

Long Term Hire Agreement – Operating Lease



Agreement No. <nnnn.3>

This agreement is made the xx Day of xxxx, 20xx

Between

LeasePlan New Zealand Limited

of 632 Great South Road, Ellerslie, Auckland

New Zealand

(LeasePlan)

And

<Client Name>

of <Client Address>

New Zealand

(The Hirer)

The Hirer wishes to hire motor vehicles from time to time from LeasePlan and to be provided with certain services in relation to those motor vehicles. LeasePlan and the Hirer have agreed to enter into this Agreement to set out the terms and conditions, first, on which any motor vehicle or motor vehicles described in a Schedule will be hired by LeasePlan to the Hirer and, secondly, on which services will be provided by LeasePlan to the Hirer.

Glossary of defined terms

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

Business Day means Monday to Friday other than gazetted public holidays and bank holidays in New Zealand.

Contract Start Date means, in respect of each Vehicle, the first day of the Term being:

- (a) where the Vehicle is a Sale and Hireback Vehicle, the date agreed between LeasePlan and the Hirer to be the date on which the Hiring Arrangement will commence, as specified in the Schedule for that Vehicle (a composite Schedule may stipulate a different Contract Start Date per Vehicle); and
- (b) in all other cases, the date LeasePlan informs the Hirer that the Vehicle is available for delivery.

Disposal means, in respect of each Vehicle, either the sale of the Vehicle to any party, the deemed sale of the Vehicle where the Vehicle is subject to a new lease to any party or the deemed sale of the Vehicle where the Vehicle is taken into the LeasePlan company car fleet.

Distance Variation means, in respect of each Vehicle, the amount per kilometre specified in the Schedule to be multiplied by the difference between the number of kilometres travelled by that Vehicle from the Contract Start Date to the Expiry Date and the number of kilometres specified in the Schedule.

Expiry Date means, in respect of each Vehicle, the last day of the Term or, if that day is not a Business Day, the next succeeding Business Day.

Fair Wear and Tear means, in respect of the condition of a Vehicle, the condition of the Vehicle assessed by reference to the Fair Wear and Tear Policy published on leaseplan.co.nz.

Force Majeure means Acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, riots, civil commotion, sabotage, revolution, strikes and lockouts.

GST means Goods and Services Tax payable in terms of Section 8 of the Goods and Services Tax Act 1985 or any amendment thereto.

Hiring Arrangement means each hiring arrangement formed by the incorporation of the terms and conditions contained in this Agreement into a Schedule including, for the avoidance of doubt, a composite Schedule.

Monthly Rental means, in respect of each Vehicle, the Total per Month set out in the Schedule for that Vehicle or, where that amount has been adjusted under Clause 5, the amount notified to the Hirer under Clause 5.

Non Contract Costs means, costs that are incurred by LeasePlan in relation to the use of the Vehicle where the nature of these costs are contemplated in the Schedule but such costs occur after the Expiry Date.

Pass On Costs means, costs that are not contemplated in the Monthly Rental and are borne by LeasePlan on behalf of the Hirer in relation to any vehicle under the control of the Hirer, where such costs have occurred after LeasePlan is requested to authorise the expenditure and has accepted liability for the payment and where LeasePlan has applied due care and expertise to ensure that the costs are valid and apply legitimately to a vehicle under the control of the Hirer.

Sale and Hireback Vehicle means any Vehicle acquired by LeasePlan from the Hirer and hired back to the Hirer.

Schedule means, in respect of each Vehicle, a contract supplement in such form as may be agreed from time to time by LeasePlan and the Hirer, together with the accepted lease quotation setting out the fleet management options to be provided for that Vehicle which bears the same calculation number as that contract supplement PROVIDED THAT where any Vehicles are Sale and Hireback Vehicles the contract supplements and accepted lease quotations for those Vehicles shall form a composite Schedule being the basis of the Hiring Arrangements for those Vehicles.

Term means, in respect of each Vehicle, the period of the hire of that Vehicle described as "Length in months" in the Schedule commencing on the Contract Start Date and includes any variation to the period of hire as agreed between LeasePlan and the Hirer, but for the avoidance of doubt does not include any new lease that is entered into by LeasePlan and the Hirer.

Vehicle means the Vehicle specified in a Schedule and includes (in each case) all accessories, tools and fittings and all additions and replacement parts fitted to a Vehicle during the Term (whether provided by the Hirer or not) and references in this Agreement to the "Vehicle" include references to any item of the Vehicle.

Words with capital initial letters have, unless the context otherwise requires, their meanings given to them in this Interpretation. The singular includes the plural and vice versa. Headings are for convenience only and do not affect the construction of this Agreement.

