

Agreement to Hire VUWSA Mazda MPV

This is an Agreement between the Victoria University of Wellington Students' Association ("**VUWSA**"); and

_____ ("**the Hirer**")

(together "**the Parties**").

VUWSA agrees to hire to the Hirer, and the Hirer agrees to hire from VUWSA, the following vehicle owned by VUWSA:

- Black Mazda MPV, 8 seats, Licence Plate LFW343 ("**the Vehicle**")

for the Hire Period and upon the terms set out in this Agreement.

PERSONS TO DRIVE THE VEHICLE

- (1) The Vehicle may only be operated or otherwise used by the Hirer and such other approved persons named in *Appendix One* of this Agreement, provided that such approved person has agreed in writing to comply with all of the Hirer's obligations under this Agreement (as if the approved person were the Hirer). The Hirer agrees that it will be responsible for all acts and omissions of any approved person and that the Hirer shall be liable to VUWSA for all acts and omissions of such approved persons as if such acts or omissions were those of the Hirer. Unless the context otherwise requires, any reference to the 'Hirer' in this Agreement shall also include any other approved person named in *Appendix One*.
- (2) The Hirer must be 18 years of age or older, hold a current FULL New Zealand driver's licence and meet any additional criteria specified by VUWSA (on its website or otherwise) from time to time, such as being:
 - (a) a fully paid member of an affiliated club of VUWSA;
 - (b) a paid employee or volunteer of either VUWSA; or
 - (c) any other category or categories of persons covered under VUWSA's insurance policy from time to time.
- (3) The Hirer must, before operating or otherwise using the Vehicle, supply to VUWSA a current FULL driver's licence (for each driver) to be photocopied by VUWSA for insurance purposes.

PERMITTED USE OF THE VEHICLE

- (4) The Vehicle may only be used for lawful purposes that will directly benefit VUWSA or one of VUWSA's affiliated clubs.
- (5) The Hirer shall not use or permit the Vehicle to be used for the carriage of passengers for hire or reward unless this is expressly approved by VUWSA in writing.
- (6) The Hirer shall at all times:
 - (a) comply with all laws, by-laws, rules, codes, regulations and other legal requirements relating to the possession, use and operation of the Vehicle, including without limitation the New Zealand Road Code; and
 - (b) ensure that the Vehicle is never operated without displaying a current warrant of fitness and certificate of registration.
- (7) The Hirer shall not:
 - (a) sublet or hire the Vehicle to any other person;
 - (b) permit the Vehicle to be operated by any other person;
 - (c) operate the Vehicle or permit it to be operated:
 - (i) for any illegal purpose;
 - (ii) under the influence of alcohol, drugs or any other intoxicating or prohibited substances;
 - (iii) in any race, speed test, rally or contest;
 - (iv) in an unsafe, reckless or dangerous manner;
 - (v) to propel or tow any other Vehicle or motor vehicle unless specifically authorised by VUWSA in writing on this form in *Appendix 3*;
 - (vi) except on a formed and metal driving strip or superior surface;

- (vii) in breach of the Land Transport Act 1998 and any rules, regulations, or by-laws made under that Act or any other Act relating to motor vehicles or road traffic;
 - (viii) for the transport of more than the number of passengers or more than the weight of goods specified in the certificate of loading for the Vehicle; or
 - (ix) in any manner which might prejudice any warranties given for the Vehicle or the recovery of insurance monies payable in relation to the Vehicle or its use; or
- (d) operate the Vehicle if at the time of operating, the Hirer is for any reason not the holder of a current New Zealand driver's licence appropriate for the Vehicle.

