

Bay Islands Car Share Pty Ltd

Membership Agreement

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Last Modified: 23 March 2019 **Changes to This Membership Agreement**

We may change this Membership Agreement from time to time. When We do, We will post the change(s) on Our website. We suggest that You visit Our website regularly to keep up to date with any changes.

1 PARTIES

This Agreement is between:

Bay Islands Car Share Pty Ltd (**We, Us**);

and

The Member (**You, Your**).

2 APPLYING FOR MEMBERSHIP

- 2.1 Applications for Membership are by the online application form on Our Website. By submitting a Membership Application, You agree that:
- (a) You meet the Eligibility Requirements set out at clause 3.1 at the time of submitting the Membership Application;
 - (b) We will provide credit to You to make use of the Service and as such, You consent to Us communicating with a credit reporting agency in the manner described in Schedule 1; and
 - (c) You consent to Us requesting and receiving information about Your Driving History from the relevant state or territory government authority and You will undertake reasonable steps to assist with this process.
- 2.2 You **must** inform Us immediately if You cease to meet any of the Eligibility Requirements at any time while You continue to be Member.
- 2.3 We may accept or reject any Membership Application at Our discretion.
- 2.4 You warrant that all information provided by You to Us in Your Membership Application or at any time while You are a Member, including without limitation Your name, address, email address, and information about Your Driving History or credit record, is true and correct and is all the information We could reasonably require in relation to Your Membership and use of the Service. You **must** ensure that all information provided by You to Us is current and up to date. You **must** indemnify Us for any claim or loss that We suffer as a result of any information that You provide to Us in relation to this Agreement, Your Membership or Your use of the Service being incorrect or misleading in any way, whether intentionally or otherwise.
- 2.5 This clause 2.5 and clause 3 (below) apply from the time you submit a membership application to Us. The rest of this Agreement starts when We give You notice that We accept Your Membership Application.

3 MEMBER ELIGIBILITY CRITERIA

- 3.1 To become a Member and to continue to be a Member, You must:
- (a) be at least 21 years old;
 - (b) have no licence suspensions or disqualifications, or been convicted of a substantial breach of road safety legislation, including any alcohol or drug related offences in the past 5 years;
 - (c) not have been convicted of, or have any pending convictions for, a serious criminal offence in any jurisdiction;
 - (d) hold a full unrestricted licence and have been licensed to drive for at least 12 months;
 - (e) have an appropriate credit or debit card with sufficient credit to cover Your Damage Cover Liability for the duration of the time that You are borrowing a Vehicle through the Service;
 - (f) have a satisfactory credit history as reported on Your credit record.

- (g) not be bankrupt or have been bankrupt at any point within the last 2 years;
 - (h) not suffer from any medical conditions that may inhibit Your ability to operate the Vehicle or which may make it unsafe for You to operate the Vehicle; and
 - (i) pay the Joining Fee and Membership Fees (if any).
- 3.2 You **must** immediately disclose to Us any traffic or driving convictions or licence suspensions or cancellations that might affect Your eligibility for Membership. Failure to do so may mean that You have no cover for any Damage, theft of the Vehicle or Third Party Loss. If You do not wish to disclose any such incident, You **must** cancel Your Membership immediately.

4 INCORPORATION OF POLICIES; CHANGES TO THIS AGREEMENT

- 4.1 These terms, together with the Policies and the Fee Schedule, form Your agreement with Us. You **must** be familiar with the Policies and comply with them at all times while using the Service. You may obtain the latest version of the Policies and Fee Schedule from Us or from Our Website.
- 4.2 If there is any inconsistency between these terms and the Policies, the Fee Schedule or Your Membership Application, these terms will prevail to the extent of any inconsistency.
- 4.3 We may change the terms of this Agreement. We will notify You in advance of any changes becoming effective by notice posted on Our Website and at the latest at the time when We issue Your next invoice.
- 4.4 You acknowledge and agree that We may:
- (a) at any time, reduce the Membership Fee without notice to You; or
 - (b) at any time with at least (1) month notice to You, increase the Membership Fee, to take effect on the next full calendar month for which you will be required to pay Membership Fees.
- 4.5 Where We increase the Membership Fee in accordance with clause 4.4 above, You will be entitled to terminate this Agreement by providing written notice of such election to Us no later than five (5) business days and no earlier than thirty (30) business days before the change is due to take effect.

5 USE OF THE SERVICE

- 5.1 You are solely responsible for Your actions and inactions in relation to Your Use of the Service and/or Vehicles.
- 5.2 Subject to clause 5.3 You use any Vehicle made available through Us at Your own risk and unless We are negligent We have no responsibility or liability to You, any passenger or third party (howsoever arising) resulting from any Accident, breakdown or any other failure of a Vehicle.
- 5.3 The Service, including the Booking System, comes with consumer guarantees under the Australian Consumer Law in the Consumer and Competition Act 2010 (Cth) and corresponding federal, state and territory legislation that cannot be excluded by this Agreement. Nothing in this Agreement affects your statutory rights as a consumer. We give no warranties beyond the consumer guarantees that are not expressly set out in this Agreement. In particular, to the extent not prohibited by law:
- (a) You acknowledge that with the exception of a major failure that continues un-remedied for 48 hours, the delivery of the Services (including the availability of the Booking System) is not time critical. We will supply the Services within a reasonable time, and We give no other warranty or guarantee in relation to the availability of the Service (including the Booking System), or that access to the Service (including the Booking System) will be free from interruptions or errors; and

- (b) the Services depend upon telecommunications, cloud storage and other services delivered to Us and Members by third parties, the availability of which We cannot control.

