



**i-MiEV ELECTRIC VEHICLE
LEASE AGREEMENT**

BETWEEN

MITSUBISHI MOTORS AUSTRALIA LIMITED
ABN 53 007 870 395
(**MMAL**)

AND

**THE CLIENT SPECIFIED ON PAGE 1 OF THE MASTER
AGREEMENT**
(**Client**)

Master Agreement

BETWEEN **MITSUBISHI MOTORS AUSTRALIA LIMITED** ABN 53 007 870 395 of 1284 South Road, Clovelly Park, South Australia 5042 (**MMAL**)

AND **[INSERT NAME] [INSERT ABN] of [INSERT ADDRESS] (Client)**

The parties hereby agree that:

- A. upon execution of a Schedule in the form of Appendix 1 in accordance with clause B below, the parties will be taken to have entered into an Agreement on the terms and conditions set out in Appendix 3;
- B. a Schedule (and any other document contemplated by the Agreement) will be taken to have been duly and properly executed by the Client if signed by a person named in Appendix 2 (as amended from time to time by written notice from the Client to MMAL); and
- C. all terms given meaning in Appendix 3 have the same meaning in the clauses above and in a Schedule.

EXECUTED by
MITSUBISHI MOTORS AUSTRALIA LIMITED
in accordance with Section 127 of the
Corporations Act 2001:

Director

Director/Secretary

Full Name (print)

Full Name (print)

Date

Date

EXECUTED by
THE CLIENT
in accordance with Section 127 of the
Corporations Act 2001:

Director

Director/Secretary

Full Name (print)

Full Name (print)

Date

Date

Appendix 1
(Form of Schedule)

The Client hereby offers to lease the Vehicle (as described in Item 1 below) on the terms and conditions set out in Appendix 3 of the Master Agreement (**Terms and Conditions**).

By executing this Schedule, MMAL accepts the Client's offer to lease the Vehicle from MMAL on the Terms and Conditions.

Client

[INSERT NAME AND ADDRESS]

Item 1 – Vehicle

Mitsubishi i-MiEV Sedan, body number [INSERT]

Item 2 – Term

36 months

Item 3 – Rent

\$1581.82 plus \$158.18 GST, totalling \$1740.00.

Rent is payable monthly with the first payment due on the Commencement Date and each subsequent payment due on the last day of each calendar month during the Term.

Item 4 – Special Conditions

[INSERT]

Item 5 – Permitted Modifications

[INSERT, eg details of permitted signwriting]

Accepted for and on behalf of the **Client** by its authorised signatory:

Accepted for and on behalf of **MMAL** by its authorised signatory:

Signature

Signature

Full Name (print)

Full Name (print)

Date

Date

Appendix 2
(Client's Authorised Signatories)

[INSERT]

Appendix 3 (Terms and Conditions)

Refer to clause 15 for defined terms

1. COMMENCEMENT AND DELIVERY

- 1.1 The Client and MMAL will be taken to have entered into an Agreement immediately upon execution of the Schedule by the Client and MMAL. Regardless of any act or omission of the parties, an Agreement will only come into effect upon the execution of a Schedule by both parties.
- 1.2 Subject to the Agreement, MMAL agrees to lease the Vehicle to the Client and the Client agrees to lease the Vehicle from MMAL on and from the Commencement Date for the Term.
- 1.3 By entering into the Agreement the Client warrants that:
- 1.3.1 it has selected the Vehicle and unconditionally accepts the Vehicle as being of merchantable quality and suitable for the Client's purposes;
- 1.3.2 it will not make any claim against MMAL concerning the ownership, condition, suitability or safety of the Vehicle, other than under the warranty provided under clause 10.1; and
- 1.3.3 it accepts for lease any Vehicle of the type and model nominated in Item 1 of the Schedule which is delivered to the Client.
- 1.4 If the delivery of the Vehicle is to take place later than thirty (30) days after the execution of a Schedule, MMAL may recalculate the Rent to reflect changes (if any) in the cost of supply of the Vehicle together with any change in interest rate or change in the bases of Costs since the execution of the Schedule.
- 1.5 Delivery of the Vehicle by MMAL to the Client for the purposes of the Agreement will be deemed to have occurred upon the registration of the Vehicle whether or not the Vehicle is in the possession or control of the Client at that time.

