

Truck Hire and Recovery Agreement

This Truck Hire and Recovery Agreement (**Agreement**) is dated ~CURRENT_DATE~

Parties

The parties to this Agreement are:

~CUSTOMER_DETAILS~ (You, Your)

And

Reliance (Aus) Pty Ltd trading as I'm in the Right (ABN 55 162 611 994) of Level 7, 65 Berry Street, North Sydney NSW 2060
(IITR)

(each a **party** and together, the **parties**)

Reliance (Aus) Pty Ltd trading as I'm In the Right
ABN 55 162 611 994
Level 7
65 Berry Street
North Sydney NSW 2060
Phone: 1300 00 IITR
Email: info@imintheright.com.au

PART A – Truck Hire Terms and Conditions

1 The Agreement to rent

1.1 Rented Truck Hire Particulars

- (a) You agree to rent the Rented Truck, and IITR agrees to allow You to do so, on the terms and conditions of this Agreement.
- (b) The details of the Rented Truck, hire details and the fees and charges in respect of the Rented Truck payable by You to IITR are as follows:

~VEHICLE_DETAILS_NO_EXCESS~

1.2 Excess Information

~EXCESS_DETAILS~

1.3 Delivery Inspection Report

- (a) You agree that at the time of its collection by You the Rented Truck is in an undamaged and Good Condition save as otherwise expressly set out in the Delivery Inspection Report.
- (b) It is Your responsibility to check the condition of the Rented Truck when You collect it and You agree to return the Rented Truck in the same condition it was in when You collected it.
- (c) You are responsible for any and all damage to the Rented Truck during the Hire Period (and any other period in which You have possession, custody or control of the Rented Truck), regardless of cause and for any loss of use in connection with any repairs, except for Fair Wear and Tear.

- (d) The Delivery Inspection Report is as follows:

~VEHICLE_DELIVERY_INSPECTION~

~VEHICLE_COMMENTS~

~VEHICLE_MARKUP_IMAGE~

~VEHICLE_PHOTOS~

- (e) You acknowledge that You have relied solely on Your own inspection, skill and judgment in renting the Rented Truck.

2 Your Insurance Requirements

2.1 Own insurance required for some activities

If You wish to haul or engage in any of the following activities, You must obtain Your own insurance for the Rented Truck prior to the Commencement Date:

- (a) Fuel delivery or haulage;
- (b) Refrigerated freight haulage more than 1,000 kms from Return Location;
- (c) Hanging meat;
- (d) Livestock; or

- (e) Logging operations.

2.2 Mandatory inclusions of Your own insurance

If You are required to obtain Your own insurance for the Rented Truck under clause 2.1:

- (a) You must procure insurance for the Rented Truck for the whole of the Hire Period (and any other period in which You have possession or control of the Rented Truck) from an insurer licensed in the States and Territories in which the Rented Truck will be operated by Authorised Drivers that is rated not lower than "B+" in Best's Insurance Reports (**Best's**) with a Financial Category Size of at least "VII";
- (b) the insurance must cover the Rented Truck's full replacement value (which shall be the greater of the actual cash value or the book value of the Rented Truck, including special equipment and accessories), the loss of rental, third party loss and theft;
- (c) all loss and damage to the Rented Truck during the Hire Period (and any other period in which You have possession or control of the Rented Truck) and any third party loss arising from or related to the Rented Truck is Your sole responsibility and is to be paid in full on demand by IITR, by You to IITR (or by Your insurer to IITR, if You are able to procure Your insurer to do so) notwithstanding any other provisions of this Agreement;
- (d) You must indemnify IITR for all loss and damage to the Rented Truck (including special equipment and accessories) occurring during the Hire Period (and any other period in which You have possession or control of the Rented Truck), for loss of rental, theft and all third party loss arising from the use of the Rented Truck as well as for the costs, damages and loss arising from any Claim or other matter that arises in connection with the Rented Truck during the Hire Period (and any other period in which You have possession or control of the Rented Truck), including legal costs and disbursements;
- (e) You must provide IITR with a Certificate of Currency listing IITR as an interested party on each applicable insurance policy referred to in this paragraph 2.2 prior to the Commencement Date. Each such policy shall confirm that the insurer will give written notice to IITR of any cancellation or material alteration of such policy at least thirty (30) days prior to the effective date of any cancellation or material alteration of such policy and that that notice shall be sent to IITR at its address noted in this Agreement.
- (f) You must maintain all insurances referred to in this paragraph 2.2 for at least the duration of the Hire Period (and any other period in which You have possession or control of the Rented Truck) and not perform or permit any action or omission which may cause the termination of, or material reduction in, any such insurance without the prior written consent of IITR (and You must promptly notify IITR of any termination and/or material reduction in any insurance).

2.3 Your own insurance takes precedence to IITR's cover

Notwithstanding this or any other clause in this Agreement, and irrespective of whether You:

- (a) have the benefit of the Accident Damage Excess (**ADE**) or the Under-Age Accident Damage Excess (**UADE**); or
- (b) pay IITR for Accident Excess Reduction (**AER**) or Under-Age Accident Excess Reduction (**UAER**),

You accept that:

- (i) where You are required to obtain Your own insurance for the Rented Truck under clause 2.1; or
- (ii) You have the benefit of insurance cover that You procure from Your insurer or any other policy owned or available to You that covers You in respect of the Rented Truck (**Other Insurance**),

IITR or its insurer will be entitled to seek an indemnity from You and/or Your insurer or other available insurer, including where applicable, to the extent that the Other Insurance stands in priority to IITR's insurance in respect of any Claim made in connection with the Rented Truck during the Hire Period (and any other period in which You have possession or control of the Rented Truck); and

- (iii) Other Insurance shall take priority with respect to any covered claim or occurrence.

2.4 Claim obligations

You must:

- (a) lodge any claim with Your insurer required by IITR with respect to the Rented Truck and provide all necessary cooperation and assistance to IITR and the insurer in relation to the claim, where You are required to obtain Your own insurance for the Rented Truck under clause 2.1 or have the benefit of insurance cover under clause 2.3; and
- (b) provide IITR with any documents concerning the Rented Truck or Your use of the Rented Truck that IITR may request during or after the Hire Period for it to provide those documents to an insurer in connection with any insurance claim.

3 General

3.1 IITR is the Rented Truck owner

- (a) As between You and IITR, the Rented Truck is owned, and shall remain owned, solely by IITR.
- (b) You must not attempt to transfer or sublease the Rented Truck or any rights or obligations under this Agreement. Subject to applicable laws, any purported or actual transfer or sublease of the Rented Truck by anyone other than IITR may be void and will entitle IITR to terminate this Agreement without notice.

3.2 Compliance by Authorised Drivers

- (a) The Rented Truck may only be used and operated by Authorised Drivers to transport goods for Your business in compliance with all applicable laws, regulations and rules.
- (b) Without limiting the foregoing provisions, the Rented Truck may not be used or operated for personal, domestic or household purposes.

3.3 Obligations applying to an Authorised Driver

- (a) Your obligations under this Agreement also apply to any Authorised Driver.
- (b) You must ensure that every Authorised Driver understands, acknowledges and complies with this Agreement and any breach will be deemed to constitute a breach of this Agreement by You, for which You are liable to IITR.

3.4 No agency or other legal relationship

Neither You nor any Authorised Driver are (or shall be deemed to be) an agent, servant, contractor, subcontractor or employee of IITR.

3.5 The Australian Consumer Law

You have consumer rights conferred by the ACL and neither this clause nor any other provision of this Agreement excludes, restricts or modifies:

- (a) Part 2-3 of the ACL relating to unfair contract terms; or
- (b) any implied terms, guarantees or rights You may have under those laws or any other Federal, State or Territory legislation.

3.6 Liability for loss or damage

You are liable to IITR for any and all loss and damage sustained to the Rented Truck, Accessories and to any Rented Truck tools, tyres and equipment during the Hire Period (and any other period in which You have possession or control of the Rented Truck), except to the extent caused by IITR's negligence, fraud or wilful misconduct including that of its officers, employees, contractors or agents.

3.7 Your obligations

- (a) You must contact any driver of the Rented Truck in the event of any Claim, loss or damage, fine or penalty incurred in connection with the Rented Truck or where IITR otherwise reasonably requires You to contact the driver on IITR's behalf.
- (b) It is Your responsibility to ensure that each Authorised Driver holds a current driver's licence (that is not a learner's permit or provisional licence) which is valid for the Rented Truck and the likely duration of the Hire Period.
- (c) You will notify IITR immediately upon becoming aware that an Authorised Driver is disqualified from driving or if their driver's licence is suspended, endorsed or cancelled.

3.8 Warranties regarding Authorised Drivers

- (a) You warrant that each Authorised Driver is qualified to operate the Rented Truck, has all relevant licences, has completed the necessary training and that no Authorised Driver:
 - (i) has had motor vehicle insurance declined, a motor vehicle insurance policy cancelled or had special conditions applied by any motor vehicle insurer in the last 5 years;
 - (ii) has been convicted of an alcohol or drug related traffic offence, been disqualified from driving or had a driver's licence suspended, endorsed or cancelled in the last 5 years; or
 - (iii) suffers from a physical or mental condition or impairment that a medical professional has found, suggested or certified may interfere with the Authorised Driver's ability to control and drive the Rented Truck.
- (b) You warrant that:
 - (i) each Authorised Driver is at least 21 years of age, unless authorised in writing by IITR;
 - (ii) each Authorised Driver of a B-Double truck is at least 23 years of age; and
 - (iii) each Authorised Driver of a prime mover is at least 25 years of age.

3.9 Your obligations regarding Authorised Drivers

- (a) You must maintain a log of Authorised Drivers, including a copy of their contact details, driver's licences, qualifications and dates on which they drive the Rented Truck.
- (b) All such contact details, driver's licences and qualifications in respect of each Authorised Driver must be provided to IITR before the Authorised Driver drives the Rented Truck and if You wish to make any changes to who is an Authorised Driver, You must notify IITR and obtain its prior written consent.
- (c) You must ensure that each Authorised Driver promptly completes a written report for each trip made by the Rented Truck following the completion of the trip and You must provide such reports to IITR in a format and at times requested by IITR, to enable IITR to verify compliance with this Agreement (if and to the extent it chooses to do so by reference to such reports) and where applicable, to comply with any fuel tax reporting obligations.
- (d) You will, on demand by IITR, indemnify IITR from and against all and any loss, damage, penalties, expenses, fines, costs and interest payable by IITR as a result of any missing, inaccurate or incomplete trip reports.
- (e) You must ensure that You and each Authorised Driver comply with the requirements of the NHVAS, and any instructions provided by IITR with respect thereto.
- (f) You are responsible for all and any fuel permits required or ordered during the Hire Period (and any other period in which You have possession or control of the Rented Truck) in connection with the Rented Truck.

3.10 Return of the Rented Truck – Fuel and AdBlue

- (a) You must return the Rented Truck to the Return Location at the conclusion of the Hire Period, or when reasonably requested by IITR, with no less than the amount of fuel that was in the Rented Truck at the time that You collected it from IITR (**Threshold Fuel Amount**). You will bear the sole risk of loss and expense for overfilling the Rented Truck with more fuel than the Threshold Fuel Amount.
- (b) If the Rented Truck requires the use of a diesel exhaust fluid known as AdBlue, You must return the Rented Truck to the Return Location at the conclusion of the Hire Period with no less than the amount of AdBlue that was in the Rented Truck at the time that You collected it from IITR as set out in the Hire Particulars (**Threshold AdBlue Amount**). You will bear the sole risk of loss and expense for overfilling the Rented Truck with more AdBlue than the Threshold AdBlue Amount.

3.11 Personal Property Securities Act

You must not register or claim to be entitled to register any security or other interest in the Rented Truck under the *Personal Property Securities Act 2009* (Cth).

3.12 Your acknowledgements

You acknowledge and agree that:

- (a) as at the date of this Agreement, the total amount of the Hire Charges is unknown and will be based on the length of the Hire Period; and
- (b) the total amount of the Hire Charges may be different to any estimate provided once the actual Hire Period is known.

4 Credit Card Payment Authority

4.1 Warranty of Card ownership

Subject to clause 4.2(c) You warrant that You (whether alone or with another person or other people) own the credit or debit card provided to IITR (the **Card**) and that You will be personally responsible for all amounts charged to that Card in accordance with this Agreement.

4.2 Authority to charge the Card

- (a) You irrevocably and unconditionally authorise IITR to charge the Card for all amounts payable by You under this Agreement as and when due (except as otherwise set out in clause 18.2). If, on final review, an error is found in an earlier calculation, You, on notice from IITR, must pay the corrected amount (where an underpayment was made) and IITR will refund any overpayment made by You (where an overpayment was made).
- (b) You authorise IITR to correct any card vouchers (if applicable) signed by You or to debit or credit further amounts against the Card, to reflect the correct charges.
- (c) Where the Card is not in Your name, You warrant that You are authorised to permit IITR to charge it for all amounts payable by You under this Agreement. You must provide IITR with evidence of such authority in a form reasonably required by IITR.

4.3 Disputed amounts

- (a) If You dispute any amount charged to the Card, then You must contact IITR within 21 days of receiving notice of the charge. You may contact IITR at the following email address: info@imintheright.com.au. IITR will deal promptly with any dispute and, if it reasonably considers that any amount should be refunded to You, it will promptly credit that amount to the Card.
- (b) If You are dissatisfied with any determination made by IITR in this respect, You are required to have Your grievance dealt with pursuant to the dispute resolution process in clause 29.

4.4 Payments for a Card not in your name

Where You have made a payment by use of a Card that is not in Your name or provided ITR with a direction to bill any amount to a third party person or corporation, and such other person or company fails to make any payment under this Agreement, then You agree:

- (a) that You are responsible for ensuring that those payments are honoured; and
- (b) You will be taken to have failed to satisfy these payment obligations if these payments are dishonoured.