6 USE OF LOCKBOX SYSTEM AND VEHICLE KEYS

Upon acceptance of Membership You will be issued one (1) Smart Key for the engine immobiliser. Prior to the commencement of the booking a PIN that enables You to access the vehicle keys from the Lockbox will be sent by SMS. You must:

- (a) keep the PIN secure;
- (b) keep your Smart Key secure.
- (c) keep the Vehicle keys secure throughout the booking until you return them to the Lockbox at the end of the Booking;
- (d) not allow any other person to use a PIN or to access the Vehicle without Our written consent; and
- (e) use the PIN only to access a Vehicle for which You have a valid Booking.

7 MEMBER PROFILES; USE OF OUR WEBSITE

- 7.1 We will create a Member Profile for You using the information that You provide to Us in Your Membership Application or by any other method. You may access you member profile by requesting it in writing from info@bayislandscarshare.com.au.
- 7.2 You are responsible for updating and maintaining the currency of Your own Member Profile on Our Website and any changes **must** be notified to Us by email to info@bayislandscarshare.com.au You **must** ensure that any information posted in Your Member Profile is correct and complete and not misleading.
- 7.3 You warrant that any text, images or other content that would constitute intellectual property of any nature ("Materials") that You include in Your member profile or otherwise provide to Us does not infringe on the intellectual property rights of any third party. You grant us a non-exclusive, irrevocable, worldwide, perpetual licence to use any Materials that you produce or provide, for the purpose of operating and marketing the Service.
- 7.4 We will take reasonable steps to verify, at the time that a Member is accepted for Membership, that he or she has a current driver licence. However We do not guarantee the completeness or correctness of this or any other information that Members provide to Us at the time of submitting a Membership Application or afterwards. We will not under any circumstances be liable for any loss or damage resulting from or arising in connection with any errors, inaccuracies or misrepresentations in Your Member Profile.
- 7.5 We may issue You with a Member ID and initial password for accessing the Member-only areas of Our Website. You **must** keep Your Member ID and password confidential and secure. You **must** use the Website and the Booking System only for the intended purpose of making valid Bookings for the Service, and You will be liable for any use of Our Website, including the Booking System, that is made using Your Member ID.

8 ACCEPTANCE AND CANCELLATION OF BOOKINGS

- 8.1 You agree to make arrangements for renting a Vehicle only through the Booking System or by phone booking.
- 8.2 The minimum Booking Period is 1 hour. You will need to contact Us to make bookings that are longer than 3 days.

- 8.3 You must:
- (a) confirm the beginning and end times of any Booking that You make before You begin using a Vehicle;
 - (b) pay the Booking Fee and any usage fee or other fees set out in the Fee Schedule in connection with Your Booking (even if You collect the Vehicle after the start of the Booking Period, return it before the end of the Booking Period, or do not use it at all during the Booking Period) unless You cancel the Booking, in which case clause 8.5 applies; and
 - (c) pay the charges set out in the Fee Schedule if You use the Vehicle outside of the period for which You have Booked the Vehicle or fail to return the Vehicle to the proper location at the agreed time.
- 8.4 We may cancel that Booking (either before the Booking commences or during the Booking Period), if We are unable to take a pre authorisation on Your Card, or to collect payment instalments that are payable for a long Booking in accordance with clause 18.2.
- 8.5 If You cancel a Booking, You may be required to pay the time charges for part or all of the Booking, as set out in the Fee Schedule.

9 LIABILITY FOR LOSS AND DAMAGE

- 9.1 If You Borrow a Vehicle, You **must** return it to Us in the same condition that it was in at the start of the Booking, subject to reasonable wear and tear.
- 9.2 You are responsible to Us for all Loss and Damage that occurs between the time that You take possession of the Vehicle at the start of a Booking and the time that You return the keys and conclude Your Booking (even if this is later than the end of the original Booking Period).
- 9.3 **Damage Cover**
- (a) Damage Cover is included in the Rental Charges. You may also have the option of reducing Your DCL by purchasing an optional Collision Damage Waiver as shown in the Fee Schedule.
 - (b) Subject to these Terms and Conditions, if You have an Accident or if the Vehicle is stolen We will indemnify You for the theft, any Loss and Damage or Third Party Loss but You **must** pay up to the DCL for each Accident or theft unless We agree that:
 - (i) You were not at fault; and
 - (ii) the other party was insured and their insurance company accepts liability.
 - (c) An additional Damage Cover Liability applies if You are 21 to 24 years of age
 - (d) An additional Damage Cover Liability applies if You are 75 years of age or older
 - (e) An additional Damage Cover Liability applies if You have held you licence for less than 12 months.
 - (f) The Damage Cover Liability payable under clauses 9.3(b) and 9.3(c) will be charged to Your credit card as follows:
 - (i) for single vehicle Accidents, after a repairer's estimate or tax invoice verifying the amount charged for Loss and Damage has been sent to You;
 - (ii) if the Vehicle has been stolen and if having made reasonable enquiries in Our sole opinion We consider it is unlikely the Vehicle will be recovered; and
 - (iii) for Accidents in which there is Third Party Loss, after:
 - (A) a reasonable estimate of the Third Party Loss has been made;

- (B) a repairer's estimate or tax invoice verifying the amount charged for Damage has been obtained; and
- (C) all documents verifying the Third Party Loss and Damage have been sent to You,

unless You have expressly authorised the charge to Your credit card at an earlier time.

