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# CAR NEXT DOOR

# MEMBER AGREEMENT

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## 1. PARTIES

This Agreement is between:

**Car Next Door Australia Pty Ltd ABN 53 163 596 530 (“Us”);**

and

**The Member (“You”).**

## 2. APPLYING FOR MEMBERSHIP

- 2.1 Applications for Membership are by the online application form on Our Website. By submitting a Membership Application, You agree that:
- You meet the Eligibility Requirements set out at clause 3.1 at the time of submitting the Membership Application; and
  - We will provide credit to You to make use of the Service and as such, You consent to Us communicating with a credit reporting agency in the manner described in Schedule 1.
- 2.2 You must inform Us immediately if You cease to meet any of the Eligibility Requirements at any time while You continue to be Member.
- 2.3 We may accept or reject any Membership Application at Our discretion.
- 2.4 You warrant that all information provided by You to Us in Your Membership Application or at any time while You are a Member, including without limitation Your name, address, email address, and information about Your Driving History or credit record, is true and correct and is all the information We could reasonably require in relation to Your Membership and use of the Service. You must ensure that all information provided by You to Us is current and up to date. You must indemnify Us for any claim or loss that We suffer as a result of any information that You provide to Us in relation to this Agreement, Your Membership or Your use of the Service being incorrect or misleading in any way, whether intentionally or otherwise.
- 2.5 This clause 2 and clause 3 apply from the time you submit a membership application to Us. The rest of this Agreement starts when We give You notice that We accept Your Membership Application.

## 3. MEMBER ELIGIBILITY CRITERIA

- 3.1 To become a Member and to continue to be a Member, You must:
- be at least 18 years old and no more than 85 years old (noting, however, that Members who are under 21 years of age will have access to a restricted range of vehicles);
  - have no licence suspensions or disqualifications, major violations or alcohol/drug related incidents in the past 5 years;
  - not have been convicted of, or have any pending convictions for, a criminal offence in any jurisdiction;
  - hold a full unrestricted driver licence;
  - have an appropriate credit or debit card with sufficient funds to cover Your Damage Cover Liability and Fees and Charges that You may incur in relation to Your use of the Service; and
  - have a satisfactory credit history as reported on Your credit record.
- 3.2 You must immediately disclose to Us any traffic incidents or driving violations that might affect Your eligibility for Membership. **Failure to do so may mean that You are not covered by Our Insurance Policy.** If You do not wish to disclose any such incident, You must withdraw your Membership Application or cancel Your Membership immediately.

## 4. INCORPORATION OF POLICIES; CHANGES TO THIS AGREEMENT

- 4.1 These terms, together with the Policies and the Fee Schedule, form Your written agreement with Us. You must be familiar with the Policies and comply with them at all times while using the



Service. You may obtain the latest version of the Policies and Fee Schedule from Us or from Our Website.

- 4.2 If You are an Owner, the terms contained in the Owner Agreement also form part of Your written agreement with Us.
- 4.3 If there is any inconsistency between these terms and the Policies, the Fee Schedule or Your Membership Application, these terms will prevail to the extent of any inconsistency.
- 4.4 We may change the terms of this Agreement, the Policies, the Fee Schedule or the Owner Agreement at any time by giving You notice by email (changes will also be posted on Our Website). If the changes affect Your cover under Our Insurance Policy, we will give you at least 3 days' prior notice. If you do not agree to the changes, You may cancel your Membership in accordance with clause 27.3 and if you do so within 30 days We will refund any fees or charges that you have paid that relate to the period after the changes come into effect.

## **5. USE OF THE SERVICE**

- 5.1 We provide the Service to facilitate the sharing of vehicles. Vehicle hire or rental services are provided by Owners to Borrowers under a separate contract, the terms of which are informed by these terms. We may act as an agent of Owners or Borrowers under that separate contract, as provided for in these terms and the Owner Agreement.
- 5.2 We do not control the condition of any Vehicle, the actions of any Member, or the information provided to us by You or other Members and included in any Member Profiles or otherwise made available to You. You are solely responsible for Your actions and inactions in relation to Your Use of the Service and Your interactions with other Members.
- 5.3 We are not liable for, and disclaim any liability related to, your interaction with other Members, your use of other Members' Vehicles or other Members' use of Your Vehicle, or any Member's action or inaction, with respect to the Service. You use any Vehicle made available through the Service at Your own risk. We owe You no duty of care, and disclaim all responsibility or liability to You, any passenger or third party (howsoever arising) resulting from any Accident, breakdown or any other failure of a Vehicle.
- 5.4 By using the Service, You agree that any legal claim or remedy that You seek to make or obtain under a contract for Vehicle rental services, or for actions or omissions of other Members or third parties will be limited to the particular Member or third party and You agree not to attempt to claim against or impose liability on or seek any legal remedy from Us with respect to such actions or omissions. If You have a dispute with or claim against one or more Members, You release us (and our officers, directors, agents, and employees) from liability (howsoever arising, whether under contract, tort, statute or otherwise) in any way connected with such disputes or claims.
- 5.5 The Service, including the Booking System, comes with consumer guarantees under the Australian Consumer Law in the *Consumer and Competition Act 2010* (Cth) that cannot be excluded by this Agreement. Nothing in this Agreement affects your statutory rights as a consumer. We give no warranties beyond the consumer guarantees that are not expressly set out in this Agreement. In particular, to the extent not prohibited by law:
  - a) You acknowledge that with the exception of a major failure that continues un-remedied for 48 hours, the delivery of the Services (including the availability of the Booking System) is not time critical. We will supply the Services within a reasonable time, and We give no other warranty or guarantee in relation to the availability of the Service (including the Booking System), or that access to the Service (including the Booking System) will be free from interruptions or errors;
  - b) the Services depend upon telecommunications, cloud storage and other services delivered to Us and Members by third parties, the availability of which We cannot control;
  - c) if We fail to supply the Services within a reasonable time, or otherwise fail to comply with a consumer guarantee, We will not be liable for any damage, loss or cost, including without limitation loss of expected revenue, loss of profit or loss of opportunity, that is not reasonably foreseeable.

