from where hired, provided however that the Ace Rent A Car return location is open in accordance with its trading hours. If the Vehicle is returned after hours the Hirer is on risk until the Vehicle return is processed by Ace Rent A Car notwithstanding that keys may be returned via an after hours key return facility.

(c) Standard charges. The Hirer shall pay the total rent for the hire period to Ace Rent A Car and for the purpose of this Agreement the total rent shall be the aggregate of: **(i)** Either the charge for the use

of the Vehicle (whether a time and kilometre rate charge, a flat rate charge, or any other rate of charge) calculated by Ace Rent A Car in accordance with the relevant writings and figures set forth on the Rental Contract or our website under Rates & Charges then current at the commencement of the hire period and being the rate accepted by the Hirer as the appropriate rate payable by the Hirer; **(ii)** charges for petrol to top up to the level at the commencement of the hire period and an administrative fee where Ace Rent A Car tops up fuel to pre hire levels in the event that the Hirer does not (as at 1 July 2021 this fee is \$25 inclusive of GST however the particular fee is subject to amendment to the fee as noted in the Ace Rent A Car Booking Confirmation and Rental Contract); **(iii)** excess kilometre charges where maximum kilometres are specified in the Rental Contract and in the absence of specification the first 100km per 24/hour period is included in the base hire charge; **(iv)** one way rental fees where Ace Rent A Car agrees the Vehicle does not have to be returned to the point of collection/pick up (however it must be returned to another Ace Rent A Car depot or location specified by Ace Rent A Car); **(v)** credit card fees; **(vi)** all stamp duties, GST and other taxes payable in respect of the hire period; **(vii)** personal accident insurance, repositioning, an Ace Rent A Car limitation of liability program or Risk Management Program **(viii)** quarantine or sanitisation costs including where the Vehicle is to or from a special location such as Barrow Island or areas affected by dieback; and, **(ix)** any other charges specified as part of the Rental Contract or the Rates & Charges section of the Ace Rent A Car website at the commencement of hire.

(d) No show or delay in pickup. Ace Rent A Car shall impose a No show fee of the greater of one day's rent, fees and charges under the Rental Contract in the event the Hirer does not pick up the Vehicle on the agreed first day of the hire period. For the purposes of this provision a 'No show' is when the Hirer: does not cancel prior to the scheduled commencement of the hire period; fails to pick up the Vehicle at the arranged time and date; or, fails to provide any of the documentation that's required to be provided at the commencement of hire; or, fails to provide a credit card in the main driver's name with enough available funds on it.

(e) Cancellation fee. **(i)** If the Hirer cancels 48 hours or more before the hire period is due to start, the Hirer's moneys paid will be refunded. **(ii)** If the Hirer cancels in the 48 hour period before a hire period of less than 3 days is due to start, the Hirer's moneys paid will not be refunded. **(iii)** If the Hirer cancels in the 48 hour period before a hire period of at least 3 days is due to start, the Hirer's moneys paid will be refunded minus the cost of 3 days hire.

(f) Late return charge. Ace Rent A Car shall impose a late return charges calculated at one fifth of the daily rental rate for each hour or part thereof to a maximum of 5 hours. After 4 complete hours the normal daily rate will apply in addition to an additional administration fee of \$50 (subject to the Booking Confirmation and Rental Contract). The Hirer acknowledges that Ace Rent A Car needs to manage its fleet and bookings for the benefit of all of its clients.

4. ADDITIONAL CHARGES AND DEPOSITS

(a) The parties agree that the following additional charges shall apply unless expressly amended by quotation or written agreement:

(i) A sum equal to the full replacement value of any tyres, tools, accessories, navigation systems or other equipment lost or stolen or damaged during the hire period; **(ii)** the agreed sum payable in respect of each and every claim or the agreed rate of excess cover specified on the Rental Contract or as set out in the Risk Management Program; **(iii)** any fines for traffic or parking offences rising from the use of the Vehicle imposed on any person or company during the hire period and in the event that Ace Rent A Car pays a fine on the Hirer's behalf, the Hirer will be charged an administrative fee of \$50 or such other amount as disclosed in Ace Rent A Car's Booking Confirmation and Rental Contract from time to time; **(iv)** any expenses incurred by Ace Rent A Car in repossessing the Vehicle including where the Vehicle has been impounded by the Police or other Relevant Authority; **(v)** a deposit of up to two times the standard deposit for first time Hirers or where Ace Rent A Car is concerned with the Hirer's driving record (eg a history of accidents or infringements), ability to drive (eg experience on Australian roads including country driving), or some other matter suggests to Ace Rent A Car that the Vehicle and/or payment for Hire is at an increased risk.

(b) Ace Rent A Car reserves the right to charge an Administrative Fee, of up to 20% of the amount of loss, cost and damage in addition to any amount claimed for any loss, cost or damage as reasonable compensation for Ace Rent A Car having to deal with any situation of loss, cost or damage occasioned by the Hirer's failure to comply with its obligations under this Agreement.

(c) Where Ace Rent A Car has a road side assistance service (such

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as the RAC) the Hirer must pay the costs of call out, repairs, products and services generally where such call out is due to the Hirer's fault including where the Vehicle runs out of fuel, flat battery, lost keys or keys locked in the Vehicle.

5. PAYMENT AND ACCOUNTS

(a) For non-account Hirers, all hire charges hereunder are at the request of Ace Rent A Car payable in advance for the estimated duration of hire unless specifically agreed to the contrary in writing by Ace Rent A Car. Should the period of hire be extended, the Hirer will immediately pay in advance the hire charge for the additional period or such deposit as required by Ace Rent A Car. Any moneys due from the Hirer to Ace Rent A Car will be paid immediately on the hire being terminated. Ace Rent A Car reserves the right to call the Hirer and Vehicle back to the Perth Metropolitan Area for inspection and to sign a new Rental Contract.

(b) For account Hirers, Ace Rent A Car may issue invoices on the earlier of completion of the hire period or weekly, fortnightly, monthly or on a COD basis. Payment terms for account customers will be no later than 7 days from the date of the invoice except for COD or where the Hirer is in default in which case immediate payment is required.

(c) *GST exclusive.* The consideration for any supply has been calculated initially without regard to and is exclusive of GST. If GST is payable in respect of any supply, Ace Rent A Car may increase the price for the supply ("original amount") by an amount sufficient so that the total amount payable in respect of the supply, after discounting for the amount of any GST payable in respect of the supply, is equal to the original amount.

(d) Ace Rent A Car may bank any part payments of invoices, without prejudice to its rights to recover the outstanding balance of any invoice, irrespective of the Hirer's intention when making that payment.