- (g) If You dispute the Loss and Damage or the amount charged, You may contact Us and We will address or assist you to resolve the dispute.
- (h) If the actual costs of, or associated with, the Loss and Damage are less than the amount that You have been charged, or if We recover the costs from any third parties who may have been at fault, then We will reimburse the difference to Your Card within a reasonable time after all costs have been fully quantified and forward to you an invoice for the final amount. Alternatively, if We discover that the actual costs are not covered under this Agreement, or if the actual costs exceed the amount that You have been charged, then we may charge Your Card, either for Our account with the outstanding amount.
- (i) If Loss and Damage to the Vehicle from hail, flood, fire, storm, cyclone or natural disasters occurs during a period when You have possession of the Vehicle, You **must** pay the DCL.

10 EXCLUSIONS TO COVER AND LIABILITY

10.1 There is no Damage Cover if You are less than 21 years of age.

10.2 There is no Damage Cover and You are liable for:

- (a) Damage or Third Party Loss arising from a Major Breach of the Rental Contract;
- (b) the full cost of replacing or repairing any accessories supplied by Us including, but not limited to GPS units, lost keys, keyless start and remote control devices; or
- (c) Underbody Damage;
- (d) Damage to the Vehicle's interior, regardless of how such Damage occurred except as a result of a collision with another vehicle and subject to fair, wear and tear;
- (e) damage to another vehicle that You or a member of Your immediate family has or had physical or legal custody or control of;
- (f) personal items that are left in or stolen from the Vehicle or for loss or damage to property belonging to or in the custody of:
 - (i) You;
 - (ii) any relative, friend or associate of Yours ordinarily residing with You or with whom You ordinarily reside; or
 - (iii) Your employees.

10.3 You are fully responsible for, and have no cover for:

- (a) legal costs to defend criminal acts or fines for breaches of road traffic statutes;
- (b) damage to property belonging to, or in the custody of, You, or any relative or friend of Yours who ordinarily resides with You;
- (c) any penalties, fines, punitive, exemplary or aggravated damages for which You are liable; and
- (d) Your liability under any contract or if You have agreed to or accepted liability without Our prior agreement unless You would have been liable irrespective of the terms of that contract.

- 10.4 You have no cover and are liable to the Us for Damage caused or incurred as a result of You fitting anything to the Vehicle incorrectly or not in accordance with the Vehicle manufacturer's recommendations.
- 10.5 Information provided which is found to be false or misleading will invalidate damage cover in the event of any damage and may result in the cancellation of your membership

11 USE OF THE VEHICLE

- 11.1 Only You can drive the Vehicle. It is a Major Breach of the Agreement if You let anyone else drive the Vehicle, and the consequences are that neither You nor the unauthorised driver would have Damage Cover for any Damage, theft of the Vehicle or Third Party Loss.
- 11.2 At the start of a Booking Period, you will use the keys held within the Lockbox to unlock the Vehicle. Before driving the Vehicle, You **must**:
- (a) check that the Tolling Device and Fuel Card are in the Vehicle;
 - (b) check that the fuel gauge shows at least ¼ full;
 - (c) check whether Vehicle is clean and tidy;
 - (d) check for any damage;
 - (e) take photographs or a video that clearly show all sides of the vehicle (and keep these photographs for at least 30 days); and
 - (f) report any issues to Us by calling on **0403 378 917**
- 11.3 You may be treated as having caused, and be liable to Us for, any Loss and Damage or untidiness that You fail to report before driving the Vehicle; or that is not recorded in the photographs that You take at the start of your Booking Period; or where You do not provide those photographs to Us within three business days of Our request.
- 11.4 You **must not** attempt to access the Vehicle without a valid Booking for that Vehicle.
- 11.5 You **must** have a valid licence to drive the class of Vehicle which is issued in an Australian state or territory or an international licence (with an valid International Driving Permit if Your licence is not issued in English) appropriate for the class of the Vehicle and not subject to any restriction or condition.
- 11.6 The Vehicle **must never** be driven on:
- (a) an Unsealed Road;
 - (b) Off Road; or
 - (c) above the snow line (being any area where snow chains **must** be fitted) between 1 May and 31 October.
- 11.7 The Vehicle **must not** be used in any area that is prohibited by Us. Prohibited areas include:
- (a) roads that are prone to flooding or are flooded;
 - (b) beaches, streams, rivers, creeks, dams and floodwaters;
 - (c) any road where the police or an authority has issued a warning;
 - (d) any road that is closed; and