5 Return and Repossession of the Rented Truck

5.1 Return of the Rented Truck

- (a) Subject to clause 5.4, You agree to immediately return the Rented Truck to ITR to the Return Location at the end of the Hire Period.
- (b) You must permit ITR to inspect the Rented Truck at any time and from time to time upon demand by ITR, on reasonable notice.
- (c) When the Rented Truck is returned to ITR (whether due to Your breach of this Agreement or otherwise, including pursuant to clause 5.4(a)(iii)), it must be:
 - (i) in Good Condition;
 - (ii) accompanied by all manuals, logbooks, maintenance records, vehicle inspection records, registration certificates, including any duly executed registration transfer certificates and duly executed transfer documentation provided with the Rented Truck;
 - (iii) accompanied by all Accessories, keys, tools, jacks and equipment supplied by ITR to You;
 - (iv) accompanied by all equipment, replacements, instruments and other goods supplied with the Rented Truck or attached to it by ITR (these items must be intact in their entirety and not exhibit defects); and
 - (v) returned during Business Hours to the Return Location or to where ITR otherwise reasonably directs in writing.

5.2 Repossession

- (a) If You do not return the Rented Truck when required by this Agreement, including when there has been a Major Breach of the Agreement (clause 16.1), then following an oral or written demand from ITR that You return it, ITR may:
 - (i) take steps to repossess the Rented Truck where and when it is found. You authorise ITR to enter any premises owned or occupied by You and You agree to make all reasonable efforts to obtain the right for ITR to enter any premises for it to repossess the Rented Truck. You must provide all cooperation requested by ITR in connection with the repossession of the Rented Truck and You shall be liable for any loss, damage and reasonable expenses incurred by ITR in repossessing the Rented Truck; and/or
 - (ii) report the Rented Truck as stolen to law enforcement.
- (b) If the Rented Truck is found illegally parked for a period in excess of six (6) hours, abandoned or is being or has been used in a manner prohibited under this Agreement, then ITR may, with or without notice, repossess the Rented Truck and terminate this Agreement.
- (c) You must reimburse ITR for its reasonable costs and expenses of repossessing the Rented Truck on demand by ITR.

- (d) You must indemnify IITR from and against any Claim made by any third party resulting from IITR's repossession of the Rented Truck, except to the extent caused by the fraud, negligence or wilful misconduct of IITR including that of its officers, employees, contractors or agents.

5.3 Customer Property

- (a) If the Rented Truck contains any property (**Customer Property**) at the time it is back in IITR's possession (including by virtue of You returning the Rented Truck or because the Rented Truck was recovered by law enforcement or through IITR repossession), IITR is authorised to hold the Customer Property for You or place it in storage for You, at Your sole cost and risk of loss and damage.
- (b) Your failure to retrieve Customer Property within thirty (30) days of being notified by IITR, will constitute Your abandonment of the Customer Property, and You will be deemed to have waived any and all rights, claims and ownership to the Customer Property.
- (c) You acknowledge that IITR may, in accordance with applicable law, sell or otherwise dispose of any Customer Property that has been abandoned.

5.4 IITR's delivery of Rented Truck

- (a) You agree that IITR may, in its absolute discretion, and You authorise IITR to:
 - (i) collect Your Vehicle from You and drive it to the relevant repairer;
 - (ii) deliver the Rented Truck to You;
 - (iii) once the repairs to Your Vehicle have been completed, deliver Your Vehicle to You by driving it to You and collect the Rented Truck from You; and
 - (iv) drive Your Vehicle for any other incidental purpose.
- (b) In the event of an accident or incident involving Your Vehicle arising from IITR driving Your Vehicle in accordance with clause 5.4(a) which results in loss or damage to Your Vehicle or to a third party:
 - (i) You agree that you will lodge a claim against any policy of insurance covering Your Vehicle in relation to such accident or incident within 48 hours of IITR notifying You of the accident or incident; and
 - (ii) IITR will pay the excess amount in respect of such claim.

Any such policy of insurance will stand in priority to any policy of insurance that IITR may have in place.

6 Maintenance and Safety of the Rented Truck

6.1 Securing the Rented Truck

- (a) You must remain in possession of the Rented Truck and not abandon it at any time during the Hire Period.
- (b) You must ensure that the Rented Truck is kept locked with all windows closed and the keys under Your personal control, store the Rented Truck in a safe location, and take all reasonable precautions to guard the Rented Truck against any theft of, or vandalism or damage to it, when not in use.

6.2 Prohibited Persons and Prohibited use

You must ensure that the Rented Truck is not used or driven by any person who is a Prohibited Person, that the Rented Truck is not used for a Prohibited Use and that all Authorised Drivers comply with all applicable road safety laws and regulations.

6.3 Maintenance

- (a) You acknowledge that You are responsible for maintaining the Rented Truck in a roadworthy condition for the duration of the Hire Period or otherwise while the Rented Truck is in Your possession, custody or control but in each case such maintenance may only be done with IITR's prior written consent, which will not be unreasonably withheld.
- (b) If the Hire Period spans the normal maintenance intervals for the Rented Truck, then it is Your responsibility to return the Rented Truck to IITR on any date reasonably specified by IITR for a changeover to a replacement vehicle.
- (c) You agree that each Authorised Driver has been inducted and trained to complete an NHVAS daily vehicle checklist specified by IITR and that if the associated folder is lost You will pay a fee of \$250 (exclusive of GST) to replace the folder.
- (d) You agree to check:
 - (i) the tyre pressure in all tyres of the Rented Truck; and
 - (ii) the amount of engine oil, AdBlue, coolant, and brake fluid in the Rented Truck,each day during the Hire Period (and any other period in which You have possession, or control of the Rented Truck) and to maintain them at the levels recommended by the manufacturer of the Rented Truck or as reasonably required by IITR for the Rented Truck.

6.4 Steps to be taken when the Rented Truck is damaged, breaks down or there is a fault

You and any Authorised Drivers must immediately stop driving and must park the Rented Truck where safe to do so and contact IITR if:

- (a) the Rented Truck is damaged in any way;
- (b) the Rented Truck breaks down;
- (c) You or an Authorised Driver become aware of a fault in the Rented Truck or reasonably believe that the Rental Truck is unsafe to drive; or
- (d) upon any warning or fault lights or messages becoming illuminated or displayed in the Rented Truck,

and You and any Authorised Drivers must not recommence driving the Rented Truck unless authorised to do so by IITR, acting reasonably.

6.5 Your liability for non-compliance

You agree that:

- (a) where You do not comply with this clause 6, You are liable for all fees, charges, loss and damage to the Rented Truck and any third party loss and damage as a result;
- (b) You will not arrange for the Rented Truck to be moved, make any repairs or adjustments to the Rented Truck or undertake any maintenance of, or replace, any parts of the Rented Truck unless authorised in writing by IITR or in the case of an emergency where IITR's authorisation cannot reasonably be obtained, and subject to Your obligations under clause 6.3;
- (c) You are liable for any unauthorised towing, repair or maintenance costs incurred by You and You agree to indemnify IITR against any Claim made by any third party in respect of those costs and to pay to IITR the cost associated with any remedial works deemed necessary by IITR to rectify any unauthorised work, except to the extent caused by IITR's fraud, negligence or wilful misconduct including that of its officers, employees, contractors or agents;
- (d) IITR will not reimburse You for any towing, repair or maintenance costs it has authorised, unless You produce such receipts and other information or documents IITR may reasonably require; and

- (e) IITR may obtain a repair quotation for the Rented Truck and use it as the basis of IITR's recovery of costs from You. IITR may, in its absolute discretion, choose not to repair the Rented Truck.

7 Hire Charges

7.1 Subject to clauses 18 to 22, You agree to pay to IITR the following amounts:

(a) **Daily Hire Charges**

- (i) The daily hire charge set out in the Hire Particulars for each Hire Day. The minimum charge will be the daily hire charge for one Hire Day (plus excess kilometre charges) unless otherwise stated in the Hire Particulars.
- (ii) If You terminate this Agreement prior to the Commencement Date, You must pay to IITR a \$100.00 cancellation fee. This fee will not be construed as a penalty but as a charge that is designed to offset IITR's cost of securing the Rented Truck for rental.

(b) **Delivery and Pickup Fee**

A charge set out in the Hire Particulars for:

- (i) delivering the Rented Truck to and/or collecting the Rented Truck from You; and/or
- (ii) collecting Your Vehicle from You and/or delivering Your Vehicle to You..

(c) **Location Fee**

A charge of \$150.00 or the actual cost paid by IITR to collect the Rented Truck, whichever is higher, where You return the Rented Truck to a location other than the Return Location, or IITR collects the Rented Truck from a location outside a 50 km radius from the Return Location.

(d) **Accident Excess Reduction (AER)**

The amount for an optional Accident Excess Reduction (**AER**) as accepted by You and set out in the Hire Particulars, calculated for each Hire Day.

(e) **Under-Age Accident Excess Reduction (UAER)**

The amount for an optional Under-Age Accident Excess Reduction (**UAER**) as accepted by You and set out in the Hire Particulars, calculated for each Hire Day.

(f) **Vehicle Registration Recovery (VRR) Fee**

A charge set out in the Hire Particulars in respect of operating costs including, but not limited to, vehicle registration, compulsory third party insurance, stamp duty on vehicle purchases and transport accident charges.

(g) **Excess Kilometre Charge**

- (i) A charge for each kilometre driven in excess of the kilometre allowance set out in the Hire Particulars, averaged over the duration of the Hire Period (and any other period in which You have possession, custody or control of the Rented Truck), and charged at the excess kilometre charge set out in the Hire Particulars.
- (ii) Distance travelled by the Rented Truck is to be determined by reading the Rented Truck's factory installed odometer.

(h) **After Hours Fee**

A charge set out in the Hire Particulars for delivering and/or collecting the Rented Truck outside Business Hours.

(i) **Return of Rented Truck Outside Business Hours**

- (i) If the Rented Truck is returned outside Business Hours, then it will be deemed to not have been delivered until IITR inspects and accepts the return of the Rented Truck on the next Business Day and You will be liable to pay a further Full Daily Hire Charge (where a Business Day falls on the next day) or two further Full Daily Hire Charges (where You deliver the Rented Truck on a weekend).
- (ii) If the Rented Truck is left inside or outside the Rental Location outside of Business Hours, it will be Your responsibility until the Rented Truck is in IITR's possession the following Business Day. For the avoidance of doubt, You may not leave the Rented Truck unattended outside the Return Location and if the Rented Truck is stolen outside the Return Location, You are responsible for the Rented Truck and for payment of the amounts in clauses 10, 11 and 12. If You leave the Rented Truck outside the Return Location, the keys for the Rented Truck must be left in a secure drop box (if IITR makes such a drop box available).

(j) **Administration Fee**

The percentage rate set out in the Hire Particulars in relation to administration functions undertaken in respect of the hire of the Rented Truck.

8 Additional Charges

8.1 You agree to pay to IITR the following Additional Charges:

(a) **Fuel Charge**

If You do not return the Rented Truck with at least the Threshold Fuel Amount, IITR will charge You an amount equal to the number of litres necessary to fill the Rented Truck to the Threshold Fuel Amount, multiplied by the price per litre set out in the Hire Particulars, plus a refueling fee of \$45.00 (exclusive of GST).

(b) **AdBlue Charge**

If You do not return the Rented Truck with at least the Threshold AdBlue Amount, IITR will charge You an amount equal to the number of litres necessary to fill the Rented Truck to the Threshold AdBlue Amount, multiplied by the price per litre set out in the Hire Particulars, plus a refueling fee of \$45.00 (exclusive of GST).

(c) **Surcharges**

A charge of 1.5%, or such higher percentage as set by IITR's financial institution, for any amount charged to the credit or debit Card referred to in clause 4.

(d) **Mechanical Damage**

- (i) You agree to pay for any mechanical or other damage to the Rented Truck caused by Your failure to maintain, adequate engine oil level, pressure and adequate fluid levels (including water and antifreeze), misuse, unlawful use or by reason of any other neglect of necessary servicing or maintenance of the Rented Truck while being rented to You or under Your care, custody or control.
- (ii) You must promptly return the Rented Truck to IITR, at the location and time specified by IITR, for any inspection and maintenance that may be reasonably required by IITR.
- (iii) You also agree to pay for all towing expenses if the Rented Truck becomes stuck (in sand, mud, snow or otherwise) and all expenses incurred to start up the Rented Truck if You fail to use an engine heating device, if installed.
- (iv) You must not make any alterations or modifications to the Rented Truck.

