

## TERMS AND CONDITIONS OF LEASE MANAGEMENT

### **IMPORTANT NOTICE**

This document does not contain all of the terms of the Management Contract. The rest of the Management Contract terms are set out in the Quotation.

By signing the Quotation the Client has agreed to enter into the Management Contract.

A number of important terms used in this document are defined in clause 17. These terms commence with a capital letter. Some other key words are also explained. Please refer to clause 17 in reviewing this document.

## **1 MANAGEMENT SERVICES AND MANAGEMENT FEE**

### **1.1 Management Fee and Management Services**

In consideration of the Client paying Novate@bility the Management Fee Novate@bility will provide to the Client, during the Term, the Management Services on the terms and conditions set out in this document. The Client must pay the Management Fee monthly in arrears. The amount of the Management Fee payable by the Client will be specified in the Quotation and will be included in the Client Invoice.

### **1.2 Client Invoice**

- (a) The Client is responsible for and must always pay on time all Fleet Costs specified in the Client Invoice.
- (b) Novate@bility will send the Client a Client Invoice as soon as practicable after the beginning of each calendar month during the Term.
- (c) The Client must ensure the Client Invoice is paid as soon as practicable but in any event within 14 days of the Client Invoice being issued.
- (d) The Client acknowledges that its employer may on behalf of the Client pay some or all of the Client Invoices if the amount is part of the Quotation into a leasing account created and held on Novate@bility's system.
- (e) If the Client Invoice is not paid in full on or before the due date for payment of that Client Invoice, Novate@bility may charge interest at the rate of 18% on the amount payable which has not been paid until the amount due is paid.
- (f) If a Client Invoice remains outstanding for 30 days or more after the due date for payment of that Client Invoice, Novate@bility may suspend provision of the Management Services.

## **2 REGISTRATION**

The Client must at all times keep the Vehicle registered and will provide Novate@bility evidence of that registration on request and in any event as soon as practicable on payment of registration charges.

## **3 INSURANCE**

The Client is responsible for insuring the Vehicle and will ensure that the insurance is satisfactory for its needs, such insurance must be with a Preferred Insurer or if the client does not wish to use a Preferred Insurer such other Insurer as may be agreed to in writing by Novate@bility.

## **4 ROADSIDE ASSISTANCE SERVICES**

If specified in the Quotation, Novate@bility will provide or cause the Roadside Assistance Provider specified in the Quotation to provide to the Client the roadside assistance services specified in the Quotation, for the roadside assistance fee payable by the Client and specified in the Quotation. The roadside assistance services will be provided on the terms and conditions provided by the relevant roadside assistance provider.

## **5 FUEL CARDS**

- (a) The Client must purchase all fuel for the Vehicle on the fuel card approved of or issued at the request of Novate@bility. The Client must not use that fuel card to purchase fuel for any other Vehicle.

## TERMS AND CONDITIONS OF LEASE MANAGEMENT

- (b) If the fuel card is lost or stolen the Client must as soon as practicable notify Novate@bility and Novate@bility will cancel the fuel card and arrange for a replacement fuel card.
- (c) If the Client does not promptly notify Novate@bility once it becomes aware or should reasonably have become aware of authorised expenditure on the fuel card, Novate@bility may require the Client to file a police report and provide Novate@bility with a copy of the report within 2 Business Days of Novate@bility requesting the Client file a police report. If the Client fails to provide a copy of the report within the time frame required by this clause the Client will be responsible for all unauthorised expenditure regardless of when the expenditure was made.

### 6 ALLOWANCE

#### 6.1 Variation to Allowance

The Allowance may be varied at any time during the Term:

- (a) by Novate@bility where:
  - (i) the amount spent is in excess of the current Allowance or is likely to exceed the current Allowance given the amount spent to date on that item; or
  - (ii) if an Adverse Event occurs to enable Novate@bility to recover for any Loss it may suffer as a result of that event; or
- (b) at the Client's request where Novate@bility agrees to the request (which it may or may not do so in its absolute discretion).

#### 6.2 Discounts

Where Novate@bility receives volume discount rates from Service Providers it may share fleet discounts in any way that it thinks fit and may take into consideration those rates in calculating the operating costs charged to the Client.

#### 6.3 Service and Product Providers

- (a) Novate@bility engages various third party providers in order to provide the products or services which form part of the Fleet Costs. Where Novate@bility has a panel of providers, the Client must select a provider from that panel.
- (b) Novate@bility may change the list of third party providers from time to time and will provide notification of such changes on its website or via direct communication. Where a Client's selected provider is removed from the list, Novate@bility may, at its election, substitute such provider with a suitable alternate provider to provide the product or service to the Client.
- (c) Where the Client has an existing arrangement with a third party provider not included in Novate@bility's list of providers, the Client must transfer from its existing provider to a third party provider specified on Novate@bility's list of providers.
- (d) If the amount received by Novate@bility to be applied to make payments to third parties on behalf of the Client is less than the amount owing to that provider, the Client will be liable to pay the shortfall and when Novate@bility receives any further payment from the Client's salary, any payments to such third party providers will be prioritised prior to any payment being made to the Client.