2. RENT

- 2.1 In consideration of MMAL leasing the Vehicle to the Client, the Client must pay the Rent to MMAL by way of instalments throughout the Term in accordance with Item 3 of the Schedule. Rent accrues on a daily basis.
- 2.2 If the Client is unable to make use of the Vehicle for 30 or more days as a direct result of the unavailability of Spare Parts or a direction by MMAL, the Client may by written notice to MMAL request that its obligation to pay Rent be suspended in which case the Client will not be obliged to pay Rent for the entire period during which the Vehicle cannot be used as described in this clause.
- 2.3 All payments to be made by the Client to MMAL under the Agreement must be made to MMAL in cleared funds via direct debit transfer into the account from time to time notified to the Client in writing by MMAL.
- 2.4 If the Client fails to pay any amount due under the Agreement when due and payable, the Client must pay interest at the Default Rate on so much of that amount that is from time to time outstanding.

- 2.5 All moneys payable by the Client under the Agreement must be paid without set off or counterclaim and free and clear of any deduction or withholding unless prohibited by law, in the manner and by the method from time to time required by MMAL.

3. REPRESENTATIONS AND WARRANTIES

The Client represents and warrants that (as of the Commencement Date and on each date Rent is due):

- 3.1 it has full capacity and power to enter into and observe its obligations under the Agreement;
- 3.2 its obligations under the Agreement are valid, binding and enforceable against it;
- 3.3 it will not claim any legal or beneficial interest in the Vehicle after the Commencement Date or make any demand against MMAL except in respect of the Client's interests as conferred by the Agreement;
- 3.4 the Vehicle will be operated and used by competent and appropriately qualified and licensed persons; and
- 3.5 the Vehicle will remain free from all encumbrances.

4. UNDERTAKINGS

4.1 For the avoidance of doubt, during the Term:

- 4.1.1 the Client will be responsible for all toll transactions, traffic infringement fees, parking fees, e-tag fees, speeding and red light violation fees and any fines or penalties incurred in the use of the Vehicle and must settle such amounts in a timely manner;
- 4.1.2 MMAL is not responsible for the amounts referred to in clause 4.1.1 and all such amounts will be referred to the Client for immediate settlement;
- 4.1.3 the Client must pay the costs incurred by MMAL, as notified to the client by MMAL, in connection with any fines that are not settled in a timely manner by the Client; and
- 4.1.4 if the Client permits another person to possess, use or control the Vehicle, the Client will remain responsible for all of its obligations under the Agreement and will be liable under the Agreement for the acts and omissions of any such person as if they were acts or omissions of the Client.

4.2 The Client must not:

- 4.2.1 allow to exist or create or attempt to create any encumbrance over the Vehicle;
- 4.2.2 affix the Vehicle to land or other chattels;
- 4.2.3 unless otherwise specified in Item 5 of the Schedule (and then only to the extent so specified), make alterations to or dismantle the Vehicle nor paint or display signs or

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advertising media on the Vehicle without MMAL's prior written consent; or

4.2.4 permit anything to prejudice the interest of MMAL under the Agreement or in the Vehicle, or otherwise expose MMAL to liability.

4.3 The Client must strictly comply with the special conditions in Item 4 of the Schedule (if any), which will prevail over any other terms and conditions of the Agreement to the extent of any inconsistency with them.

5. **INSURANCE**

5.1 The Client must effect and at all times during the currency of the Agreement maintain insurance for the Vehicle:

5.1.1 for an amount of not less than its cost against damage or destruction caused by accident and all insurable risks commonly insured against with respect to a vehicle of a similar nature to the Vehicle (including fire and theft);

5.1.2 against Third Party Property Damage for not less than \$5,000,000; and

5.1.3 against such other insurable risks as MMAL may require including, without limitation, the risk of the Vehicle containing, transporting or otherwise being used in connection with any hazardous matter,

but excluding any insurance MMAL takes out as part of the MMAL Services.

Insurance must be taken out in the names of MMAL and the Client for their respective rights and interests and name MMAL as "loss payee" and include an endorsement to the effect that the policy will continue for at least 30 days after the insurer gives written notice to MMAL of:

5.1.4 the non-payment of any premium when due; or

5.1.5 the insurer's intention to cancel the policy for any reason.