(e) **Breakdown Roadside Assistance**

- (i) You must pay the cost of providing breakdown roadside assistance. You also assume full responsibility for any additional expenses or losses incurred by reason of a breakdown of the Rented Truck, whether or not causing a delay en route, including storage, towing and other expenses.
 - (ii) Where the Rented Truck is replaced by IITR for any reason, IITR may, at its option, terminate this Agreement and You must enter into a further agreement with IITR if You wish to rent, hire or lease the replacement truck.
- (f) **Tolls**
- (i) You are responsible for payment of any tolls incurred during the Hire Period or otherwise whilst the Rented Truck is in Your possession, custody or control.
 - (ii) IITR will charge You the total amount of any toll plus an administration fee of \$3.00 (exclusive of GST) per toll to reimburse IITR for the administrative cost incurred in processing the toll where tolls are charged to IITR.
- (g) **Fees for recovery of the Rented Truck**
- A minimum charge of \$150.00 (exclusive of GST) or such higher reasonable charge depending on the distance travelled, time and/or difficulty associated with the recovery of the Rented Truck, for the cost of recovery and/or towing of the Rented Truck (to the Return Location, police compound or a vehicle assessment/repair facility), in the event of an Accident or if You lose the Rented Truck keys.
- (h) **Returning and lost keys**
- (i) A minimum charge of \$150.00 (exclusive of GST) for returning the Rented Truck keys and/or remote door opening devices to a location other than the Return Location.
 - (ii) A charge of \$150.00 or the actual cost paid by IITR, whichever is higher, for the cost of replacing lost Rented Truck keys and/or remote door opening devices.
- (i) **Excessively Dirty Vehicle Cleaning Charge**
- (i) Charges for cleaning an Excessively Dirty Vehicle, calculated as follows:
 - (A) a fee of \$150.00 (exclusive of GST) for a basic detail (being an interior and exterior clean);
 - (B) a fee of \$280.00 (exclusive of GST) for a deluxe detail (being a basic detail plus deodorising the carpet, cleaning the door jams, and cleaning all internal leather, vinyl and plastics);
 - (C) a fee of \$380.00 (exclusive of GST) for a full detail (being a deluxe detail plus an interior steam clean and an exterior clean and polish); and/or
 - (D) a fee of \$380.00 (exclusive of GST) if there is any evidence someone has smoked in the Rented Truck, or if the Rented Truck has been used to carry animals (excluding registered service animals).
 - (ii) Without limiting the definition of "Excessively Dirty Vehicle" in clause 36.1, You agree that the Rented Truck will be deemed an Excessively Dirty Vehicle if You, any Authorised Driver or any other occupant(s) smoke any substance inside the Rented Truck, or if the Rented Truck is used to carry animals (excluding registered service animals).
- (j) **Interest**
- (i) Interest on any amount that remains unpaid after the expiry of fourteen (14) days after the issue of a tax invoice by IITR will be calculated daily at the greater of:
 - (A) the rate being 4% above the Cash Rate Target set by the Reserve Bank of Australia;
 - and

- (B) the rate set as the rate which accrues on all outstanding civil judgments of the Supreme Court (or its equivalent) in the jurisdiction in which the Rented Truck was collected by You, calculated from the date on which payment was due until paid.
 - (ii) The parties agree that the interest charges do not exceed a genuine pre-estimate of loss to be suffered by ITR if the unpaid amount is not paid and is not a penalty.
- (k) **Collection Expenses**

You must reimburse ITR for its reasonable costs and expenses incurred in collecting any amount payable under this Agreement from You.
- (l) **Infringement Notices**

If a traffic, parking, operating, moving or other violation or toll infringement notice is received by ITR relating to the use of the Rented Truck during the Hire Period or otherwise whilst the Rented Truck is in Your possession, custody or control, then:

 - (i) ITR will advise the relevant authority that You were the driver of the Rented Truck at the time of the infringement. The authority will then issue the infringement notice to You;
 - (ii) ITR will charge You an administration fee of \$33.00 (exclusive of GST) for each infringement notice received to reimburse ITR for the administrative cost incurred in processing the infringement notice; and
 - (iii) as between You and ITR, You are solely responsible for such violation or infringement.
- (m) **Late Return Fee**
 - (i) A charge set out in the Hire Particulars for delivering the Rented Truck late for each hour overdue.
 - (ii) When the Rented Truck is delivered by more than three (3) hours late, another Daily Hire Charge is payable by You.
 - (iii) For the avoidance of doubt, if You deliver the Rented Truck outside of Business Hours it will be deemed to not have been delivered until the next Business Day and You will be liable for pay the Return of Rented Truck Outside Business Hours Fee under clause 7.1(i).
- (n) **Non-Return of Vehicle Fee**

You will be charged a non-return of Rented Truck fee at the Full Daily Hire Charge for each day the Rented Truck is not returned in accordance with clause 5.1.
- (o) **Registration Checking Fee**

A charge of \$30.00 where You fail to provide ITR with acceptable proof of registration of Your Vehicle before the Rented Truck is returned, being the approximate cost of requesting registration details from the relevant roads authority.
- (p) **Special Licence Fees and Taxes**

You will pay any special licenses and taxes required in connection with Your business, including such licenses, taxes, fines, or tolls imposed against You arising out of the operation, use or storage of the Rented Truck and any fees or taxes required by any law or regulation, including trip permits or licences. You must file, or assist ITR in filing, all and any returns or reports required by any governmental authority as a result of Your use or operation of the Rented Truck.
- (q) **Other Amounts in the Hire Particulars**

Any other amounts set out in the Hire Particulars.
- (r) **Other Amounts**

In addition to any other amounts payable by You under this Agreement, You must pay to IITR, on demand and in a manner acceptable to IITR, the sum of:

- (i) any amount charged by IITR as reimbursement for Taxes arising in connection with Your use of the Rented Truck;
- (ii) IITR's reasonable costs, including reasonable legal fees, incurred in collecting payments due from You, dealing with Your breach of this Agreement and/or gaining custody of the Rented Truck;
- (iii) all fines, tolls, penalties, forfeitures, court costs and other expenses assessed against IITR, arising out of the violation of any law, rule or regulation with respect to Your possession, operation or use of the Rented Truck, and any associated administration fees.

9 Security Deposit

9.1 Security Deposit is held as security for performance of obligations

If IITR requires You to pay a security deposit as a condition of this Agreement (**Security Deposit**), IITR will hold the Security Deposit as security for Your performance of all Your obligations under this Agreement. You will not be entitled to any interest on the Security Deposit, and IITR may hold the Security Deposit with its other funds.

9.2 Default in performance

If You default in the performance of any of Your obligations under this Agreement, IITR may (but will not be obliged to) apply all or any portion of the Security Deposit to pay any money owing to IITR or for any damages sustained by IITR as a result of or to cure the default. IITR's application of the Security Deposit will not be construed as an agreement to limit the amount of IITR's claim or as a waiver of any damage resulting from Your default.

9.3 Reimbursement if Security Deposit used as a result of breaches

If IITR applies any amount of the Security Deposit as a result of Your breaches of the Agreement, You agree to reimburse IITR the applied amount within five (5) days after a request by IITR. IITR will return the remaining Security Deposit (if any) to You within a reasonable period after You return the Rented Truck to IITR.

9.4 Termination for failure to provide a Security Deposit

If You fail to provide the Security Deposit, IITR may terminate this Agreement or require You to pick up the Rented Truck at a different location.

10 Your Liability

10.1 What you are liable for

- (a) Subject to clauses 11 and 12, other than where caused by Fair Wear and Tear, and for liability of IITR that IITR is unable to exclude by non-excludable applicable law, You are responsible, to the fullest extent permitted by law, for, and release and must on demand indemnify, IITR from and against, any and all loss and damage, including any actual and consequential loss and damage, suffered by IITR during the Hire Period (and any other period in which You have possession, or control of the Rented Truck) in connection with the Rented Truck, including:
 - (i) loss and damage when the Rented Truck is otherwise in Your possession, custody or control, and resulting from Your use or possession of the Rented Truck;
 - (ii) loss and damage arising from theft of the Rented Truck;
 - (iii) loss and damage arising from an act of God, such as hail, storm, bushfire or flood;
 - (iv) loss and damage in respect of any action for death or injury to any person;

- (v) loss, damage, costs and expenses incurred by IITR because of injury or damage sustained by any occupant, either authorised or unauthorised, of the Rented Truck, including You, Your employees, agents or representatives and for any loss and damage to any cargo or other property left in, stored, loaded in or transported by the Rented Truck, including consequential damages, and for any loss and damage to any other of Your property or the property of Your agents or employees left in or on the Rented Truck at any time or in any place. You assume all risk of that loss and damage and waive all Claims against IITR that You may otherwise have in respect thereof;
 - (vi) any and all losses, damages, costs and expenses incurred by IITR because of injury, damage or property loss caused by You, Your agents, employees or representatives as a result of transporting any flammable, explosive or corrosive items, infectious substances, toxic substances, radioactive materials or other hazardous or dangerous goods or substances, including items listed in clause 3.2.3 of the Australian Code for the Transport of Dangerous Goods by Road & Rail;
 - (vii) any and all losses, damages, costs and expenses incurred by IITR as a result of any trailer or attachment to the Rented Truck;
 - (viii) any loss suffered or incurred by a third party when the Rented Truck is in Your possession, custody or control, and resulting from Your use or possession of the Rented Truck;
 - (ix) loss and damage as a result of Your breach of this Agreement and/or the use or operation of the Rented Truck in breach of this Agreement;
 - (x) loss and damage to the Rented Truck if it is used, operated or driven in breach of this Agreement or if the loss and damage results from collision with any structure because of insufficient height or width clearance;
 - (xi) the value of all Accessories, tyres, tools and accessories lost or stolen from the Rented Truck;
 - (xii) the cost of repossessing the Rented Truck in accordance with this Agreement, including legal fees and disbursements;
 - (xiii) loss of use of the Rented Truck when it is out of service due to an Accident or misuse;
 - (xiv) loss and damage resulting from excessive or improper loading of the Rented Truck, including where any person ignores advisory signs or warnings;
 - (xv) loss and damage resulting from operating the Rented Truck in any location that is not a public road, including recovery and salvage charges to extricate the Rented Truck;
 - (xvi) fines and penalties, including for forfeiture or seizure, resulting from the use of the Rented Truck; and
 - (xvii) loss and damage resulting from or caused by Your accessories or equipment, except to the extent caused by the fraud, negligence or wilful misconduct of IITR including that of its officers, employees, contractors or agents.
- (b) Notwithstanding anything in this clause or any other clause of this Agreement, there is no cap or limit on Your liability to IITR resulting from any use or operation of the Rented Truck for a Prohibited Use, by a Prohibited Person or for a Total Liability Use.

11 Accident Damage Excess (ADE) and Under-Age Accident Damage Excess (UADE)

11.1 Liability may be limited to the ADE

- (a) This clause 11.1 only applies if You are not required to obtain Your own insurance in respect of the Rented Truck under clause 2.1.

- (b) Your liability to IITR for loss and damage sustained to the Rented Truck in a motor vehicle Accident is limited to the amount of the ADE, as set out in the Hire Particulars, for each incident that results in loss and damage, to the Rented Truck, save in the circumstances specified in clauses 11.2, 15 and 17 and subject to You making payment to IITR of the ADE.
- (c) If the damages are less than the ADE, then You will be reimbursed the difference between the damages (plus an administration fee equal to 10% of the damages amount) and the ADE paid by You.
- (d) If the damages are caused by a third party and You have complied with Your obligations under clause 14, then IITR will refund the ADE to You if and when the damages are recovered from the third party and/or their insurer.

11.2 UADE and ADE liability for younger drivers

- (a) This clause 11.2 only applies if You are not required to obtain Your own insurance in respect of the Rented Truck under clause 2.1.
- (b) If an Authorised Driver is under the age of 25 or has less than two (2) years' experience driving the class of vehicle to which the Rented Truck belongs and has possession, custody or control of the Rented Truck when it is lost, stolen or damaged, then:
 - (i) Your liability to IITR for loss and damage sustained to the Rented Truck in a motor vehicle accident is limited to the combined total of the ADE and UADE, as set out in the Hire Particulars, for each incident that results in loss and damage to the Rented Truck, save in the circumstances set out in clauses 15 and 17 and subject to You having made payment to IITR of the ADE and UADE;
 - (ii) If the damages are less than the combined total of the ADE and UADE, then You will be reimbursed the difference between the damages (plus an administration fee equal to 10% of the damages amount) and the ADE and UADE paid by You;
 - (iii) If the damages are caused by a third party and You have complied with Your obligations under clause 14, then IITR will refund the ADE and UADE to You if and when the damages are recovered from the third party and/or their insurer.

12 Accident Excess Reduction (AER) and Under-Age Accident Excess Reduction (UAER)

12.1 Accident Excess Reduction (AER)

- (a) This clause 12:
 - (i) only applies if You are not required to obtain Your own insurance in respect of the Rented Truck under clause 2.1; and
 - (ii) does not apply if the Rented Truck is:
 - (A) a Prime mover;
 - (B) an 8 tonne Pantech truck;
 - (C) an 8 tonne Tray; or
 - (D) an 8 tonne Tautliner.
- (b) You may purchase optional AER and/or UAER prior to collecting the Rented Truck from IITR. AER and UAER cannot be purchased after the Rented Truck has been collected by You from IITR.
- (c) If AER is offered to and accepted by You as set out in the Hire Particulars:
 - (i) then Your liability to IITR for damage to the Rented Truck with respect of any motor vehicle accident involving the Rented Truck is limited to the Reduced ADE, as set out in the Hire Particulars, for each motor vehicle accident involving the Rented Truck that results in loss or

damage, save in the circumstances specified in clauses 15 and 17 and subject to You making payment to IITR of the Reduced ADE prior to collecting the Rented Truck from IITR; and

- (ii) if the damages are less than the Reduced ADE, then You will be reimbursed the difference between the damages (plus an administration fee equal to 10% of the damages amount) and the Reduced ADE paid by You. If the damages are caused by a third party and You have complied with Your obligations under clause 14, then IITR will refund the Reduced ADE to You if and when the damages are recovered from the third party and/or their insurer.

12.2 Under-Age Accident Excess Reduction

- (a) This clause 12.2:
 - (i) only applies if You are not required to obtain Your own insurance in respect of the Rented Truck under clause 2.1; and
 - (ii) does not apply if the Rented Truck is:
 - (A) a Prime mover;
 - (B) an 8 tonne Pantech truck;
 - (C) an 8 tonne Tray; or
 - (D) an 8 tonne Tautliner.
- (b) If, in addition to AER, UAER is offered to and accepted by You as set out in the Hire Particulars, and an Authorised Driver is under the age of 25 or has less than two years' experience driving the class of vehicle to which the Rented Truck belongs and has possession or control of the Rented Truck when it is lost, stolen or damaged then Your liability to IITR for loss or damage to the Rented Truck is limited to the combined total of the Reduced ADE and Reduced UAER prior to collecting the Rented Truck from IITR, as set out in the Hire Particulars, for each incident that results in loss and damage:
 - (i) save in the circumstances specified in clause 15 and 17; and
 - (ii) subject to You making payment to IITR of the Reduced ADE and Reduced UAER;

12.3 Refund when damage is less than the Reduced ADE/UAER

If the damages are less than the combined total of the Reduced ADE and Reduced UAER, then You will be reimbursed the difference between the damages (plus an administration fee equal to 10% of the damages amount) and the Reduced ADE and Reduced UAER paid by You.