- (e) any road where it would be unsafe to drive the Vehicle.
- 11.8 You **must not**:
- (a) drive the Vehicle:
 - (i) whilst intoxicated or under the influence of drugs or alcohol or with a blood alcohol content or level of drugs present in blood, urine or oral fluid that exceeds the limit set by law; or
 - (ii) recklessly or dangerously; or
 - (iii) whilst the Vehicle is damaged or unsafe;
 - (b) fail or refuse to undergo any breath, blood, urine or oral fluid test or drug impairment assessment;
 - (c) use the Vehicle:
 - (i) for any illegal purpose;
 - (ii) to move dangerous, hazardous, inflammable goods or substances that pollute or contaminate, in quantities above that used for domestic purposes;
 - (iii) to propel or tow another vehicle or a trailer;
 - (iv) in connection with the motor trade for experiments, tests, trials or demonstration purposes; or
 - (v) in an unsafe or un-roadworthy condition.
 - (d) damage the Vehicle deliberately or recklessly or allow anyone else to do so;
driving the Vehicle under or into an object lower than the height of the Vehicle or narrower than the width of the Vehicle;
 - (e) step, stand or sit on the roof or any other panel of the Vehicle and You **must** prevent any passenger from doing so;
 - (f) modify the Vehicle in any way;
 - (g) sell, rent, lease or dispose of the Vehicle; or
 - (h) register or claim to be entitled to register any interest in the Vehicle under the Personal Property Securities Act 2009.
- 11.9 You **must not** use the Vehicle to carry:
- (a) passengers for hire, fare or reward or for rideshare purposes;
 - (b) more than the number of passengers for which the Vehicle is licensed; or
 - (c) any load that exceeds the limits for which the Vehicle was designed, constructed, registered or licenced.
- 11.10 You **must not** tamper or interfere with the Lockbox System or Tolling Device and You must prevent any other person from doing so.
- 11.11 You **must not** use a mobile phone or a GPS unit whilst the Vehicle is in motion or stationary; but not parked unless the body of the phone or GPS unit is affixed to the Vehicle and the phone or GPS unit is not being held or touched at any time whilst being used.
- 11.12 You **must** comply with all mandatory:
- (a) seat belt laws and fines may be imposed by the police on any driver or passenger who does not have a seat belt properly adjusted and fastened; and

- (b) child restraint laws and ensure that for all children under the age of seven years the restraint has been fitted correctly according to the weight and age of the child and that the restraint is properly adjusted and fastened.
- 11.13 You **must**:
- (a) make sure that the Vehicle is correctly locked when not in use or unattended and the keys or remote control device **must** be kept in Your possession at all times and **must never** be left in the ignition when the Vehicle is unattended; and
 - (b) secure the key in the Lockbox when returning the Vehicle.
- 11.14 You **must** take reasonable care of the Vehicle by:
- (a) preventing it from being damaged;
 - (b) making sure that it is protected from the weather;
 - (c) maintaining the engine and brake oils and coolant level and tyre pressures;
 - (d) using the correct fuel type; and
 - (e) making sure it is not overloaded.
- 11.15 For Our Benefit and the benefit of other Members You **must not** (and **must not** permit any other person to):
- (a) smoke in a Vehicle;
 - (b) place stickers, signs, symbols, or other devices, modifications, advertisements or publicity materials on the interior or exterior of the Vehicle without Our permission.

Cleaning, deodorising and administrative charges will apply if there is a breach of this clause, as listed in the Fee Schedule.

12 ACCIDENTS AND BREAKDOWNS

- 12.1 If the Vehicle breaks down or is involved in an Accident during a Booking Period, You **must** follow the reporting, claims processing, and repair procedure set out in in this clause 12.
- 12.2 You **must** take reasonable steps to protect the safety of the Vehicle after the occurrence of an Accident or breakdown, including but not limited to following all reasonable instructions given by Us.
- 12.3 If You have an Accident or if the Vehicle is stolen You **must** report the Accident or theft to Us within 24 hours of it occurring and fully complete an Accident/Theft report form.
- 12.4 If the Vehicle is stolen or if You have an Accident where:
- (a) any person is injured;
 - (b) the other party has failed to stop or leaves the scene of the Accident without exchanging names and addresses; or
 - (c) the other party appears to be under the influence of drugs or alcohol,
- You **must** also report the theft or Accident to the Police.
- 12.5 If You have an Accident You must:
- (a) exchange names and addresses and telephone numbers with the other driver;
 - (b) take the registration numbers of all vehicles involved;
 - (c) take as many photos as is reasonable showing:

- (i) the position of the Vehicles before they are moved for towing or salvage;
 - (ii) the Damage to the Vehicle;
 - (iii) the damage to any third party vehicle or property; and
 - (iv) the general area where the Accident occurred, including any road or traffic signs;
- (d) obtain the names, addresses and phone numbers of all witnesses;
- (e) not make any admission of fault or promised to pay the other party's claim or release the other party from any liability;
- (f) forward all third party correspondence or court documents to Us within 7 days of receipt; and
- (g) co-operate with Us in the prosecution of any legal proceedings that We may institute or defence of any legal proceedings which may be instituted against You or Us as a result of an Accident, including attending Our lawyer's office or any Court hearing.
- 12.6 Upon any warning lights or messages becoming illuminated or displayed in the Vehicle, or if you become aware of any mechanical fault with the Vehicle, You **must** as soon as practicable stop driving, park the Vehicle where safe to do so and contact Us or the Roadside Assistance service. You **must not** recommence driving the Vehicle unless directed to do so by Us or the Roadside Assistance service.
- 12.7 If a Vehicle suffers a mechanical fault or breakdown while You are driving it, You must:
- (a) report it to Us by calling **0403 378 917**; and
 - (b) wait with the Vehicle until Roadside Assistance attends the Vehicle.
- 12.8 If there is a mechanical issue at the start of a Booking prior to You commencing driving, You **must** call Us on **0403 378 917** to report the issue and We will help you to arrange alternative transport.
- 12.9 You **must not** let anyone else repair or work on the Vehicle or tow or salvage it without Our prior written authority to do so.
- 12.10 You **must not** leave the Vehicle unattended following an Accident and before the arrival of a tow or salvage operator.
- 12.11 You **must not** attempt to jump start the Vehicle, or use the Vehicle to jump start any other vehicle.
- 12.12 Roadside Assistance callouts are provided at no cost for:
- (a) mechanical breakdowns;
 - (b) wheel changing (using serviceable spare); and
 - (c) towing to an NRMA/RACQ-nominated repairer (up to 20km). (The cost of towing beyond 20km will be charged to the party responsible for the need for Roadside Assistance).
- 12.13 Where, in Our reasonable opinion, You are responsible for the Vehicle running out of fuel, having a flat battery, or having the keys locked inside, You are liable to pay any additional Roadside Assistance charges relating to:
- (a) provision of emergency fuel;
 - (b) recharging or replacement of flat batteries; or
 - (c) opening the Vehicle.
- 12.14 You **must** return the Vehicle to its Booking location following any tow.