5.2 The Client must not permit any circumstance (whether by act or omission) which may invalidate, result in the cancellation of or otherwise prejudice any insurance required to be taken out pursuant to the Agreement.

5.3 The Client must:

5.3.1 punctually pay each premium and all other monies payable under any insurance policy concerning the Vehicle;

5.3.2 immediately notify MMAL of anything which:

(a) gives or may give rise to a claim under; or

(b) could in any way prejudice,

any insurance policy concerning the Vehicle;

5.3.3 produce to MMAL when requested, a certificate of currency from the insurer for the relevant insurance policy or policies; and

5.3.4 notify MMAL immediately of the details of any claims in respect of the Vehicle.

5.4 Subject to clause 5.5, if the Vehicle is lost, stolen, totally destroyed or substantially damaged (Casualty Event) then:

5.4.1 the Client must pay to MMAL any moneys due and owing to MMAL under the Agreement as at the date of the Casualty Event together with the Early Termination Amount;

5.4.2 MMAL is entitled to receive from the insurer the moneys recoverable under the insurance referred to in clause 5.1 in respect of the Vehicle. In the event that MMAL does not receive payment in full of the Loss Proceeds within 60 days of the Casualty Event, the Client must pay to MMAL on demand the Loss Proceeds minus the amount (if any) received by MMAL pursuant to the insurance referred to in clause 5.1.1. MMAL will refund any monies received under this clause 5.4.2 in excess of the Loss Proceeds to the Client, subject to the Agreement;

5.4.3 without prejudice to the Client's obligations under clauses 5.4.1 and 5.4.2, the Agreement will terminate on the occurrence of the Casualty Event, with respect to that Vehicle unless MMAL provides a replacement vehicle in accordance with clause 5.4.4; and

5.4.4 at the request of the Client MMAL may in its absolute discretion elect to lease a replacement vehicle in place of the Vehicle, in which case immediately upon the replacement vehicle coming into the use and possession of the Client, the replacement vehicle will be subject to the Agreement in place of the Vehicle so that with effect on and from that date, every reference in the Agreement to the Vehicle will be taken to be a reference to the replacement vehicle.

5.5 MMAL is irrevocably authorised to appropriate any insurance or other moneys received by it in respect of loss of or damage to the Vehicle towards any moneys then due and owing, or in MMAL's opinion reasonably likely to become due and owing, by the Client to MMAL under the Agreement.

6. **MAINTENANCE**

6.1 MMAL will provide, or procure a third party (eg, an authorised Mitsubishi dealer) to provide, the MMAL Services for the Vehicle during the Term.

6.2 The Client must deliver the Vehicle or make it available to MMAL or its nominee at the time and place nominated by MMAL in accordance with the intervals for scheduled servicing specified in the Manual in order for the MMAL Services to be performed.

6.3 The Client must at the Client's cost:

6.3.1 keep the Vehicle in good order and repair and properly operated, serviced and housed, observing at all times the Manufacturer's recommendations in respect of its operation and servicing, and maintain it in first-class