## **6. USE OF LOCKBOX SYSTEM AND VEHICLE KEYS**

- 6.1 For each Booking you make for an Instant Keys Vehicle, we will issue You with a PIN that enables You to access the keys from the Lockbox. You must:



- a) keep the PIN secure;
  - b) keep the keys secure throughout the booking until you return them to the Lockbox at the end of the Booking;
  - c) not allow any person other than a Member to use a PIN or to access the Vehicle without Our written consent; and
  - d) use the PIN only to access a Vehicle for which You have a valid Booking.
- 6.2 For each Booking you make for a Key Handover Vehicle, you must arrange to collect the keys as instructed by the Owner. You must:
- a) keep the keys secure throughout the Booking until You return them as directed by the Owner at the end of the Booking; and
  - b) not allow any person other than a Member to access the Vehicle without Our written consent.

## **7. MEMBER PROFILES; USE OF OUR WEBSITE**

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

## **8. ACCEPTANCE AND CANCELLATION OF BOOKINGS**

- 8.1 You agree to make arrangements for sharing another Member's Vehicle only through the Booking System.
- 8.2 The minimum Booking Period is one hour. You will need to contact Us to make Bookings that are longer than 10 days. For Vehicles that are parked in marked 'car share parking' bays, the maximum Booking period is 4 days.
- 8.3 You must, for the benefit of any Member whose Vehicle you Book through the Service, other Members and Us:
- a) confirm the beginning and end times of any Booking that You make before You begin using a Vehicle;
  - b) only use another Member's Vehicle during the period for which You have a confirmed Booking;
  - c) pay the Booking Fee and any usage fee or other fees set out in the Fee Schedule in connection with Your Booking (even if You collect the Vehicle after the start of the Booking Period, return it



before the end of the Booking Period, or do not use it at all during the Booking Period) unless You cancel the Booking, in which case clause 8.5 applies; and

- d) pay the charges set out in the Fee Schedule if You use the Vehicle outside of the period for which You have Booked the Vehicle or fail to return the Vehicle to the proper location at the agreed time.

8.4 We may, on behalf of a Member whose Vehicle you have Booked, cancel that Booking (either before the Booking commences or during the Booking Period), if We are unable to take a pre-authorization on Your Card, or to collect payment instalments that are payable for a long Booking in accordance with clause 22.2.

8.5 If You cancel a Booking, You may be required to pay the time charges for part or all of the Booking, as set out on Our Website.

## **9. LIABILITY FOR LOSS AND DAMAGE**

9.1 If You Borrow a Vehicle, You must return it to the Owner in the same condition that it was in at the start of the Booking. You are responsible to the Owner and to Us for all Loss and Damage that occurs while You have possession of the Vehicle.

9.2 If You Borrow a Vehicle, You must take and provide to Us photographs of the Vehicle when You take possession of the Vehicle and when You cease to have possession of the Vehicle, in accordance with the Damage Policy. Failure to do so may mean that You will be deemed under the Damage Policy to have caused, and be liable to the Owner and Us for, any Loss and Damage or untidiness to the Vehicle, even if that Loss and Damage or untidiness may have occurred before or after You took possession of the Vehicle. If You are an Owner, You must inspect the Vehicle and report to Us any damage to the Vehicle, in accordance with the Damage Policy. Failure to do so may mean that You will be deemed under the Damage Policy to have caused, and be liable to Us for, any Loss and Damage or untidiness to the Vehicle, even if that Loss and Damage or untidiness may have occurred before You re-took possession of the Vehicle.

9.3 Subject to clauses 9.5 and 10:

- a) if Loss and Damage occurs during Your possession of the Vehicle, then, in respect of each single event (being an event that occurs at the same address and time), You are liable to Us for and will be charged the costs of rectifying the Loss and Damage up to the amount of Your Damage Cover Liability (“DCL”). If You are a Borrower You may be liable to the Owner for paying the full costs of rectifying the Loss and Damage if one of the exclusions to Your cover under Our Insurance Policy that are set out in clause 10 applies;
- b) if Loss and Damage is identified or reported to Us in connection with Your possession of the Vehicle, We may charge Your Card for Our account for the amount that We estimate, in good faith, will be sufficient to cover the extent of the damage (up to the amount of the applicable DCL, provided that none of the exclusions in clause 10 apply). If it appears to us that the Loss and Damage may equal or exceed your DCL amount, We will charge Your Card for Our account with Your full DCL amount. If it appears to us that one or more of the exclusions in clause 10 applies, We will charge Your Card, for the Owner’s account, an amount up to the Loss and Damage. We will promptly notify you of the details of the Loss and Damage and the amount to be charged.
- c) If you dispute the Loss and Damage or the amount charged, You may contact Us and We will address or assist you to resolve the dispute in accordance with our Complaints and Dispute Resolution Policy. We will do so on behalf of an Owner if a disputed amount is owed to or has been paid to the Owner.
- d) If the actual costs of, or associated with, the Loss and Damage are less than the amount that You have been charged, or if We recover the costs from any third parties who may have been at fault, then We will reimburse the difference to Your Card within a reasonable time after all costs have been fully quantified and forward to you an invoice for the final amount. Alternatively, if We discover that the actual costs are not covered under this Agreement, or if the actual costs exceed the amount that You have been charged, then we may charge Your Card, either for Our account or for the Owner’s account, with the outstanding amount.

