



## CarSmart

### Terms and Conditions of Agreement

#### Background

- A. LeasePlan is in the business of providing vehicle management services.
- B. You have applied to LeasePlan to receive CarSmart vehicle management services.
- C. LeasePlan has agreed to become your agent in arranging vehicle management services on your behalf in accordance with the terms and conditions set out in this Agreement.

**LeasePlan and you agree** as follows

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#### 1. Dictionary and interpretation

##### 1.1 Dictionary

The following terms have the meanings set out below, unless the context otherwise requires:

**Account Fee** means the monthly fee payable by you in consideration for LeasePlan providing you with the Services under this Agreement.

**Additional Services** means the optional management services that may be, or are, provided to you by LeasePlan under this Agreement from time to time during the Term. The optional services are roadside assist, and insurance and accident management as described in clauses 5.3 and 5.2 respectively.

**Agent** means a third party appointed by LeasePlan to act as LeasePlan's authorised agent to promote CarSmart.

**Application** means the application (in the form approved by LeasePlan) made by you requesting LeasePlan provide the Services.

**Agreement** means this agreement (including its schedules) comprising these terms and conditions and the terms set out in the Application.

**Business Day** means Monday to Friday other than gazetted public holidays and bank holidays in Victoria.

**Contract Start Date** means, in respect of the Vehicle, the first day of the Term, being the date LeasePlan approves your Application and agrees to commence providing the Services to you. LeasePlan will notify you of the Contract Start Date.

**Fuel and Maintenance Services** means the fuel, maintenance and repair services provided to you by LeasePlan under this Agreement as described in clause 4.1.

**GST** and other terms defined in the GST Law have the meanings given to those terms in the *A New Tax System (Goods & Services Tax) Act 1999*.

**GST Law** means the same as in the *A New Tax System (Goods & Services Tax) Act 1999*.

**Payment** means, in respect of the Vehicle, all the amounts payable pursuant to this Agreement.



**Schedule of Services** means the Services LeasePlan provides as part of CarSmart described in the schedule.

**Services** means the CarSmart vehicle management services provided to you by LeasePlan under this Agreement including the Fuel and Maintenance Services and the Additional Services (if any).

**Term** means, in respect of the Vehicle, the period for which LeasePlan agrees to provide the Services to you commencing on the Contract Start Date and ending on the date of the termination of this Agreement.

**Vehicle** means the vehicle or vehicles specified by you in the Application and includes all accessories, tools and fittings, and all additions and replacement parts fitted to a Vehicle during the Term. References in this Agreement to the "Vehicle" include references to any item of the Vehicle.

**You** means the person or persons being the applicants specified in the Application.

## 1.2 Interpretation

The following rules apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect the construction of this Agreement;
- (b) the singular includes the plural and conversely;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (e) a promise or agreement by 2 or more persons binds each person individually and all of them jointly;
- (f) a reference to any legislation is a reference to that legislation as amended or supplemented from time to time; and
- (g) a provision must not be construed against a party only because the party prepared it.

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## 2. Application

2.1 If you wish LeasePlan to provide the Services to you in relation to a Vehicle, you may complete and submit an Application.

2.2 Applications may be submitted directly to LeasePlan or through one of its Agents. LeasePlan will, at its discretion, determine whether it wishes to approve your Application.

2.3 If your Application is approved, and in consideration of you making the Payments, LeasePlan will provide the Services to you in respect of the Vehicle from the Contract Start Date for the Term on the terms and conditions of this Agreement.

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## 3. Account Fee for CarSmart

3.1 The Account Fee payable to LeasePlan for providing Services to you is a fixed monthly fee, the amount of which we notified to you at the time of your Application.



- 3.2 LeasePlan reserves the right to vary the Account Fee at its absolute discretion upon providing you with 30 days notice of its intention to do so.

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#### **4. Fuel and Maintenance Services**

4.1 LeasePlan will, acting as your agent:

- (a) arrange for a facility for the purchase of fuel at certain petrol stations. LeasePlan will arrange for you to be supplied with a fuel card for the Vehicle however:
  - (i) additional or replacement fuel cards will be provided at a fee, the amount of which LeasePlan can notify you if requested;
  - (ii) if you discover that a fuel card is lost, stolen or has been used without proper authority, you must immediately report this by telephone to LeasePlan; and
  - (iii) the risk of unauthorised use or misuse of any fuel card issued at your request shall remain with you. LeasePlan will not be liable to you for any loss and damage you suffer as a result of any unauthorised use or misuse of a fuel card unless the loss and damage was caused solely and as a direct result of the actions of LeasePlan.
- (b) facilitate some or all of the maintenance services described in the Schedule of Services being provided to you by LeasePlan preferred service providers at the trading terms negotiated by LeasePlan on your behalf in respect of the Vehicle;
- (c) remit the payment received from you in respect of Fuel and Maintenance Services to the providers of those services.

4.2 You must not, at any given point in time spend more on the Fuel and Maintenance Services than the monthly maximum aggregate spending limit of \$2,000 (inclusive of GST) for each Vehicle.