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- order and condition (fair wear and tear excepted) in all respects;
- 6.3.2 attend to the day-to-day and routine maintenance of the Vehicle and replace any parts MMAL reasonably deems necessary in accordance with MMAL's instructions;
- 6.3.3 use the Vehicle in accordance with the Manual, Manufacturer's recommendations and/or as advised by MMAL in writing;
- 6.3.4 keep all log books and service records completed correctly and as required by law and ensure that the Vehicle is used:
- (a) only within the limits and specifications recommended by the Manufacturer and/or the insurer and for purposes for which the Vehicle is designed or manufactured; and
- (b) for a purpose that is lawful;
- 6.3.5 if the Vehicle is damaged or devalued for any reason, restore the Vehicle to a condition of no lesser standard, utility and value than it was in before the damage or devaluation occurred, in compliance with MMAL's directions;
- 6.3.6 notify MMAL immediately the Client becomes aware of any:
- (a) defect arising in respect of the Vehicle which may be the subject of a current or future warranty claim or the basis for implementation of any recall or service campaign; or
- (b) claim based on any injury to persons and/or property damage arising out of design or manufacturing defects in the Vehicle;
- 6.3.7 operate the Vehicle in accordance with the Manufacturer's loading recommendations and in compliance with all legal and roadworthy requirements;
- 6.3.8 operate the Vehicle in a safe and considerate manner and keep it in a clean and tidy condition;
- 6.3.9 carry out preventative maintenance including checking of oil levels and coolant levels every 800 (eight hundred) kilometres or 2 (two) weeks whichever occurs earlier;
- 6.3.10 not make or allow any change or modification or addition to the Vehicle or use it for towing without the prior written consent of MMAL;
- 6.3.11 not use or allow the Vehicle to be used for participating in any motor sport activity including rallying, racing, speed or reliability trials nor for self drive-hire, driving tuition or as a taxi;
- 6.3.12 not tamper with the Vehicle odometer and advise MMAL within 48 hours of any fault in that instrument;
- 6.3.13 use an authorised Mitsubishi dealer for all maintenance of the Vehicle except when the prior written consent of MMAL has been obtained to do otherwise; and
- 6.3.14 not, other than as contemplated by this clause 6, permit any maintenance or repair work to be performed on the Vehicle without MMAL's prior written consent, which MMAL may grant or withhold in its absolute discretion and subject to any conditions MMAL may prescribe.
- 6.4 MMAL's obligations with regard to maintenance, repair and servicing of the Vehicle will only extend to the provision of the MMAL Services.
- 6.5 MMAL may advise, order and/or direct from time to time any matter which MMAL reasonably considers as necessary in order to maintain the Vehicle in good operating condition, to protect the confidential trade secrets and intellectual property associated with it, and/or to avoid any damage to the Vehicle or any person or property; and the Client shall promptly implement such advice, orders or directions.
- 6.6 MMAL does not assume any liability for any Costs, loss, damage or expense which may be incurred by the Client due to inability to use the Vehicle during maintenance or repair work and/or procurement of Spare Parts. The Client hereby expressly waives any and all rights that it may otherwise have with respect thereto.

7. ALTERATIONS AND INSPECTION

- 7.1 All equipment, parts, components, accessories, replacements, instruments, tools, Spare Parts and other goods supplied with the Vehicle or attached to the Vehicle (including any such items acquired by the Client after the Commencement Date) will be taken to form part of the Vehicle unless MMAL has notified the Client in writing that specific goods or goods of a specified class shall be deemed for the purpose of this clause not to form part of the Vehicle. Any part removed from the Vehicle will be deemed to continue to form part of the Vehicle for the purposes of the Agreement, and will remain the property of MMAL wherever located.
- 7.2 The Client must produce the Vehicle to MMAL for inspection or testing at the reasonable request of MMAL.
- 7.3 MMAL may, at any time on reasonable prior notice to the Client, during normal business hours by itself or its designated representative inspect or audit the Client's compliance with its obligations under the Agreement, the condition of the Vehicle and/or the storage place of the Vehicle.
- 7.4 Based on the results of an inspection and/or audit under clause 7.3, MMAL may require the Client to take any action advised by MMAL as deemed necessary by MMAL for the Client to comply with the Agreement.
- 7.5 The Client shall provide MMAL with assistance in any investigation reasonably requested by MMAL, including regarding the cause of any defect in the Vehicle.