(e) *Interest.* It is agreed that Ace Rent A Car shall charge interest on all moneys owing at the rate of 20% per annum (on the basis of a 365 day year) calculated on a daily basis and compounded monthly. Interest shall become payable without need for notice.

6. CREDIT AND ORDERS

(a) Ace Rent A Car at its discretion may refuse any order and may refuse to proceed with any order should the Hirer's credit worthiness or trade references be unsatisfactory or of concern to Ace Rent A Car.

(b) The Hirer hereby acknowledges that it has no right to credit or a credit facility from Ace Rent A Car and the granting of any credit or credit facility by Ace Rent A Car in respect to the supply of the Vehicle to the Hirer will be at Ace Rent A Car's absolute discretion and should credit or a credit facility be granted to the Hirer it will be on the terms and conditions set out in this document.

(c) The Hirer acknowledges that Ace Rent A Car may on their own or through their associates perform credit check(s) on the Hirer and the Nominated Drivers to ascertain credit worthiness of the Hirer and the Hirer and each Nominated Driver authorises (and after the event ratifies) Ace Rent A Car to make inquiries with accountants, financiers, creditors, Relevant Authorities and other people or parties to assess the credit worthiness of the Hirer and their driving history. The Hirer and each Nominated Driver waives in favour of Ace Rent A Car the right to privacy of its credit history, credit worthiness and driving history.

(d) All costs, charges, fees and duties payable in respect of such application for credit or credit facility or the provision of security or securities will be the sole expense of the Hirer.

(e) Ace Rent A Car may vary the terms and conditions of any credit facility from time to time, or revoke that credit facility at any time, at Ace Rent A Car's absolute discretion. Any such variation or revocation will take effect from the date such variation or revocation is communicated to the Hirer, in accordance with these terms and conditions.

(f) In respect of commercial hires, prior to commencement of hire or the extension of a hire period, Ace Rent A Car may require personal guarantees from directors or shareholders (including a holding company) of the Hirer, a bank guarantee, cash security deposit or other form of security.

7. GENERAL RESTRICTIONS AND REQUIREMENTS OF HIRER AND DRIVER

(a) The Hirer acknowledges and agrees that: (i) Hire rates are based on each nominated driver being aged between 22 and 70 years old whom hold a valid full driver's license (provisional and probationary driver's such as P Platers or drivers on an "extraordinary driver's license" granted by a Court are not permitted to drive Ace Rent A Car vehicles) for a period of at least 12 months prior to the

commencement of hire. If the proposed Hirer or a nominated driver is outside of these parameters, the proposed Hirer must notify Ace Rent A Car at the time of booking and in any event prior to commencement of the hire period. (ii) Unless this is a negotiated commercial hire contract, the maximum number of Nominated Drivers per hire contract is 4. Ace Rent A Car may require each such person to sign the Rental Contract.

(b) The parties agree and the Hirer undertakes that no person shall drive the Vehicle unless s/he: (i) holds a current motor drivers licence which is valid in the State or Territory for the class of vehicle hired however provisional and probationary driver's such as P Platers or drivers on an "extraordinary driver's license" granted by a Court; (ii) has never been refused motor vehicle insurance; (iii) has never been convicted of any offence relating to driving a motor vehicle under the influence of alcohol or drugs or driving with a blood alcohol content equal to or greater than the percentage constituting an offence at law; and, (iv) is at least 21 years old as at their last birthday and has held a full drivers licence of the required class for a minimum period of 12 months prior to the commencement of hire and has held a valid driver's license for at least 4 years during their lifetime.

(c) The Vehicle must not be driven by any person other than the Hirer or an approved Nominated Driver, or where the Hirer is a company operating as a business, the Hirer's properly authorised employee, agent, contractor or other representative.

Note: The illegal use or theft by a 3rd party without the connivance, consent or negligence of the Hirer shall not of themselves constitute a breach of this undertaking however leaving the Vehicle unattended with the motor running or leaving the keys unattended (eg in the ignition or on a tyre) do constitute gross negligence for the purpose of this clause.

8. HIRER'S UNDERTAKINGS AND RESTRICTIONS ON CARE FOR AND USE OF THE VEHICLE

The Hirer acknowledges and undertakes as follows:

(a) *General.* The Hirer must take good care of the Vehicle at all times. This includes maintaining sufficient water in the radiator, oil in the engine sump, gearbox or transmission, transfer case and differentials and keeping the tyres correctly inflated. The Vehicle must not be abused or misused by the Hirer in any way whatsoever or be driven or used when it is in a damaged or unsafe condition.

(b) The Vehicle must not be used by the Hirer: (i) for any illegal purpose; or, (ii) in any race, speed test or contest or in preparation therefore; or, (iii) to propel or tow any vehicle or trailer or to convey any load in excess of that for which the Vehicle was constructed; or (iv) for the conveyance of passengers for hire, fare or reward.

(c) *Alcohol and drugs.* The Vehicle must not be driven by the Hirer under the influence of intoxicating alcohol or drugs. The Vehicle must not be driven by the Hirer when having a blood alcohol content equal to or greater than the percentage constituting an offence at law. The Hirer will not refuse or fail to undergo a breath, blood or similar test or analysis in compliance with the directions of a member of the police force or other Relevant Authority. Such refusal shall give Ace Rent A Car the right to terminate this hire agreement.

(d) *No smoking!* Please be aware that all Vehicles have a non-smoking policy. Fines will apply if this policy is not strictly adhered to and recovering seats may be required and charged to you. As at 1 July 2021 the minimum smoking compensation fine is \$100 plus any additional detailing or repair costs where there is a smell of smoke or smoking related damage (fees and costs subject to specification in the Booking Confirmation and Rental Contract from time to time).

(e) The Vehicle must not be used or driven for the transportation of property unless the Hirer at the cost of the Hirer first obtains all necessary approvals, permits or licences from all Relevant Authorities.

(f) The Vehicle must not be used by the Hirer to haul any goods or convey any load unless specified and agreed prior to commencement of the hire period or to convey any load which was incorrectly or improperly loaded or secured.

(g) The Vehicle must not without the prior written consent of Ace Rent A Car be used by the Hirer for the carriage of Dangerous Substances or for transportation of animals including personal pets. If the Hirer requires the Vehicle to transport a licensed carer pet such as a Seeing Eye dog the Hirer must advise Ace Rent A Car prior to the commencement of hire and Ace Rent A Car may require a special bond.

(h) The Hirer shall carry out or cause to be carried out daily routine checking procedures and shall ensure: (i) that the supplies of lubricants are maintained at the correct levels. (ii) that the tyres are in good condition. (iii) that all controls and brakes are functioning properly. (iv) that the Vehicle is kept in a clean and tidy condition at

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all times. (v) that the Vehicle is not defaced in any way.