LeasePlan and the Hirer agreement

LeasePlan and the Hirer agree as follows:

1. New vehicle procedure

- 1.1 When the Hirer wishes LeasePlan to acquire a Vehicle from a supplier and wishes LeasePlan to hire that Vehicle to the Hirer, the Hirer shall request from LeasePlan a lease quotation. If LeasePlan provides such a lease quotation which the Hirer then accepts, LeasePlan will place an order with an appropriate supplier for the Vehicle. Receipt by LeasePlan of a signed lease quotation from the Hirer will be deemed as acceptance of the terms and conditions of this Agreement as well as those inherent in the lease quotation.
- 1.2 The Hirer agrees that its acceptance of a lease quotation will be irrevocable and acknowledges accordingly that LeasePlan will order the relevant Vehicle solely for the purpose of the proposed Hiring Arrangement for that Vehicle and the Hirer will be bound to proceed with the Hiring Arrangement of that Vehicle. If after acceptance of a lease quotation, the Hirer either wishes to cancel the proposed Hiring Arrangement or fails to take delivery of the Vehicle, LeasePlan or the supplier of the Vehicle, or both, may charge the Hirer a fee for doing so.
- 1.3 Upon receipt of the supplier's invoice for the Vehicle, LeasePlan will prepare a Schedule for the Vehicle, a copy of which will be forwarded to the Hirer.

2. Sale and hire back

- 2.1 When the Hirer wishes LeasePlan to acquire vehicles from the Hirer and to hire those vehicles back from LeasePlan, the Hirer will provide LeasePlan with a complete listing of all such vehicles (including their respective current odometer readings, market values where relevant and written down values in the books of the Hirer where relevant) and their registration numbers.
- 2.2 LeasePlan will prepare a composite Schedule for the vehicles for execution by LeasePlan and the Hirer, noting the agreed acquisition price.
- 2.3 The Hirer shall provide a GST invoice to LeasePlan and LeasePlan shall purchase the vehicles and pay the Hirer the acquisition price on the Contract Start Date.

3. Agreement

- 3.1 LeasePlan shall hire and the Hirer shall take on hire each Vehicle the subject of a Schedule on and from the Contract Start Date for the Term and at the Monthly Rental and otherwise on the terms and conditions contained in the Schedule and this Agreement.
- 3.2 The Hirer warrants that the Vehicle will be used primarily for business purposes.

- 3.3 This Agreement including attachments and Schedules constitutes the entire agreement between the Parties regarding the subject matter referred to herein and supersedes and nullifies any negotiations, agreements or promises in respect thereof which have been made prior to the execution of this Agreement. The parties agree for the purposes of section 5D of the Fair Trading Act 1986 (FTA) that they are contracting out of sections 9, 12 A and 13 of the FTA in respect of the matters covered by this Agreement.

- 3.4 Nothing in this Agreement creates an agency relationship, joint venture, partnership, equitable relationship or unincorporated joint venture relationship between the Hirer and LeasePlan. LeasePlan does not act as an agent or fiduciary for the Hirer in any way in relation to the matters contained in this Agreement.

LeasePlan may, from time to time, receive certain rebates, discounts or other considerations from third party suppliers who may provide services or goods to LeasePlan or the Hirer in relation to the matters contained herein. The Hirer acknowledges and consents to LeasePlan receiving such rebates, discounts or consideration.

4. Scheduled services

- 4.1 Where the Schedule includes allowances for maintenance and tyres, LeasePlan will, subject to it approving all expenditure prior to the service agent undertaking the repair or maintenance of the Vehicle, bear the cost of servicing the Vehicle according to the manufacturer's service schedule, including the cost of replacing tyres up to the number of tyres specified in the Schedule.

The Hirer must when appropriate submit the Vehicle to a LeasePlan preferred service provider for maintenance and carry out all other reasonable requirements of LeasePlan in relation to the Vehicle.

- 4.2 Where the Schedule includes an allowance for:
 - (a) Registration, LeasePlan will bear the cost of keeping the Vehicle registered;
 - (b) Direct Driver Support, LeasePlan will provide a roadside assistance service and a direct driver support service for the Hirer and the drivers of the Vehicles. Towing charges arising as a result of the Vehicle being involved in an accident or as a result of neglect or misuse of the Vehicle or where the driver has not adhered to the relevant roadside assistance guidelines as to towage will be treated as a Pass On Cost;
 - (c) Fuel, LeasePlan will, if the Hirer complies with any reasonable requests made by LeasePlan in relation to the supply of fuel, bear the cost of supply of fuel for the Vehicle.