HIRER'S OBLIGATIONS

- (8) The Hirer shall ensure that it operates and cares for the Vehicle in a responsible and prudent manner at all times and in particular shall ensure at all times that:
- (a) the Hirer complies with the manufacturer's recommendations for the care and operation of the Vehicle;
 - (b) the water in the radiator and battery of the Vehicle is maintained at the proper level;
 - (c) the oil in the Vehicle is maintained at a proper level;
 - (d) the tyres of the Vehicle are maintained at their proper pressure;
 - (e) the brake lights and headlights are in good working order;
 - (f) the brakes are operating to a satisfactory standard;
 - (g) the Vehicle is kept reasonably clean and well presented;
 - (h) all reasonable care is taken in handling and parking the Vehicle and that it is left securely locked when not in use. If, despite the Hirer's reasonable care, the Vehicle (or any part of it) is lost, stolen or damaged, the Hirer must notify VUWSA and the relevant authorities immediately;
 - (i) any minor damage, faults or problems with the Vehicle are to be reported to VUWSA immediately upon return of the Vehicle to the VUWSA Association Secretary; and
 - (j) the Vehicle **has at least 2.1 metres clearance** at all times, and particularly when driving under a roof or in a car park building or other confined space.
- (9) The Hirer shall also pay for any additional cleaning, repair or other costs directly arising from the Hirer's failure to take reasonable care or comply with any of his or her obligations under this Agreement (including any costs for stain removal, replacement of seat covers, seat repair, carpet repair or replacement, or otherwise).
- (10) The Hirer shall not remove the Vehicle from New Zealand and must advise the Owner of its current location on request.
- (11) The Hirer shall properly keep and maintain all keys for the Vehicle in a safe and secure manner and shall not make copies of any keys for the Vehicle (or permit any copies to be made) unless expressly permitted by VUWSA.
- (12) If, for any reason, VUWSA has any reasonable concerns about the Hirer's use of the Vehicle or compliance with any obligation in this Agreement, the Hirer will at VUWSA's request permit VUWSA to inspect the Vehicle during the Hire Period to ensure that the Hirer's obligations under this Agreement are being complied with.

VUWSA'S OBLIGATIONS

- (13) VUWSA shall supply the Vehicle to the Hirer in a safe and roadworthy condition together with all necessary keys, warrants of fitness and certificates of registration. If a new registration is issued during the course of the Hire Period, VUWSA shall supply this to the Hirer before expiry of the previous registration certificate and the Hirer shall fix the new registration label to the windscreen of the Vehicle promptly upon receipt.
- (14) VUWSA shall be responsible for all ordinary costs of running the Vehicle during the Hire Period, (such as oil supply, warrant of fitness, and registration costs), except those costs which are payable by the Hirer under this Agreement (e.g. petrol costs). To avoid any doubt, VUWSA shall not be responsible for any additional cleaning, repair or other costs directly arising from the Hirer's failure to take reasonable care or comply with his or her obligations under this Agreement. The Hirer shall be responsible for such costs and shall reimburse VUWSA as soon as practicable upon VUWSA's request where any such costs are incurred by VUWSA.

NO WARRANTIES OR REPRESENTATIONS

- (15) The Hirer acknowledges that it relies on its own inspection of the Vehicle and its own skill and judgement, and not that of VUWSA, as to the quality and suitability of the Vehicle.
- (16) To the extent permitted by law, VUWSA excludes all express and implied warranties (except any warranties expressly stated in this Agreement), guarantees and representations in relation to the Vehicle, and in particular, makes no warranty or representation about the quality, suitability or fitness of the Vehicle for any purpose.

MECHANICAL REPAIRS AND ACCIDENTS

- (17) If the Vehicle is damaged, has any defect, or requires repair or salvage, whether because of an accident or a breakdown or otherwise, the Hirer shall advise VUWSA of the full circumstances by telephone as soon as practicable. In particular, the Hirer shall immediately notify VUWSA of any speedometer or odometer breakage,

or defect and deliver the Vehicle to a workshop nominated by VUWSA to enable VUWSA to rectify or replace the speedometer or odometer at VUWSA's cost.

- (18) The Hirer shall comply with VUWSA's directions and requirements in relation to any repairs or salvage and shall not arrange or undertake repairs or salvage without the express authority of VUWSA except to the extent that the repairs or salvage are strictly necessary to prevent further damage to the Vehicle or other property or to maintain the Vehicle's security.
- (19) The Hirer shall ensure that no person shall interfere with the odometer/distance recorder, speedometer, or (except in an emergency) any part of the engine, transmission, braking, or suspension systems of the Vehicle.
- (20) The Hirer's obligations under this Agreement shall continue notwithstanding that he or she may be unable to use the Vehicle for any period during the Hire Period.