9.4 The amount of Your DCL varies according to the Membership Plan You have selected. You may also have the option of reducing Your DCL by paying an additional fee at the time of Booking the Vehicle.

- 9.5 You will not have to pay the DCL if Loss and Damage was caused by another vehicle and We agree that:
- a) You are not at fault;
  - b) You are able to identify the other vehicle and provide its registration number and the owner's name, home or business address and telephone number or licence number; and
  - c) We recover the full amount of Loss and Damage from the third party or their insurer.

9.6 If Loss and Damage to the Vehicle from hail, flood, fire, storm, cyclone or other natural disaster occurs during a period when You have possession of the Vehicle, You must pay the DCL.

## 10. EXCLUSIONS TO COVER AND LIABILITY

- 10.1 You will be fully responsible for, there is no cap or limit on Your liability for, and You and Your Additional Drivers have no cover under Our Insurance Policy for, any Loss and Damage resulting from:
- a) the use or possession of the Vehicle by You or Your Additional Drivers in any of the circumstances set out in clause 10.5;
  - b) Your breach of any part of clauses 10.7, 13.5, 14.7, 14.10 or 15.1c) of this Agreement;
  - c) Your failure to correctly lock the Vehicle or to secure the key when returning the Vehicle; or
  - d) use of the Vehicle by any person who is not an Authorised Driver; or
  - e) use of the Vehicle by any person who holds a learner or provisional driver licence or permit, unless You are the Owner of the Vehicle and the person is Your Additional Driver.
- 10.2 You must inform Us immediately if any of Your Driving History details change during the course of Your Membership, including (but not limited to) any vehicular accidents that you are involved in (note that these are not limited to "Accidents" as defined). **If You fail to immediately inform Us about new events in Your Driving History or of any other matters that may affect Your eligibility for Membership, You may be excluded from cover under Our Insurance Policy for Loss and Damage.**
- 10.3 In the event that You are held responsible for Loss and Damage, We may ask You to provide evidence to confirm that the information that You have provided to Us about Your Driving History is correct and complete. If You do not provide this evidence within 10 business days after Our request, or if You have provided false or misleading information to Us or failed to provide Us with any relevant information, You may be excluded from cover under Our Insurance Policy for Loss and Damage.
- 10.4 If You fail to inform Us about something that You know or should know is relevant to a claim, or if fraud is involved, You may be excluded from cover under Our Insurance Policy for Loss and Damage.
- 10.5 You will be fully responsible for, You will liable to the Owner or Us for, and You and Your Additional Drivers have no cover under Our Insurance Policy for, Loss and Damage where You or Your Additional Drivers operate or use the Vehicle:
- a) if You are a Borrower - more than 2 hours after the end of a Booking Period;
  - b) while You are or Your Additional Driver is under the influence of alcohol or drugs or both to the extent that You are or Your Additional Driver is incapable of having proper control of the Vehicle or while Your or Your Additional Driver's blood alcohol content or the level of drugs present in Your or Your Additional Driver's blood exceeds the limit specified by the law of the state or territory in which the Vehicle is driven; or if You or Your Additional Driver refuse to submit to a drug or alcohol test;
  - c) if You are a Borrower - on any road or other surface which is not sealed;
  - d) in any area or under any circumstances (including crossing a waterway or transporting a Vehicle across a waterway) where the Vehicle may or does become partially or totally immersed in water;



- e) under any circumstances where the Vehicle may or does sustain damage to the body or undercarriage as a result of making contact with a stationary object overhanging or on the road surface (including driving or attempting to drive under, over or around any such object);
  - f) under any circumstances where the Vehicle sustains damage to the roof area including but not limited to the fitting of roof racks (or similar devices) or the carriage of items on the roof, standing or sitting on the roof or making contact with overhanging objects;
  - g) under any circumstances where the Vehicle is refuelled with fuel other than that which is recommended by the Vehicle manufacturer;
  - h) under any circumstances where the Vehicle is unsecured;
  - i) if You are a Borrower - in any area above the snow line during the gazetted snow season or in any other area under conditions where a reasonable person would use snow chains;
  - j) on any beach or in any other area exposed to saltwater;
  - k) if you are a Borrower - more than 500 kilometres from the Vehicle's home location without the consent of the Owner and Us;
  - l) in any other such location or region specified by Us as an area or region in which the Vehicle must not be used;
  - m) in breach of clause 14.7 or the Loss and Damage arises due to Your or Your Additional Driver's deliberate or reckless act or omission;
  - n) if the Vehicle is involved in an Accident - You or Your Additional Driver leaves the scene of the Accident before exchanging details with the other party or parties involved in the Accident or before police or emergency services attend the Accident scene, or if You or Your Additional Driver fails to cooperate with police or emergency services; or
  - o) to carry passengers or property for hire, fare or reward.
- 10.6 You are fully responsible for, and You and Your Additional Drivers have no cover under Our Insurance Policy for:
- a) legal costs to defend criminal acts or fines for breaches of road traffic statutes;
  - b) damage to property belonging to, or in the custody of, You, or any relative or friend of Yours who ordinarily resides with You;
  - c) any penalties, fines, punitive, exemplary or aggravated damages for which You or Your Additional Drivers are liable; and
  - d) Your liability under any contract or if You have agreed to or accepted liability without Our prior agreement unless You would have been liable irrespective of the terms of that contract.
- 10.7 If You are the Owner of a Key Handover Vehicle, You will be fully responsible for, and You and Your Additional Drivers have no cover under Our Insurance Policy for, Loss and Damage that occurs whilst the Vehicle is in Your possession.
- 10.8 You have no cover under Our Insurance Policy and are liable to the Owner for Loss and Damage caused or incurred as a result of You fitting anything to the Vehicle incorrectly or not in accordance with the Vehicle manufacturer's recommendations.
- 10.9 There is no cover under Our Insurance Policy for the theft of personal belongings from the Vehicle. You (whether as Owner or Borrower) agree to indemnify Us for any claim made against Us for loss of or damage to any personal property that is connected with Your use or possession of a Vehicle, or the use or possession of Your Vehicle, including personal property left in the Vehicle.