- 7.6 The Client shall not, and shall not attempt to, open or break any sealed parts or components of the Vehicle. The Client shall require any operator of the Vehicle to also comply with this requirement.
- 7.7 The Client shall not modify the structure, engineering or design of the Vehicle, nor do anything in that regard which would in any way infringe, impeach or lessen the validity of any patents associated with the Vehicle which are owned by or licensed to the Manufacturer.
- 7.8 MMAL and the Manufacturer shall have the right to change at any time the design or specifications of any Products and in such case the Client shall not have the right to refuse, or to claim any refund or payment in respect of, any Products which are different from those requested by the Client.
- 7.9 MMAL or the Manufacturer may at any time and without prior notice declare obsolete or discontinue the manufacture, distribution or sale of any vehicle, or modify its construction or classification. MMAL and the Manufacturer shall not be obligated to manufacture or sell Spare Parts for such obsolete, discontinued or modified vehicles. The Client shall have no claim against MMAL or the Manufacturer for any such action.
- 7.10 The Client must comply with any requirements notified to the Client by MMAL from time to time as necessary to comply with any requirements imposed on MMAL by the Manufacturer.
- 8. DEFAULT AND TERMINATION**
- 8.1 An Event of Default occurs should the Client:
- 8.1.1 fail to punctually observe and perform any of the terms, conditions and/or obligations (all of which are material) of the Agreement or of any other agreement between the Client and MMAL;
- 8.1.2 make an attempt to sell, transfer or dispose of the Vehicle or assign the Agreement or any right or obligation under it without MMAL's prior written consent;
- 8.1.3 resolve to wind itself up or give notice of its intention to do so or if a receiver, an administrator, or liquidator is appointed;
- 8.1.4 enter into a scheme or deed of arrangement or composition with, or assignment for the benefit of, any class of its creditors;
- 8.1.5 be deemed to be or state that it is unable to pay its debts as and when they fall due or commit an act which could be relied upon as an available act of insolvency or bankruptcy in legal proceedings;
- 8.1.6 fail within 14 days after becoming aware of any default judgement against it, either to satisfy the same or to apply for it to be satisfied or appeal against it and in the event of such application or appeal being unsuccessful, failing to make immediate payment in satisfaction thereof;
- 8.1.7 be placed in provisional or final liquidation, placed under judicial management or wound up, whether compulsorily or voluntarily;
- 8.1.8 abandon the Vehicle;
- 8.1.9 compromise with any of its creditors or endeavour or attempt to do so (except in the ordinary course of business);
- 8.1.10 do or suffer to be done anything which might prejudice MMAL's rights under the Agreement or which might cause MMAL to suffer any loss or damage;
- 8.1.11 dispose of or sell any of its assets (except in the ordinary course of business) or mortgage, pledge or hypothecate or in any other way encumber any of its assets or cede any debts owing to it without the prior approval of MMAL (which approval shall not be unreasonably withheld);
- 8.1.12 fail to repay any loan, debt, guarantee or other obligation constituting indebtedness of the Client when due;
- 8.1.13 make any incorrect or untrue statement or representation in connection with the Agreement or the Client's financial affairs or any relevant particulars thereof; or
- 8.1.14 breach any warranty given under the Agreement.
- 8.2 If any default remains unremedied following the expiration of 7 days after MMAL gives the Client notice to remedy an Event of Default, MMAL may, in its absolute discretion and without prejudice to any of its other rights, immediately terminate the Agreement in which case the Client must:
- 8.2.1 immediately pay all amounts then due to MMAL under the Agreement, all of which shall be deemed due and payable forthwith; and
- 8.2.2 in addition to all other payments required to be made to MMAL upon termination of the Agreement, on the End Date pay to MMAL the Early Termination Amount.
- 8.3 MMAL shall be entitled to retain all moneys paid by the Client under the Agreement, and to recover from the Client all costs and expenses howsoever arising and which have been incurred by MMAL in taking possession of the Vehicle and in recovering all amounts due by the Client including all legal costs on an solicitor and own client basis.
- 8.4 Should MMAL terminate the Agreement, MMAL shall be entitled to terminate any other agreement between MMAL and the Client.
- 9. RETURN OF VEHICLE**
- 9.1 On or before the End Date the Client must immediately deliver up possession of and return to MMAL the Vehicle at the Client's cost and to such location as MMAL requires in Good Condition free from encumbrances and together with all documents and service records, and shall do all such things as may be reasonably necessary to enable MMAL's authorised agent or representative to receive the Vehicle.
- 9.2 Upon receipt of the Vehicle MMAL will procure an Inspection Report, which will note:

