**ACCIDENT REPLACEMENT VEHICLE TERMS AND CONDITIONS**

**Agreement**

1. This Accident Replacement Vehicle Agreement (***Agreement***) between the Company and the Customer commences on the Start Date and continues for the Term, and comprises:
	1. these Terms and Conditions; and
	2. the Accident Replacement Vehicle Schedule.

**Definitions and interpretation**

1. In this Agreement, capitalised terms have the meanings given to them in the Schedule and:

**Company** means the company named in the letterhead of the Schedule.

**Estimated Return Date** means the estimated return date specified in the Schedule.

**Start Date** means the date on which the Accident Replacement Vehicle arrangement commences as specified in the Schedule.

**Term** means the period from the Start Date until the Vehicle is returned to the Company.

**Vehicle** means the Vehicle specified in the Schedule, and includes its parts, components, keys, remote opening devices, any tag or device for paying electronic tolls, all accessories and all other contents supplied by the Company.

1. Any reference in this Agreement to the singular includes the plural, to any gender includes all genders, to persons includes all bodies and associations both incorporated and unincorporated, to any legislation or regulations includes all amending and succeeding legislation and regulation, to clauses and schedules to clauses and schedules of this Agreement and paragraph headings are for reference purposes only.

**Driver**

1. The Customer agrees that only the Customer will drive the Vehicle during the Term.
2. The Customer warrants that s/he holds a current Australian driver's licence (not being a learner driver's licence or Probationary 1 drivers license) to drive the Vehicle.
3. The Customer warrants that s/he is permitted to drive in the state of Victoria. If an international licence is held, s/he will provide formal documentation with proof of residential address.

**Geographic area**

1. The Customer agrees not to drive the Vehicle outside the state of Victoria unless the Company provides its prior written approval.

**Use of the Vehicle**

1. The Customer agrees during the Term:
	1. to exercise all reasonable care in the operation and use of the Vehicle;
	2. not to allow any animal to enter the Vehicle;
	3. not to smoke or allow any other person to smoke in the Vehicle;
	4. not use, or allow the Vehicle to be used, for any illegal purpose, race, contest or performance test of any kind;
	5. to maintain the Vehicle, including by filling it with the applicable fuel, and maintaining engine oils and coolant levels;
	6. to keep the Vehicle locked and the keys under the Customer's control at all times; and
	7. to ensure the Vehicle is operated in accordance with all laws.
	8. to not use the vehicle as an Uber or in a ride sharing capacity.

**Return of Vehicle**

1. The Customer agrees to return the Vehicle:
	1. to the address noted in the letterhead of the Schedule on or before the Estimated Return Date (or such other date the Company notifies to the Customer from time to time); and
	2. in the same condition as collected.
2. The Customer understands and agrees that the only damage which exists to the Vehicle at the Start Date is the damage noted on the vehicle diagram in the Schedule, and the Customer agrees that s/he has inspected the Vehicle and confirmed that there is no other pre-existing damage to the Vehicle.

**Costs**

1. The Customer may be liable for amounts as specified in this Agreement.
2. The Customer must pay to the Company:
	1. if the fuel tank is not full upon return, the cost to the Company of filling the tank;
	2. if the Vehicle is not clean and tidy upon return, the cost to the Company of cleaning the Vehicle;
	3. any amount paid (or payable) by the Company to any person arising out of the Customer's use of the Vehicle or imposed on the Company by any government or other competent authority in respect of the Vehicle (including, but not limited to, traffic, speeding or parking infringements, or e-tag fees) (plus a $30 processing fee per payment);
	4. any other amount for which the Customer is liable to the Company under this Agreement (including for any Loss/Damage under clause 17), whether in respect of a breach of this Agreement or otherwise; and
	5. any interest payable under clause 15.
3. The Customer must pay any amounts due by the Customer to any government or other competent authority arising out of the Customer's use of the Vehicle (including, but not limited to, traffic, speeding or parking infringements, or e-tag fees).

**Payment**

1. All amounts due to the Company from the Customer must be paid immediately upon the return of the Vehicle to the Company, or at such other time as the Company notifies to the Customer.
2. The Customer authorises the Company to charge all amounts payable to the Company under this Agreement to the Customer's credit card as detailed in the Schedule.
3. If the Customer fails to pay any amount due under or in connection with this Agreement within 14 days of the date by which the Customer was required to pay the amount, the Customer must also pay to the Company interest at 10% per annum (compounded daily) on the outstanding amount from the expiry of 14 days from the date on which the Customer was required to pay the amount to the date of payment and all collection costs incurred by the Company in recovering the unpaid amount and interest.

**Loss and damage**

1. The Customer must notify the Company immediately upon:
	1. any loss of, or damage to, the Vehicle; or
	2. any incident involving the Vehicle,

and the Customer must comply with all of the Company's reasonable instructions in relation to the same (including the instructions set out in the *'In case of an accident'* sticker on the Vehicle's windscreen). Any damage that is to be remedied must be done so by a supplier of the Company’s choice

(c) if a supplier not approved by the Company is used the Customer may be liable for any changes associated with act.