4.3 You must pay to LeasePlan on the due date for payment the amount you have spent in respect of Fuel and Maintenance Services. These amounts will be the amount charged to LeasePlan, on your behalf by LeasePlan's the preferred suppliers of Fuel and Maintenance Services.

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#### **5. Additional Services**

5.1 LeasePlan offers the Additional Services during the Term. The Additional Services are optional and all or some of them may be requested at any time.

5.2 If insurance and accident management services are requested by you LeasePlan will, acting as your agent:

- (a) LeasePlan will keep the Vehicle insured on a comprehensive basis against loss or damage by accident, fire and theft and against third party liability upon and subject to the terms and conditions of the insurance policy. LeasePlan will provide you with a copy of the policy. You agree, and you must ensure every driver of the Vehicle agrees, to comply with and be bound by

all terms and conditions and limitations of the insurance policy. LeasePlan will procure that the insurance policy provides that the coverage afforded cannot be cancelled or materially altered without 7 days prior written notice to LeasePlan. If LeasePlan receives such a notice, it will promptly inform you. It is then up to you to determine whether you should arrange for alternate insurance coverage or not.

- (b) Every accident involving the Vehicle must be reported by telephone to LeasePlan's National Claims Centre as soon as possible, but in any event by the end of the first Business Day after the accident. You must carry out all instructions that LeasePlan give you in relation to the repair of the Vehicle, must immediately complete any accident report form (which must not make any admission of liability) and must obtain witnesses' details if possible. Unless otherwise agreed:
  - (i) You and the driver must immediately provide to LeasePlan every summons, writ, pleading or communication of any kind relating to any claims and legal proceedings received by either you and the driver relating to the accident; and
  - (ii) You and the driver must not in any manner aid or abet any claimant except if required to do so by law or the direction of a court or tribunal, but you and the driver must co-operate fully with LeasePlan and, where appropriate its insurers, in all matters connected with the accident investigation and conduct of any claim or action.
- (c) If the Vehicle is lost, stolen or damaged and is declared to be a total loss by its insurers, the Term will automatically terminate on the date the insurer pays the proceeds of the policy of insurance of the Vehicle to LeasePlan. LeasePlan will, upon receipt of monies from the insurer, pay you the amount received by LeasePlan.
- (d) Without prejudice to clause 7, you indemnify LeasePlan from and against any claims against LeasePlan in excess of the limit of LeasePlan's third party insurance cover for loss or damage to persons or property arising out of or caused by or use of the Vehicle.
- (e) Fees for the insurance and accident management services will be payable by you monthly and the amount will be notified to you at the time of Application or when you request these Additional Services.

5.3 If roadside assistance services are requested by you, LeasePlan will:

- (a) subscribe, on your behalf in respect of the Vehicle, at the standard rate for group membership of the roadside assistance provider (or similar motorist's organisation) in the state or territory in which the Vehicle is registered;
- (b) pay the membership fee annually in advance and charge to you that amount on the next monthly invoice. If you advise us that you either no longer wish to receive roadside assistance services prior to the anniversary date for renewal of your roadside assistance membership, then the unused portion of the membership will be forfeited and you will not be entitled to a refund.

- 5.4 The amount payable by you for Additional Services will vary if you select or opt out of some or all of the Additional Services during the Term. If you request Additional Services after your Application has been accepted or if you opt out of receiving some or all of the Additional Services the amount charged will be recalculated. LeasePlan will notify you promptly of the change.

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## 6. Payments to be made by you

- 6.1 Every month LeasePlan will send you a tax invoice for Payment of:
- (a) the Account Fee, which will be charged monthly in advance;
  - (b) your actual expenditure on Fuel and Maintenance Services for the Vehicle in the previous month; and
  - (c) your actual expenditure on the Additional Services (if any) for the Vehicle in the previous month.
- 6.2 Payment is required by the date for payment specified in the tax invoice.
- 6.3 All Payments to be made must be made by direct debit.
- 6.4 You are liable to pay all stamp duties and other costs and taxes of a similar kind arising out of or in connection with the provision of Services under this Agreement.
- 6.5 Unless an amount is expressly stated to be inclusive of GST, all amounts and payments are exclusive of GST. If GST is imposed on any taxable supply made under this Agreement by LeasePlan to you, you must subject to LeasePlan issuing a valid tax invoice, pay to LeasePlan, as additional consideration, an amount equal to GST at the same time and in the same manner as making the payment on which the GST is calculated.
- 6.6 Time for Payment is of the essence of this Agreement.

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## 7. Indemnities and liabilities

- 7.1 To the extent permitted by law, neither party will be liable to the other for any indirect, incidental, special or consequential damages or any loss of actual or anticipated profits, revenue or business opportunities.
- 7.2 You release and indemnify LeasePlan, its directors, employees, agents and contractors (**those indemnified**) in respect of any all claims, losses, liabilities, damages, costs or expenses (including legal costs on a full indemnity basis) that may be asserted against, sustained or paid by those indemnified directly or indirectly in connection with:

- (a) any breach by you of your obligations or responsibilities under this Agreement. This includes any default in paying the Payments under this Agreement and the costs and expenses of taking action against you to recover the unpaid Payments; and
- (b) any loss of or damage to property or injury (including death) to persons occurring in connection with the use of the Vehicle.