(i) *No re-hiring/subleasing.* The Vehicle or any part thereof, shall not be re-hired, on-hired, sub-let or loaned to any 3rd party.

9. LIABILITY FOR ACCIDENTS, LOSS, DAMAGE AND/OR OTHER MATTERS

The Hirer agrees that:

(a) The Hirer shall be liable to Ace Rent A Car for the full amount of any damage to the Vehicle (howsoever caused) which occurs on or after any breach by the Hirer of any term condition warranty or undertaking contained in this Agreement and for the negligence of the Hirer and its servants and agents.

(b) The Hirer acknowledges and agrees that the amount of any damage to the Vehicle shall be assessed by an authorised representative of Ace Rent A Car (or a Qualified Person engaged for the purpose by Ace Rent A Car) who shall certify the amount of such assessment and in either case the assessment of damage so made shall be final and binding on Ace Rent A Car and on the Hirer in the absence of manifest error. Unless otherwise agreed, Replacement Value shall apply.

(c) The Hirer is liable for the full amount for all damage caused by incidents involving animals or livestock.

(d) The Hirer is liable for the full amount for all damage caused in a Single Vehicle Accident.

(e) The Hirer is liable for the full amount for all damage caused by the operation of the Vehicle: Off Road; on mine sites; and/or unsealed surfaces.

(f) For the avoidance of doubt, unless expressly and separately agreed, Ace Rent A Car and any insurance or self-insurance placed by Ace Rent A Car does not cover damage or injury to persons or property (including the Vehicle) in the following circumstances: (i) on mine sites including access roads to mine sites; (ii) on private roads; (iii) on beaches, boat ramps, rivers, lakes or other places where the motor vehicle enters the water or could be immersed or partially or totally submerged in water; (iv) occasioned by cyclones, storms, floods, tides, fires, inclement weather or other Force Majeure.

(g) Where tyres are replaced by the Hirer the replacement tyre or tyres must be the same make and model as the tyres at the commencement of the hire.

(h) Ace Rent A Car takes no responsibility and gives not warranty for the selection, fitting and use of any child seats, capsules or other fittings for the safe transport of children or babies. Ace Rent A Car's position is that commercial vehicles such as utes, buses and vans should not be used for the transport of children or babies. The Hirer does this entirely at its risk even in circumstances where Ace Rent A Car makes such a child restraint available for hire.

10. SPECIFIC PROVISIONS IN RESPECT OF OFF ROAD USE

If the Hirer uses the Vehicle Off Road then the Hirer shall be liable for and indemnifies Ace Rent A Car against:

(a) The cost of rectifying all tyre and steering damage.

(b) The cost of rectification of all under carriage damage.

(c) The cost of repairing all body damage unless such damage can be attributed to a specific accident on a public road.

(d) The cost of returning the Vehicle to Ace Rent A Car should the Vehicle for any cause break down or be damaged or need towing.

(e) The cost of rectification of damage to over carriage, suspension, chassis, differential, gear box, transfer case, axles, wheels or other damage caused by Off Road use, misuse or abuse of the Vehicle, and

(f) The cost of replacing spare wheels, equipment, tools and jack.

11. ACCIDENTS, INCIDENTS AND DAMAGE

(a) The Hirer will report (by telephone and later confirmed in writing) to Ace Rent A Car or Ace Rent A Car's solicitors (for the purpose of considering any litigation against Ace Rent A Car) within 24 hours after any breakdown of the Vehicle or the occurrence of any accident or incident which might give rise to any claim by any person against Ace Rent A Car or the Hirer for injuries or damage to persons or property arising out of the hire, use or possession of the Vehicle by the Hirer and provide colour photographs or video where possible.

(b) The Hirer will complete and furnish to Ace Rent A Car within a reasonable time such statements, information and assistance as Ace Rent A Car may require in respect of any event or accident involving damage to the Vehicle or to the property of any person or injury to any person. Under no circumstances will the Hirer or any Nominated Driver admit Fault unless directed by Ace Rent A Car.

(c) The Hirer will not, without the prior written consent of Ace Rent A Car, make or give any offer, promise of payment, settlement waiver, release indemnity or admission of liability in respect of any accident, damage to the Vehicle or damage to the property of any 3rd person

or injury to any person.

(d) The Hirer will enable Ace Rent A Car to inspect the Vehicle for the purpose of ascertaining the condition and state of repair thereof.

12. LIMITATIONS OF LIABILITY AND RISK MANAGEMENT

Ace Rent A Car and the Hirer may agree that if the Hirer agrees to pay the Excess as per the agreed Risk Management Program, the Hirer can cap its potential liability to Ace Rent A Car in the event that an accident, loss or damage is not caused by or materially contributed to by the negligent act or omission of the Hirer.

(a) *Damage or accident attributable to Hirer.* If the Vehicle suffers damage whilst on hire – whether in an accident with another vehicle or otherwise - and it was attributable to the Fault of the Hirer then Ace Rent A Car will charge the Hirer the greater of the agreed Excess (the minimum from the Risk Management Program is currently \$2,850 plus GST per event for cars and \$3500 plus GST per event for SUV's, Vans, Utes and mini busses) and Ace Rent A Car's loss, cost and damage plus an administrative fee which will be no more than 20% of the amount of loss, cost and damage. This minimum is expressly subject to alternate specification in the Booking Confirmation and Rental Contract from time to time or a specific direction from Ace Rent A Car at the point of hire where Ace Rent A Car assesses a higher than standard – which may be due any risk factors including without limitation driving history, insurance costs, Hirer's itinerary and environmental factors.

(b) Even if Ace Rent A Car claims on Ace Rent A Car's third party property damage policy the Hirer will have to pay the sum calculated in accordance with paragraph (a) above. Ace Rent A Car will not claim the Excess sum twice for the one accident but where the accident is the Fault of the Hirer then the Hirer may be liable to Ace Rent A Car for a sum greater than the Excess. For example, the Excess payable to Ace Rent A Car's third party damage insurer may be capable of being absorbed in the amount in paragraph (a) above. If not, then the sum claimed by Ace Rent A Car from the Hirer will be greater than the applicable Excess.