12.4 Refund of recovered damages

If the damages are caused by a third party and You have complied with Your obligations under clause 14, then IITR will refund the Reduced ADE and Reduced UAER to You if and when the damages are recovered from the third party and/or their insurer.

12.5 Not insurance products

AER and UAER offered by IITR are not insurance products or policies.

13 Loss of use of Rented Truck

13.1 Loss calculation

Notwithstanding any limitation on Your liability specified in clauses 11 or 12 if the Rented Truck is unavailable to IITR for hire due to any loss or damage to the Rented Truck, You will pay IITR, on demand, an amount calculated using the following formula (**Unavailability Amount**):

$$A = DR \times UR \times CD$$

where:

A = the Unavailability Amount to be paid by You to IITR

DR = the Daily Hire Charge;

UR = the Utilisation Rate;

CD = the number of calendar days between the date that the Rented Truck is unavailable to IITR for hire due to loss or damage to the Rented Truck and the earlier of:

- (a) the date that the Rented Truck is repaired; and
- (b) the date that the Rented Truck is deemed to be a total loss by the relevant insurer.

14 Accidents involving the Rented Truck

14.1 Reporting an Accident or theft to Us

- (a) If You or an Authorised Driver has an Accident or if the Rented Truck is stolen You **must**:
 - (i) contact IITR to report the Accident or theft as soon as practicable, but in no case more than 24 hours of it occurring. You may contact IITR at the following email address: info@imintheright.com.au; and
 - (ii) subsequently fully complete an Incident Report Form.
- (b) The Incident Report Form should include as much information as is reasonably practical, including:
 - (i) the information listed in clause 14.3 regarding the contact details for the other driver and witnesses and an accurate written and diagrammatic description of the Accident and its location; and
 - (ii) the circumstances under which the Accident or theft occurred.
- (c) The Incident Report Form **must** be submitted to IITR:
 - (i) within seven (7) days of the Accident or theft, or upon the return of the Rented Truck if it is returned to IITR within that seven (7) day period; or
 - (ii) if the Rented Truck is stolen, immediately the theft of the Rented Truck is reported to the police.

14.2 Reporting an Accident or theft to the police

If the Rented Truck is stolen or if You or an Authorised Driver of the Rented Truck has 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 or the Authorised Driver **must** also report the theft or Accident to the police as soon as:

- (i) the theft is discovered; or
- (ii) it is practical to do so after an Accident.

14.3 Steps You must take following an Accident

If You or an Authorised Driver have an Accident You and the Authorised Driver **must**:

- (a) make the Rented Truck secure;
- (b) exchange names and addresses, phone numbers and email addresses with the other driver;

- (c) obtain the name of the other driver's insurance company;
- (d) take a photo of both sides of the other driver's licence;
- (e) take the registration numbers of all vehicles involved;
- (f) take as many photos as is reasonable showing:
 - (i) the position of the Rented Truck before they are moved for towing or salvage;
 - (ii) the Loss and Damage to the Rented Truck;
 - (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; and
- (g) obtain the names, addresses, phone numbers and email addresses of all witnesses.

14.4 Subsequent assistance

Subsequent to the Accident or theft You and any Authorised Driver **must**:

- (a) forward all third party correspondence or court documents to IITR within seven (7) days of receipt;
- (b) co-operate with IITR in the investigation of any Accident or theft claim and supply such further information as IITR or its investigator may reasonably request within seven (7) days of receipt of such a request; and
- (c) co-operate with IITR in the prosecution of any legal proceedings IITR, whether it be in the name of IITR, the driver/hirer as bailee or cross-hire provider, may institute or the defence of any legal proceedings which may be instituted against You or IITR as a result of an Accident, including attending:
 - (i) IITR's lawyers' office; and
 - (ii) any Court hearing.

14.5 What You must not do

You and any Authorised Driver **must not**:

- (a) make any admission of fault;
- (b) make any offer or promise to pay or settle any claim for third party loss; or
- (c) agree to indemnify, waive, or release any other party from liability to pay for damage as a result of an Accident, theft or attempted theft.

14.6 Consequences of lack of co-operation

Your entitlement to limitation of your liability specified in clauses 11 or 12 will be reduced, including to nil, according to the extent We are prejudiced as a direct result of any delay in complying with:

- (a) the reporting obligations in clauses 14.1 and 14.2; and
- (b) the obligations in clause 14.4 to forward third party correspondence and court documents to Us within seven (7) days and to co-operate with Us in the investigation of any Accident or theft claim and the prosecution or defence of any legal proceedings.

14.7 Replacement vehicle following a major Accident

Acting reasonably, IITR reserves the right not to replace the Rented Truck if it is involved in a major Accident or there has been substantial loss and damage to it and a replacement vehicle is always subject to availability.

15 Liability

15.1 Reasonable care

- (a) You and any Authorised Driver must take reasonable care of the Rented Truck by:
- (i) preventing it from being damaged or stolen;
 - (ii) maintaining it in a sound condition;
 - (iii) minimising the risk of it being stolen by ensuring that the security devices are used and they are maintained in good working order;
 - (iv) complying with all applicable laws, requirements and safety requirements including those relating to fire appliances;
 - (v) making sure it is protected from inclement weather or floods;
 - (vi) properly securing any goods, property or equipment carried in it;
 - (vii) maintaining its engine and brake oils and coolant level and tyre pressures;
 - (viii) using the correct fuel type;
 - (ix) making sure it is not overloaded by the number of persons or by the weight of goods carried; and
 - (x) only employing competent employees and ensuring that they meet these requirements and all other requirements of this Agreement.
- (b) You must also:
- (i) ensure the Rented Truck is loaded so that:
 - (A) it does not exceed its applicable mass and dimension limits; and
 - (B) the load is properly restrained so that it complies with load performance standards, including the Load Restraint Guides (issued by the National Transport Commission);
 - (ii) know and understand Your transport activities; and
 - (iii) identify the risks of Your activities, such as fatigue, speeding, excessive mass or dimensions, poorly restrained loads and unsafe vehicles;

15.2 Prohibited Persons

You must ensure that none of the following people drive the Rented Truck at any time:

- (a) any person other than an Authorised Driver;
- (b) any person who has obtained IITR's consent to operate the Rented Truck by fraud, misrepresentation or deception;
- (c) any person who is intoxicated; any person who is required by law to have a Smart Start or other interlock device fitted to any vehicle they drive;
- (d) any person under the age of 21 years, unless authorised in writing by IITR;
- (e) if the Rented Truck is a B-Double truck, any person under the age of 23, unless authorised in writing by IITR;
- (f) if the Rented Truck is a prime mover, any person under the age of 25, unless authorised in writing by IITR;

- (g) any person who is not a qualified and licensed driver or who is not experienced in the use of the Rented Truck;
- (h) any person who is the holder of a learner's permit or a provisional or probationary licence;
- (i) any international driver who is unable to prove they have the requisite class of licence in their home country or any international driver who is unable to meet the licensing requirements regarding holders of an international drivers licence of the relevant state or territory;
- (j) any person who has been convicted of a major traffic violation (excluding parking violations), including careless, abusive or reckless driving or driving under the influence of alcohol, drugs or other intoxicants within the last three (3) years;
- (k) any person who is disqualified from driving or is the holder of a suspended, endorsed or cancelled driver's licence (or any person whose licence has been suspended, cancelled or revoked within the last three (3) years), or who does not hold a current driver licence valid for the Rented Truck for the likely duration of the Hire Period; or
- (l) any person who has held a driver's licence for less than two (2) years.

15.3 Prohibited Use

You and any Authorised Driver must not:

- (a) drive, use or operate the Rented Truck:
 - (i) when it is damaged or unsafe;
 - (ii) in violation of the Heavy Vehicle National Law;
 - (iii) for any illegal purpose, the commission of a crime, or for an unlawful act (including a traffic offence for which the maximum penalty is a loss of licence or a suspension of 12 months or more);
 - (iv) in excess of applicable speed limits;
 - (v) in an aggressive, dangerous or abusive manner;
 - (vi) unsafely, recklessly, in a grossly negligent manner or with deliberate intent to cause injury, loss or damage;
 - (vii) for rally driving, racing, use on a racetrack, or for undertaking trials, experiments, motor sport events, tests, films or contests;
 - (viii) for driving instruction;
 - (ix) for vibration;
 - (x) outside the scope of the driver's employment or outside the usual course of Your business;
 - (xi) for conveying passengers for hire or reward, or for rideshare purposes, unless authorised in writing by IITR;
 - (xii) in connection with any act of terrorism;
 - (xiii) to carry or transport illegal drugs, materials or substances;
 - (xiv) to transport goods except in compliance with all necessary approvals, licences and legal requirements (all of which are to be obtained at Your cost);
 - (xv) to carry more persons than may be properly accommodated by the seat belt restraints;
 - (xvi) to carry a greater load than that for which the Rented Truck was built or as prescribed in the Rented Truck manual;

- (xvii) for any purpose other than the purpose for which the Rented Truck was designed;
 - (xviii) for hauling any goods that are incorrectly, inappropriately or unsafely loaded or secured or for the haulage of which the Rented Truck was not designed;
 - (xix) for transporting any flammable, explosive or corrosive items, infectious substances, toxic substances, radioactive materials or other hazardous or dangerous goods or substances, such as any gases or substances which may form explosive mixtures or any other toxic or explosive materials including petrol or propane, including items listed in clause 3.2.3 of the Australian Code for the Transport of Dangerous Goods by Road & Rail;
 - (xx) in any way that results in radioactive, chemical or biological contamination of the Rented Truck;
 - (xxi) for towing a trailer, tow boat, camper or other similar equipment or any other vehicle, unless expressly authorised in writing by IITR;
- (b) use a mobile phone when the Rented Truck is moving or stationary and not parked:
- (i) to make or receive a phone call;
 - (ii) to send a text message, video message, or email;
 - (iii) to perform any audio function; or
 - (iv) as a navigational device,
- unless** the body of the phone is securely mounted in the Rented Truck and its operation does not involve:
- (A) entering information, text, numbers or symbols, except if that operation can be performed using voice controls only; or
 - (B) scrolling on the device.
- (c) use it to transport persons other than in the passenger compartment; and
- (d) operate it in any way defamatory to IITR or in any way that puts IITR in a negative light.

15.4 Prohibited areas of use

The Rented Truck must never be driven, used or operated:

- (a) on an Unsealed Road;
- (b) Off Road;
- (c) above the Snow Line or on any road where snow has fallen or is likely to fall.
- (d) on roads that are prone to flooding or are flooded;
- (e) on beaches or sand dunes or any area exposed to saltwater;
- (f) through streams, rivers, creeks, salt lakes, or dams;
- (g) on any road:
 - (i) where the police or an authority has issued a current warning;
 - (ii) that is closed; and
 - (iii) where it would be unsafe to drive the Rented Truck.
- (h) in any area where there is not sufficient height or width clearance, or which is not paved;

- (i) in any location or region specified on the Hire Particulars or otherwise reasonably specified by IITR as an area or region which is prohibited;
- (j) in or on an airport or airfield or for underground, aviation, airport or airside activities;
- (k) on fixed wharfs, jetties or the carriage of the Rented Truck over water as ship cargo or by any other means without IITR's prior written permission; or
- (l) outside the state or territory in which the Rented Truck was hired, unless specified on the Hire Particulars or otherwise authorised in writing by IITR;

15.5 Total Liability Use

You will be responsible, to the fullest extent permitted by law, for all and any loss and damage sustained by IITR or any third party in connection with the Rented Truck:

- (a) as a result of fraud;
- (b) where You or any Authorised Driver has committed a Major Breach of this Agreement (see clause 16); or
- (c) the Rented Truck:
 - (i) loses a load that was not properly secured;
 - (ii) suffers hail damage;
 - (iii) is damaged in a collision with property, including a motor vehicle, owned by, rented to, being transported by, used by, or in the control or charge of You, an Authorised Driver, or any Family Member or person who usually resides with You or an Authorised Driver;
 - (iv) suffers damage caused by reversing;
 - (v) suffers damage to its undercarriage;
 - (vi) requires one or more tail lifts;
 - (vii) is damaged in an overhead collision or because it was driven under or onto an object lower than the height of the Rented Truck;
 - (viii) is damage because fluid (whether or not fuel) was pumped or transferred into the incorrect tank;
 - (ix) is abandoned;
 - (x) is the subject of unauthorised repairs or alterations;
 - (xi) is unsafe or not roadworthy while under Your or any Authorised Driver's control, where You or they should reasonably have been aware of that fact;
 - (xii) is driven in any area or under any circumstances (including crossing a waterway or transporting a vehicle across a waterway) where the Rented Truck becomes partially or totally immersed in water;
 - (xiii) sustains mechanical damage as a consequence of non-compliance with clause 6; or
 - (xiv) is repaired or maintained in breach of clause 6.

15.6 Fuel

- (a) You must only fill the Rented Truck with the fuel type specified in the manufacturer's specifications.
- (b) Notwithstanding the purchase of ADE, UADE, AER, UAER, Reduced ADE and/or Reduced UADE or any other provision of this Agreement, if You put the wrong type of fuel into the Rented Truck, You will be liable to IITR for the costs of any damage and repair.