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4.3 Where the schedule does not include an allowance for fuel, LeasePlan will, if the Hirer complies with any reasonable requests made by LeasePlan in relation to the supply of fuel, bear the cost of supply of fuel for the Vehicle and recharge such costs as Pass On Costs.

4.4 Where the schedule includes an allowance for AnyWear Cover, LeasePlan will provide a credit to the Hirer for chargeable wear and tear as contemplated in clause 11.1 of this Agreement. The credit will be calculated according to the details included in the AnyWear Cover Addendum to this Agreement.

5. Recalculation

- 5.1 If there is an increase or decrease during the Term in the cost or risk to LeasePlan of:
- (a) providing repair and maintenance services under Clause 4.1 as a result of kilometres driven being in excess of the number of kilometres per annum specified in the Schedule and on which the Monthly Rental is based;
 - (b) keeping the Vehicle registered under Clause 4.2(b);
 - (c) providing a roadside assistance service for the Vehicle and drivers of the Vehicle under Clause 4.2(c);
 - (d) providing insurance for the Vehicle under Clause 12;
 - (e) providing the Vehicle arising directly or indirectly from a change in, or the implementation of, any law or regulation or administrative direction or practice;
 - (f) providing services to the Hirer as a result of the Hirer requesting additional or reduced services to be provided,

LeasePlan has the irrevocable right to increase or decrease the Monthly Rental and will give one month's written notice to the Hirer of its intention to so increase or decrease the Monthly Rental.

5.2 LeasePlan will annually perform a cost analysis and if a Vehicle's annualised kilometre travel has or is forecast to differ from the kilometres specified in the Schedule, LeasePlan has the irrevocable right to increase or decrease any items which make up the Monthly Rental and will give one month's written notice to the Hirer of such increase or decrease in the Monthly Rental, where the kilometre variance has resulted in increased or decreased costs or risks.

6. Early termination of hiring arrangement

- 6.1 Where the Term for any Vehicle, for whatever reason other than the Vehicle being lost, stolen or damaged as contemplated in clause 12.4, is terminated more than 31 days prior to its Expiry Date, LeasePlan shall upon such termination calculate the amount of an Early Termination Charge, which will then become due and payable by the Hirer to LeasePlan as a Pass On Cost.
- 6.2 The Early Termination Charge will be calculated according to the following scale:
- (a) For contracts terminated within the first 12 months of a Hiring Arrangement, the Early Termination Charge will be the Monthly Rental multiplied by 6.
 - (b) For contracts terminated after 12 months but within the first 24 months of a Hiring Arrangement, the Early Termination Charge will be the Monthly Rental multiplied by 4.
 - (c) For contracts terminated after 24 months of a Hiring Arrangement, the Early Termination Charge will be the Monthly Rental multiplied by the lower of the number months remaining in the Hiring Arrangement and 3.

7. Payment terms

7.1 The Hirer agrees to pay the Monthly Rental to LeasePlan on the first day of each month during the Term. The first such payment will be adjusted in respect of the period from the Contract Start Date to the last day of the month in which the Contract Start Date occurred by adding to it a proportionate part of the Monthly Rental (calculated on a daily basis). The last such payment will be the corresponding proportionate part of the Monthly Rental.

The Hirer agrees to pay Pass On Costs as they arise from time to time. Payment is due on the first day of the month following the date of the invoice.

- 7.2 All amounts due to LeasePlan under the Hiring Arrangement will be transferred by LeasePlan by direct bank debit from an account advised by the Hirer to LeasePlan.
- 7.3 The Hirer is liable to pay all GST and other taxes and other costs of a similar kind arising out of or in connection with the hire of the Vehicle or any payment to be made to LeasePlan by the Hirer.
- 7.4 The Hirer shall pay to LeasePlan on demand late payment interest calculated at the rate equivalent to 4% above the 90 day Bank Bill Rate on all sums due from the Hirer to LeasePlan under a Hiring Arrangement which remain unpaid after their respective due dates and such interest shall be calculated from the due date of such payment until actual payment, whether before or after judgement.

LeasePlan and the Hirer agreement

8. Condition of vehicle

- 8.1 Unless a Vehicle is a Sale and Hireback Vehicle the Hirer will, no later than the day after delivery of the Vehicle by LeasePlan to the Hirer, carry out an inspection of the Vehicle with a view to confirming that the Vehicle is free from defects and damage. The Hirer shall, if required by LeasePlan, sign a certificate to that effect. Any such certificate will be conclusive of the facts stated therein.
- 8.2 Where a Vehicle is a Sale and Hireback Vehicle, the Hirer warrants to LeasePlan that the Vehicle is complete, is in accordance with the specification provided by the Hirer to LeasePlan under Clause 2.1, is in good working order and condition and complies in all respects with every relevant requirement of law and where relevant the Vehicle manufacturer's warranty. The Hirer indemnifies and will keep indemnified LeasePlan against any breach of this warranty.