(c) *Damage or accident not attributable to Hirer.* If the accident or damage was not attributable to the fault of the Hirer then the Hirer's liability to Ace Rent A Car for damage to the Vehicle shall be capped at the Excess but without prejudice to Ace Rent A Car's right to pursue the party causing the damage. Further, Ace Rent A Car may charge the Hirer for costs of repossessing the Vehicle (including towing) and losses such as for lost profits. If Ace Rent A Car makes a claim on its third party damage insurance policy then the excess payable to Ace Rent A Car's Third Party Damage Insurer may be capable of being absorbed in the \$2,850 plus GST per event for cars and \$3500 plus GST per event for SUV's, Vans, Utes and mini busses (or such other sum determined with reference to paragraph (a) above). If not then the sum claimed by Ace Rent A Car from the Hirer may be greater than the Excess.

(d) *No cover for Single Vehicle Accidents.* If the Hirer is involved in a single vehicle accident i.e., no other vehicle involved (such as a roll over or impact with a tree or other stationary thing) then Ace Rent A Car will charge the Hirer the greater of the Excess and Ace Rent A Car's loss, cost and damage plus and Administrative fee which will be no more than 20% of the amount of loss, cost and damage.

(e) *No cover for collision with animals.* If the Hirer has a collision with an animal (including livestock) then regardless of fault, Ace Rent A Car will charge the Hirer the greater of the Excess and Ace Rent A Car's loss, cost and damage plus and Administrative Fee which will be no more than 20% of the amount of loss, cost and damage.

(f) *No cover for accidents or damage incurred on mine sites.* If the Vehicle suffers damage on a mine site or construction site including damage attributable to salt or salt water, then regardless of fault, Ace Rent A Car may charge the Hirer the greater of the applicable damage Excess and Ace Rent A Car's loss, cost and damage plus and Administrative Fee which will be no more than 20% of the amount of loss, cost and damage.

(g) *Discretion to charge a lesser sum.* In any of the above scenarios Ace Rent A Car may elect simply to charge the amount of loss, cost and damage cost of repairs plus the Administrative Fee of not more than 20% or the cost of new vehicle plus an Administrative Fee if the Vehicle is written off.

(h) For the avoidance of doubt: (i) Ace Rent A Car may claim reimbursement from the Hirer for the costs of replacing lost or damaged equipment, costs of repossessing the Vehicle (including fines and towage charges) and the lost profits for the period when the Vehicle is out of commission (ii) The Excess is only a cap in respect of the Hirer's potential liability for damage to Ace Rent A Car's Vehicle and not to any vehicle or property owned by a 3rd party.

(i) Where the Hirer is a company or a business operating on or about mine sites or processing facilities, the Hirer must insure the Vehicle

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under their own insurance and provide a Certificate of Currency in the joint names of Harlem Enterprises Pty Ltd T/a Ace Rent A Car and/or the financier of the Vehicle or such policy must note the interest of Ace Rent A Car and the financier in the policy schedule. Ace Rent A Car must be provided with a copy of the insurances forthwith upon request.

13. NO WARRANTIES BY ACE RENT A CAR

Except for any warranties implied in this Agreement by the Trade Practises Law (or consumer protection law), all conditions and warranties (statutory or otherwise) whether of fitness for purpose, quality or description are negated and excluded.

(a) Ace Rent A Car will supply a copy of the manufacturer's specifications for a Vehicle upon request.

(b) The Hirer will not at any time make any claims against Ace Rent A Car for any loss or damage for delays through breakdown mechanical difficulty or accident or by reason of the Vehicle being found to be unsuitable for the purposes of the Hirer or with respect to any loss or damage to any property stolen from the vehicle or damaged or otherwise during the hire period or left in the Vehicle after the return of the Vehicle to Ace Rent A Car. And the Hirer hereby agrees to indemnify Ace Rent A Car in respect of all claims, damages and actions brought against Ace Rent A Car in respect thereof.

(c) Ace Rent A Car is not responsible for and makes no representation or warranty in regard to representations or statements made by a 3rd party booking service or travel agent.

14. PROTECTION OF ACE RENT A CAR'S RIGHTS:

(a) **Termination for breach.** If the Hirer is found to be in breach of any term condition or warranty herein or has made any misrepresentation to Ace Rent A Car; or if Ace Rent A Car considers on reasonable grounds that the conduct of the Hirer is likely to adversely affect Ace Rent A Car's interests or the condition of the Vehicle then Ace Rent A Car may determine this Agreement and without notice repossess the Vehicle whereupon all moneys previously paid by the Hirer shall be forfeited to Ace Rent A Car but without prejudice to any claims or rights of Ace Rent A Car in respect of any arrears of rent or any moneys due to Ace Rent A Car.

(b) The Hirer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Vehicle and shall protect the same against distress, execution or seizure, and shall indemnify Ace Rent A Car against all losses, damages, costs, charges, and expenses arising directly or indirectly by any failure to observe and perform this condition, except in the event of requisition by a Relevant Authority.

(c) **Events of default.** If the Hirer makes default in punctual payment of sums due to Ace Rent A Car pursuant to the contract for supply of the Vehicle or services or other charges, or shall fail to observe and perform the provisions of this Agreement, or if the Hirer shall suffer any distress or execution to be levied against the Hirer, or make any arrangement with its creditors or being a company shall go into liquidation, administration, receivership or shall do or shall cause to be done or permit to suffer any act or thing whereby Ace Rent A Car's rights in the Vehicle may be prejudiced or put into jeopardy.

(d) **Indemnity.** The Hirer hereby agrees to pay Ace Rent A Car on demand and indemnify and keep indemnified Ace Rent A Car from and against any and all legal and other costs properly incurred by Ace Rent A Car in seeking to remedy any breach by the Hirer of this Agreement, which costs Ace Rent A Car may incur in connection with or as a consequence of remedying any such breach or default by the Hirer of this Agreement. The intended purpose and effect of this provision is to provide Ace Rent A Car with complete compensation for the costs associated with engaging a professional legal or other advisers for the purpose of recovering damages or debts associated with the Hirer's breach of this Agreement.

(e) **Repossession.** If the Hirer fails to return the Vehicle as and when required under this Agreement (other than due to theft or an accident), and if you fail to comply with a demand by Ace Rent A Car to return the Vehicle, then paragraphs (i) and (ii) shall apply. (i) Ace Rent A Car may take steps to recover and repossess the Vehicle where and when it is situated. The Hirer authorises Ace Rent A Car to enter any premises under the Hirer's occupancy or control in order to secure or repossess the Vehicle. The Hirer indemnifies Ace Rent A Car for any loss, damage or claim arising from the entry to premises or securing or repossessing of the Vehicle. Where required the Hirer must give such undertakings and do all such matters as may be required to obtain permission from a landlord, owner or other site controller to allow Ace Rent A Car to secure or repossess the Vehicle. (ii) The Hirer agrees that Ace Rent A Car may deem the Vehicle stolen and report it stolen to Relevant Authorities. Ace Rent

A Car may the deregister the Vehicle.