15.7 Other prohibited uses

- (a) The Rented Truck must never be driven, used or operated:
 - (i) to carry animals or pets, with the exception of accredited or trained assistance animals;
 - (ii) with an underinflated tyre; or
 - (iii) as a place wherein any person is permitted or able to smoke cigarettes, including e-cigarettes or vapes, or any other substance.
- (b) You will be responsible for any damage caused or additional costs incurred by ITR, such as cleaning and deodorising costs.

16 Major Breach

16.1 What is a Major Breach?

You and any Authorised Driver commit a Major Breach of this Agreement if:

- (a) You fail:
 - (i) to secure the Rented Truck (clause 6.1);
 - (ii) to maintain the Rented Truck (clause 6.3);
 - (iii) to take appropriate steps when the Rented Truck is damaged, breaks down or there is a fault (clause 6.4); or
- (b) the Rented Truck is:
 - (i) lost or damaged as a result of Your failure to take all reasonable precautions against loss and damage to the Rented Truck (see clause 15.1);
 - (ii) driven, used or operated:
 - (A) by a Prohibited Person (see clause 15.2);
 - (B) for a Prohibited Use (clause 15.3);
 - (C) in a Prohibited area of use (clause 15.4); or
 - (D) for a Total Liability Use (clause 15.5);

that causes loss and damage to, or theft of, the Rented Truck, or loss to a third party;

- (c) the Rented Truck is involved in an Accident and You or the Authorised Driver fail to:
 - (i) report the Accident to ITR within 24 hours;
 - (ii) fail to provide all relevant information in relation to the Accident to ITR;
 - (iii) exchange details with all involved parties; or
 - (iv) co-operate with ITR in properly investigating a claim arising from an Accident or theft or from prosecuting or defending any Accident or theft claim (see clause 14 for full details of Your obligations if the Rented Truck is involved in an Accident or has been stolen);
- (d) if the Vehicle Monitoring System is tampered with or removed (clause 30.5); or
- (e) the Rented Truck is stolen by You or an Authorised Driver or by any person acting for You, at Your direction or on Your behalf.

17 Loss and Damage liability

17.1 Consequences of, and liability for, a Major Breach

If You or an Authorised Driver commit a Major Breach of this Agreement (clause 16.1), to the extent permitted by law and subject to the ACL:

- (a) You will lose the benefit of any limitation on Your liability for any and all loss and damage sustained by IITR or any third party in connection with the Rented Truck, even if You have accepted and/or paid for ADE, UADE, AER, UAER, Reduced ADE and/or Reduced UADE, including where the Reduced ADE or Reduced UADE is \$0; and
- (b) You will be responsible, to the extent permitted by law, for any and all loss and damage sustained by IITR or any third party in connection with the Rented Truck.

17.2 Other liability for loss and damage

You will also be responsible for all and any loss and damage sustained by IITR or any third party in connection with the Rented Truck if it:

- (a) has punctured tyres;
- (b) is refueled with fuel other than that which is recommended by the Rented Truck manufacturer;
- (c) suffers damage to its interior or tyres other than due to Fair Wear and Tear;
- (d) suffers windscreen damage;
- (e) has windscreen chipping, cracking or shattering; or
- (f) has hail damage.

17.3 Responsibility for Accessories

You will be fully responsible and liable for damages under clause 9 for any Accessories, even if You have accepted and/or paid for ADE, UADE, AER, UAER, Reduced ADE and/or Reduced UADE for the Rented Truck. ADE, UADE, AER, UAER, Reduced ADE and Reduced UADE do not apply to any loss of or damage to Accessories.

17.4 Trailer and load

Notwithstanding any other provisions of this Agreement, IITR has no liability for, and has no obligation to provide or procure insurance in respect of any trailer or attachment to the Rented Truck or any loads, and You will be fully responsible for any loss or damage to any trailer or attachment to Rented Truck and any loads, including any loss of load or damage caused by the load.

17.5 Personal Property

- (a) You are liable for any loss or damage to personal property owned by, rented to, being transported by, used by, or in the control or charge of You, an Authorised Driver, or any Family Member or person who usually resides with You or an Authorised Driver, including personal property inside the Rented Truck, regardless of fault. Your liability will not be limited under clauses 11 or 12 in respect of any such loss and/or damage.
- (b) Loss and damage to personal property is not covered by AER or UAER.
- (c) You agree to indemnify and hold IITR harmless to the maximum extent permitted by law from any Claim by a third party against IITR for loss and damage in respect to any personal property, except to the extent caused by IITR's negligence, fraud or wilful misconduct including that of its officers, employees or contractors.
- (d) You must remove all personal property from the Rented Truck before returning it to IITR. IITR takes no responsibility for personal property left in the Rented Truck or brought onto its premises. Without limiting

the generality of the previous sentence, if an electronic tag or pass that is not registered to IITR is left in the Rented Truck, IITR will take no responsibility for any amount charged to the associated toll account.

PART B – Authority to Act Terms and Conditions

18 Recovery Claim

18.1 Liability for Hire Charges

Subject to clause 21, You are liable to IITR for the Hire Charges.

18.2 Recovery Claim is ongoing

If the Hire Charges become the subject of a Recovery Claim, clauses 19 to 22 will apply and IITR will not request payment of the Hire Charges from You while the Recovery Claim is ongoing, subject to clauses 27 and 28.

19 Appointment as Agent

19.1 Appointment

- (a) You appoint IITR as Your agent to select and instruct a Recovery Firm to pursue the Recovery Claim on Your behalf under the terms outlined below.
- (b) You also give Your consent for IITR to share Your personal and Collision details with the Recovery Firm.

19.2 Authority

You authorise IITR to provide any instructions that the Recovery Firm requires in connection with the Recovery Claim, including:

- (a) subject to clause 20, negotiating the terms, conditions and costs upon which the Recovery Firm will pursue the Recovery Claim;
- (b) providing instructions to the Recovery Firm to negotiate with the At Fault Party or Insurer regarding liability for the Collision and the quantum of the Hire Charges;
- (c) subject to clause 21, providing instructions to the Recovery Firm to settle the Recovery Claim on terms and for an amount IITR considers to be reasonable; and
- (d) receiving any notices or bills required to be sent to You by the Recovery Firm, and providing any instructions necessary for the receipt, deposit, transfer, or transit of any proceeds from the Recovery Claim, including any interest or legal costs recovered.

19.3 IITR as the Recovery Firm

If IITR is the Recovery Firm that will pursue the Recovery Claim on Your behalf, you appoint IITR as Your agent and representative with the authority to pursue the Recovery Claim. This appointment includes authority to:

- (a) subject to clause 20, select the terms, conditions and costs upon which IITR will pursue the Recovery Claim;
- (b) negotiate with the At Fault Party or Insurer regarding liability for the Collision and the quantum of the Hire Charges;
- (c) subject to clause 21, settle the Recovery Claim on terms and for an amount IITR considers to be reasonable; and

- (d) provide any instructions necessary for the deposit, transfer, or transit of any proceeds from the Recovery Claim, including any interest or legal costs recovered.

20 Costs of Recovery Claim

20.1 Recovery Costs payment

The Recovery Firm's costs of pursuing the Recovery Claim will be paid from the proceeds of the Recovery Claim (including any interest or legal costs recovered).

20.2 Payment of any shortfall

Should these costs exceed the proceeds, IITR will pay the shortfall.

21 Payment and Indemnity

21.1 Settlement of a Recovery Claim

If IITR provides instructions to the Recovery Firm to settle the Recovery Claim under clause 19.2(c), IITR will:

- (a) accept any amount recovered from the At Fault Party or Insurer (including any interest or legal costs recovered) in full satisfaction of the Hire Charges; and
- (b) release You from any further liability for the Hire Charges. This will occur even if IITR fails to recover any amount at all.

21.2 Entitlement to indemnity

Provided you do not breach clause 22.2(a), IITR will indemnify You in respect of any adverse costs order that may be made against You in legal proceedings to recover the Hire Charges.

21.3 Your liability remains

Notwithstanding anything in this clause or any other provision of this Agreement, You always remain liable to pay the Additional Charges.

22 Your Promises and Obligations

22.1 Confirmation of ownership/bailment and information

You confirm that:

- (a) You are (and were at the time of the Collision) the owner or bailee of Your Vehicle. Alternatively, You represent and warrant to IITR that You are duly authorised to sign and enter into this Agreement for and on behalf of the owner or bailee; and
- (b) You have provided IITR with all relevant information and that this information is accurate in every detail. You acknowledge that IITR has relied upon the accuracy of this information in agreeing to accept the obligations in clauses 18.2, 21, and 21.

22.2 Covenants

You agree that:

- (a) You will co-operate with IITR and the Recovery Firm and do all things reasonably required to support the Recovery Claim. This includes providing and signing witness statements or affidavits, appearing in court to give evidence and providing any information or documents necessary for pursuing the Recovery Claim;

- (b) You will use Your best endeavors to ensure the repair or replacement of Your Vehicle proceeds without any delay;
- (c) You will immediately notify IITR once the repairs to Your Vehicle have been completed or You have received a total loss payout, and thereafter immediately return the Rented Truck to IITR;
- (d) You will immediately notify IITR if Your Vehicle is moved from one location or repairer to another location or repairer;
- (e) You will immediately return the Rented Truck to IITR at the end of the Hire Period;
- (f) You will not hire a vehicle other than the Rented Truck during the Hire Period;
- (g) You will not make a claim for any loss or damage from an At Fault Party or Insurer for physical inconvenience or loss of amenity without first obtaining consent from IITR;
- (h) Where another person or entity (for example, Your Insurer) seeks to recover, on Your behalf, any property loss or damage (in addition to the Hire Charges) suffered by You as a result of the Collision, You will give control and carriage of any legal proceedings commenced on Your behalf for that purpose to the Recovery Firm, provided that the Hire Charges are also being (or are intended to be) claimed in those legal proceedings; and
- (i) You will not do anything to compromise the Recovery Claim, including:
 - (i) by making an admission of liability in respect of the Collision;
 - (ii) purporting to release the At Fault Party or Insurer from Your recovery rights by signing any form of release, including a settlement release, deed of release or agreement, discharge voucher, or similar document or otherwise; or
 - (iii) by engaging in unreasonable conduct that delays the repair or replacement of Your Vehicle.

PART C – General Terms and Conditions

23 GST

23.1 Amounts are GST exclusive

All amounts set out in this Agreement are GST exclusive.

23.2 GST is payable

You must pay GST, without deduction or set off, at the same time and on the same basis as You pay the corresponding amounts under this Agreement.

24 General

24.1 Warranty

You warrant that You have provided all relevant information to IITR and that it is true and correct in every particular. You acknowledge that IITR has relied on the accuracy of Your information in deciding to enter into this Agreement.

24.2 Acknowledgment

You acknowledge and agree that:

- (a) this Agreement is not regulated by the Consumer Credit Code;

- (b) IITR may appoint and instruct a Recovery Firm that is a related entity, within the meaning of the *Corporations Act 2001* (Cth);
- (c) IITR may pay and receive a referral fee, commission, reward or gift in connection with Your hire of the Rented Truck and the repair or replacement of Your Vehicle;
- (d) IITR does not organise or coordinate, nor is it liable or responsible for, the repair, storage, movement or disposal of Your Vehicle, unless otherwise agreed; and
- (e) IITR may assign or transfer its rights and/or obligations under this Agreement. In the event of such assignment, You will remain bound by this Agreement.

25 Intellectual Property Rights

25.1 No licence granted for Intellectual Property Rights

This Agreement does not grant You a licence or right to use IITR's Intellectual Property Rights.

25.2 No claim or right of ownership of use

You have no claim or right to ownership or use of IITR's Intellectual Property Rights.

26 Limited Liability and Indemnity

26.1 ACL and Non-Excludable Obligations

- (a) You have the rights conferred by the ACL and nothing in this Agreement is intended to have the effect of:
 - (i) excluding, restricting or modifying the operation of Part 2-3 of the ACL (Unfair Contract Terms)
 - (ii) excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL (remedies relating to guarantees);
 - (iii) the exercise of a right conferred by such a provision; or
 - (iv) any liability of IITR in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL (Consumer Guarantees) to a supply of goods or services,(each, a **Non-Excludable Obligation**).
- (b) Except in relation to Non-Excludable Obligations, to the extent permitted by law:
 - (i) IITR makes no warranty of any kind, express or implied, as to the acceptability, fitness for any particular purpose or as to absence of any manufacturing defects of the Rented Truck, regardless of the cause (including any negligence by IITR);
 - (ii) all conditions, warranties, guarantees, rights, remedies, liabilities or other terms implied or conferred by statute, custom, or the general law that impose any liability or obligation on IITR, are expressly excluded from this Agreement; and
 - (iii) IITR makes no warranties or other representations under any contract with You, including this Agreement.

26.2 Limitation of liability

- (a) Except in relation to Non-Excludable Obligations and IITR liability for death, personal injury or property damage that is not excludable by applicable law, IITR's liability to You arising directly or indirectly under or in connection with this Agreement is limited as follows:

- (i) IITR will have no liability whatsoever to You for any loss, harm, damage, cost or expense (including legal fees) in the nature of special, indirect, incidental, punitive or consequential loss or damage (including, without limitation, economic loss, loss of contract, loss of profit or revenue, loss of business, loss or damage to cargo or driver time, for property left, stored, loaded or transported on the Rented Truck or for loss of opportunity, loss of production, production stoppage or loss of data) of any kind whatsoever;
 - (ii) if You or any Authorised Driver parks Your or their own vehicle at the Return Location while You hire the Rented Truck, You acknowledge (and will procure that each Authorised Driver acknowledges) that You and they do so at Your and their own risk and that all contents of such vehicles are at Your and their own risk, that IITR does not have any liability to You or them for any loss, claim, theft or any other thing that results because You or they choose to park Your or their vehicle at the Return Location; and
 - (iii) the aggregate of IITR's liability to You is otherwise limited to an amount not exceeding the amount paid by You to hire the Rented Truck.
- (b) In relation to Non-Excludable Obligations, IITR's liability to You for a failure to comply with any Non-Excludable Obligation is limited, in respect of goods or services supplied by IITR to You that are not used for personal, domestic or household purposes, to:
- (i) in the case of services, supplying the services again or payment of the cost of having the services supplied again; and
 - (ii) in the case of goods, replacing the goods, supplying equivalent goods or repairing the goods, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.
- (c) Nothing in this Agreement purports to modify or exclude Non-Excludable Obligations.