## **11. LIMIT OF COVER**

- 11.1 Cover under Our Insurance Policy for Damage and Loss for a single event or series of events with the same cause is limited to:
- a) \$30,000,000 for the repair or replacement of the Vehicle and any Third Party Loss;
  - b) \$25,000 for the costs incurred to clean up and remove any debris following an Accident; and



- c) the reasonable cost of removing the Vehicle to the nearest safe or secure place after it is damaged in an Accident or recovered after theft.

## **12. RIGHTS OF RECOVERY**

- 12.1 If Damage and Loss is covered or partially covered by Our Insurance Policy, then Our Insurer has the right and You permit Us or Our Insurer to take action or institute legal proceedings against any person legally liable for the recovery of that Damage or Loss. Any action or legal proceeding may be commenced in Your name. You must provide Us with all information and assistance We reasonably require in the recovery of the loss.

## **13. USE OF THE VEHICLE**

- 13.1 At the start of a Booking Period, you will use the keys to unlock the Vehicle. Before driving the Vehicle, You must:-
- a) check that the Tolling Device and Fuel Card are in the Vehicle (for Instant Keys Vehicles only);
  - b) check that the fuel gauge shows at least  $\frac{1}{4}$  full (and, if it is not, take a photo of the fuel gauge and email it to [members@carnextdoor.com.au](mailto:members@carnextdoor.com.au);
  - c) follow any instructions given in Our app or Website; and
  - d) take photographs that clearly show all exterior surfaces and the interior of the vehicle (and upload these photos in accordance with the Damage Policy)..
- 13.2 Unless You are the Owner of the Vehicle:
- a) You must not, for Our benefit and the benefit of the Owner, attempt to access the Vehicle without a valid Booking for that Vehicle; and
  - b) You must not permit any person other than another Member to drive another Member's Vehicle.
- 13.3 You must not, for Our benefit and the benefit of the Owner, operate the Vehicle if Your driver licence has expired, has been suspended or is of a category that does not permit You to drive the Vehicle.
- 13.4 You must not (and must not permit or suffer any other person to) tamper or interfere with any Lockbox System or Tolling Device.
- 13.5 You must not (and must not permit or suffer any other person to), for Our benefit and the benefit of the Owner:
- a) operate any device that requires the use of one or both hands while driving, including but not limited to mobile phones, mobile computers, or devices that allow texting;
  - b) carry cargo or baggage that damages the Vehicle or exceeds the Vehicle's carrying capacity;
  - c) carry a number of passengers that exceeds the number that the Vehicle is designed to carry or the number of available seatbelts;
  - d) carry passengers or property for hire, fare or reward, unless You are the Owner of the Vehicle (in which case, You must obtain separate insurance to cover that activity);
  - e) pick up hitchhikers or persons unknown to You;
  - f) transport any inflammable, hazardous, toxic, volatile, poisonous, dangerous or illegal substances or items;
  - g) drive the Vehicle while under the influence of alcohol or drugs or both to the extent that You are incapable of having proper control of the Vehicle or while Your blood alcohol content or the level of drugs present in Your blood exceeds the limit specified by the law of the state or territory in which the Vehicle is driven;
  - h) use the Vehicle for or in connection with any illegal activity;
  - i) use the Vehicle in contravention of any traffic regulations;
  - j) use the Vehicle in an unsafe or unroadworthy condition;
  - k) engage in any motor sport, time trial, competitive driving or racing or off-road driving;



- l) use the Vehicle to push, propel or tow another car, trailer or any other thing, unless You are the Owner of the Vehicle;
  - m) use the Vehicle in any way that is reckless, illegal, abnormal or likely to damage the Vehicle or cause a danger to persons or property;
  - n) sell, rent or dispose of the Vehicle or any of its parts, or attempt to give anyone legal rights over the Vehicle or any of its parts, unless You are the Owner; or
  - o) refuse to undergo any breath or blood test or drug impairment assessment when reasonably requested by the police.
- 13.6 You must not (and must not permit or suffer any other person to), for Our Benefit and the benefit of other Members:
- a) smoke in a Vehicle;
  - b) allow any animals to enter the Vehicle except in designated pet-friendly Vehicles, in which case You must provide, and ensure that the animal remains inside, an appropriate carrier; or
  - c) place stickers, signs, symbols, or other devices, modifications, advertisements or publicity materials on the interior or exterior of the Vehicle without Our permission.