15. PPSA

(a) Ace Rent A Car (as grantee) may protect its interest in the Vehicle and as security for the obligations, representations, warranties and/or indemnities owing to it by the Hirer (as grantor) and the Guarantor (as grantor) by registering one or more charges pursuant to the PPSA against the Vehicle or against any deposit, promise to pay, card authority and all present and after acquired property of the Hirer and the Guarantor or other security granted pursuant to this Agreement. The Hirer and Guarantor and each of them hereby charge in favour of Ace Rent A Car all their present and after acquired property.

(b) To the extent permitted by law, the following sections in the PPSA will not apply to this Agreement and the Hirer as grantor hereby waives all rights arising under those sections: s92 (secured party must not damage goods when removing accession); s93 (reimbursement for damage); s94 (refusal of permission to remove accession); s95 (notice of removal of accession - to the extent that it requires the grantee to give a notice to the grantor); s97 (Court order about removal of accession); s118 (enforcing security interests in accordance with land law decisions); s121 (enforcement of liquid assets); s130 (notice of disposal to the extent that it requires the grantee to give a notice to the grantor); s132(3)(d) and (4); s134(1); s135 (notice of retention); s137; s140; s142 (redemption of collateral)

(c) The grantor hereby agrees, at the grantor's cost to do everything which the grantee reasonably requires to be done, for the purpose of ensuring that in relation to each and every Security Interest granted by it to the grantee: (i) any such Security Interest is enforceable, perfected and effective and continues to be so; (ii) the grantee may apply for any registration or give any notification which the grantee may deem necessary to ensure that the Security Interest has priority as a first priority interest, or with such other priority as the grantee agrees in writing; (iii) the grantee is able to exercise all of its rights in relation to the Security Interest; (iv) promptly sign any further documents and provide any further information (such information to be complete, accurate and up to date in all respects) that the grantee may reasonably require to register a Financing Statement, Financing Change Statement other document required under the PPSA; (v) indemnify and upon demand reimburse the grantee for all expenses incurred in registering a Financing Statement, Financing Change Statement or any other document required under the PPSA or for the purposes of releasing any charged property; (vi) give the grantee at least 14 days prior written notice of any proposed change in the grantor's name or any other change in the grantor's details; (vii) immediately advise the grantee of any material change in its business practices of selling goods that would result in a change in the nature of proceeds derived from such sales.

(d) The grantor hereby waives its right to receive a Verification Statement in accordance with s157 PPSA.

(e) The grantor will not disclose any information of the kind described in s275(1) PPSA without the prior written consent of the grantee.

16. GUARANTEE AND INDEMNITY

(a) General: (i) In consideration of Ace Rent A Car at the request of the Guarantor agreeing to supply and continuing the supply of the Vehicle to the Hirer and in further consideration any credit or credit facility given by Ace Rent A Car to the Hirer, the Guarantor hereby guarantees to Ace Rent A Car the due and punctual payment by the Hirer of all moneys which are now or may from time to time hereafter be owing or remain unpaid by the Hirer to Ace Rent A Car and the due performance of the Hirer's obligations to Ace Rent A Car howsoever arising now and in the future and undertakes to pay all such moneys and fulfil all such obligations on demand; and, (ii) indemnify and keep indemnified Ace Rent A Car against all loss or damage that Ace Rent A Car may suffer by reason that the whole or any part of the Hirer's liability to Ace Rent A Car is not recoverable from the Guarantor by reason of any failure of liability of the Hirer for any reason. This indemnity will not be limited or affected in any way whatsoever by the fact that such moneys or obligations cannot be or could never be recovered from or enforced against the Hirer for any reason. Each Guarantor's liability under this clause is unlimited. (iii) The Guarantor hereby acknowledges that prior to the execution of this Agreement that the Guarantor has consulted independent legal advisers who have explained the nature, effect, extent and implications of this Guarantee and the obligations which this Guarantee places upon the Guarantor or has had the opportunity to take advice and declined to do so.

(b) The Guarantor acknowledges that the Guarantor's obligations under this Guarantee will be principal obligations co-extensive with those of the Hirer to Ace Rent A Car.

(c) This Guarantee is a continuing guarantee to Ace Rent A Car for all debts of the Hirer to Ace Rent A Car in respect of the Vehicle supplied or

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to be supplied to the Hirer and will not be prejudiced, abrogated or affected by: **(i)** Ace Rent A Car providing any indulgence or concession to the Hirer or any Guarantor or by any variation in the terms upon which Ace Rent A Car supplies the Vehicle or makes credit available to the Hirer or by Ace Rent A Car waiving any breach or default by the Hirer; **(ii)** any payment made to Ace Rent A Car which is thereafter avoided whether by statute as a preference or voidable transaction or for any other reason whatsoever and any said payment will not operate to discharge the Guarantor's liability under this Guarantee and in that event Ace Rent A Car, the Hirer and the Guarantor are to be restored to the rights which each respectively would have had if the payment had not been made; **(iii)** the Guarantor not having notice of any neglect or omission by the Hirer to pay for the Vehicle ordered in accordance with the trade terms specified by Ace Rent A Car; **(iv)** any absolute or partial release of or compromise with the Hirer or any one or more Guarantor by Ace Rent A Car; **(v)** any composition, compromise, release, discharge, arrangement, abandonment, waiver, variation, relinquishment or renewal of any security or right by Ace Rent A Car; **(vi)** any variation of the provisions of this Agreement by the Hirer; **(vii)** any assignment of this Agreement of the contract of supply; **(viii)** any release, failure to sue, any agreement not to sue, any exchange, variation, renewal or modification made or any other dealing, act or omission (whether constituting a waiver, election, estoppel or otherwise) by Ace Rent A Car with respect to any judgment, order for payment of moneys, specialty, instrument (negotiable or otherwise) or other security whatsoever held, recovered, or enforceable by Ace Rent A Car or any obligation or liability whatsoever in respect of all or any of the moneys reserved by these General Terms & Conditions for the obligations contained herein **(ix)** any other act, omission or default on the part of Ace Rent A Car or the happening of any other matter or thing whereby the liability of the Guarantor would, but for this provision, have been discharged, reduced or otherwise affected or any other present or future legal disability of the Hirer or the Guarantor AND each of the above circumstances is to be construed separately and independently and so as not to limit the meaning or any other listed circumstances and is not to be limited by the provisions of any other clause in these General Terms & Conditions.

(d) Ace Rent A Car will not be required or obliged to give any notice to the Guarantor of a default by the Hirer or any other Guarantor; or, give any notice to or obtain any consent from the Guarantor before the amount of moneys payable by the Hirer to Ace Rent A Car or the obligations and liabilities of the Hirer are increased or varied for any reason.