OWNERSHIP AND RISK

- (21) Ownership of the Vehicle shall at all times remain with VUWSA. The Hirer shall have no right to, or interest in the Vehicle other than as hirer and bailee of goods and shall not assert, or endeavour to obtain, any other right or interest in the Vehicle.
- (22) The Hirer is not permitted to deal with the Vehicle in any manner except as expressly provided in this Agreement.
- (23) The Hirer shall not sell, pledge, charge, mortgage, lease out, sublet or part with the possession or control of the Vehicle or to allow any lien or other encumbrance over it, or attempt to do or authorise any of these things.
- (24) Subject to the Hirer's right to be indemnified under clause(25), the Vehicle shall at all times be at the Hirer's risk during the Hire Period, except in relation to fair wear and tear.

INSURANCE AND INDEMNITY BY VUWSA

- (25) VUWSA holds insurance in relation to the Vehicle. Subject to the Exclusions set out below in clause (27), the Hirer's liability under clauses (29) to (32) and (43) and VUWSA actually being indemnified under its insurance policy, the Hirer will be indemnified:
 - (a) fully in respect of any liability he or she might have to VUWSA in respect of loss or damage to the Vehicle and its accessories and spare parts and any consequential loss of revenue or other expenses of VUWSA, including towing and salvage costs associated with the recovery of the Vehicle and its accessories and spare parts; and
 - (b) to the extent of ten million dollars in respect of any liability he or she might have for any damage to any property (including injury to any animal) belonging to any other person arising out of the Hirer's use of the Vehicle.
- (26) In the event that VUWSA is not indemnified under its insurance policy for any reason, the Hirer accepts by signing this Agreement, that:
 - (a) the Vehicle is hired at the Hirer's own risk in respect of loss or damage to the Vehicle and consequential loss to VUWSA;
 - (b) the Hirer shall be liable to VUWSA for damage to or loss of the Vehicle and consequential loss; and
 - (c) the Hirer has no insurance cover under this Agreement in respect of damage, injury, or loss caused to any person or property.

EXCLUSIONS

- (27) The indemnities referred to in clause (25) above shall not apply where the relevant damage, injury or loss arises in circumstances where:
 - (a) the driver of the Vehicle is under the influence of any drug, alcohol, or any other intoxicating or prohibited substance;
 - (b) the driver of the Vehicle has a proportion of alcohol in either the blood or the breath which exceeds the legal limit, or where the driver of the Vehicle fails to supply a blood or breath sample as required by law, or where the driver of the Vehicle fails to stop or remain on the scene following an accident as required by law;
 - (c) the Vehicle is in an unsafe or un-roadworthy condition that arose during the course of the Hire Period and that caused or contributed to the damage, injury or loss, and the Hirer was aware of or ought to have been aware of the unsafe or un-roadworthy condition of the Vehicle;
 - (d) the driver is disqualified from holding or has never held a driver's licence appropriate for the Vehicle, or who is breaching any condition of their driver's licence;
 - (e) the Vehicle is wilfully or recklessly damaged by the Hirer or is lost, stolen or damaged as a result of the wilful or reckless behaviour of the Hirer;
 - (f) the Vehicle is operated in any conditions which are contrary to those recommended by the manufacturer as appropriate for the Vehicle or in any conditions where the Vehicle is not fit to deal with any peril likely to be encountered during the course of its operation including racing, pace making, speed tests, or driving in preparation for such activities;
 - (g) the Vehicle is operated outside the term of the Hire Period or, if the Hire Period is extended, any agreed extension of that period;

- (h) the Vehicle is operated by any person other than the Hirer;
 - (i) the relevant damage, injury or loss (including any damage, death, illness, loss, liability, cost, or expense of any nature) is directly or indirectly caused by, or occurs as a result of or in connection with any war, invasion, hostilities or warlike operations, civil war, rebellion, revolution, act of terrorism or other force majeure event;
 - (j) the Vehicle is being used for the purpose of, in the course of, or in furtherance of any criminal activity;
 - (k) the Vehicle is loaded or operated in excess of the manufacturers recommended specifications or contrary to any legal requirements; or
 - (l) the Hirer is in breach of any of its obligations under this Agreement.
- (28) The Hirer acknowledges by signing this Agreement that he or she is aware of and agrees to the above exclusions to his or her indemnification.