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

#### **14. ACCIDENTS AND BREAKDOWNS**

- 14.1 If the Vehicle breaks down or is involved in an Accident during a Booking Period, You must follow the reporting, claims processing, and repair procedure set out in the Damage Policy and in this clause 14.
- 14.2 You must report any Accident (irrespective of whether it results in the Vehicle being damaged, lost or destroyed) to Us as soon as possible after the Accident occurs. You must also provide all information We reasonably request concerning the Accident within 48 hours of any request, and deliver a correctly completed Collision or Damage Report Form including any police witness statements or reports to Us within 48 hours after the Accident.
- 14.3 You must assist Us (at Our cost and direction) in respect of any claim or action brought in respect of any Accident, including attending court to give evidence, and tell us about any other insurance or other claim that may be relevant to the claim.
- 14.4 You must not make any admission of liability, offer of compromise, payment, settlement, waiver, release, indemnity or any other admission (other than a true statement made under compulsion of law) in relation to the Accident without Our prior written consent.
- 14.5 You must promptly give Us any papers or other documents that You receive concerning the Accident and take reasonable steps to ensure that any other person who receives any such papers or documents concerning the Accident provides those papers and documents promptly to Us.
- 14.6 By entering into this Agreement, You consent to and authorise Us to obtain copies of any police witness statements or reports made or able to be obtained by You in relation to the Accident or police charges against You.
- 14.7 Upon any warning lights or messages becoming illuminated or displayed in the Vehicle, or if you become aware of any mechanical fault with the Vehicle, You must as soon as practicable stop driving, park the Vehicle where safe to do so and contact Us or the Roadside Assistance service. You must not, for Our benefit and the benefit of the Owner, recommence driving the Vehicle unless directed to do so by Us, the Owner of the Vehicle, or the Roadside Assistance service. If there is a dispute between a Borrower and the Owner as to whether Damage and Loss was caused by the Borrower's failure to properly attend to warning lights or by an underlying mechanical issue, We may (but are not obliged to) assist with investigating the cause of the issue, and allocate the costs of such investigation, in accordance with the Damage Policy.
- 14.8 If a Vehicle suffers a mechanical fault or breakdown while You are driving it, You must:
- a) report it to Us by phone and also call the Roadside Assistance provider; and
  - b) wait with the Vehicle until Roadside Assistance attends the Vehicle.



- 14.9 If there is a mechanical issue at the start of a Booking prior to You commencing driving, You must call Us to report the issue.
- 14.10 You must not, for the benefit of the Owner, attempt to jump start the Vehicle, or use the Vehicle to jump start any other vehicle.
- 14.11 Roadside Assistance charges will be passed through to the Member who, in our reasonable opinion, is responsible for the need for the callout.
- 14.12 If the Vehicle needs to be towed, the cost will be charged to the party who, in our reasonable opinion, is responsible for the need for towing, except where the Borrower has travelled further than 500km from the Vehicle's Booking location without the express permission of the Owner and Us, in which case the Borrower will be responsible for the cost of towing, regardless of fault.
- 14.13 The Borrower is responsible for returning the Vehicle to its Booking location following any tow.
- 14.14 Neither We nor the Vehicle's Owner will provide any compensation or reimbursement for costs or losses You incur as a result of a Vehicle being inoperable or unavailable for any reason. We recommend that You ensure that You have suitable private travel insurance cover in place to cover such eventualities.

## **15. REFUELLING**

- 15.1 For Instant Keys Vehicles, We may provide a Fuel Card for the purposes of refuelling another Member's Vehicle. You acknowledge that:
- a) You must not disclose the PIN that We provide to You for use with the Fuel Card;
  - b) You may only use a Fuel Card that is provided with a Vehicle for which You have made a Booking in order to purchase fuel for use in that Vehicle;
  - c) You must check whether the Vehicle takes diesel or petrol fuel before refuelling, and fill the fuel tank with the fuel specified in the Owner's instructions. You will be fully liable to the Owner for the costs of any damage caused by using the wrong fuel type in the Vehicle (which costs are not covered under Our Insurance Policy);
  - d) if the Fuel Card is faulty or missing, or if you are driving a Key Handover Vehicle, You must pay for the fuel and then seek reimbursement from Us by sending Us a tax invoice for the fuel purchase;
  - e) You must not use, or permit or suffer any other person to use, the Fuel Card for any other purpose other than as set out in this Agreement; and
  - f) You must indemnify Us for any costs that We may incur in relation to Your use of the Fuel Card in any manner that is not expressly authorised by this Agreement.

Failure to adhere to these conditions may mean You are liable for any charges incurred against the Fuel Card plus an administrative fee.

## **16. RETURNING THE VEHICLE**

- 16.1 At the end of the Booking Period, You must, for Our benefit and the benefit of other Members:
- a) return the Vehicle to the same parking space from which it was collected (if the Vehicle has a dedicated parking space), or to an unrestricted parking space as close as possible to its specified home location for Vehicles collected from a public space, and follow any specific parking instructions given for the Vehicle;
  - b) ensure that the fuel tank is at least  $\frac{1}{4}$  full;
  - c) ensure that the Vehicle is no less clean and tidy than when You started the Booking;
  - d) close all of the windows;
  - e) ensure that all lights and accessories are turned off;
  - f) if the Vehicle has a Fuel Card, leave the Fuel Card in its designated location;
  - g) check that you have removed any of your personal possessions from the Vehicle;
  - h) if a Lockbox is usually located on the Vehicle, put it back in place;

- i) lock the Vehicle with the key then secure the key in the Lockbox (for Instant Keys Vehicles) or return it as directed by the Owner (for Key Handover Vehicles) ;
- j) take photographs that clearly show all exterior surfaces and the interior of the Vehicle and upload them in accordance with the Damage Policy; and
- k) comply with any other requests or instructions given by the Owner or Us.

If You do not do all of these things, You may be held responsible for Loss and Damage to the Vehicle and/or charged an amount in accordance with the Fee Schedule. These amounts may be payable to Us for our account or payable to Us on behalf of the Owner.