(e) The Guarantor will not in competition with Ace Rent A Car enforce any security held by the Guarantor against any of the assets of the Hirer or claim payment of any moneys owing to the Guarantor by any other Guarantor or the Hirer in any manner which would have the effect of reducing the amount recoverable by Ace Rent A Car of the money hereby guaranteed. The Guarantor will not prove or claim in any bankruptcy, liquidation, composition arrangement or assignment or in respect of the appointment of any liquidator or trustee until Ace Rent A Car has received 100 cents in the dollar in respect of the moneys owing by the Hirer to Ace Rent A Car and the Guarantor is to hold on trust for Ace Rent A Car that proof and claim and any dividend received thereon.

(f) This Guarantee is valid and effective and binds any person who executes it despite the fact that another proposed or contemplated party has not executed it.

(g) This Guarantee will not be affected by the death, disability, mental incapacity, bankruptcy, liquidation, insolvency, deed of arrangement, assignment or composition for the benefit of creditors, capital reconstruction or the appointment of a receiver and/or manager (whether by the court or under the powers contained in any instrument) or administrator of the Hirer or of any Guarantor or the property of any such party or notice of any of the preceding circumstances.

(h) In the event that this Agreement is transferred or assigned to any person or persons, the benefit of the Guarantee extends to the transferee or assignee and the benefit of the Guarantee continues to inure concurrently for the benefit of Ace Rent A Car despite any such transfer or assignment to the extent permissible by law.

17. INFORMATION AND PRIVACY

(a) Privacy. When the Hirer makes an application to Hire a Vehicle, it consents to Ace Rent A Car using and disclosing the Hirer's personal information consistent with Ace Rent A Car's Privacy Policy.

(b) Secrecy. Ace Rent A Car will use reasonable endeavours to maintain the confidentiality of the Hirer's confidential information but accepts no responsibility for loss of or damage to or maintenance of secrecy with respect to any plans, drawings, samples or other

materials supplied by the Hirer to Ace Rent A Car or left in a Vehicle. **(c) Information.** The Hirer and Nominated Drivers (and authorised drivers) acknowledge that Ace Rent A Car may and may be required to use and disclose personal, private or confidential information in the course of the hire relationship and the entering into and giving effect to this Agreement. Information uses include: assessing and managing credit; damage monitoring; accident/incident and claims reporting and management; debt recovery; fraud prevention, insurance claims and credit management; insurance matters; and, to deal with infringements, tolls and Relevant Authorities generally. The Hirer indemnifies Ace Rent A Car for any claim or action brought by a Nominated Driver against Ace Rent A Car for properly using information pursuant to this clause 17.

18. MINING, CIVIL, ENGINEERING AND CONSTRUCTION:

The following paragraph 18 is specific to commercial use of the Vehicle particularly in regard to mining, civil, engineering, construction or related uses.

(a) Servicing and Inspection. **(i)** The Hirer shall at all reasonable times allow Ace Rent A Car, its employees, agents and/or its insurers to have access to Vehicle to inspect, test, adjust, repair or replace the same. **(ii)** Such work will be carried out at reasonable times to suit the Hirer's business operations. **(iii)** Unless otherwise agreed or specified, all servicing to the Vehicle including electrical, hoses, leaks, lubricants, filters, fire suppression/extinguishers, attachments etc., are to the Hirer's account and as per manufacturer's recommendations and/or good industry practice. Copies of all service reports, maintenance records and electrical/mechanical checks must be forwarded to Ace Rent A Car after each service interval.

(b) Breakdown, repairs and adjustment. **(i)** Any breakdown or the unsatisfactory working of any part of the Vehicle must be notified immediately to Ace Rent A Car and any claim for breakdown time will only be considered from the time and date of notification. **(ii)** Full allowance will be made to the Hirer for any stoppage due to breakdown of the Vehicle caused by the development of either an inherent fault not ascertainable by reasonable examination and for all stoppages for normal running repairs in accordance with the terms of this Agreement. **(iii)** Where repairs have been authorised and are not the responsibility of the Hirer, Ace Rent A Car may pay or reimburse the Hirer for the reasonable costs. **(iv)** The Hirer shall be responsible for all expenses, loss and damage incurred by Ace Rent A Car arising from any breakdown due to the Hirer's negligence, misdirection or misuse of the Vehicle, whether by the Hirer or his servants or agents, and for the payment of the hire during such breakdown periods. **(v)** The Hirer accepts responsibility for all call-out service provided during hire pending the period e.g. to change filters, meshes or repair damage to the Vehicle.

(c) Other stoppages loss of use due to breakdown. **(i)** No claims will be admitted (other than those allowed for under 'breakdown' as herein provided) for stoppages through causes outside Ace Rent A Car's control, including bad weather or local conditions such as soft sand, lockout or any other site specific issues and the Hirer shall be completely responsible for the cost of recovering the Vehicle from difficult conditions, including loss of hire. **(ii)** Each item of the Vehicles specified in or hire pursuant to this Agreement is hired as a separate unit and the breakdown or stoppage of one or more units (whether the property of Ace Rent A Car or otherwise) through any cause whatsoever shall not entitle the Hirer to compensation or allowance for the loss of working time by any other unit or units of the Vehicle working in conjunction therewith, or associated labour costs.

(d) Return for repairs. If during the hire period Ace Rent A Car decides that urgent repairs to the Vehicle are necessary, it may arrange for such repairs to be carried out on site or at any other location of its nomination. If similar Vehicle is unavailable, Ace Rent A Car shall be entitled to suspend or terminate the contract in respect of that item forthwith by giving written notice to the Hirer.

19. MISCELLANEOUS

(a) Distance. Where relevant, the total distance driven shall be measured by the odometer installed in the Vehicle.

(b) GPS and remote tracking. Ace Rent A Car Vehicles may be fitted with a GPS tracker which can be used to open and close the Vehicle and track and record the geographical location, distance and speed of the Vehicle during the rental period. It can also be used to immobilise the vehicle in the event of non-payment or if Ace Rent A Car has grounds to suspect the Vehicle is being used for a Prohibited Use. The Hirer agrees that Ace Rent A Car can track and record the Hirer's location and use of the Vehicle using the GPS and the Hirer accepts that personal information may be recorded.

(c) Compliance with Laws. The Hirer covenants with Ace Rent A

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Car that the Hirer will comply with all State and Federal statutes relating to the operation of motor vehicles and without limiting the generality thereof will pay all taxes, tolls, levies, charges, duties, fines and penalties imposed on the Vehicle arising out of the use of the Vehicle by the Hirer during the hire period and will apply for and obtain all necessary permits and licenses, lodge returns, execute such documents and do all such acts and things and pay all such monies as are required in connection with the operation of a motor vehicle in connection with the transportation of property and will indemnify Ace Rent A Car in respect of any liability incurred by Ace Rent A Car in respect thereof.