HIRER'S LIABILITY

- (29) In the event that the Hirer is indemnified under clause (25), he or she shall be liable to pay the relevant excess amounts indicated at clause (43) of this Agreement under the heading "Liability for Excess" (subject to any amendment under clause (44) to such amounts)
- (30) In all other cases (including where any of the exclusions listed in clause (27) apply), the Hirer will indemnify VUWSA against all losses (including costs) which VUWSA incurs as a result of:
- (a) the (full or partial) loss or destruction of the Vehicle;
 - (b) the Hirer failing to comply with any of its obligations under this Agreement;
 - (c) any negligent act or omission by the Hirer or any person for whom the Hirer is responsible; and
 - (d) the Hirer's possession and use of the Vehicle.

TRAFFIC VIOLATIONS

- (31) The Hirer is responsible for violations and insurance liabilities due to unsafe or incorrect driving, parking or maintaining the Vehicle in an un-roadworthy condition.
- (32) The Hirer shall pay for all infringement notices incurred in relation to the Vehicle during the Hire Period.

RETURN OF THE VEHICLE

- (33) The Hirer shall, at or before the expiry of the Hire Period, deliver the Vehicle in the same good order, repair and condition as it was in at the commencement of the Hire Period (except fair wear and tear) to the designated parking space outside the Rankine Brown Building (as well as returning all keys and accessories to the VUWSA Reception (L4 Student Union Building) or obtain VUWSA's consent for an extension of the Hire Period. If VUWSA in its sole discretion agrees to extend the Hire Period, the Hirer shall deliver the Vehicle together with all keys and accessories (in the same good order, repair and condition as at the commencement of the initial Hire Period) to VUWSA on or before the expiry of the extended period. To avoid any doubt, the Vehicle must always be returned to VUWSA with a full petrol tank.

TERMINATION

- (34) VUWSA shall have the right to immediately terminate the hiring and take immediate possession of the Vehicle if the Hirer fails to comply with any term of this Agreement, if the Vehicle or any part of it is damaged, lost or stolen, or if any adverse circumstance exists which may materially prejudice VUWSA or adversely affect VUWSA's rights or obligations under this Agreement. Any termination under this clause shall be without prejudice to the rights of VUWSA or the Hirer under this Agreement or otherwise arising prior to termination.
- (35) On termination by VUWSA, the Hirer shall promptly deliver the Vehicle to VUWSA and all amounts payable under this Agreement shall become immediately due and payable by the Hirer.

GENERAL

- (36) The payment, indemnity, and any other obligations which by their nature are implied to continue beyond the expiry or termination of this Agreement, survive beyond the expiry or termination of this Agreement.
- (37) The Hirer shall not assign all or any part of its interest under this Agreement without VUWSA's prior written consent.
- (38) If VUWSA delays or does not exercise any right or remedy under this Agreement, it is not a waiver of that right or remedy. Any waiver or consent given by VUWSA must be in writing and will be effective only in the specific instance and for the specific purpose for which it is given.
- (39) The rights and remedies provided in this Agreement are cumulative. They do not exclude any of VUWSA's rights or remedies provided by law.
- (40) Any illegality, unenforceability or invalidity of any part of this Agreement will not affect the remaining parts of this Agreement, which will remain in full force and effect unless otherwise agreed between the parties.
- (41) The Hirer will pay all costs (including legal fees) incurred by VUWSA in enforcing or attempting to enforce its rights under this Agreement.

INSURANCE ACCEPTANCE

(42) Without limiting any other provision of this Agreement, the Hirer accepts the insurance cover details of which are set out in clause (25) of this Agreement. The Hirer acknowledges and accepts that they are aware of the exclusions set out in clause (27). The Hirer also accepts that they are aware of and accept the conditions set out in clauses (26), (29) and (30).