### 7 TERMINATION

#### 7.1 Termination by the Client

The Client may terminate this document at any time before the Scheduled Termination Date, if the Client:

- (a) gives Novate@bility at least 30 days' notice, in writing its intention to do so on and from the date specified in the notice; and
- (b) pays to Novate@bility (in cleared funds) all amounts then due and owing to Novate@bility under the Management Contract.

#### 7.2 Termination by Novate@bility

Novate@bility may terminate this document at any time before the Scheduled Termination Date, by giving the Client at least 30 days' notice of its intention to do so on the date specified in the notice.

#### 7.3 Accrued obligations not affected

Termination of this document does not affect any of the rights or obligations of a party that have accrued before the date of termination.

## TERMS AND CONDITIONS OF LEASE MANAGEMENT

### 8 REIMBURSEMENT

#### 8.1 Agreed reimbursements

Novate@bility may, at the Client's request but, in Novate@bility's absolute discretion, agree to reimburse the Client for:

- (a) insurance costs charged by an insurer other than a Preferred Insurer;
- (b) service costs charged by a service provider other than a Service Provider;
- (c) Maintenance Costs which have not been authorised by Novate@bility;
- (d) registration costs (including third party insurance); and
- (e) fuel other than fuel purchased on the fuel card.

#### 8.2 Reimbursements not agreed

Novate@bility will not reimburse the Client for any:

- (a) Infringement;
- (b) Third Party Fees; or
- (c) any other costs not covered by the Allowance.

#### 8.3 Reimbursement procedure

- (a) The Client may make up to 3 Reimbursement Claims in each year during the Term. The Client may not make a Reimbursement Claim later than 7 days after the Termination Date and may not claim for costs incurred more than 14 days prior to the commencement of the current FBT year.
- (b) If the Client wishes to make a Reimbursement Claim, it must deliver to Novate@bility a duly completed Reimbursement Claim Form specifying each amount the Client wishes Novate@bility to reimburse; and
- (c) Novate@bility will pay all Approved Reimbursement Claims to the credit of the bank account the Client specifies on the Reimbursement Claim Form.
- (d) If the amount claimed by the Client is greater than Novate@bility's fleet rates, Novate@bility may adjust the Reimbursement Claim (up or down) to conform with Novate@bility's fleet rates.
- (e) Where the Client makes a Reimbursement Claim, such claim will be paid only after payment to the third party provider has been made and will be paid as and when all other expenses payable in respect of an Allowance and all fees payable by the Client have been made (or paid as the case may be) and only if the amounts subject to the Reimbursement Claim do not exceed the amounts received by Novate@bility from the Client's employer. As a result the Client may be reimbursed for a claim over a number of invoiced billing cycles.

#### 8.4 Set off

Novate@bility may set off any approved Reimbursement Claim against any unpaid Client Invoice or any other amount the Client owes to Novate@bility on any account.

### 9 RECONCILIATION AMOUNT

Novate@bility will, within 90 days after the Termination Date, charge to or credit the Client with a Reconciliation Amount

### 10 INFRINGEMENT

The Client must:

- (a) pay any Infringement, direct to the person or authority who issued the Infringement within the time specified in the Infringement notice;
- (b) give Novate@bility evidence (in form and substance satisfactory to Novate@bility) that the Infringement has been paid within 14 days after the Client makes the payment; and
- (c) pay to Novate@bility all Infringements or third party fees being any fees (including debt collection fees), costs, charges or levies Novate@bility pays (or becomes liable to pay) to a third party in relation to the Vehicle Novate@bility suffers or incurs as soon as practicable, and in any event within 14 days after Novate@bility tells the Client, by notice in writing, about the amount payable.

## TERMS AND CONDITIONS OF LEASE MANAGEMENT

### 11 NOTICES

- (a) A notice required to be given to the other party under this document may be given by the party or its solicitor in any of the following ways:
  - (i) in person;
  - (ii) by delivery; or
  - (iii) electronically.
- (b) A notice may be given:
  - (i) in person by handing a written notice to the party; or
  - (ii) by delivery, by delivering it or posting it addressed to the party at his or her address specified in the Schedule; or
  - (iii) electronically by sending it by facsimile or email to the party at its electronic address.
- (c) Subject to any laws that may provide otherwise, a notice will be taken to have been given:
  - (i) if the notice is given in person, at the time it is given;
  - (ii) if the notice given by delivery (other than by posting), upon delivery;
  - (iii) if the notice is given by delivery by posting, 2 Business Days after posting; or
  - (iv) if the notice is given electronically, on the day it is sent.