26.3 Indemnity

- (a) Subject to this clause 26.3, each party indemnifies and agrees to keep indemnified the other party against any loss, claim, damage, liability, action or legal proceedings and all costs, charges and expenses (including legal fees and disbursements on a full indemnity basis) in connection with the enforcement of this Agreement or arising either directly or indirectly as a result of a breach by the indemnifying party of its obligations or of any warranties or representations given under this Agreement, including any action brought by third parties against the other party as a result, either directly or indirectly, of such breach.
- (b) Notwithstanding clause 26.3(a), to the extent permitted by law, You must protect, defend, indemnify and hold IITR and its partners and their respective officers, directors, shareholders, agents, representatives and employees harmless from and against any and all Liabilities to the extent that the Liabilities arise from:
- (i) Your failure to comply with Your obligations under law and/or to government bodies having jurisdiction over You and/or the Rented Truck;
 - (ii) any liability or dispute arising from property left in the Rented Truck or abandoned by You;
 - (iii) any liability imposed on or assumed by You under any worker's compensation Act, plan or contract and any and all injuries (including death) or property damage sustained by You or any of Your agents, officers, employees or contractors;
 - (iv) loss and damage incurred by IITR from Your use of the Rented Truck, or in respect of any attachment not owned or insured by IITR;
 - (v) claims arising out of Your negligence or breach of this Agreement;
 - (vi) Your wilful acts of dishonesty;
 - (vii) Your fraud, criminal activity, unlawful activity or malicious acts;

- (viii) Your wilful breach of statute, contract or duty;
 - (ix) Your conduct intended to cause loss, damage or liability with reckless disregard for the consequences; or
 - (x) claims which arise out of Your maintenance, use or operation of the Rented Truck, except to the extent caused by IITR's negligence or breach of this Agreement,

except to the extent caused by the negligence, fraud or wilful misconduct of IITR including that of its officers, employees or contractors.
- (c) The obligations under clause 26.3 shall survive termination or expiry of this Agreement.

27 Cancellation

27.1 Right to terminate within 7 days

You have the right to terminate this Agreement within seven (7) days of the Commencement Date (**Cancellation Period**) without giving any reason provided that:

- (a) You notify IITR of Your decision in writing;
- (b) You immediately return the Rented Truck, in accordance with this Agreement;
- (c) You pay IITR the Full Daily Hire Charge for each day the Rented Truck was hired, at the time You return the Rented Truck; and
- (d) You pay the Early Return Fee set out in the Hire Particulars.

27.2 Acknowledgement

You acknowledge that:

- (a) the fees and charges for the hire of the Rented Truck are calculated on the basis that You rent and pay for the Rented Truck for more than seven (7) days; and
- (b) if for any reason the Rented Truck is returned or repossessed within seven (7) days from the first day of the Hire Period, in addition to the above fees and charges, You will also be liable to IITR for the Early Return Fee.

27.3 Early Return Fee is not a penalty

The Early Return Fee is not a penalty, but rather, an amount equivalent to part of the discount that IITR applied when calculating the fees and charges set out in the Hire Particulars prior to IITR entering into this Agreement with You.

27.4 Termination rights

Your termination rights are otherwise governed by clause 28.

28 Termination

28.1 Immediate termination

Without limiting either party's rights or remedies at law or in equity, either party (the "**first party**") may, by notice to the other party, immediately terminate this Agreement if the other party:

- (a) has committed a material breach of this Agreement;
- (b) has committed a breach of this Agreement that is remediable and that is not remedied within seven (7) days of written notice from the first party requiring it to be remedied; or

- (c) has suffered an Insolvency Event (or any associated entity (as that term is defined in the *Corporations Act 2001* (Cth)) of the other party has suffered an Insolvency Event), except where such termination would be in breach of the *Corporations Act 2001* (Cth).

28.2 Termination by IITR

IITR may terminate this Agreement with written notice if the Rented Truck is stolen or lost (and not recovered within 14 days), or the Rented Truck is, or IITR reasonably considers the Rented Truck to be, substantially destroyed or damaged, or if You:

- (a) use the Rented Truck for a Prohibited Use or allow it to be used, operated or driven by any Prohibited Person or otherwise allow for it to be used, operated or driven in breach of this Agreement;
- (b) fail to obtain or maintain any insurance coverage as required by this Agreement or You are informed by Your insurer that it will not accept liability under an insurance policy that You are required to obtain under this Agreement (whether due to an error, omission, non-disclosure or misstatement in any insurance document, or for any other reason);
- (c) fail to return the Rented Truck at the time required under this Agreement;
- (d) abandon or purport to abandon the Rented Truck;
- (e) fail to provide to IITR a Security Deposit that You are required to provide to IITR under this Agreement; or
- (f) make any false representation or statement either in this Agreement or in connection with the Rented Truck.

28.3 Our rights on termination

If this Agreement is terminated:

- (a) it will not affect Our right to receive any money We are owed under this Agreement;
- (b) You give Us permission to access and enter Your premises to repossess the Rented Truck without using unreasonable force or causing damage; and
- (c) You must pay any towing or recovery fees incurred in the Rented Truck's repossession.

28.4 Obligations on termination

If this Agreement is terminated, then:

- (a) You must return the Rented Truck to the Return Location immediately and pay the Prescribed Amounts within seven (7) days;
- (b) You must inform IITR of the location of the Rented Truck;
- (c) IITR may enforce this Agreement in respect of the Rented Truck and recover any direct, indirect, consequential, punitive, statutory or other damages from You including for downtime and loss of use;
- (d) IITR may immediately take possession of and repossess the Rented Truck and You must allow it to do so;
- (e) IITR may report the Rented Truck as stolen to law enforcement authorities if the Rented Truck is not returned to IITR within seven (7) days and IITR may take any steps which it considers reasonable to recover the Rented Truck; and
- (f) IITR may charge the credit or debit Card referred to in clause 4 for any amounts that are owed under this Agreement (including any unpaid Hire Charges or any other money payable under this Agreement) and all costs to:
 - (i) remove any signage and livery on the Rented Truck; and

- (ii) restore the Rented Truck to the same condition and appearance as when received, except for fair wear and tear (as per the Fair Wear and Tear Guide excepted (“**Good Condition**”).

Note: Your renting of the Rented Truck will be sufficient consent for this charge.

- (g) You further consent to ITR charging the Card and any of Your other credit cards that it has on file in order to obtain payment under this Agreement.

29 Dispute Resolution

29.1 Complaints

- (a) If You have a complaint about, or if You wish to dispute, any matter relating to Your hire or use of the Rented Truck under this Agreement, then You agree that before commencing any legal proceedings other than for urgent interlocutory relief You must follow the dispute resolution process set out below.
- (b) In the first instance, You must notify ITR during Business Hours of Your complaint and provide ITR with such information (written or oral) as You may be requested to provide to facilitate proper discussion and consideration of the complaint. You may contact ITR at the following email address: info@imintheright.com.au.

29.2 Referral to mediation

- (a) If Your complaint is not resolved within ten (10) working days of its notification, then the matter will be referred to mediation that is to take place within ten (10) days of the referral.
- (b) The Mediator will be as agreed between the parties or, if there is no such Agreement, as selected by the CEO of the Australian Disputes Centre (**ADC**) of Lower Ground Floor, 233 Macquarie Street, Sydney NSW 2000.
- (c) Unless otherwise agreed, the mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to the ADC.
- (d) Each party shall bear its own costs associated with the mediation and shall share the Mediator’s costs on a 50/50 basis.
- (e) If the complaint is not resolved at mediation (but only in that event), then either party may then commence legal proceedings with respect to the subject matter of the complaint.

30 Vehicle Monitoring System

30.1 Agreement for use of the Monitoring System

- (a) Subject to applicable laws, You acknowledge and agree that the Rented Truck may be fitted with GPS systems, antennas, transceiver boxes or other related monitoring equipment and systems (together, the **Monitoring System**).
- (b) The Monitoring System is equipped with an onboard computer, GPS tracking device, telematics module and toll transponder and can be used to open and close the Rented Truck and track and record the geographical location, distance, speed, braking and damage data of the Rented Truck during the Hire Period (and any other period in which You have possession, custody or control of the Rented Truck).
- (c) Subject to applicable laws, You agree that ITR may use the Monitoring System for the above purposes and can download data from the Monitoring System. You must procure each Authorised Driver’s consent to the foregoing provisions of this clause 30. You also agree, and will procure the consent of each Authorised Driver, to ITR’s collection, holding, use and disclosure of the data collected by the Monitoring System in accordance with this clause 30 and the ITR Privacy Policy available at <https://www.imintheright.com.au/privacy-policy>.

- (d) You must notify each Authorised Driver about the presence and operation of the Monitoring System and ensure that they do not drive the Rented Truck in the event that they do not agree to this clause 30.

30.2 Immobilisation

The Monitoring System can also be used to immobilise the Rented Truck if You fail to pay any amount due under this Agreement or if IITR has reasonable grounds to suspect the Rented Truck is or has been used for a Prohibited Use or by any Prohibited Person.

30.3 Action taken because of driving behaviour

- (a) Subject to applicable laws, IITR may take action on the basis of Your and/or any Authorised Drivers' driving behaviour and driving behaviour data (including, but not limited to geolocation, speed, mileage, braking, and damage data) derived from the Monitoring System and other devices or gauges relevant to Your rental and usage of the Rented Truck.
- (b) Actions may include suspension or termination of this Agreement and/or Your ability to continue to rent vehicles from IITR. IITR may also provide or sell this information to third parties.

30.4 Monitoring must be for business purpose only

You must ensure that in respect of Authorised Drivers who are Your employees located in New South Wales, that the Monitoring System is not used to track their driving of the Rented Truck other than when they are driving the Rented Truck for Your business purposes.

30.5 Tampering or removing the Monitoring Device prohibited

- (a) You must ensure that You and all Authorised Drivers do not tamper with the Monitoring System or remove it from the Rented Truck.
- (b) You will be responsible for any and all damage or theft to the Monitoring System which occurs during the Hire Period (and any other period in which You have possession, custody or control of the Rented Truck), except damage caused by fair wear and tear (as per the Fair Wear and Tear Guide).

31 Privacy

31.1 Personal Information

- (a) You acknowledge that IITR will collect, hold, use and/or disclose Personal Information about You and any Authorised Driver (whether collected from You and/or from third parties), in accordance with IITR's Privacy Policy.
- (b) You authorise IITR to collect, hold, use and/or disclose Personal Information that you provide to us in accordance with IITR's Privacy Policy. This may include disclosure of Personal Information that you provide to IITR to third parties that may include, among others:
 - (i) lead generation, call center and marketing providers;
 - (ii) tow truck companies in relation to the towing of Your Vehicle and/or the Rented Truck;
 - (iii) motor vehicle fleet companies in relation to the hire of the Rented Truck to You, which includes Orix, whose Collection Statement can be found at <https://www.orix.com.au/wp-content/uploads/2020/10/Collection-Statement-Oct-2020.pdf>;
 - (iv) panel beaters, mechanics and motor vehicle repairers in relation to the repair of Your Vehicle and/or the Rented Truck;
 - (v) roads and traffic authorities or toll operators in relation to traffic, parking and toll infringements (including Your personal contact information, vehicle rental information, usage information and billing and financial information);

- (vi) finance brokers, dealerships, cross hire partners, insurers, insurance brokers, motor vehicle assessors or investigators in relation to the Recovery Claim and/or any motor vehicle accident involving the Rented Truck;
 - (vii) police in relation to the Recovery Claim, Your hire of the Rented Truck (including any attempt to recover the Rented Truck from You) and/or any motor vehicle accident involving the Rented Truck;
 - (viii) the Recovery Firm or any other legal practitioners retained in relation to the Recovery Claim and/or any motor vehicle accident involving the Rented Truck;
 - (ix) personal injury triage service providers and legal practitioners retained in relation to any claim for personal injury; and
 - (x) debt collectors, insurers, government agencies, hosting providers, software developers and/or infrastructure support providers for the operation of IITR's business and provision of services to You.
- (c) Further information about the circumstances under which IITR collects, uses, holds, discloses and sell Personal Information can be found in IITR's Privacy Policy.

31.2 Your undertaking and warranty

- (a) You undertake to take reasonable steps to:
- (i) ensure that any Personal Information that You provide to IITR is correct, accurate, up to date and complete at the time it is provided;
 - (ii) ensure that You, any Authorised Driver and any other concerned individual is aware that IITR may collect, hold, use and/or disclose their Personal Information in accordance with IITR's Privacy Policy and may disclose their Personal Information to third parties, including as set out in clause 31.1(b);
 - (iii) notify IITR of any change to Personal Information concerning any Authorised Driver within 24 hours;
 - (iv) protect Personal Information in Your possession and/or control that is collected, held, used, transmitted, stored or otherwise processed by IITR from accidental or unlawful destruction, loss, alteration, unauthorised disclosure and/or access.
- (b) You warrant that:
- (i) You are entitled and authorised to upload, input, transfer and/or disclose the Personal Information that You provide to IITR; and
 - (ii) You have provided the appropriate notifications and procured all necessary consents, permissions and authorisations to allow IITR and its personnel to collect, hold, use, sell and disclose the Personal Information without breaching any applicable law or any person's rights.