- 12.15 We will not provide any compensation or reimbursement for costs or losses You incur as a result of a Vehicle breaking down. We recommend that all members ensure that they have suitable private travel insurance cover in place to cover such eventualities if they are planning an out-of-town trip.

13 REFUELING

We will provide a Fuel Card for the purposes of refuelling the Vehicle. You acknowledge that:

- (a) You may only use a Fuel Card that is provided with a Vehicle for which You have made a Booking in order to purchase fuel for use in that Vehicle;
- (b) You **must** check whether the Vehicle takes diesel or petrol fuel before refuelling, and fill the fuel tank with the lowest-cost type of fuel that the Vehicle is designed to use. You will be fully liable to Us for the costs of any damage caused by using the wrong fuel type in the Vehicle (which costs are not covered under Our Insurance Policy)
- (c) if the Fuel Card is faulty or missing, You **must** pay for the fuel and then seek reimbursement from Us by sending Us a tax invoice for the fuel purchase. The amount will be credited to Your account on the next invoice;
- (d) You **must not** use, or permit or suffer any other person to use, the Fuel Card for any other purpose other than as set out in this Agreement; and
- (e) You **must** indemnify Us for any costs that We may incur in relation to Your use of the Fuel Card in any manner that is not expressly authorised by this Agreement. Failure to adhere to these conditions may mean You are liable for any charges incurred against the Fuel Card plus an administrative fee.

14 RETURNING THE VEHICLE

14.1 At the end of the Booking Period, You must, for Our benefit and the benefit of other Members:

- (a) return the Vehicle to the same Private Car Park from where it was rented;
- (b) ensure that the fuel tank is at least $\frac{1}{4}$ full;
- (c) ensure that the Vehicle is no less clean and tidy than when You started the Booking;
- (d) close all of the windows;
- (e) ensure that all lights and accessories are turned off;
- (f) leave the Fuel Card inside the glove box;
- (g) check that you have removed any of your personal possessions from the Vehicle;
- (h) Lock the Vehicle with the key then lock the key in the Lockbox. and;
- (i) take photographs or a video that clearly show all sides of the vehicle.

If You do not do all of these things, You may be charged an amount in accordance with the Fee Schedule. These amounts may be payable to Us for our account or payable to Us.

14.2 If You use a Vehicle outside of a valid Booking Period, including if You fail to return the Vehicle and its key within 12 hours after the end of the Booking Period, this will be taken to be a theft of the Vehicle and after making reasonable attempts to contact You We may:

- (a) report the vehicle as being stolen; and/or
- (b) take steps to locate, recover and repossess the Vehicle, or engage a third party to recover the Vehicle, without further notice to You.

- 14.3 If the Vehicle is found illegally parked, apparently abandoned or is used or obtained as prohibited under this Agreement, We may, after making reasonable attempts to contact You, recover the Vehicle or engage a third party to recover the Vehicle, To the extent permitted by law, You waive any right to any hearing or to receive any notice or legal process as a precondition of Our recovering the Vehicle in accordance with this clause 14.3.
- 14.4 You **must** pay to us immediately on demand any costs we reasonably incur in recovering a Vehicle under clause 14.2 or 14.3.

15 LIABILITY FOR PARKING AND DRIVING INFRINGEMENTS

- 15.1 If an Infringement Notice is issued in relation to an infringement occurring during a time which You have possession of a Vehicle, or as a result of your failure to leave the Vehicle in a legal, unrestricted parking space at the end of a Booking Period, then You are responsible to Us for payment of the Infringement Notice and any demerit points will accrue to Your licence.
- 15.2 You **must** pay any Infringement Notice that You are responsible for in full on or before the date that payment is due. If We receive an Infringement Notice that You are responsible for, then:
- (a) We will charge Your Card for the amount due under the Infringement Notice;
 - (b) If we cannot charge Your Card for any reason, or if demerit points apply for the infringement, then We will inform the relevant authority that You were the driver of the Vehicle at the time of the Infringement and the authority will then issue the Infringement Notice to You; and
 - (c) We may charge You an administration fee for each Infringement Notice received, in accordance with the Fee Schedule.
- 15.3 You will be responsible to Us for the full cost of recovery and any damage to the Vehicle should the Vehicle be seized, towed or impounded whilst in Your possession or as a result of Your failure to leave the Vehicle in a legal, unrestricted parking space at the end of a Booking Period, in addition to any additional late fees and/or extended Booking fees resulting from a late return of the Vehicle.
- 15.4 If You dispute Your liability for an Infringement Notice, then You may raise the dispute with Us and We will deal with it in accordance with the Complaints and Dispute Resolution Policy.