9. Liabilities

- 9.1 So long as LeasePlan has promptly placed an order on a supplier for the supply of a Vehicle, LeasePlan will not be liable for any delay in delivery of the Vehicle, unless such delay is a result of LeasePlan's negligence.
- 9.2 To the maximum extent permitted by law, the Hirer indemnifies and holds LeasePlan fully indemnified against any loss, damage, injury or death to persons or property occurring in connection with the Vehicle or as a result of the use of the Vehicle except where the loss, damage, injury or death results from LeasePlan's negligence.
- 9.3 To the maximum extent permitted by law, LeasePlan indemnifies and holds the Hirer fully indemnified against any loss, damage, injury or death to persons or property occurring in connection with the Vehicle or as a result of the use of the Vehicle where the loss, damage, injury or death is a result of LeasePlan's negligence.
- 9.4 Non-performance by either party of any of its obligations under this Agreement shall be excused during the time and to the extent that the performance was prevented by a Force Majeure event.
- 9.5 Performance of any obligation affected by a Force Majeure event shall be resumed as soon as reasonably possible after the Force Majeure event has ceased.
- 9.6 A party claiming the benefit of Force Majeure shall promptly give written notice to the other party specifying the cause and extent of the Force Majeure event and its inability to perform any of its obligations under this Agreement and the likely duration of the non-performance and shall take all reasonable steps to minimise the effect of the Force Majeure event.

10. Obligations of the Hirer in relation to the vehicle

- 10.1 The Hirer shall until the Vehicle is returned to or collected by LeasePlan at the Expiry Date or prior termination of the Term:
- (a) subject to Clause 4.1, be fully responsible for maintaining the Vehicle in good and substantial repair and proper working condition (with due regard to the requirements of holding a valid Warrant of Fitness or equivalent as required by law) and for any loss of, or damage to, the Vehicle however occasioned (Fair Wear and Tear only excepted), and must give immediate written notice to LeasePlan of any such loss or damage to the Vehicle;
 - (b) upon request from LeasePlan or its authorised representatives, present the Vehicle from time to time at a mutually agreed location for inspection and testing;
 - (c) subject to Clause 4.2(b), punctually pay or cause to be paid all registration fees, accident compensation levies payable under the Injury Prevention, Rehabilitation and Compensation Act 2001, road user charges, GST and other charges or taxes which may from time to time become payable in respect of the Vehicle and on demand show to LeasePlan the receipt for those payments;
 - (d) keep the Vehicle free from any lien or charge of any kind and free from any distress, execution or other legal process and if, despite this obligation, any such event does affect the Vehicle to immediately inform LeasePlan of that fact by telephone with subsequent written confirmation;
 - (e) not without the prior written consent of LeasePlan, sell, assign, charge, let on hire or dispose of or part with possession of the Vehicle or any part of the Vehicle and if, despite this prohibition, the Hirer is not for any reason in possession of the Vehicle, the Hirer must forthwith notify LeasePlan of that fact and take all necessary steps (including without limitation those required by LeasePlan) to recover possession of the Vehicle;
 - (f) not use or allow the Vehicle to be used for any purpose for which it is not designed or suitable and in particular, but without limitation, for racing, pace-making or speed or other testing, the carriage of passengers for hire or reward or for the transportation of dangerous or noxious substances or any other load which might harm the Vehicle;
 - (g) not without the prior written consent of LeasePlan make any alteration to the Vehicle;

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- (h) permit the Vehicle to be driven only by persons who either hold a valid and current New Zealand or approved international drivers licence;
- (i) ensure that the Vehicle is as far as reasonably possible adequately secured and protected against and not exposed to damage from fire, theft or any other avoidable risk and not use or allow the Vehicle to be used for any purpose not permitted by the terms and conditions of any relevant policy of insurance or to do or allow to be done any act or thing which may invalidate the insurance;
- (j) ensure that cigarette or other smoking is not permitted in the Vehicle;

10.2 The distance actually travelled by the Vehicle at any time and from time to time will be determined by reference to the odometer fitted to the Vehicle. The Hirer must immediately notify LeasePlan if at any time the odometer becomes unserviceable. The distance actually travelled by the Vehicle whilst the odometer is unserviceable will be calculated by reference to the daily average distance travelled by the Vehicle during the preceding 90 days or since the Contract Start Date, whichever is the lesser.