- 16.2 If You use a Vehicle outside of a valid Booking Period, including if You fail to return the Vehicle and its key within 6 hours after the end of the Booking Period, this will be taken to be a theft of the Vehicle and We or the Owner may:
- a) report the Vehicle as being stolen; and/or
  - b) take steps to locate, recover and repossess the Vehicle, or engage a third party to recover the Vehicle, without further notice to You.
- 16.3 If the Vehicle is found illegally parked, apparently abandoned or is used or obtained as prohibited under this Agreement, We may, after making reasonable attempts to contact You, recover the Vehicle or engage a third party to recover the Vehicle. To the extent permitted by law, You waive any right to any hearing or to receive any notice or legal process as a precondition of Our recovering the Vehicle in accordance with this clause 16.3. Nothing in this clause is intended to limit an Owner's legal rights against a Borrower.
- 16.4 You must pay to us immediately on demand any costs we reasonably incur in recovering a Vehicle under clause 16.2 or 16.3.

## **17. REVIEWS**

- 17.1 Providing reviews about other Members and Vehicles is important to give other Members as much information about the Service as possible. Both Borrowers and Owners are requested to submit reviews following the completion of each Booking.
- 17.2 You must abide by the Review Policy published on Our Website when providing feedback, including by not posting any abusive, defamatory, obscene or intimidating material or statements.

## **18. LIABILITY FOR PARKING AND DRIVING INFRINGEMENTS**

- 18.1 If an Infringement Notice is issued in relation to an infringement occurring during a time which You have possession of a Vehicle, or as a result of Your failure to leave the Vehicle in a legal, unrestricted parking space at the end of a Booking Period, then You are responsible to the Owner for payment of the Infringement Notice and any demerit points will accrue to Your driver licence.
- 18.2 You must pay, for the benefit of the Owner, any Infringement Notice that You are responsible for in full on or before the date that payment is due. If either We or the Owner receive an Infringement Notice that You are responsible for, then:
- a) We or the Owner will inform the relevant authority that You were the driver of the Vehicle at the time of the Infringement and the authority will then issue the Infringement Notice to You;
  - b) You consent to Us providing Your personal details to the Owner for the purpose of informing the relevant authority; and
  - c) We may charge You an administration fee for each Infringement Notice received, in accordance with the Fee Schedule.
- 18.3 You will be responsible to the Owner for the full cost of recovery and any damage to the Vehicle should the Vehicle be seized, towed or impounded whilst in Your possession or as a result of Your failure to leave the Vehicle in a legal, unrestricted parking space at the end of a Booking Period, in addition to any additional late fees and/or extended Booking fees resulting from a late return of the Vehicle.
- 18.4 If You dispute Your liability for an Infringement Notice, then You may raise the dispute with Us and We will deal with it in accordance with the Complaints and Dispute Resolution Policy.

## **19. LIABILITY FOR TOLLS**

- 19.1 You will be liable for payment of any Tolls incurred in relation to the use of a Vehicle during the period for which You have use of that Vehicle.
- 19.2 Your liability for the Toll will commence at the time the Toll is incurred. For Instant Keys Vehicles, We will provide credit to You for the amount of the Toll from that time until the time that payment for the Toll falls due under your monthly invoice. For Key Handover Vehicles You will be liable to the Owner for any Tolls that the Owner's toll statement shows were incurred while you had possession of the Vehicle.
- 19.3 If You dispute a Toll that has been charged to You or for which We have attributed responsibility to You, then You can ask Us to review Our records to reassess liability for the Toll.

## **20. FEES AND COSTS**

- 20.1 You agree to pay to Us (for our account or in certain cases as payment collection agent for Owners):
- a) any Membership Fee applicable to the Membership Plan that You have selected;
  - b) any additional fees, charges and penalties in accordance with this Agreement and the Policies (or notified by Us in accordance with the Agreement from time to time), including without limitation costs relating to any Infringements, Tolls, fuel charges for which You are responsible, any Damage Cover Liability or other liabilities arising from Your use of the Service and from Your use of Vehicles;
  - c) all fees and charges that are incurred in relation to the use of the Service using Your Member ID, even if You did not authorise the use of Your Member ID; and
  - d) GST and all other taxes or levies on any of the amounts payable under this Agreement.
- 20.2 To calculate Fees and Charges, We will use billing information generated or received by Us, which may include:
- a) information collected by the Booking System;
  - b) information collected in connection with the use of a Fuel Card;
  - c) information collected in connection with the use of a Tolling Device;
  - d) information recorded in photographs of the odometer of a Vehicle;
  - e) receipts submitted to Us; and
  - f) any other information that is relevant to determining the Fees and Charges applicable to Your use of the Service.
- 20.3 We may bill You in advance or arrears for some or all of the Fees and Charges payable by You under this Agreement. We will try to include all Fees and Charges for the relevant billing period on Your invoice. However, this is not always possible and We may include these unbilled Fees and Charges in one or more later Invoices.

## **21. DRIVING CREDITS**

- 21.1 From time to time, You may be issued with Driving Credits, which can be used to cover the cost of time and distance Booking charges. Driving Credits cannot be used to pay for other expenses such as Membership Fees, Fines, or DCL.
- 21.2 Driving Credits may have an expiry date and are not transferable or redeemable for cash.

## **22. CARD PRE-AUTHORISATION, INVOICING AND PAYMENT**

- 22.1 We may place a pre-authorisation on your Card before a Booking Period commences. The pre-authorisation will remain on your Card for the period determined by Your card provider. If your Booking continues for more than 7 days, then we may place further pre-authorisations on your Card periodically until the Booking ends.
- 22.2 We reserve the right to charge You for all or part of the estimated charges relating to Your Booking Period prior to commencement of the Booking Period and/or in instalments during the Booking Period.