16 LIABILITY FOR TOLLS

- 16.1 You will be liable for payment of any Tolls incurred in relation to the use of a Vehicle during the period for which You have use of that Vehicle.
- 16.2 Your liability for the Toll will commence at the time the Toll is incurred. We will provide credit to You for the amount of the Toll from that time until the time that payment for the toll falls due under your weekly invoice.
- 16.3 If You dispute a Toll that has been charged to You or for which We have attributed responsibility to You, then You can ask Us to review Our records to reassess liability for the Toll.

17 FEES AND COSTS

- 17.1 You agree to pay to Us:
- (a) the Membership Fee applicable to the Membership Plan that You have selected;
 - (b) any additional fees, charges and penalties in accordance with this Agreement and the Policies (or notified by Us in accordance with the Agreement from time to time), including without limitation costs relating to any Infringements, Tolls, fuel charges for which You are

responsible, any Damage Cover Liability or other liabilities arising from Your use of the Service and from Your use of Vehicles;

- (c) all fees and charges that are incurred in relation to the use of the Service using Your Member ID, even if You did not authorise the use of Your Member ID; and
 - (d) GST and all other taxes or levies on any of the amounts payable under this Agreement.
- 17.2 Calculation of Fees and Charges To calculate Fees and Charges, We will use billing information generated or received by Us, which may include:
- (a) information collected by the Booking System;
 - (b) information collected in connection with the use of a FuelCard;
 - (c) information collected in connection with the use of a Tolling Device; and
 - (d) any other information that is relevant to determining the Fees and Charges applicable to Your use of the Service.
- 17.3 We may bill You in advance or arrears for some or all of the Fees and Charges payable by You under this Agreement. We will try to include all Fees and Charges for the relevant billing period on Your invoice. However, this is not always possible and We may include these unbilled Fees and Charges in one or more later Invoices.

18 INVOICING AND PAYMENT

- 18.1 We will charge Your Card on the days following any Booking that You make use of a vehicle, for the Fees and Charges relating to that Booking.
- 18.2 For Bookings longer than six days, We reserve the right to charge You for all or part of the estimated amount prior to commencement of the Booking and/or in instalments during the Booking Period.
- 18.3 We will issue Invoices to You on a regular basis showing Your Membership Fees and itemised Toll charges payable by You in accordance with this Agreement as well as a summary of all Booking charges and payments for the relevant period.
- 18.4 If the Invoice shows an amount owing by You to Us, We will charge Your Card for that amount on the date shown in the Invoice.
- 18.5 If You fail to pay the amounts that You owe under this Agreement within the time allowed for payment (including if the Card that You have provided to Us for payment purposes is declined by the Card issuer or bank), then at Our discretion, We may:
- (a) charge a handling fee as set out in the Fee Schedule
 - (b) charge interest on the outstanding amount, calculated daily at the rate equal to Westpac Banking Corporation standard business overdraft rate plus 2%;
 - (c) suspend provision of the Service to You, including by restricting or disabling Your access to Our Website and preventing You from making or accepting Bookings; and/or
 - (d) terminate Your Membership.
- 18.6 If You are in default of any obligation to pay money to Us under this Agreement, You **must** indemnify Us for the reasonable costs We incur in taking action against You to recover that amount.

19 CREDIT AND DEBIT CARD CHARGES

- 19.1 You authorise Us to retain the Card information for the purpose of future transactions.

- 19.2 You authorise Us to charge the Card in respect of all Fees and Charges due and payable under this Agreement.
- 19.3 You warrant that the Card is Yours and You (whether alone or with another person or other people) are responsible for all amounts charged or debited to that Card. Where the Card is not in Your name, You warrant that You are authorised to permit and authorise Us to charge the Card in accordance with this Agreement.

20 PRIVACY

- 20.1 We will comply with all relevant privacy legislation and our Privacy Policy in relation to Your personal information. You can find our Privacy Policy on our Website at www.bayislandscarshare.com.au
- 20.2 The terms of Our Privacy Policy form part of this Agreement. Our Privacy Policy sets out how We collect, use, store and disclose Your personal information.
- 20.3 If We do not collect personal information from You, We will not be able to provide Our Services to You and if any of the personal information You provide is incomplete or inaccurate, the quality of Our services may be compromised.
- 20.4 You can tell Us if You do not consent to Our use of such information, or if You do not wish to receive such information, or if you have any questions about Our Privacy Policy, by calling Us on **0403 378 917** or by sending an email to info@bayislandscarshare.com.au
- 20.5 By entering into this Agreement and by providing us with personal information, You represent to us that You have read, and agree to, the terms of Our Privacy Policy.