- 9.2.1 the number of kilometres travelled by the Vehicle;
- 9.2.2 the cost of repairing any damage (interior or exterior) to the Vehicle so as to restore the Vehicle to Good Condition;
- 9.2.3 any missing parts;
- 9.2.4 the condition of the tyres;
- 9.2.5 the deterioration of the mechanical condition of the Vehicle; and
- 9.2.6 the service history of the Vehicle.
- 9.3 If, following MMAL's receipt of the Inspection Report, the Vehicle is not in Good Condition, MMAL may give written notice to the Client stating the work required to restore the Vehicle to Good Condition.
- 9.4 Within the 7 day period after receipt of the notice referred to in clause 9.3, the Client may carry out or procure the work referred to in clause 9.3 to restore the Vehicle to Good Condition.
- 9.5 Clause 9.1 will then apply again where the End Date will be deemed to be the date of expiry of the period referred to in clause 9.4.
- 9.6 If following reacquisition of the Vehicle by MMAL pursuant to clause 9.5 the Vehicle is not in Good Condition and/or is encumbered, the Client must pay to MMAL on demand the cost of repairing or restoring to Good Condition and/or disencumbering the Vehicle.
- 9.7 If the Client continues in possession of the Vehicle after the End Date, the Client shall, until the return of the Vehicle, be obliged to make monthly payments to MMAL equivalent to the Rent and Costs reasonably determined by MMAL to be attributable to the month immediately preceding the End Date and will otherwise be bound by the terms of the Agreement so far as they are capable of applying. Rent accrues on a daily basis with each day's Rent equal to one thirtieth of the monthly Rent. This clause will not be taken in any way to prejudice MMAL's rights under the Agreement or to affect the Client's obligations under the Agreement.
- 9.8 If the Client fails to deliver up the Vehicle in accordance with clause 9.1, MMAL may directly or by its agents re-take possession of the Vehicle and for that purpose MMAL may as agent of and with the authority of the Client enter upon any land or premises where the Vehicle is reasonably suspected by MMAL of being situated and take such steps as are necessary to access and remove the Vehicle from those premises.
- 10. WARRANTY AND LIABILITY**
- 10.1 MMAL warrants the Vehicle to the Client on the terms set out in the written warranties that MMAL provides in respect of the Vehicle at the time of supply of the Vehicle to the Client.
- 10.2 Subject to clause 10.3 and other than the warranties described in clause 10.1, MMAL provides no express warranties to the Client or any end-user of the Vehicle.
- 10.3 MMAL does not exclude or limit the application of any provision of any statute (including the Trade Practices Act), where to do so would:
- 10.3.1 contravene that statute; or
- 10.3.2 cause any part of this clause ~~10~~ to be void.
- 10.4 MMAL's liability to the Client:
- 10.4.1 for any breach of any express or implied provision of the Agreement (other than an implied warranty of title); or
- 10.4.2 in respect of MMAL's conduct in relation to the Client (which conduct includes without limitation the provision by MMAL of any advice, assistance or recommendations),
- is limited, at MMAL's option, to any one of supplying, replacing or repairing the goods or supplying again the services in respect of which the breach occurred.
- 10.5 Except to the extent that clauses 10.3 and 10.4 apply, MMAL excludes all:
- 10.5.1 statutory liability;
- 10.5.2 tortious liability (including but not limited to, liability in negligence);
- 10.5.3 conditions and warranties implied by custom, the general law or statute; and
- 10.5.4 liability for all economic, consequential or indirect losses, expenses, damages and costs incurred by the Client,
- arising out of or relating to the Agreement or the provision of the Vehicle.
- 11. ACKNOWLEDGMENTS AND INDEMNITIES**
- 11.1 The Client acknowledges that:
- 11.1.1 in deciding to enter into the Agreement the Client has not relied in any way on MMAL's skill or judgment and the Client has satisfied itself as to the condition, suitability and quality of the Vehicle and its fitness for the Client's purposes;
- 11.1.2 MMAL has made no representation in relation to the delivery, freedom from defects, safety, condition or suitability of the Vehicle, its quality, fitness for any purpose or its conformity with any description or sample;
- 11.1.3 the Client has made its own enquiries and MMAL has not by act or omission made any representations relating to whether or not the Client should enter into the Agreement or relating to any tax or accounting consequences flowing to the Client in connection with the Agreement;
- 11.1.4 the Client shall use, operate and possess the Vehicle at the Client's own risk and MMAL shall not be liable to the Client (except to the extent that liability cannot, by law, be excluded) in respect of any loss or damage to the Client howsoever caused arising from the utilisation or operation of the Vehicle; and
- 11.1.5 the Vehicle is at all times the personal property of MMAL and the Client shall not permit

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anything to be done that is inconsistent with MMAL's ownership of the Vehicle.