(d) No agency. The Hirer is not and shall not be deemed to be the agent of Ace Rent A Car for any purpose whatsoever and for all purposes shall be in no better position than a person driving the Vehicle with the consent of Ace Rent A Car.

(e) Read down and severance. If any term, provision, agreement, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other competent authority to be invalid, void or unenforceable, the remainder of the terms, provisions, agreements, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a reasonably acceptable manner in order that the transactions contemplated hereby may be consummated as originally contemplated to the fullest extent possible.

(f) Warranty of Authority. Any person who signs this Agreement on behalf of the Hirer warrants that for all purposes of the agreement he/she is the duly authorised agent of the Hirer. If such person is not the duly authorised agent of the Hirer then in consideration of Ace Rent A Car accepting the order or permitting that person to collect the Vehicle he/she shall be deemed to be the Hirer and agrees to be bound by this Agreement.

(g) Hirer as representative. Where a Hirer purchases any goods or service for the benefit of a 3rd party, whether as agent or in any other capacity, until that 3rd party has paid for the goods or service in full, the Hirer will remain liable as the primary debtor for those goods or services.

(h) Subsequent hirings. The parties agree that these terms and conditions will apply to all subsequent hirings of the Vehicle by the Hirer from Ace Rent A Car unless specifically varied in writing by the execution of a later agreement.

(i) Assignment. Ace Rent A Car may charge, assign, pledge, mortgage, transfer or otherwise dispose of, in whole or in part, its rights under this Agreement without further consent of the Hirer.

(j) Counterparts. This Agreement may consist of a number of copies (including facsimile or electronic copies), each signed by one or more parties to the Agreement. If there are a number of signed copies they are treated as making up the one document and the date on which the last counterpart is executed will be the date of the agreement. This Agreement is binding on the parties on the exchange of counterparts. A copy of a counterpart sent by facsimile or by electronic mail: must be treated as an original counterpart; is sufficient evidence of the execution of the original; and, may be produced in evidence for all purposes in place of the original. Further terms and conditions may be incorporated by reference to the Ace Rent A Car website or publications.

(k) Waivers and Consents. No consent or waiver expressed or implied by Ace Rent A Car to, or of, any breach of any of this Agreement by the Hirer will be construed as a consent or waiver to, or of, any other breach of the same or any other covenant, condition or duty. No consent or waiver by Ace Rent A Car will be valid unless provided in writing and signed by an authorized officer of Ace Rent A Car.

(l) Further assurances. The Hirer must do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by Ace Rent A Car for the purpose of enforcing rights and remedies or obtaining relief or indemnity from third parties who have caused or contributed to loss, damage or cost of Ace Rent A Car, including but not limited to commencing or joining in or rendering reasonable assistance in respect of, an action against any 3rd party who may have caused or contributed to such loss cost or damage.

(m) Covenants. Where a corporate Hirer has no more than 4 directors the director signatory is deemed to personally covenant to uphold and cause to be performed the Hirer's Covenants.

(n) Health and safety. It is the Hirer's sole responsibility and risk to ensure that all health and safety law and regulations in relation to the

Vehicle and its use are observed at all times after delivery of the Vehicle and that appropriate steps are taken in accordance with such law in relation to the storage, handling and use of the Vehicle. The Hirer indemnifies and will continue to indemnify Ace Rent A Car against all loss or damage arising out of any breach by the Hirer of health and safety law.

(o) Description. All photographs, weights, illustrations, dimensions and other particular given in or accompanying a quotation or order or contained in descriptive literature are approximate only and deviations there from shall not give rise to any claim against Ace Rent A Car.

(p) Jurisdiction. This Agreement is governed by the law of Western Australia and the parties submit to the jurisdiction of the Courts of this State.

(q) Discharge. Ace Rent A Car is not required to discharge a security until it has been fully paid however it shall use all reasonable endeavours to co-operate with the Hirer's requirements in respect of any security registrations.

(r) Quotations. All quotations issued by Ace Rent A Car to a Hirer are subject to these terms and conditions. Ace Rent A Car reserves the right to vary or rescind quotations at any time prior to the Hirer placing an order the subject of such quotations unless the parties agree to lock the quotation in for a period of time.

(s) Ethical conduct. The parties agree to act in accordance with any anti-corruption or similar law.

(t) Special Orders. In the event the Hirer requests a Vehicle or part thereof to be specifically purchased, a specialised purchase contract may be written up. Particular conditions set out in the contract shall prevail to the extent of any inconsistency with these general conditions. Similarly if the Hirer requires Ace Rent A Car hire a Vehicle or equipment from another supplier to fulfil an order, then such cross hire or sourcing arrangement shall be subject to a specialised equipment order contract which shall prevail over these general conditions to the extent of any inconsistency. A key term of that agreement is that the Hirer give Ace Rent A Car a full indemnity for loss, cost or damage arising out of the cross hire arrangement to extent that such loss, cost or damage are caused or contributed to by the Hirer. Nothing in the foregoing requires Ace Rent A Car to acceded to any such request by the Hirer.

20. DEFINITIONS

Access Device means any device for accessing, locking or activating the motor vehicle - most commonly meaning the key.

Accident means any collision (other than a Single Vehicle Accident) between the Vehicle and any other object, including another vehicle, or any other incident or occurrence that results in the Vehicle being damaged, lost or destroyed.

Act of God or Force Majeure means an accident of a nature beyond Ace Rent A Car's reasonable control including without limitation civil unrest, war, flood, lightning, industrial/labour dispute, epidemic or inclement weather.

Approved Unsealed Road means an Unsealed Road for which Ace Rent A Car has expressly agreed in writing shall be an Approved Unsealed Road. It is a condition of approval that the road is a gravel road which is well formed, graded, well maintained and in good condition at the time of driving the Vehicle upon the road and that any requisite permits have been obtained from the Relevant Authority.

Business Day means a day in which trading banks are open in Western Australia provided that day is not a Saturday, Sunday or Public Holiday in Western Australia or the state or territory of receipt of a formal notice under this Agreement.

Collision means two things coming into contact.

Complete Vehicle Rental Contract and this **Agreement** mean these General Terms and Conditions, the application information, Booking Confirmation, Rental Contract (containing variables), application for hire with the pre-hire Vehicle Condition Docket and (if applicable) any agreed Risk Management Program and any accepted quotation and where these General Conditions are incorporated into a Long Term Hire Agreement with Option to Buy those terms are incorporated into this definition.