31.3 Authorised Drivers consent required and their rights

- (a) You must procure the consent of each Authorised Driver to IITR obtaining any address for the Authorised Driver that has been provided to any authority holding drivers' licensing or vehicle registration information and such consent must also authorise and direct any such authority to give address and drivers licence details to IITR, or its authorised agent, upon request.
- (b) Authorised Drivers have the right to request access and corrections to their Personal Information that IITR holds. They also have a right to make a complaint about the way in which IITR manage their Personal Information.
- (c) To gain access to, seek correction of, or complain about the handling of Personal Information that IITR holds about an Authorised Driver, the Authorised Driver may contact IITR at Level 7, 65 Berry Street, North Sydney NSW 2060 or by email to info@imintheright.com.au.

- (d) You must notify each Authorised Driver of the rights available to them that are described under this clause 31.3(b).

31.4 **Notification of unauthorised use**

You must notify IITR as soon as possible upon becoming aware of any unauthorised use of Your IITR account.

31.5 **Use of information**

IITR will only use the information described in this document and in particular to:

- (a) provide You with the above functionalities;
- (b) issue certain vehicle commands or collect information about certain aspects of a Rented Truck's state;
- (c) advise You on important safety-related information;
- (d) collect information about the Rented Truck's performance and provide services related to the Rented Truck;
- (e) collect information about the use of the Rented Truck in order to better manage IITR's fleet; and
- (f) provide services to the Rented Truck's passengers where applicable.

31.6 **Personal data safeguards**

IITR maintains administrative, technical and physical safeguards designed to protect the personal data against accidental, unlawful or unauthorised destruction, loss, alteration, access, disclosure or use. IITR will only retain Your personal data for as long as necessary to provide You with the App, unless otherwise authorised by You, or required or authorised by applicable law.

31.7 **Right of access**

- (a) Subject to applicable law, You may have the right to request access to and receive information about Your personal data, update and correct inaccuracies in Your personal data, and have the information blocked or deleted, as appropriate.
- (b) These rights may be limited in some circumstances by local law requirements. You also have the right to withdraw Your consent at any time without cost and to access Your consent declaration at any time.
- (c) To exercise Your rights or for more information about the App, please contact IITR using the contact details on page 1 of this Agreement.

32 **Security Interest acknowledgement**

32.1 **Acknowledgment**

If the Rented Truck is owned by Custom Service Leasing Pty Ltd (**CSL**) and leased to IITR for use in its business, then You acknowledge that:

- (a) CSL has a Security Interest in the Rented Truck;
- (b) the exercise of any rights by CSL will not constitute a breach or default under this Agreement or otherwise entitle You to terminate, rescind or revoke this Agreement;

32.2 **Your rights are subject to CSL's rights under the head lease**

Your rights in respect of a Rented Truck are expressly subject and subordinated to CSL's rights under a head lease between CSL and IITR and that nothing in this Agreement will in any way limit, reduce, vary or otherwise qualify CSL's rights under that head lease; and

32.3 Consequences of CSL's security interest becoming enforceable

if CSL's Security Interest becomes enforceable, or the head lease in respect of the Rented Truck is terminated:

- (a) CSL may by notice to You terminate this Agreement and upon such notice Your right to possess and use the Rented Truck automatically ceases and You must surrender possession and control of the Rented Truck to CSL, notwithstanding that You may not be in breach or default of Your obligations under this Agreement;
- (b) CSL may enter any premises where the Rented Truck is located and remove the Rented Truck therefrom; and
- (c) You will obtain all necessary consents from the owner, occupier and other interested persons (such as any mortgagee) of the relevant premises where the Rented Truck is located to enable CSL to take possession of it.

33 Notices

33.1 What constitutes a Notice

In this agreement, a **"Notice"** means:

- (a) a notice; or
 - (b) a consent, approval or other communication required to be in writing,
- under this agreement.

33.2 How is a Notice given?

Any written notice or demand to be given by a party (**sender**) to the other party (**recipient**) under or in connection with this Agreement will be effective:

- (a) If left at the recipient's address as specified in this Agreement or such replacement address of the recipient otherwise notified to the sender;
- (b) If the notice or demand is posted by prepaid post to the recipient's address as specified in this Agreement or such replacement postal address of the recipient otherwise notified to the sender, in which case it will be deemed to have been received by the recipient five (5) Business Days after the date on which the notice or demand was posted;
- (c) If made by facsimile or email to the address for the recipient specified in this Agreement or such replacement facsimile or email address of the recipient otherwise notified to the sender, when the sender receives a read or delivery receipt or reply to the notice or demand.

34 General

34.1 Amendments

- (a) Subject to clause 34.1(b), this Agreement may only be amended by a written document signed by You and IITR.
- (b) IITR may unilaterally amend this Agreement to correct any typographical, clerical, or formatting errors. Such amendments must not affect the substantive rights or obligations of either party.

34.2 Assignment

You may not assign, transfer, license or novate Your rights or obligations under this Agreement without the prior written consent of IITR, which shall not be unreasonably withheld.

34.3 No Disparagement

- (a) Each party agrees not to, directly or indirectly, participate in, establish, or create individually or in concert with others, any communication which makes, represents, or advertises, by way of fact or opinion, any slanderous, libelous, injurious, disparaging or adverse statements about the other party, its officers, directors, shareholders, agents, representatives and employees.
- (b) Each party recognises that engaging in that conduct is harmful to the other party's business and that monetary damages may not be an adequate remedy and, as a result, it agrees that the other party may seek an injunction to prevent the dissemination or communication of any actual or threatened defamatory or injurious material or statements.

34.4 Relationship

IITR is an independent contractor, and this Agreement does not create any relationship of partnership, joint venture, or employment arrangement between the parties. You have no express, implied or apparent authority to create or assume, in IITR's name or on its behalf, any obligation, or to act or purport to act as IITR's agent.

34.5 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Agreement by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Agreement.
- (b) Any waiver or consent given by any party under this Agreement will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.

34.6 Cooperation

You agree to cooperate with IITR in connection with the defence or prosecution of any legal proceedings or in dealing with any government authority. IITR cooperates with all federal, state and local law enforcement officials to provide the identity of its customers who operate rental vehicles.

34.7 Severance

If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain enforceable.

34.8 Survival

Clauses 10, 25, 26, 31, 34.3 and this clause 34.8 and any other clauses which by their nature survive termination of this Agreement shall so survive its termination.

34.9 Jurisdiction

This Agreement will be interpreted in accordance with the laws in force in New South Wales. You and IITR irrevocably submit to the exclusive jurisdiction of the courts located in New South Wales with respect to any proceedings concerning this Agreement or its subject matter.

34.10 Counterparts

- (a) This Agreement may be executed in counterparts provided that no binding agreement shall be reached until the executed counterparts are exchanged.
- (b) A counterpart of a document may be exchanged in hard copy or by email.
- (c) A counterpart exchanged by email shall constitute evidence of the execution of the original.

35 Fair Wear and Tear Guide

Type	Description	Fair Wear and Tear?
GENERAL	Missing Keys, Service Manual or Owner's Manual	NO
	Missing DG Compliant Equipment (if applicable)	NO
EQUIPMENT	Missing/Damaged cigarette lighter, door knobs, window winders, trimming , aerial	NO
	Missing/Damaged jack, tool and safety equipment	NO
GLASS (incl. Mirrors, windows, and headlights)	Cracks	NO
	Bulls eyes, and stars (and minor chips)	NO
	Non-operational or cracked/broken headlights or lenses	NO
TYRES	Non-roadworthy condition. Tyres must be above wear bar evenly worn	NO
	Missing Spare Wheel	NO
	Punctures in Tyres	NO
	Sidewall Damage	NO
WHEELS/RIMS	Dents , Buckles or badly scratched	NO
	Damaged Mudguards	NO
INTERIOR TRIM	Seats/trim - burnt, cut, holed or ripped or stained	NO
	Seats/trim - worn material, split stitching, or frayed	YES
	Soiling to seats or carpets caused by normal use	YES
	Rips, cuts and marks to dash and controls	NO
	Cracked , broken missing or inferior quality replacement controls, panels, equipment (radio /speaker/lids)	NO
	Odours or Tobacco smells	NO
	Missing or Extremely Soiled Floor Coverings	NO
	Worn Floor Coverings on Drivers Pedal position	YES
PAINT/BODY	Major Scratching - more than 50mm long and/or deep (with rusting)	NO
	Minor touch ups or minor flaking	NO

	Prominent touch ups, spoils from bird/tree droppings and major flaking	YES
	Evidence of poor repairs, colour mismatch or misalignment between panels	NO
	Dented or Cracked Body Panels	NO
	No rust penetration maximum 2 per panel (4 in total)	YES
	Hail damage, buckling distortion or missing badges	NO
	Minor stone chipping on front panelling	NO
	Major prominent stone chipping	NO
	Damage to paint work from fitment or removal of decals	NO
	Worn paint near guards from driver entry and exit	NO
	Worn paint on boot foot-well from driver entry and exit	NO
	Holes drilled in cab for antennas or other	NO
UNDER BODY	Minor dents and surface rusting	YES
	Major damage and ingress rust	NO
	Missing Chassis rails	NO
	Exhaust Leaks which are the result of visible damage to the exhaust system	NO
MECHANICAL CONDITION	Failure to service and maintain the vehicle as per the manufacturers recommendations, resulting in premature component or assembly failure	NO
EXHAUST	Bent or damaged exhaust stack.	NO

36 Definitions and interpretation

36.1 Definitions

Terms capitalised throughout this Agreement are defined as follows:

“Accessories” means keys and remote door opening devices, any removable equipment supplied with the Rented Truck including, but not limited to, child restraint seats, and satellite navigation devices (which may or may not attract an additional charge for usage), tyres, tools (supplied with the Rented Truck), SD card, telematics, roof racks, tow bar and any other equipment supplied with the Rented Truck, which are only to be used:

- (a) with the Rented Truck as originally supplied or such vehicle as ITR supplies as a replacement for the Rented Truck; and
- (b) in accordance with all instructions and operational information provided.

“Accident” means any accident, incident, loss of, or damage to, involving the Rented Truck (no matter how minor and irrespective of whether it results in damage to the Rented Truck) or which results in loss or damage to a third party.

“ACL” means The Australian Consumer Law as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

“Additional Charges” means all the amounts payable by You as set out in clause 8.

“ADE” means the Accident Damage Excess set out in the Hire Particulars.

“Administration Fee” has the meaning given by clause 7.1(j).

“AER” means the Accident Excess Reduction set out in the Hire Particulars.

“After Hours Fee” has the meaning given by clause 7.1(h).

“At Fault Party” means any individual or entity responsible, including vicariously, for the Collision and the resulting Loss and Damage.

“Authorised Driver” means any person who:

- (a) is not a Prohibited Person;
- (b) has received a safety check from You; and
- (c) is authorised in writing by IITR to drive the Rented Truck.

“Business Day” means a day that is not a Saturday, a Sunday, a public holiday or a bank holiday in the State in which the Rented Truck was hired.

“Business Hours” means 9.00am-5.00pm on a Business Day.

“Cancellation Period” has the meaning given in clause 27.1.

“Card” has the meaning given in clause 4.1.

“Claim” includes all issues, disputes, damages, including without limitation, negligence claims, demands, debts, accounts, expenses, costs, liens, actions, proceedings, complaints or differences of any or every kind, name, nature or description which a third party has now, had or might have had or might assert in the future.

“Collision” means the motor vehicle collision involving Your Vehicle.

“Commencement Date” means the earlier of:

- (a) the date and time specified on the Hire Particulars as the time of commencement of the Hire Period;
- (b) when the Rented Truck is delivered to You or to a location requested by You; or
- (c) when the Rented Truck is collected by You.

“Customer Property” has the meaning given in clause 5.3.

“Daily Hire Charges” has the meaning given in clause 7.1(a).

“Delivery and Pickup Fee” has the meaning given in clause 7.1(b).

“Delivery Inspection Report” means the report about the condition of the Rented Truck that is set out in clause 1.3.

“Excess Kilometre Charge” as the meaning given in clause 7.1(g).

“Excessively Dirty Vehicle” means a vehicle which requires cleaning beyond IITR’s standard cleaning practice, such standard cleaning practice being a general exterior and interior clean using regular cleaning

products, water high pressure cleaner and vacuum taking no longer than 15 minutes and not requiring steam cleaning, specialised cleaning products or specialised third party cleaners.

“Fair Wear and Tear” means the acceptable level of deterioration of the Rented Truck arising from its regular use as set out in the Fair Wear and Tear Guide in clause 35.

“Family Member” means any child (including step-children), spouse, domestic partner (or their children), parent, sibling (or step-sibling), grandchild, grandparent or relative of You or any Authorised Driver.

“Full Daily Hire Charge” means all Hire Charges and Additional Charges payable by You under this Agreement for each Hire Day.

“Good Condition” has the meaning given in clause 28.4(f)(ii).

“Heavy Vehicle National Law” means the *Heavy Vehicle National Law Act 2012* (Cth) as enacted by each state and territory under the following legislation and all related regulations and ordinances: *Heavy Vehicle National Law Act 2013* (ACT); *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW); *Heavy Vehicle National Law Act 2012* (Qld); *Heavy Vehicle National Law (South Australia) Act 2013* (SA); *Heavy Vehicle National Law (Tasmania) Act 2013* (Tas); *Heavy Vehicle National Law Application Act 2013* (Vic) and includes *Road Traffic Act 1974* (WA); *Road Traffic (Vehicle Standards) Rules 2002* (WA) and the *Motor Vehicles Act 1949* (NT).

“Hire Charges” means all the amounts payable by You as set out in clause 7.

“Hire Day” means each calendar day, or part calendar day, on which You have possession, custody or control of the Rented Truck.

“Hire Particulars” means the form containing details of the Rented Truck, hire details and the principal fees and charges in respect of the Rented Truck payable by You to ITR set out in clause 1.1 of this Agreement.