21 CANCELLATION AND SUSPENSION OF MEMBERSHIP

- 21.1 We may immediately cancel or suspend Your Membership at any time if You:
- (a) Commit a Major Breach of this Agreement; or
 - (b) fail to make a payment that is due under this Agreement within 30 days after We give You written notice of the payment default.
- 21.2 We may cancel Your Membership with no less than 30 days' notice at Our sole discretion.
- 21.3 You may terminate this Agreement at the expiry of the Initial Term or any Subsequent Terms by providing written notice of Your intention to do so no later than one (1) week before the expiry of the Initial Term or Subsequent Terms, to take effect upon the expiry of the Initial Term or Subsequent Terms.
- 21.4 If You terminate during the Initial Term or any Subsequent Terms, You acknowledge and agree that you will forfeit any Membership Fees paid in advance. You may cancel Your Membership with immediate effect in exceptional circumstances with Our agreement.
- 21.5 If Your Membership is cancelled, either by You or by Us, then:
- (a) You **must not** use the Service on or after the date of cancellation;
 - (b) We will issue a final Invoice within 60 business days of the cancellation of Your Membership and either make payment to You or charge Your Card for amounts owing by You, in accordance with this Agreement; and
 - (c) this Agreement will terminate on the date that We have received final payment.
- 21.6 Termination of this agreement does not affect any accrued rights or liabilities up to (and including) the date of termination.

22 RESOLVING YOUR COMPLAINTS

- 22.1 If You have a complaint or dispute about any of the services provided under this Agreement or decisions made on a Damage or theft claim, You may refer Your complaint or dispute to Our Internal Disputes Resolution Process where Your complaint will be reviewed by an employee who has the experience, knowledge and authority to conduct a full review.
- 22.2 The first step is to contact Us on **0403 378 917** or by sending an email to info@bayislandscarshare.com.au and We will acknowledge receipt of Your complaint or dispute within 10 working days.
- 22.3 Provided We have all the necessary information We will review Your complaint or dispute and respond to You in writing with reasons for Our decision within 15 working days or if further investigation is required, within a reasonable time frame that We will endeavour to agree with You.

23 GOVERNING LAW, OTHER

- 23.1 This Agreement is governed by the laws of Queensland, and each party submits to the nonexclusive jurisdiction of the courts of that state.
- 23.2 You may only assign this Agreement or a right under this Agreement with Our prior written consent. We may assign this Agreement or a right under this Agreement by written notice to You.
- 23.3 If the whole or any part of a provision of this Agreement is invalid or unenforceable in a jurisdiction it must, if possible, be read down for the purposes of that jurisdiction so as to be valid and enforceable. If however, the whole or any part of a provision of this Agreement is not capable of being read down, it is severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.
- 23.4 Except where this Agreement expressly states otherwise, this Agreement does not create a relationship of employment, trust, agency or partnership between the parties.

24 THIRD PARTY SOFTWARE TERMS AND CONDITIONS

- 24.1 Bay Island Car Share Pty Ltd uses 3rd party software to facilitate the booking process. The provider SimplyBook.me Ltd, provides an appointment and scheduling system that has many additional features such as promotion and marketing system, sales system and client contact system. By using the site and/or applying to become a member of Bay Islands Car Share Pty Ltd, you agree to the following SimplyBook.me terms and conditions:
- (a) Definitions:
- SimplyBook.me services or SimplyBook.me system — is a system provided by SimplyBook.me Ltd that allows system users to get various business functionalities that help them to run their business. The SimplyBook.me system can run under various domain names, such as: SimplyBook.me, SimplyBook.it, SimplyBook.asia, BookingTroll.eu and other names that offer the same services.
- Service provider or user — Company or person that provides services, rents tools, equipment, space etc. and uses the SimplyBook.me system to accept and treat bookings online, send promotions, sell products and do other related things that helps them run their service business.
- (b) Client/s or service buyer/s — Clients can be any type of person that books an appointment or buys a product online with a service provider that has a user account with the SimplyBook.me system. This can for example be patient, student, or client. SimplyBook.me is the processor of data for the clients of the SimplyBook.me system.

- (c) The user of the system, often same as service provider, is the controller of your data (the client data). You can ask the controller of your data for all personal information that he may hold on you, he can delete it and rectify by your requests
- (d) If you use the SimplyBook.me system or related sites, you agree to that you will not:
 - (i) violate any laws, third party rights or our policies;
 - (ii) use our sites and tools if you are not able to form legally binding contracts, are under the age of 18;
 - (iii) fail to deliver services ordered from you, unless the buyer gets a refund or can get similar or same service at a different time and date agreed by both parties;
 - (iv) interfere with other users' listings;
 - (v) post false, inaccurate, misleading, defamatory, libelous content (including personal information) or use the service and site for link building purposes;
 - (vi) take any action that may undermine feedback and/or ratings systems;
 - (vii) distribute or post spam, unsolicited, or bulk electronic communications, chain letters, or pyramid schemes;
 - (viii) distribute viruses or any other technologies that may harm any visitors of the site; or
 - (ix) harvest or otherwise collect information about users, including email addresses, credit cards without their consent.
- (e) SimplyBook.me does not offer any purchase guarantees concerning client's payments for appointment bookings or service purchases or other product purchases from service providers. SimplyBook.me offers service providers a way to sell their services, and buyers, clients, patients a method to book these services. Service providers can use our tools to offer their clients to pay for services online. Buyers and service providers share the responsibility for making sure purchases and service orders facilitated by SimplyBook.me are in good spirit, rewarding and hassle-free. SimplyBook.me encourage buyers to work with sellers before opening a complaint with SimplyBook.me. SimplyBook.me takes no responsibility for wrongful service orders, services provided by service providers or services not provided by service providers even if they are purchased and paid for. It is strongly recommended that buyers inform themselves about the service provider before booking with them and before paying online and for the service providers to make sure buyers are for real.

25 DEFINITIONS AND INTERPRETATION

Accident means any collision 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.