However, a notice given electronically will not be taken to have been given if the party giving the notice receives notification from the recipient's electronic service provider that transmission or delivery was not successful.

### 12 WARRANTIES AND INDEMNITIES

#### 12.1 Warranties by the Client

The Client represents and warrants to Novate@bility that:

- (a) it has full legal capacity and power to enter into this document;
- (b) it has obtained all necessary consents to enable it to execute this document;
- (c) by executing this document, the document will be enforceable on the party in accordance with its terms;
- (d) it has not relied on any undertaking, conduct or representation from, or on behalf of, any other party, except as set out in this document;
- (e) it is able to pay its debts as and when they fall due; and
- (f) it is not affected by an Insolvency Event.

#### 12.2 Indemnity for failure to perform

The Client indemnifies and must keep indemnified Novate@bility from any Loss or Claim Novate@bility suffers or incurs arising from or in connection with a breach by the Client of any of its obligations under the Management Contract.

### 13 AMENDMENT AND VARIATION OF MANAGEMENT FEE

- (a) Subject to paragraph (b) below, the Management Contract can only be amended, supplemented, replaced or novated by another document signed by all the parties.
- (b) Novate@bility may increase the Management Fee by notice in writing. If the Client does not agree to the increase, the Client may within 7 days of receipt of the notice from Novate@bility provide written notice to Novate@bility that the Client wishes to terminate this document and the Finance Lease on the date specified in the notice from the Client which shall be no later than 1 month after the date of the notice from the Client.

### 14 GST

- (a) The Client must pay all duties, taxes and fees which in any way relate to this document, any supply made under this document or any transaction contemplated by this document.
- (b) Unless GST is expressly included a payment under this document for any supply made under or in connection with this document does not include GST. To the extent that any supply made under or in connection with this document is a taxable supply, the GST excluded consideration otherwise payable or provided for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of such supply and subject to receipt of any tax invoice if required, is payable at the same time.

## TERMS AND CONDITIONS OF LEASE MANAGEMENT

- (c) If payment to a party under this document is a payment by way of reimbursement or indemnity and is calculated by reference to the GST inclusive amount of such loss, cost or expense incurred by that party, then payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense before any adjustment is made for GST pursuant to this clause 14.
- (d) Payments under this clause must be made at the time that the act or supply giving rise to such liability occurs.

### 15 CHANGE IN LAWS AND CONSUMER LAWS

- (a) Upon a change in any applicable law, if it is determined by Novate@bility that the provision of the Management Services is no longer compliant with any applicable law, Novate@bility may discontinue administering the relevant service or alter the way it is being administered to comply with the relevant laws.
- (b) The performance of the Management Services come with guarantees under the Australian Consumer Law that cannot be excluded or restricted by this document and any clause that excludes or restricts a Client's rights under those guarantees is subject to the Australian Consumer Law.
- (c) To the extent permitted by law including the Australian Consumer Law, Novate@bility will bear no loss or responsibility resulting from any data entry errors where the Client have been provided with a copy of the report of the information in which the error has been made and the Client has not made reasonable efforts to notify Novate@bility of the error.

### 16 GENERAL

#### 16.1 Governing law

This document is governed by the law in force in Victoria.

#### 16.2 Waiver of rights

No failure or delay on Novate@bility's part to exercise any rights or powers under this document will operate as a waiver of that right or power. Novate@bility may only waive its rights under this document in writing.

#### 16.3 Operation of indemnities

Each indemnity in this document survives the expiry or termination of this document. A party may recover a payment under an indemnity in this document before it makes the payment.

#### 16.4 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

#### 16.5 Inconsistency with other documents

If the Management Contract is inconsistent with any other document or agreement between the parties, including the Finance Lease, this document prevails to the extent of the inconsistency.

#### 16.6 Time is of the essence

Time is of the essence of this document.

### 17 INTERPRETATION

#### 17.1 Definitions

The following definitions apply in this document.

**Adverse Event** means an act of sabotage or vandalism, and act of God, including without limitation, fire, flood or other natural disaster, an event which is unusual in nature and which could not have been reasonably expected and any event which is beyond the reasonable control of the parties which results in Novate@bility suffering or incurring a Loss.

**Allowance means** the amount specified in the Quotation which is the amount Novate@bility allows the Client to incur in respect of Fleet Costs during the Term.

**Australian Consumer Law** means the Australian consumer law under the Competition and Consumer Act 2010 (Cth).

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Melbourne.