Dangerous Substances means inflammable liquids, gases or solids having a true flash point of less than 23 degrees Celsius (73 F) or of any goods materials or substances of an explosive or corrosive nature.

Excess and where the car is insured, **Insurance Excess** means the amount the Hirer is responsible for under the Risk Management Program or other provision of this Agreement in the event the Vehicle is damaged, regardless of fault. Note that if the Hirer is in breach of its duties as Hirer or bailee or negligent the insurer or Ace Rent A Car in the case of self-insurance may call upon the Hirer to indemnify or reimburse Ace Rent A Car (or insurer as the case may be) to the

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extent the loss or damage was caused by the act or omission of the Hirer.

Excess Amounts means the agreed maximum limits to the Hirer's liability to Ace Rent A Car in the event of the happening of an accident or event which is not caused or contributed to by the act or omission of the Hirer which will be contained in or provided with the agreed Risk Management Program. Refer to the Rental Contract (in particular under "Excess") and the Booking Confirmation.

Excess Reduction means an optional charge which may be offered by Ace Rent A Car to reduce or waive the Excess in the event of an insurance or other claim against damage or theft.

Excluded Areas means areas where the Vehicle is not to be driven including Off Road, the Gibb River Road, Cape Leveque (and its Unsealed Road access), Tanami Track, Windjana Gorge, Canning Stock Route, Gun Barrel Highway, Birdsville Track. The Hirer is advised to refer to the allowed area of use map on Ace Rent A Car's website, for example in Western Australia being Exmouth in North (Costal Road only), Kalgoorlie in East and Esperance in South of WA. In the case of special hires or lease to buy arrangements Ace Rent A Car may stipulate additional Excluded Areas without in any way being seen to permit Off Road use.

Fault means caused by or materially contributed to by: (i) the Hirer's misconduct, negligent act or omission; and/or (ii) the Hirer's contacting with a vehicle or other thing, object or an animal (whether or not that thing was also moving); (iii) breach of a provision this Agreement. For the avoidance of doubt, even if the Hirer is not negligent but breaches a restriction on the use and operation of the Vehicle then the Hirer shall be deemed at Fault.

Gazetted Road means a sealed or Unsealed Road regularly maintained by a local, state or government body or council and upon which the general public have unlimited rights of access.

GST refers to Goods and Services Tax which is a value added tax such as VAT.

Hirer means and includes the following (unless an express contrary intention is agreed in writing): (i) any person who signs this Agreement whether on his own behalf or on behalf of any other person, company, corporation or government department; (ii) the person, company, corporation or government department shown on the rental agreement/application for hire or the addressee of that rental agreement; and (iii) any person, company, corporation or government department which is or becomes vicariously liable at law to 3rd parties for loss or damage caused by the driver of the Vehicle where it is established that the hiring was made by the driver as agent for and on behalf of such person, company, corporation or government department.

Hirer's Covenants means the obligations of the Hirer pursuant to these conditions including to secure property, pay monies and/or indemnify Ace Rent A Car.

Illegal Purpose means a purpose contrary to law or in breach of a statute or regulation and this includes a contravention of any of the provisions of any road traffic act of the State or Territory in which the Vehicle is being used.

Offence includes an infringement.

Off Road means any road which is not a Sealed Road or a Gazetted Road and includes: driving surfaces which are not traditionally paved or sealed/bituminised such as beaches, sand, gravel, riverbeds, mud, snow, rocks and other natural terrain; and, roads for which an access permit is required.

PPSA is a reference to the Personal Property Securities Act (Cth) and it's relevant subsidiary legislation and **PPSR** is a reference to the register established and maintained pursuant to that Act.

Prohibited Person means any person who is not an authorised driver or a person who is under the illegal or adverse influence of drugs or alcohol.

Relevant Authority means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, registry, department, commission, authority, tribunal, agency, or entity and where a quasi-government or private organisation is responsible for managing an area, issuing permits, tickets or fines (e.g. to use private roads or a mine site) then that organisation and **Relevant Authorities** has a corresponding meaning.

Replacement Value and replacement cost in relation to the Vehicle which has suffered a Total Loss or is otherwise stolen, missing and/or not returned when due under this contract means the cost of a comparable item of the Vehicle delivered to Ace Rent A Car's location including all costs of delivery, installation, tuning and calibration and/or other adjustment.

Sealed Road means a road sealed with a hard material such as tar, bitumen or concrete and the **Unsealed Road** shall be defined accordingly.

Single Vehicle Accident or **SVA** means without limitation any

accident in which the Vehicle is involved, which accident does not involve the Vehicle colliding with another vehicle. SVA includes but is not limited to, rollovers, collisions with animals, and reversing into or contacting with stationary objects.

Total Loss means any loss or damage that is not repairable or that would cost more to repair than the market value of the Vehicle or discrete accessory coming with the Vehicle such as communications equipment.

Vehicle means the motor vehicle the subject of the hire (usually described on the application form), or any alternate motor vehicle that Ace Rent A Car supplies to the Hirer, whether as a replacement or otherwise, and includes all Vehicle parts, tyres, tools (supplied with the Vehicle), accessories, and all other equipment in or fitted to the Vehicle.

Young Driver Surcharge means a surcharge payable by or in respect of drivers under 26 years of age.

23. INTERPRETATION

In the construction and application of this Agreement:

(a) Each rate noted or referred to in this Agreement is the rate as determined from time to time unless otherwise agreed by written quotation or price agreement.

(b) An act includes an omission to act.

(c) Words in the singular number will include the plural number and the masculine gender will include the feminine and neuter genders and vice versa where the circumstances so require.

(d) A reference to a party named herein means and includes its or their and each of its or their heirs executors administrators and permitted successors or assigns.

(e) The Hirer takes the Vehicle as bailee.

(f) In the case of a joint hiring or where two or more persons constitute a party hereto the covenants and agreements on the part of those persons herein contained will bind them and any two or more of them jointly and each of them severally.

(g) *PPSA definitions apply*. Unless the context other requires words and phrases defined in the PPSA shall have the same meaning when used in this Agreement.

(h) Reference to any statute or act includes all statutes and acts (State or Federal) for the time being enacted amending or modifying any statutes and all regulations, by-laws, requisitions or orders made under any statute from time to time by any statutory public or other Relevant Authority and any statutes or acts enacted in substitution for any such statute or act.

(i) Where a party grants a charge, that charge shall be deemed to include a power of sale.

(j) Reference to "Perth" in the context of servicing means the Perth Metropolitan Area and Ace Rent A Car's workshop and head offices