Agreement means the agreement comprising the Member Agreement, the Policies and the Fee Schedule.

Booking means an instance where a Member uses the Service to reserve a Vehicle belonging to another Member.

Booking Fee means the amount charged by Us to process each Booking.

Booking Period means the period of a Booking (including any amendments to that period that are made and accepted through the Booking System).

Booking System means the technology that coordinates Bookings and payments and performs the remote management of the Lockbox System.

Borrower means a Member who borrows, or makes a Booking to borrow, a Vehicle “Card” means the credit or debit card that a Member has selected as their primary method of payment to Us for amounts owing to Us.

Damage Cover Liability or **DCL** means the amount You **must** pay if there is Loss and Damage that is covered by Our Insurance Policy. The amount You **must** pay varies according to the Membership Plan You have selected and may be varied by advance notice to You.

Driving History means the driving-related events in Your past that We will use to help assess Your suitability for the Service.

Eligibility Requirements means the minimum requirements set out in clause 3 that Members **must** meet in order to obtain and maintain Membership in the Service.

Fee Schedule means the pages on Our Website setting out the fees or charges We may charge You in connection with Your Membership or Your use of the Service, as updated, published on Our Website and notified to Members from time to time.

Fees and Charges means the set of charges levied on Members arising from their Membership in, and use of the Service.

Fuel Card means the Motorpass card located in each Vehicle for the use of Borrowers to pay for fuel added to the Vehicle. Use of the Fuel Card is governed by clause 13.

GPS means Global Positioning System.

Infringement Notice means the notification of any driving or parking offence.

Invoice means the itemised report of a Member’s use of the Service and will include details of any Fees and Charges incurred and any payments made.

Lockbox System means the combination of the digital lockbox device that fixes to a car boot (the **Lockbox**), the GPS technology and other peripheral equipment installed in a Vehicle to enable it to participate in the Service.

Loss and Damage means:

- (a) damage to the Vehicle that requires repair or replacement (excluding normal wear and tear);
- (b) loss arising from theft of the Vehicle or fire damage to the Vehicle;
- (c) towing, storage and recovery charges; and
- (d) Third Party Loss.

Major Breach means a breach of any of clauses 6, 11.1, 11.4, 11.5, 11.6, 11.7, 11.8, 11.9, 11.10, 11.11, 11.13, 11.14, 12.9 or 12.10 that causes Damage, theft of the Vehicle or Third Party Loss.

Member means any person whose Membership Application has been accepted by Us.

Member Profile means the information about You that is stored on Our systems.

Membership means the state of being an active Member of the Service.

Membership Application means an application for Membership, which may be made electronically, and includes all of the information provided by the prospective Member in that form or in connection with that application;

Membership Fee means the monthly amount payable by a Member to Us according to the Member’s selected Membership Plan.

Membership Plan means a rate plan available to Members. Different plans are available and can be viewed on Our Website.

Our Insurance Policy means Our fleet motor comprehensive insurance policy with an APRA approved, Australian licensed insurer.

Period of Cover means the period during which Your Agreement is in force.

Policies means each of the policies as published or made available on Our Website from time to time relating to the use of the Service by Members, and includes:

- (a) the Complaints and Dispute Resolution Policy;
- (b) the Damage Policy;
- (c) the Privacy Policy;
- (d) the Refunds Policy;
- (e) the Website Terms of Use; and
- (f) the Member Handbooks.

Roadside Assistance means the 24/7 breakdown service provided by RACQ.

Bay Islands Car Share Pty Ltd (also **We**, **Us** or **Our**) means Bay Islands Car Share Pty Ltd.

Third Party Loss means:

- (a) legal liability to pay compensation for accidental loss or damage to someone else's property arising out of an Accident during the Period of Cover where You was at fault and the legal liability arises out of the use of a Vehicle;
- (b) legal liability arising out of the use of a Vehicle that results in death or bodily injury to another person (not including any person who is driving or in charge of the Vehicle or a member of Your family), provided that the event or series of related events that gave rise to the legal liability, or any part of it, is not covered or indemnified in any way by any statutory or compulsory insurance or any compensation scheme or fund (except where the lack of coverage or indemnification results from Your failure to insure or register Your Vehicle or to comply with the requirements of such a policy, fund or scheme);
- (c) costs of defending a legal claim for compensation for loss or damage described in (a), provided that We have approved the costs and expenses prior to them being incurred.

Toll means an amount charged by the owner or operator of a toll road, and includes any penalties, fees or other amounts charged in relation to the late payment of a toll.

Tolling Device means any tag or device installed in a Vehicle for recording electronic Tolls.

Underbody Damage means any damage to the Vehicle caused by or resulting from contact between the underside of the Vehicle and any part of the roadway or any object or obstruction, including kerbs, gutters, speed or road humps, barriers or wheel stops and does not arise as a result of an impact with another vehicle.

Vehicle means a vehicle including its accessories, keys, remote opening devices and Tolling Device, made available for sharing through the Service.

Vehicle Profile means the photographs and other information maintained by the Us about a Vehicle that is available to other Members through Our Website. A subset of the information will also be available to the general public through Our Website.

Website means the website bayislandscarshare.com.au and any associated mobile sites and sub-domains.

Signature: Your ticking of the check box on the online application form constitutes a binding statement equivalent to Your signature under ss.8 and 9 of the Electronic Transactions Act 1999.