LIABILITY FOR EXCESS

(43) The Hirer acknowledges that they will be liable to pay the following insurance excess amounts (subject to any increase in price under clause (44) below) each and every time that they are indemnified in respect of any liability, loss or damage under clause (25) (except for liability, loss, or damage from fire or theft or conversion or attempted theft or conversion of the Vehicle, where no excess is payable):

- (a) if the driver has held their full driver's licence for at least 12 months at the time of the liability, loss or damage, the Hirer will be liable to pay:
 - (i) \$1,000 if the driver is over the age of 25 years;
 - (ii) \$1,500 if the driver is between the ages of 21 and 25 years; or
 - (iii) \$2,000 if the driver is under the age of 21 years; or
- (b) if the driver has held a licence for less than 12 months at the time of the liability, loss or damage, the Hirer will be liable to pay \$2,000 regardless of the Hirer's age).

(44) The Hirer acknowledges that the excess amounts recorded at clause (43) above include GST and are based on the existing excess amounts payable under VUWSA's relevant insurance policy at the date of this Agreement. VUWSA shall be entitled to increase the excess amounts set out above where there is any increase in such amounts under its insurance policy after the date of this Agreement.

DURATION OF HIRE

(45) VUWSA shall charge the Hirer from:

_____ (date) at _____ (time) ("the Start Time") until
_____ (date) at _____ (time) ("the End Time")

this being the full duration of the Vehicle rental under this Agreement ("the Hire Period").

RENTAL CHARGES AND PAYMENT

(46) The Hirer will be charged the following rental for the Hire Period:

\$85 (including GST) per day **AND/OR** \$40 (including GST) per four-hour period (All-inclusive rate)

PLUS

\$0.23 per kilometre (including GST)

PLUS

**\$120 (including GST) cleaning fee where applicable.
Vehicle must be returned in a clean condition otherwise the cleaning fee will be charged.**

(47) All payments are to be made to VUWSA in cleared funds in the manner set out in Appendix Two and as otherwise directed by VUWSA. Unless otherwise agreed, any payment invoiced by VUWSA must be received by VUWSA in full within 20 working days of the date of invoice, time being of the essence. No payment will be deemed to be made until it is actually received in cleared funds by VUWSA. All other payments (not to be invoiced by VUWSA) must be made by the Hirer by cash or EFTPOS payment immediately upon return of the Vehicle. If any payment is not received by the agreed date, VUWSA shall be entitled at its discretion to charge daily default interest on the unpaid amount at the rate of 4% per month until such amount has been paid in full.

ACKNOWLEDGEMENT AND EXECUTION

(48) VUWSA agrees to hire the Vehicle to the Hirer for the Hire Period set out above in clause (45). The Hirer agrees to be bound by and accepts the terms and conditions of hire as set out or tabulated in this Agreement, and has read and fully understands the Agreement.

THE HIRER'S ATTENTION IS SPECIFICALLY DRAWN TO THE CLAUSES PERTAINING TO INSURANCE AND INDEMNITY, SPECIFICALLY CLAUSES (25), (26), (27), (29), AND (30).

Hirer's Signature: _____ Date _____

VUWSA's Signature: _____ Date _____

APPENDIX ONE

Driver #1:

Name:

Address:

Phone Number:

Driver #2:

Name:

Address:

Phone Number:

Driver #3:

Name:

Address:

Phone Number:

Please attach all copies of Hirers' driver's licence(s) to this form as well as further information pertaining to other drivers.

NB. The Vehicle requires 2.1 METRES CLEARANCE when driving under roofs, car park buildings etc.

APPENDIX TWO

Days: _____ x \$85 = _____

AND/OR

4-hour periods: _____ x \$40 = _____

Kilometres:

Gauge Reading Start: _____

Gauge Reading End: _____

Kilometres travelled: _____ x \$0.23 = _____

Total Amount Charged: _____

Payment:

Payment can be made at our office reception on Kelburn Campus or via invoice:

Invoice to be made out to: _____ (name, club, group)

Contact E-mail: _____

Contact Phone Number: _____

The readings detailed in this Appendix are accepted by both parties of this Agreement as being a true and accurate reflection as to the presence of a first aid kit and the total number of kilometres covered by the Hirer.

Hirer's Signature: _____ **Date** _____

VUWSA's Signature: _____ **Date** _____