1. The Customer is liable for (and will keep the Company indemnified for):
	1. the loss of, and all damage to, the Vehicle during the Term; and
	2. the loss of, and all damage to, the property of any other person during the Term, which is either caused by, contributed to or arises from the use of the Vehicle by, the Customer (or any passenger or other person the Customer allows to use the Vehicle); and
	3. any and all incidental costs associated with the loss or damage, including but not limited to: appraisal fees, towing and storage,

(**Loss/Damage**).

1. The Customer may relieve or transfer its liability for Loss/Damage as follows.
	1. If requested to do so by the Company, the Customer must lodge a claim with its insurer for the Loss/Damage (and pay any relevant excess) utilising their policy's replacement/substitution vehicle cover (if applicable). The Customer will remain liable to the Company for the Loss/Damage to the extent that the Loss/Damage is not satisfied by the Customer's insurer.
	2. If the Company decides in its sole discretion to make a claim (or claims) under its own insurance policy in respect of the Loss/Damage, then the Customer agrees to pay the Applicable Excess (as set out in clause 20). The Customer will remain liable to the Company for the Loss/Damage to the extent that the Loss/Damage is not satisfied by the Company's insurer.
	3. Sheen Groups motor policy only provides third party liability cover secondary to the required indemnification under the drivers supplementary third-party benefit clause in the drivers own insurance.
2. The Customer acknowledges and agrees that the Company may retain possession of the Customer's own car until the Company has decided in its sole discretion whether the course of action in clause 18(a) or clause 18(b) will be followed.
3. The Applicable Excess is $2,500 per incident **P****LUS** an additional amount based on the Customer's age and/or driving experience as follows (whichever is the higher):
	* 1. under 21 years of age: $800;
		2. 21-25 years old and/or less than 2 years driving experience: $600;
		3. those aged over 80 years: $1,500.
4. Where an Applicable Excess is payable:
	1. the Applicable Excess is due and payable by the Customer on or before the Customer collects his/her own car from the Company (being a car which is being repaired by the Company); and
	2. the Customer acknowledges and agrees that the Company may retain possession of the Customer's own car until the Applicable Excess has been paid.
5. If the Company is notified that the Vehicle has been used in a dangerous manner or contrary to the law, the Customer acknowledges and agrees that the Company may report the Customer to the relevant authorities.

**Toll roads**

1. If the Customer does not have an e-tag, all trips on toll roads must be either:
	1. paid in advance; or
	2. paid within three days of travel,

with CityLink or Eastlink as required.

1. If the Customer has an e-tag, the Customer must advise the issuer of the Vehicle's car registration number while the Customer is in possession of the Vehicle.
2. If any non-payment invoices arrive at the Company, a $30 processing fee per invoice will apply to nominate the correct driver, which will be charged to the credit card supplied in accordance with clause 14.

**Property in Vehicle**

1. The Company is not liable to any person for any loss of, or damage to, any property:
	1. left in the Vehicle after its return to the Company; or
	2. stolen from the Vehicle or otherwise lost during the Term.

**Termination**

1. A party (***Terminating Party***) may terminate this Agreement by notice in writing at any time if the other party (***Breaching Party***) commits a material breach of the Agreement and such breach is not capable of remedy, or if the breach is capable of remedy but is not remedied within such reasonable period of time as is specified in a written notice by the Terminating Party to the Breaching Party.
2. In addition to its rights under clause 27, the Company may terminate this Agreement and recover the Vehicle without notice to the Customer, if:
	1. the Estimated Return Date (or such other date for return of the Vehicle as notified by the Company to the Customer from time to time) passes and the Vehicle has not been returned to the Company, without satisfactory alternative arrangements having been agreed by the Customer and the Company in writing; or
	2. the Company reasonably suspects that:
		1. the Vehicle may be, or has been, used for an unlawful purpose; or
		2. damage to the Vehicle, or injury to persons or property, is likely to, or has, occurred.
3. Upon termination, all amounts to be paid by either party under this Agreement become due and payable.
4. Termination of this Agreement does not affect any rights accrued to either party before its termination.
5. The following clauses survive termination of this Agreement: 1, 2, 3, 9, 10, 11, 12, 14, 15, 17-22 (inclusive), 26, 29-31 (inclusive), and 32-35 (inclusive).

**General**

1. All amounts specified in this Agreement are in Australian dollars and exclusive of GST (as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
2. The delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it.
3. Any provision of this Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement.
4. The law in force in the State of Victoria governs this Agreement. The parties submit to the exclusive jurisdiction of the courts of Victoria and any courts that may hear appeal from those courts in respect of any proceedings in connection with this Agreement.

By signing this document, you acknowledge that you have read, understand and agree to the conditions of this agreement:

Driver Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Driver Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_