- 22.3 We will issue Invoices to You on a regular basis showing Your Membership Fees and itemised Toll charges payable by You in accordance with this Agreement as well as a summary of all Booking charges and payments for the relevant period.
- 22.4 If the Invoice shows an amount owing by You to Us or to an Owner, We will charge Your Card for that amount on the date shown in the Invoice.
- 22.5 If You fail to pay the amounts that You owe under this Agreement within the time allowed for payment (including if the Card that You have provided to Us for payment purposes is declined by the Card issuer or bank or if you request a chargeback from your Card issuer or bank), then at Our discretion, We may:
- charge a reasonable handling fee;
  - charge interest on the outstanding amount, calculated daily at the rate equal to Westpac Banking Corporation standard business overdraft rate plus 2%;
  - suspend provision of the Service to You, including by restricting or disabling Your access to Our Website and preventing You from making or accepting Bookings; and/or
  - cancel Your Membership in accordance with clause 27.1c).
- 22.6 If You are in default of any obligation to pay money to Us or to an Owner under this Agreement, You must indemnify Us for any costs that We incur on our behalf or on behalf of the Owner in taking action against You to recover that amount.
- 22.7 If You wish to query or dispute the amounts shown on an Invoice, You may do so in accordance with the procedure set out in the Complaints and Dispute Resolution Policy.

### **23. CREDIT AND DEBIT CARD CHARGES**

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

### **24. COMMUNICATION BETWEEN CAR NEXT DOOR AND MEMBERS AND BETWEEN MEMBERS**

- 24.1 We may send notices and Invoices under this Agreement to You by email or post. You must ensure that the email and postal address that You have provided to Us are correct at all times, and You must check Your email regularly.
- 24.2 A notice or bill sent under this Agreement is taken to have been received by You or by Us (as relevant):
- if sent by ordinary post, on the date two business days after it is posted; or
  - if sent by email, four working hours after the time it is sent (unless the sender receives an automated notice that delivery did not occur or has been delayed).
- 24.3 You agree that We may provide your email address and telephone number to another Member if You have made a Booking to use their Vehicle or if they have made, or propose to make, a Booking to use Your Vehicle, so that they can communicate directly with You before, during and after the Booking in relation to that Booking. You must not use the contact details of other Members for marketing or any other unauthorised purpose.
- 24.4 If You have any questions about this Agreement or the use of the Service, You can contact Us on (02) 8035 8000 or (03) 9946 4106 or send an email to [members@carnextdoor.com.au](mailto:members@carnextdoor.com.au).

### **25. PRIVACY**

- 25.1 We will comply with all relevant privacy legislation and our Privacy Policy in relation to Your personal information. You can find our Privacy Policy on our Website.
- 25.2 The terms of Our Privacy Policy form part of this Agreement. Our Privacy Policy sets out how We collect, use, store and disclose Your personal information.



- 25.3 If We do not collect personal information from You, We will not be able to provide Our Services to You and if any of the personal information You provide is incomplete or inaccurate, the quality of Our services may be compromised.
- 25.4 You consent to Us providing Your personal information to other Members and to the relevant authorities as set out in clauses 18.2 and 24.3.
- 25.5 You can tell Us if You do not consent to Our use of such information, or if You do not wish to receive such information, or if you have any questions about Our Privacy Policy, by calling Us on (02) 8035 8000 or (03) 9446 4106 or by sending an email to [members@carnextdoor.com.au](mailto:members@carnextdoor.com.au).
- 25.6 By entering into this Agreement and by providing us with personal information, You represent to us that You have read, and agree to, the terms of Our Privacy Policy.

## **26. DISPUTE RESOLUTION**

- 26.1 If You have a complaint or dispute in relation to this Agreement, You can ask Us to consider the complaint in accordance with Our Complaints and Dispute Resolution Policy, which is available on Our Website.
- 26.2 We reserve the right, but have no obligation, to monitor or assist the resolution of disputes between You and other Members.

## **27. CANCELLATION AND SUSPENSION OF MEMBERSHIP**

- 27.1 We may immediately cancel or suspend Your Membership at any time by notice by email if You:
- breach the terms of this Agreement or any of the Policies and the breach cannot be remedied or, if the breach can be remedied, You have not remedied the breach within 5 business days after We give you notice of the breach;
  - in Our reasonable opinion, commit any illegal, dishonest or wrongful act, abuse or harass Our staff or other Members, or pose a threat to the safety or wellbeing of Our staff or other Members or to any Vehicle; or
  - fail to make a payment that is due under this Agreement within 2 business days after We give You written notice of the payment default.
- 27.2 We may cancel Your Membership with no less than 30 days' notice for any reason not listed in clause 27.1.
- 27.3 You may cancel Your Membership at any time to take effect at the end of the current month.
- 27.4 You may cancel Your Membership with immediate effect in exceptional circumstances with Our agreement.
- 27.5 If Your Membership is cancelled, either by You or by Us, then:
- You must not use the Service on or after the date of cancellation;
  - We will issue a final Invoice within 60 business days of the cancellation of Your Membership and either make payment to You or charge Your Card for amounts owing by You, in accordance with this Agreement; and
  - this Agreement will terminate on the date that We have received final payment for all amounts owing by You to Us under this Agreement.
- 27.6 Termination of this Agreement does not affect any accrued rights or liabilities up to (and including) the date of termination.