**Claim** means a claim, demand, action, proceeding or judgement, however it arises.

## TERMS AND CONDITIONS OF LEASE MANAGEMENT

**Client** means the client whose details are specified in the Quotation.

**Client Invoice** means the tax invoice Novate@bility issues to the Client each month during the Term.

**Excluded Costs** means costs recoverable under an insurance issued by an insurer approved of by Novate@bility, part costs (which includes items of a capital nature), costs arising from damage other than caused by fair wear and tear or arising from the Vehicle not being driven or parts and accessories which do not comply with or are not in accordance with the manufacture's specifications.

**Finance Lease** means the finance lease between the Financier and the Client, under which the Financier agrees to make available to the Client a lease finance facility in relation to the Vehicle.

**Financier** means the financier specified in the Finance Lease.

**Fleet Costs** means the Vehicle operating costs as charged by Novate@bility specified in the Quotation, which may include Maintenance Costs and service, fuel, tyre and insurance costs associated with the Vehicle.

**Infringement** means any fine, penalty or other impost Novate@bility or the Client suffers or incurs in relation to the Vehicle during the Term.

**Insolvency Event** means:

- (a) the Client becomes Insolvent Under Administration (as defined in the Corporations Act 2001 (Cth)) or a bankruptcy notice is filed or any other step is taken to make the Client an Insolvent Under Administration;
- (b) the Client being taken to have failed to comply with a statutory demand;
- (c) the Client:
  - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
  - (ii) being taken by applicable law to be (or if a court would be entitled or required to presume that the person is) unable to pay its debts or otherwise insolvent;
- (d) the process of any court or authority being invoked against the Client or any of its property to enforce any judgment or order for the payment of money for an amount of \$10,000 or more or the recovery of any property unless the Client is able, within 10 Business Days, to satisfy Novate@bility that there is no substantial basis for the judgment or order in respect of which the process was invoked;
- (e) the Client taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
- (f) any analogous event.

**Loss** means a loss, claim, action, damage, liability, cost (including legal costs on a full indemnity basis), penalty or expense or outgoing suffered incurred or paid.

**Maintenance Costs** means the maintenance costs, charged by Novate@bility (which Novate@bility has authorised in writing) of the Vehicle during the Term, including costs incurred through fair wear and tear other than Excluded Costs.

**Management Contract** means this document and the Quotation.

**Management Fee** means the fee payable to Novate@bility as set out in clause 1.1 of this document.

**Management Services** means the management services to be provided by Novate@bility to the Client under the Management Contract, which may include:

- (a) administration of the Finance Lease;
- (b) payment of financing and Fleet Costs associated with the Vehicle in accordance with the Allowance;
- (c) reporting to the Client on, and administration of, the Finance Lease.

**Novate@bility** means Pay@bility Pty Ltd ACN 67 625 177 960, trading as Novate@bility.

**Novate@bility's Website** means [www.novateability.com.au](http://www.novateability.com.au).

**Preferred Insurer** means the Novate@bility preferred insurer (if any) specified in the Quotation.

**Quotation** means the quotation which relates to the Vehicle.

**Reconciliation Amount** means the amount the Client must pay Novate@bility (if the number is a negative number) or which Novate@bility must pay the Client (if the number is a positive number) which is the difference between the total amount paid by the Client for budgeted Fleet Costs as specified in the Quotation or Client Invoices and the actual amount of Fleet Costs for the Term.

## TERMS AND CONDITIONS OF LEASE MANAGEMENT

**Reimbursement Claim** means a claim made by the Client for the payment or reimbursement of Fleet Costs covered by the Allowance.

**Reimbursement Claim Form** means an Expense Reimbursement Claim Form as provided for on Novate@bility's Website.

**Scheduled Termination Date** means the expiry date of the Finance Lease.

**Service Provider** means a service provider, approved by Novate@bility, who the Client requires to provide a service in relation to the Vehicle.

**Start Date** means the date the Finance Lease commences.

**Term** means the period between the Start Date and the Termination Date.

**Termination Date** means the earlier of the Termination Date and the date this document is terminated under clause 7.

**Vehicle** means the vehicle specified in the Quotation.

### 17.2 Rules for interpreting this document

- (a) Words importing the singular number include the plural and vice versa. Any gender includes any other gender.
- (b) References to legislation include all regulations orders proclamations, notices and other requirements under that legislation and include the legislation as consolidated amended, modified or re-enacted.
- (c) Clause headings are for reference purposes only.
- (d) "Include", "includes" and "including" are not words or limitations.
- (e) A reference to a thing includes all or any part of that thing.
- (f) A reference to a person includes a reference to an individual, person, a trust, partnership, joint venture or other incorporated association and corporation or an authority as the case may be and includes that person's executive administrators, successors and permitted assigns.
- (g) Where any matter or thing is required to be done by a party on a day which is not a Business Day then it must be done on the preceding day which is a Business Day. Where the day on which any act, matter or thing to be done is the 29th, 30th, or 31st day of any month and such a day does not occur in that month, then, such act matter or thing must be done on the last Business Day of that month.

## Quotation Schedule

---