11. Return of vehicle

- 11.1 On the Expiry Date or any earlier date on which the Hiring Arrangement is terminated, except where Clause 12.4 applies, the Hirer must make the vehicle available for return or collection and inspection by LeasePlan. The Vehicle will remain at the risk of the Hirer until it is returned to, or collected by, LeasePlan. Without prejudice to the other obligations of the Hirer under the Hiring Arrangement, LeasePlan will advise the Hirer of the cost of restoring the Vehicle to the condition required by Clause 10.1(a). The cost of such repairs will be deemed to be the cost as estimated by a motor vehicle inspector appointed for that purpose by LeasePlan who will apportion the repairs between chargeable and fair wear and tear by reference to the LeasePlan Fair Wear and Tear Policy. The chargeable portion will be treated as a Pass On Cost and become due and payable by the Hirer to LeasePlan.
- 11.2 Before returning the Vehicle the Hirer may remove any accessories fitted at the Hirer's expense during the Term. Any resulting damage to the Vehicle must be made good to the satisfaction of LeasePlan. The Hirer will not have any claim against LeasePlan in respect of any such accessory which is not removed.

11.3 On the Expiry Date or, any earlier date on which the Hiring Arrangement is terminated, except where Clause 12.4 applies, LeasePlan will calculate the difference between the distance driven by the Vehicle since the Contract Start Date (the "Actual Distance") and the number of kilometres per year specified in the Schedule multiplied by the number of years in the Term (the "Hiring Distance"). Subject to 11.4, the amount which is produced by multiplying such difference by the relevant Distance Variation will become due and payable by the Hirer to LeasePlan as a Pass On Cost.

11.4 For any given Vehicle, if the difference between the Actual Distance and the Hiring Distance is less than 10,000km, no Pass On Cost or credit will be calculated or payable.

11.5 If the Vehicle has not been returned at the Expiry Date, the Hirer shall bear the cost of any Non Contract Costs that may occur, which shall be treated as Pass On Costs.

12. Insurance

12.1 Where the Hirer elects to effect its own motor vehicle insurance, the Hirer shall ensure that the Vehicle is insured with a motor vehicle insurer approved firstly by LeasePlan and such motor vehicle insurance is to provide for an insurance deductible amount approved of by LeasePlan and the insurance is to cover against loss or damage by accident, including fire and theft to the market value of the Vehicle and against third party liability.

In situations where LeasePlan approves a large deductible or a Hirer's self insurance scheme, the Hirer will be required firstly to provide LeasePlan with satisfactory evidence of its business catastrophe cover.

The Hirer's motor vehicle insurance policy must provide that the coverage afforded cannot be cancelled or materially altered without the insurer providing seven days prior written notice to LeasePlan. The Hirer's motor vehicle policy of insurance shall record that the vehicle is the property and in the ownership of LeasePlan, that LeasePlan is an interested party and that proceeds of insurance are to be paid direct to LeasePlan.

When requested by LeasePlan, the Hirer shall promptly produce to LeasePlan the motor vehicle policy of insurance, the premium receipts and relevant insurance certificates.

If, during the term of the Hirer's motor vehicle insurance policy, the Hirer defaults in the payment of any premium in respect of such policy of insurance, then LeasePlan may pay such premium to the insurer and the amount of such premium will be treated as a Pass On Cost.

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12.2 If it is agreed between the Hirer and LeasePlan that clause 12.1 shall not apply and that LeasePlan will be responsible for insurance of the Vehicle, then LeasePlan will keep the Vehicle insured against loss or damage by accident including fire and theft and against third party liability upon and subject to the terms and conditions of LeasePlan's insurance policy, copies of which are available for inspection at the offices of LeasePlan upon request. The Hirer for himself and every driver of the Vehicle agrees to comply with and be bound by all the terms, conditions and limitations of the said policy of insurance. LeasePlan shall procure that the policy of insurance provides that the coverage afforded cannot be cancelled or materially altered without seven days' prior written notice to LeasePlan. If LeasePlan receives such a notice, it will promptly inform the Hirer. If this clause 12.2 applies, any accident damage or associated costs relating to a Vehicle which are paid by LeasePlan and are below the agreed deductible will be due and payable by the Hirer to LeasePlan as a Pass On Cost.