7.3 It is not necessary for those indemnified to incur an expense or make a payment before enforcing a right of indemnity conferred by this Agreement.

7.4 The amount of any indemnity payable under this Agreement will be increased by the amount of GST payable in respect of that indemnity.

7.5 This release and indemnity is a continuing obligation and will survive termination of this Agreement.

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## **8. Interest on unpaid sums**

If you fail to pay any amount owing by the due date, LeasePlan may charge you, and you must pay LeasePlan on demand interest calculated on the daily balance of any amount that you have not paid on time for the period it is unpaid. The rate of interest to be applied will be a rate per annum of 4 percentage points above the 30 day Bank Bill Swap Rate (BBSW) accruing on a daily basis until payment is made (whether before or after any judgment).

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## **9. Default by you**

9.1 If:

- (a) you fail punctually to make any Payments under this Agreement or any other agreement between LeasePlan and you, and such sum is not paid within 7 days of its due date; or
- (b) you fail to observe or perform any of the other terms and conditions of this Agreement and such failure is either not capable of being remedied or is not remedied within 30 days; or
- (c) any other agreement between LeasePlan and you is terminated by LeasePlan; or
- (d) if you allow any judgment against you to remain unsatisfied for 7 days; or
- (e) if you, being an individual, die or commit an act of bankruptcy; or
- (f) you call any meeting of your creditors or go into external administration,

LeasePlan may, without prejudice to any other right under this Agreement, terminate this Agreement by sending you a written notice of termination.

9.2 You must inform LeasePlan in writing of the occurrence of any event described in clause 9.1 immediately upon the happening of the event.



- 9.3 If LeasePlan terminates this Agreement then, without prejudice to any other rights LeasePlan may have against you, you must immediately upon written demand pay to LeasePlan all amounts (including interest) due under this Agreement.

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## **10. Termination by either party**

- 10.1 LeasePlan may terminate this Agreement without the requirement to provide any reason by giving you 7 days notice in writing.
- 10.2 You may terminate this Agreement without the requirement to provide any reason by giving LeasePlan 30 days notice in writing.

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## **11. Consequences of termination**

If this Agreement is terminated then you must immediately upon written demand pay to LeasePlan any amount due by you to LeasePlan whether such amount is incurred before or after termination.

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## **12. Notices**

- 12.1 Any notice to be given by one party to the other must be sent by pre-paid post or by facsimile to the address stated on the Application or another address as advised to the other party.
- 12.2 Notices are taken to have been received if sent:
- (a) by prepaid post, 3 days after posting.
  - (b) by facsimile, if the sender has evidence of successful transmission.

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## **13. Your personal information**

You have an obligation to provide LeasePlan with current and accurate personal information, including your postal, residential and e-mail addresses as well as all telephone and facsimile contact numbers. If any personal information changes during the term of this Agreement, you must immediately notify LeasePlan in writing.

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## **14. Statement of calculation**

LeasePlan will, upon request by you, supply you with a statement of any calculation made under this Agreement. In the absence of manifest error, such a statement will be conclusive of the facts stated in it and will be binding on you.

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## 15. Agents receive commission

If you have submitted an Application through an Agent and if LeasePlan accepts your Application LeasePlan may remunerate that Agent by paying an ongoing commission during the Term of this Agreement. Commissions are included in the cost of the Service.

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## 16. Waiver of rights

A party does not waive its rights, powers and discretions under this Agreement by:

- (a) failing to exercise its rights;
- (b) only exercising part of its rights; or
- (c) delaying in the exercise of its rights.

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## 17. General

- (a) You may not assign or attempt to assign or charge the benefit of this Agreement or any rights or obligations to any other person.
- (b) This Agreement shall be governed by and construed in accordance with the law in the State of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria.
- (c) If any part of this Agreement is invalid, void or unenforceable in any jurisdiction, it is severed for that jurisdiction and the remaining provisions of the Agreement will remain in full force and effect. This clause has no effect if severance alters the basic nature of this Agreement or is contrary to public policy.
- (d) This Agreement constitutes the entire agreement between you and LeasePlan about its subject matter and supersedes all previous agreements, understandings communications, and negotiations on that subject matter.
- (e) Any obligations in this Agreement which by their nature are continuing will survive termination or expiration of this Agreement.



## Schedule of Services

### 1 Fuel and Maintenance Services

Authorisation of all repairs and maintenance in accordance with the Vehicle manufacturer's recommended service schedule.

Reconciliation of all repair invoices.

Confirming authorised costs against invoice.

Advisory service concerning warranty procedures and providing day-to-day support.

Record keeping of individual Vehicle histories.

Payment on your behalf of all suppliers and repairers invoices upon receipt of funds from you.

Issue fuel cards to drivers.

### 2. Additional Services

#### A. Insurance and accident management

Accident management and associated services.

Arranging insurance policy.

Payment of annual insurance premium.

#### B. Roadside Assistance

Paying annual membership.

Provision of standard roadside assistance with nationwide cover.