## **28. GOVERNING LAW, OTHER**

- 28.1 This Agreement is governed by the laws of New South Wales, and each party submits to the non-exclusive jurisdiction of the courts of that state.
- 28.2 You may only assign this Agreement or a right under this Agreement with Our prior written consent. We may assign this Agreement or a right under this Agreement by written notice to You.
- 28.3 If the whole or any part of a provision of this Agreement is invalid or unenforceable in a jurisdiction it must, if possible, be read down for the purposes of that jurisdiction so as to be valid and





enforceable. If however, the whole or any part of a provision of this Agreement is not capable of being read down, it is severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

28.4 Except where this Agreement expressly states otherwise, this Agreement does not create a relationship of employment, trust, agency or partnership between the parties.

## **29. DEFINITIONS AND INTERPRETATION**

“Accident” means any collision between the Vehicle and any other object, including another vehicle, or any other incident or occurrence that results in the Vehicle being damaged, lost or destroyed.

“Additional Driver” means a driver who has been nominated by the Owner and who We have accepted as being entitled to drive the Vehicle as outlined in clause 10.3 of the Owner Agreement.

“Agreement” means the agreement comprising the Member Agreement, the Owner Agreement (for Members who are Car Owners), the Policies and the Fee Schedule.

“Authorised Driver” means a Member or an Additional Driver.

“Booking” means an instance where a Member uses the Service to reserve a Vehicle belonging to another Member and, in the case of Key Handover Vehicles only, where the Owner of the Vehicle has confirmed the Booking.

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

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

“Booking System” means the technology that coordinates Bookings and payments and, in the case of Instant Keys Vehicles, performs the remote management of the Lockbox System.

“Borrower” means a Member who borrows, or makes a Booking to borrow, a Vehicle.

“Car Next Door” (also “We”, “Us” or “Our”) means Car Next Door Australia Pty Ltd ABN 53 163 596 530.

“Card” means the credit or debit card that a Member has selected as their primary method of payment to Us for amounts owing to Us or that we collect as agent for Owners.

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

“Driving Credit” means credit provided to Members that can be used to pay for Bookings.

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

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

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

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

“Fuel Card” means a physical or electronic card that may be provided for an Instant Keys Vehicle for the use of Borrowers to pay for fuel added to the Vehicle. Use of the Fuel Card is governed by clause 15.

“GPS” means Global Positioning System.

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

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

“Instant Keys Vehicle” means a Vehicle that is fitted with the Lockbox System or can be unlocked and used by a Borrower using Our technology and the Vehicle’s technology without the need for the Owner or a person authorised by the Owner to deliver to the Borrower the car keys.



"Key Handover Vehicle" means a Vehicle that is not fitted with the Lockbox System.

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

"Loss and Damage" means:

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

"Member" means any person whose Membership Application has been accepted by Us and whose Membership has not been cancelled, and may be a Borrower or an Owner.

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

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

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

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

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

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

"Owner" means a Member who owns a Vehicle and has indicated their willingness to make their Vehicle available to other Members through the Service.

"Owner Agreement" means the additional set of terms and conditions specific to Owners. The agreement is available on Our Website.

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

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

- a) the Complaints and Dispute Resolution Policy;
- b) the Damage Policy;
- c) the Privacy Policy; and
- d) the Website Terms of Use

"Roadside Assistance" means the 24/7 breakdown service provided to Vehicles enrolled in the Service.

"Service" means the service of facilitating peer-to-peer car sharing.

"Third Party Loss" means:

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



- c) costs of defending a legal claim for compensation for loss or damage described in (a), provided that We have approved the costs and expenses prior to them being incurred.

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

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

“Website” means the website [www.carnextdoor.com.au](http://www.carnextdoor.com.au) and any associated mobile sites and sub-domains.

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

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



## Schedule 1

### Credit Information and Reporting

#### 1.1 (SECTION 18(E)(1) PRIVACY ACT 1988) NOTICE OF DISCLOSURE OF YOUR CREDIT INFORMATION TO A CREDIT REPORTING AGENCY.

We may provide credit to You.

We collect, hold and use, information related to your commercial and consumer creditworthiness from illion (formerly trading as Dun & Bradstreet) (w: [www.dnb.com.au](http://www.dnb.com.au) | e: [pac.austral@dnb.com.au](mailto:pac.austral@dnb.com.au) | t: 13 23 33 (a credit reporting body), for all purposes permitted by law. We also disclose information to them. This activity is conducted for the purpose of assessing your credit capacity, eligibility or history in connection with an application or an obligation as a guarantor, collecting payments from you, and managing our credit relationship. Creditworthiness information includes information that is both positive (like payment information) and negative (like defaults or serious credit infringements that we may disclose to credit reporting bodies if you fail to pay us). Our privacy policy and the credit reporting body's privacy policy (see our websites) have more information on how we, and the credit reporting body, manage personal information, including creditworthiness information. The policies also include how you can access, correct, and make complaints about personal information, request that your information is not used for credit pre-screening, and request a ban on use of credit information where you have been a victim of fraud.

#### 1.2 PERIOD TO WHICH THIS UNDERSTANDING APPLIES

This information may be given before, during or after the provision of credit to You.

#### 1.3 STATEMENT BY APPLICANT(S) FOR CREDIT

You agree to Our exchange of creditworthiness information with credit reporting bodies including illion (formerly trading as Dun & Bradstreet) (w: [www.dnb.com.au](http://www.dnb.com.au) | e: [pac.austral@dnb.com.au](mailto:pac.austral@dnb.com.au) | t: 13 23 33 , and agree that We will obtain (and to the extent permitted by law, provide) information about both consumer and commercial credit to credit reporting bodies as stated above.

#### **Signature:**

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