12.3 Every accident involving the Vehicle must be reported by prompt means to LeasePlan or its authorised agent and confirmed in writing as soon as possible and in any event by the end of the first Business Day following the accident. The Hirer must carry out all instructions of LeasePlan or its authorised agent in relation to the repair of the Vehicle, must forthwith complete any accident report form (which must not make any admission of liability) and must obtain witnesses' details if possible. Unless otherwise agreed:

- (a) the Hirer and the driver must immediately deliver to LeasePlan or its authorised agent every summons, written statement of claim, pleading or paper of any kind relating to any and all claims, suits and proceedings received by either or both of the Hirer and the driver; and
- (b) the Hirer and the driver must not in any manner aid or abet any claimant except where required by law or the direction of a court but must co-operate fully with LeasePlan or its authorised agent and, where appropriate, its insurers in all matters connected with the investigation and conduct of any claim or action.

12.4 If the Vehicle is lost, stolen or damaged and is declared to be a total loss by its insurers, the Term or, where the Vehicle is a Sale and Hireback Vehicle the Term in respect of the relevant Vehicle only, will terminate upon the insurer paying the proceeds of the policy of insurance of the Vehicle to LeasePlan and the Early Termination Charge will be the Monthly Rental multiplied by the lower of the number of months remaining in the Hiring Arrangement and 3.

13. Default by Hirer

13.1 If:

- (a) the Hirer fails to punctually pay any instalment of Monthly Rental or other sum due under the Hiring Arrangement or any other agreement between LeasePlan and the Hirer; or
- (b) the Hirer fails to observe or perform any of the other terms and conditions of the Hiring Arrangement or any other Agreement between LeasePlan and the Hirer; or
- (c) any other Agreement between LeasePlan and the Hirer is terminated by LeasePlan following any breach or any occurrence of the nature described in this Clause; or
- (d) any distress, execution, diligence, impounding or other legal process is levied on, or filed against the Vehicle or any part of the Vehicle or if the Hirer permits any judgement against the Vehicle to remain unsatisfied for seven (7) days or does or allows to be done any act or thing which may jeopardise LeasePlan's rights in the Vehicle or any part of the Vehicle; or
- (e) the Hirer calls any meeting of its creditors or enters into any liquidation or has a receiver or administrator of all or any of its assets appointed; or
- (f) the insurers of the Vehicle decline to insure or to continue to insure the Vehicle; or
- (g) the financial position of the Hirer deteriorates to such a degree that there is an increased risk of any of the above occurring;

then in each and every case, LeasePlan will advise the Hirer in writing of the occurrence of a default. In the case of failing to punctually pay any instalment of Monthly Rental LeasePlan will allow the Hirer seven days to rectify that occurrence. In the case of each and every other occurrence described in this Clause, LeasePlan will allow the Hirer thirty days to rectify the occurrence.

13.2 If the Hirer does not rectify any occurrence specified in Clause 13.1 within the time permitted, LeasePlan may at its sole discretion, (but without prejudice to any other rights under this Agreement) forthwith by notice to the Hirer, terminate the Hiring Arrangement or apply clause 5 to increase the Monthly Rental to take account of the increased credit risk being borne by LeasePlan.

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13.3 Following any termination of the Hiring Arrangement under Clause 13.2, the Hirer will then no longer be in possession of the Vehicle with LeasePlan's consent. In that event LeasePlan may without prejudice to LeasePlan's claim for any arrears of Monthly Rental or damages for any breach of any other rights under the Hiring Arrangement, retake possession of the Vehicle, and may for that purpose enter upon any premises belonging to or in the occupation or control of the Hirer which to the knowledge of LeasePlan is housing the Vehicle.

13.4 The Hirer will be responsible for all costs, charges and expenses incurred by LeasePlan in retaking possession of the Vehicle except any costs, charges and expenses arising as a result of or in consequence of the negligence or wilful default of LeasePlan.

13.5 If LeasePlan does terminate the Hiring Arrangement as provided in Clause 13 then without prejudice to the right of LeasePlan to bring a claim for damages for breach of the Hiring Arrangement, Clause 6.1 will apply and the Hirer shall forthwith upon written demand pay to LeasePlan any amount due by the Hirer to LeasePlan under Clause 6.2.

14. Exercise of rights

14.1 The Hirer shall repay to LeasePlan on demand and on a full indemnity basis, to the maximum extent permitted by law, all costs, charges and expenses incurred in any way, by reason of LeasePlan exercising any rights it may have under the Hiring Arrangement, or by reason of any breach of the Hiring Arrangement by the Hirer, including but without limitation all costs, charges and expenses incurred in ascertaining the whereabouts of either or both of the Vehicle and the Hirer.