“Hire Period” means the period during which the Rented Truck is hired by You, beginning on the Commencement Date and ending on the earlier of:

- (a) the date You are notified that the repairs to Your Vehicle have been completed;
- (b) the date or time that the maintenance sticker in the driver side or passenger side window specifies that the Rented Truck is due for maintenance or service;
- (c) after effluxion of 730 days from the Commencement Date;
- (d) the day after You receive a total loss payout in respect of Your Vehicle;
- (e) the date You return the Rented Truck to ITR;
- (f) the date ITR repossesses the Rented Truck;
- (g) the date when the Police are notified that the Rented Truck is lost, stolen or otherwise misappropriated (being the time recorded on the Police Report of the incident); or
- (h) the date of termination of this Agreement.

“Incident Report Form” means the document You must complete and submit to Us if there is Loss and Damage to the Vehicle or it has been stolen.

“Insolvency Event” means the occurrence of any of the following events in relation to a party (in each case, the **relevant party**):

- (a) the relevant party is insolvent (as defined in section 9 of the *Corporations Act 2001* (Cth)) or is the subject of an event described in sections 459C(2)(a) to (f) or section 585 of the *Corporations Act 2001* (Cth) or the relevant party makes a statement from which the other party may reasonably deduce that the relevant party is so subject;
- (b) the relevant party ceases to (or is unable to) pay its creditors (or any class of them) as and when they become due and payable, or announces its intention to do so;

- (c) a receiver, receiver and manager, administrator, liquidator, provisional liquidator, controller or similar officer is appointed to the relevant party or any of its assets;
- (d) the relevant party enters into, or resolves to, enter into, a scheme or arrangement, compromise or composition with any class of creditors;
- (e) a resolution is passed or an application to a court is taken for the winding up, dissolution, official management or administration of the relevant party;
- (f) any liquidator, receiver or manager enters into possession of any of the assets of the relevant party;
- (g) a mortgagee, charge or other holder of security, by itself or by or through an agent, enters into possession of all or any part of the assets of the relevant party;
- (h) the relevant party applies for, consents to, or acquiesces in the appointment of a trustee or receiver in respect of it or any of its property;
- (i) except to reconstruct or amalgamate while solvent on terms approved by the other party to this Agreement, the relevant party is dissolved or enters into or resolves to enter into a scheme of arrangement, compromise or re-construction with its creditors (or any class of them) or with its members (or any class of them) or proposes a reorganisation, re-arrangement, moratorium or other administration of the party's affairs;
- (j) being a natural person, commits or suffers an act of bankruptcy or has a sequestration order against them; or
- (k) anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

"Insurer" means any person or entity that has agreed to, or may be called upon to, indemnify any party, including You, for the Hire Charges, or any part thereof.

"Intellectual Property Rights" means all copyright, trademark rights, patent rights, and design rights, whether registered or unregistered, and all other rights to intellectual property as defined under article 2 of the Convention Establishing The World Intellectual Property Organization, and all rights to enforce any of the foregoing rights.

"Intoxicated" means where the driver is under the influence of any drug, substance or intoxicating liquor to the extent that the person's ability to control the Rented Truck is impaired or where the driver's blood alcohol content or level of drugs present in their blood, urine or oral fluid that exceeds the limit set by law or is in breach of the applicable State or Territory legal limit, or where the driver refuses or fails to provide a breath, blood, urine or oral test or drug impairment assessment when lawfully required to do so by or on behalf of the Police or as required by any law of the applicable State or Territory.

"Late Return Fee" has the meaning given in clause 8.1(m)

"Liability" means any claim, proceeding, cost, loss, damage, expense (including reasonable legal expenses) whether of a direct, consequential, indirect or punitive or exemplary nature.

"Location Fee" has the meaning given in clause 7.1(c).

"Loss and Damage" means any and all property loss and damage suffered by You as a result of the Collision, including the Hire Charges, but excluding any claim for personal injury.

"Monitoring System" has the meaning given in clause 30.

"NHVAS" means the National Heavy Vehicle Accreditation Scheme.

"Non-Excludable Obligation" has the meaning given in clause 26.1.

"Off Road" means an area, surface or terrain that is not a sealed or Unsealed Road and includes but is not limited to unformed roads, fire trails, tracks, river and tidal crossings, creek beds, beaches, streams, dams, rivers, flood waters, sand, deserts, rocky outcrops, fields and paddocks.

“**Other Insurance**” has the meaning given in clause 2.3

“**Personal Information**” means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form, electronic or otherwise, about an identified individual or an individual who is reasonably identifiable and includes anything that is defined as personal information in the Privacy Laws.

“**Prescribed Amounts**” means:

- (a) the Hire Charges;
- (b) the Additional Charges; and
- (c) any loss, damage or expense incurred by IITR for which You are responsible under this Agreement.

“**Privacy Laws**” means the *Privacy Act 1988* (Cth) including the Australian Privacy Principles under the *Privacy Act 1988* (Cth), the *Spam Act 2003* (Cth) and the *Do Not Call Register Act 2006* (Cth), any Australian legislation from time to time in force which affects privacy rights or Personal Information and any rules, regulations, codes, orders or other instruments issued under the *Privacy Act 1988* (Cth) or any similar Australia legislation.

“**Privacy Policy**” means the IITR’s Privacy Policy which may be updated from time to time, made available at <https://www.imintheright.com.au/privacy-policy>.

“**Prohibited Person**” or “**Prohibited People**” means any person or people referred to in clause 15.2.

“**Prohibited Use**” means any act, omission or event referred to in clause 15.3.

“**Recovery Claim**” means a claim for the recovery of the Hire Charges by way of damages from an At Fault Party or Insurer arising from the Collision.

“**Recovery Firm**” means IITR or such law firm or mercantile recovery agent IITR may in its absolute discretion elect to instruct to prosecute a Recovery Claim on Your behalf.

“**Reduced ADE**” means the Reduced Accident Damage Excess set out in the Hire Particulars.

“**Reduced UADE**” means the Reduced Under-Age Accident Damage Excess set out in the Hire Particulars.

“**Rented Truck**” means the motor vehicle described on the Hire Particulars, and any alternate motor vehicle that IITR supplies to You, whether as a replacement, upgrade or otherwise.

“**Return Location**” means the location from which the Rented Truck was hired unless otherwise specified on the Hire Particulars.

“**Security Deposit**” has the meaning given in clause 9.

“**Security Interest**” means the security interest as that term is defined in the *Personal Property Securities Act 2009* (Cth).

“**Snow Line**” means:

- (a) the alpine regions and snowfields in Victoria (commencing at Bright) and New South Wales (commencing at Jindabyne) between 1 June and 31 October;
- (b) any area in Tasmania that receives snow; or
- (c) any area where it is indicated or required that snow chains are to be fitted to the Rented Truck.

“**Taxes**” means all forms of taxes, duties, imposts, charges, withholdings, rates, levies or other government impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges.

“**Threshold Fuel Amount**” has the meaning given in clause 3.10(a).

“**Total Liability Use**” means any act, omission or event referred to in clause 15.5.

“**UADE**” means the Under-Age Accident Damage Excess set out in the Hire Particulars.

“**UAER**” means the Under-Age Accident Excess Reduction set out in the Hire Particulars.

“**Unsealed Road**” means a road, other than a road that is undergoing temporary roadworks, that has been formed and constructed but is not sealed with a hard material such as tar, bitumen or concrete.

“**Utilisation Rate**” means 70%.

“**VRR**” means the costs referred to in clause 7.1(f).

“**Your Vehicle**” means the motor vehicle with registration number ~VEHICLE_REGISTRATION~.

36.2 Interpretation

In this Agreement:

- (a) headings and underlinings are for convenience only and do not affect the construction of this Agreement;
- (b) a provision of this Agreement will not be interpreted against a party because the party prepared or was responsible for the preparation of the provision, or because the party's legal representative prepared the provision;
- (c) currency or “\$” refers to Australian dollars;
- (d) a reference to a statute or regulation includes amendments thereto;
- (e) this Agreement is not binding until and unless it has been executed by both parties;
- (f) a reference to time is to time in New South Wales unless expressly specified otherwise;
- (g) a reference to a person includes a reference to an individual, a partnership, a company, a joint venture, government body, government department, and any other legal entity;
- (h) the words “such as”, “including”, “particularly” and similar expressions are not words of limitation and shall be interpreted as if the words “but not limited to” immediately followed them in each case; and
- (i) a reference to the singular includes the plural and vice versa.

PART D – Mandate and Authority to Act

1 Mandate and Authority to Act

Rented Truck:

~RENTAL_DETAILS_NO_DATE_FUEL~

- (a) You agree to rent the Rented Truck, and IITR agrees to allow You to do so, on the terms and conditions of the Truck Hire and Recovery Agreement.
- (b) Subject to clauses 18 to 22 of the Truck Hire and Recovery Agreement, You are to pay to IITR the Hire Charges and the Additional Charges.
- (c) Under clause 19 of the Truck Hire and Recovery Agreement, You appoint IITR as Your agent to select and instruct a Recovery Firm to pursue the Recovery Claim on Your behalf.
- (d) If IITR is the Recovery Firm that will pursue the Recovery Claim on Your behalf, you appoint IITR as Your agent and representative with the authority to pursue the Recovery Claim. This appointment includes authority to:
 - (i) subject to the terms of the Truck Hire and Recovery Agreement, select the terms, conditions and costs upon which IITR will pursue the Recovery Claim;
 - (ii) negotiate with the At Fault Party or Insurer regarding liability for the Collision and the quantum of the Hire Charges;
 - (iii) subject to the terms of the Truck Hire and Recovery Agreement, settle the Recovery Claim on terms and for an amount IITR considers to be reasonable;
 - (iv) provide any instructions necessary for the deposit, transfer, or transit of any proceeds from the Recovery Claim, including any interest or legal costs recovered; and
 - (v) perform any work necessary as the appointed Recovery Firm to carry out the Recovery Claim on Your behalf.
- (e) You authorise IITR to:
 - (i) act on Your behalf in respect of the Recovery Claim;
 - (ii) obtain all documents, reports and other material that might be requested by the Recovery Firm in respect of the Recovery Claim;
 - (iii) receive any payment in settlement of the Recovery Claim;
- (f) If IITR provides instructions to the Recovery Firm to settle the Recovery Claim, including if IITR is the Recovery Firm, IITR will:
 - (i) accept any amount recovered from the At Fault Party or Insurer (including any interest or legal costs recovered) in full satisfaction of the Hire Charges; and
 - (ii) release You from any further liability for the Hire Charges. This will occur even if IITR fails to recover any amount at all.

~SIGNATORY_OPTION~

~CUSTOMER_SIGNATURE~

~CUSTOMER_NAME~

~CURRENT_DATE~

PART E – Law Firm Authority to Act

1 Law Firm Authority to Act

- (a) Under clause 19 of the Truck Hire and Recovery Agreement, You appoint IITR as Your agent to select and instruct a Recovery Firm to pursue the Recovery Claim on Your behalf.
- (b) You authorise IITR to select and instruct the law firm set out in paragraph (d) below to act on Your behalf in connection with the recovery of loss and damage in relation to the motor vehicle accident that You were involved in with the following details:
- (i) Your Vehicle's registration number: ~VEHICLE_REGISTRATION~
 - (ii) Other party's vehicle's registration number: ~OPD_VEHICLE_REGISTRATION~
 - (iii) Accident Date: ~ACCIDENT_DATE~
 - (iv) Suburb: ~ACCIDENT_SUBURB~
- including but not limited to:
- (v) corresponding and liaising with my insurer or any other insurer (including any mercantile recovery agent or solicitor appointed by any insurer or any party involved in the collision), any driver or owner of any vehicle involved in the collision, any other relevant parties to the collision;
 - (vi) obtaining any relevant documentation and information necessary to support Your claim from any relevant party/insurer or their representative, including repair documents, hire documents, insured loss documents, version and diagram documents, police reports and any other relevant documents related to the collision; and
 - (vii) performing any work necessary as the appointed Recovery Firm to carry out the recovery of hire car costs on Your behalf.
- (c) You provide authority to IITR to amend paragraph (d) below to include the details of the law firm selected by IITR to conduct the activities set out in paragraph (b) above.
- (d) **Law firm selected by IITR**
- (i) Name: _____
 - (ii) Address: _____

~SIGNATORY_OPTION~

~CUSTOMER_SIGNATURE~

~CUSTOMER_NAME~

~CURRENT_DATE~

Execution Page

Executed by You

By signing below, You confirm that:

- (a) the Rented Truck is to be used for Your business only. Failure to return the Rented Truck after written notice to return such vehicle could constitute an offence under applicable law;
- (b) all information that You provided to IITR is true and correct in every respect;
- (c) You have authority to sign this Agreement;
- (d) You agree with the Delivery Inspection Report;
- (e) You have read the terms and conditions of this Agreement and agree to the terms and conditions of this Agreement wholly and unconditionally;
- (f) You have read the terms of Part D – Mandate and Authority to Act and agree to be bound by it and agree to have your name and signature affixed to the bottom of Part D;
- (g) You have read the terms of Part E – Law Firm Authority to Act and agree to be bound by it and agree to have your name and signature affixed to the bottom of Part E; and
- (h) You acknowledge that IITR cooperates with all federal, state, and local law enforcement officials nationwide to provide the identity of any person who operates the Rented Truck.

~SIGNATORY_OPTION~

~CUSTOMER_SIGNATURE~

~CUSTOMER_NAME~

~CURRENT_DATE~

Executed by IITR

Executed for and on behalf of Reliance (Aus) Pty Ltd trading as I'm in the Right, pursuant to Section 127 of the *Corporations Act 2001* (Cth):

~SHAUN_SIGNATURE~

~BLAKE_SIGNATURE~

Shaun Wickenden

Blake Wickenden

Director

Director

~CURRENT_DATE~