15. Waiver of rights

15.1 No forbearance, indulgence or relaxation on the part of LeasePlan shown or granted to the Hirer or in enforcing any of the terms and conditions of the Hiring Arrangement shall in any way affect, diminish, restrict or prejudice the rights or powers of LeasePlan under the Hiring Arrangement or operate as or be deemed to be a waiver of any breach of the terms and conditions of the Hiring Arrangement on the part of the Hirer.

16. Dispute resolution

16.1 Any dispute relating to this Agreement between LeasePlan and the Hirer:

- (a) must be referred initially for resolution by representatives of each party, who will endeavour to resolve the dispute within 10 Business Days of the giving of notice of a dispute by a party; and

- (b) if the dispute is not resolved in accordance with clause 16.1(a), then it shall be referred to the relevant Chief Executives of LeasePlan and the Hirer (or such other nominee with an equivalent status and authority), who will endeavour to resolve the dispute within a further 20 Business Days or such other period as may be agreed by those persons; and

- (c) if the dispute is not resolved by the parties in accordance with clause 16.1(b) within a further 20 Business Days then either party may submit the dispute to an arbitrator appointed by mutual agreement, or in the absence of agreement, to a single arbitrator nominated by the president of the New Zealand Law Society or his or her nominee, and any such dispute shall be settled in accordance with the provisions of the Arbitration Act 1996.

The award of such arbitration shall be final and binding on both parties and shall not be subject to appeal or review, other than permitted by law.

17. Notices

17.1 Any notice or other communication to be given to a party under this Agreement by the other party, must be in writing and may be served personally or sent to the registered office, or other address or facsimile number or email address as set down in this Agreement or such changed address which either party may from time to time have otherwise communicated to the other in accordance with this clause.

17.2 Notices are deemed served at the following times:

- (a) when given personally, upon delivery;
- (b) when sent by post, three Business Days after posting;
- (c) when sent by facsimile, upon receipt of a facsimile transmission report stating that the communication was properly sent;
- (d) when sent by email, upon receipt of an email reply from the other party, acknowledging receipt.

Any notice served on a Saturday, Sunday or public holiday shall be deemed to have been served on the first Business Day after that day.

18. Assignment

18.1 The Hirer must not assign or charge the benefit of this Agreement or any Hiring Arrangement or attempt to do either of these things without the prior consent of LeasePlan.

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19. Joint liabilities

19.1 Where there are two or more persons to this Agreement as Hirers their liabilities under this Agreement and under any Hiring Arrangement are joint and several.

20. Execution

20.1 No Hiring Arrangement is binding on LeasePlan unless this Agreement has been signed by LeasePlan or its authorised representative.

21. Governing law

21.1 This Agreement and each Hiring Arrangement is governed by and construed in accordance with the laws of New Zealand.

22. Annual accounts

22.1 The Hirer shall, within 150 days of the end of the financial year of the Hirer, provide LeasePlan with a full set of financial statements prepared in accordance with the requirements of the Companies Act 1993 and the Financial Reporting Act 1993 or any re-enactment or replacement of those Acts. In the event that the Hirer is not required by law to publish its financial statements, the Hirer will submit its financial statements to LeasePlan along with a report from a chartered accountant confirming the compliance of those financial statements with New Zealand Financial Reporting Standards.

23. Personal Property Securities Act (PPSA)

23.1 The Hirer acknowledges that this Agreement creates a purchase money security interest in the Vehicle. The Hirer agrees to sign any documents, provide all necessary information and do anything else required by LeasePlan to ensure that this purchase money security interest is a perfected security interest.

23.2 The Hirer will not enter into any security agreement that permits any other person to register any security interest under the PPSA in respect of any Vehicle.

23.3 If Part 9 of the PPSA applies to this purchase money security interest then to the extent that it applies, the Hirer will have no rights under Part 9 (Enforcement) of the PPSA. For example, but without limitation:

- (a) The Hirer will have no rights under sections 114(1)(a) (to receive notice of sale), section 117(1)(c) (relating to distribution of surplus) or to section 133 (reinstating this agreement);

- (b) The Hirer waives its rights under section 116 (to receive a statement of account), section 119 (to recover surplus) and sections 120(2) and 121 (to receive notice of any proposal to retain the Vehicle and object to any proposal).

23.4 The Hirer waives its rights under the PPSA to receive a copy of any verification statement or financing charge statement.

23.5 If Part 9 of the PPSA applies to this purchase money security interest the Hirer agrees that where LeasePlan has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

24. Privacy and confidentiality

24.1 The Hirer authorises LeasePlan to obtain at any time from any person or entity, any information which LeasePlan may require for credit reference purposes, administering the account with the Hirer, enforcing performance of any contractual obligations or as required by New Zealand law.

24.2 The Hirer and LeasePlan acknowledge that the content of all documents and information provided by either party related to this Agreement and any discussion or correspondence between the Hirer and LeasePlan are to be treated as confidential between LeasePlan and the Hirer and shall not be disclosed to any other person or entity by LeasePlan or the Hirer unless it is in the execution of this Agreement or required to do so by law or both LeasePlan and the Hirer have consented in writing to such disclosure.

24.3 The Hirer acknowledges that LeasePlan may communicate directly and electronically with employees and representatives of the Hirer in order to effectively execute its duties under this Agreement.

25. Special Terms and Conditions

25.1 The following Special Terms and Conditions (if any) apply to this Agreement and to any Hiring Arrangement incorporating the terms and conditions set out in this Agreement.

LeasePlan and the Hirer agreement

Executed for and on behalf of
<Hirer>

Signature _____
(Director/Authorised Signatory)

Name _____

Signature _____
(Director/Authorised Officer) (or Witness)

Name _____

Accepted for and on behalf of
LeasePlan New Zealand Limited

Signature _____
(Director/Authorised Signatory)

Name _____

Signature _____
(Director/Authorised Signatory)

Name _____

Contract Addendum - AnyWear Cover

Lease Termination Fee NZD\$ 300.00 per Vehicle (excluding GST)

Maximum Cover NZD\$ 3,500.00 per Vehicle (excluding GST)

1. Cover

AnyWear Cover provides for a credit to the Hirer up to the Maximum Cover, for damage to the Vehicle which is deemed "Unacceptable" within the document titled "Fair Wear & Tear Guidelines for Cars and/or Fair Wear & Tear Guidelines for Vans (as applicable)" which are provided to the Hirer by LeasePlan in accordance with the Long Term Hire Agreement and which has been identified following an inspection of the Vehicle on return of the Vehicle to LeasePlan.

2. Definitions

"Poor Repair" means a repair to the body (including paintwork, plastic and metalwork) of the Vehicle demonstrating one or more of the following:

i. Metalwork

- Any repair that has not been undertaken in accordance with the vehicle manufacturers' specifications
- Any welding work that has not been completed to the vehicle manufacturers' original specification
- Body panels (repaired or replaced) that are misaligned and/or not completed to the vehicle manufacturers' original specification
- Repairs to the vehicle chassis that have not been completed to the vehicle manufacturers' original specification
- Any application of sealants that has not been completed to the vehicle manufacturers' original specification

ii. Repair of any components, including plastic components

- Any repair of plastic components that has not been completed to the vehicle manufacturers' original specification

iii. Paintwork

- Any paint that has not been applied in accordance with the vehicle manufacturers' original specification
- Any application of paint that has not resulted in a uniform finish with the remainder of the vehicle and demonstrates impurities or imperfections
- The result of applying anti-corrosive materials is unsatisfactory

3. Exclusions from AnyWear Cover

The following items will not be included in the calculation of an AnyWear Cover credit:

Missing items:

- Cigarette lighter
- Spare tyre(s)
- Keys
- Instruction/Service Books

Defects caused by Poor Repairs that occurred during the duration of the Long Term Hire Agreement;

Any part or accessory missing or that does not meet the original specifications at the time of delivery of the Vehicle at the commencement of the Long Term Hire Agreement.

4. Claims Conditions

- a) An inspection of the Vehicle will be undertaken by an independent and certified company appointed by LeasePlan to determine if any damage incurred might be subject to an AnyWear Cover credit. If the damage noted in the inspection exceeds the Lease Termination Fee, a credit will be processed by LeasePlan by deducting the Lease Termination Fee and any Exclusions from the assessed chargeable damage, per Vehicle, to a maximum of the Maximum Cover.
- b) The maximum AnyWear Cover credit will therefore be \$3,200.00 (plus GST).

5. General Conditions

- a) Provision of AnyWear Cover is subject to full payment of the AnyWear Cover charge which will be included in the calculation of the Monthly Rental of the relevant Vehicle.
- b) In the event of Early Termination of the Hiring Arrangement of a Vehicle following the theft, loss or total destruction of the Vehicle or at the request of the Hirer, all AnyWear Cover charges paid will be retained by the LeasePlan.
- c) Whenever there are changes made to the period of the Hiring Arrangement (reductions or increases), LeasePlan reserves the right to adjust the AnyWear Cover charge accordingly.

LeasePlan New Zealand Limited

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(c) Charge its current fees for this service in force from time-to-time