11.2 As required by the Manufacturer, MMAL hereby notifies the Client (and the client acknowledges) that:

11.2.1 the Vehicle was sold and distributed to the public only in Japan prior to its first supply to MMAL. Therefore there may be difficulties (including practical, technical or legal) in supply of Spare Parts and repair and maintenance of Vehicles, and in some cases such supply and/or repair and maintenance may take several months from the time of the Client's request or order, and/or Spare Parts may not be available; and

11.2.2 for quality and safety purposes and due to leading-edge technologies, Vehicles and some of their parts and components, including Spare Parts, shall be handled, maintained and repaired carefully by technical specialists as designated by MMAL in accordance with instructions from time to time provided by the Manufacturer.

11.3 The Client indemnifies MMAL against, and must pay on demand to MMAL, all Costs, charges, expenses, loss, damage or liability of whatever nature MMAL may incur or be liable for arising out of:

11.3.1 any breach of the Agreement by the Client or any of the Client's actions or omissions in connection with the Agreement;

11.3.2 any negligent act or omission by the Client or any of its agents, representatives, contractors, licensees or invitees;

11.3.3 any injury to persons and/or property damage due to any cause (other than design or manufacturing defects in the Vehicle provided that the Client immediately notifies MMAL as soon as it becomes aware of any such liability);

11.3.4 the use of the Vehicle by the Client or any person referred to in clause 4.1.4 (subject to clause 11.3.3); and

11.3.5 ~~enforcing or protecting or attempting to enforce or protect its rights under the Agreement or to the Vehicle.~~

12. PROVISION OF INFORMATION

12.1 The Client will provide promptly to MMAL:

12.1.1 notification of any repairs, alterations or additions made to the Vehicle unless of a trivial nature;

12.1.2 notification of any fault or defect in or damage sustained by the Vehicle unless of a trivial nature;

12.1.3 any feedback regarding the Vehicle received by the Client from any person who uses the Vehicle (eg, comments regarding its usability); and

12.1.4 other information as may be reasonably requested by MMAL from the Client from time to time in connection with the Vehicle.

12.2 The Client consents to MMAL disclosing to the Manufacturer:

12.2.1 the name and address of the Client and data regarding its business standing, capability and any additional information relating to such matters as the Manufacturer may reasonably require;

12.2.2 the information referred to in clause 12.1, (and the Client will procure the consent of any third party providing such information to disclose their personal information to the Manufacturer); and

12.2.3 a copy of the Agreement and any amendment to it.

12.3 In the event of any damage to, theft of or an accident involving the Vehicle, the Client must immediately notify MMAL of the pertinent facts and circumstances relating to the damage, theft or accident. In the event of any accident involving personal injury, property damage or damage to the Vehicle, the Client's notification to MMAL must be followed by a written report to MMAL and any government authority (as deemed necessary by MMAL) in a form satisfactory to or prescribed by MMAL as soon as practicable, but not later than 3 business days, after the occurrence of any accident. The Client and its agents will give full cooperation in the prosecution or defence, as the case may be, of any claim brought by or against MMAL. If any claim is made or action commenced for damages for death, bodily injury or property damage resulting from the ownership, operation, maintenance, use or repair of the Vehicle, the Client shall promptly notify MMAL thereof and forward by overnight courier to MMAL a copy of every demand, notice or summons or other process received in connection therewith.

13. CONFIDENTIALITY

13.1 For a period of ten (10) years after the expiry or termination of the Agreement, the Client shall not disclose or authorise the disclosure to any third party any information received by it under the Agreement which is designated as confidential or proprietary information regarding the Products. The Client shall implement reasonable procedures to prevent the intentional, reckless or negligent disclosure to third parties of such confidential and proprietary information. Nothing in the Agreement will prohibit the Client from disclosing information in the following situations:

13.1.1 disclosure of information which is in or becomes part of the public domain otherwise than as a result of a breach of the Agreement;

13.1.2 disclosure of information which was known to the Client other than by means of the Agreement;

13.1.3 disclosure of information received by the Client from a third party under no obligation of secrecy to MMAL; or

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- 13.1.4 disclosure required by law or by the government or governmental agencies pursuant to subpoenas or other discovery and inquiry procedures; provided however that the Client must use its best efforts to ensure that such bodies treat such materials as confidential to the extent permitted by law, and use best efforts to notify MMAL that such information is required to be disclosed under such circumstances.
- 13.2 The Client shall, promptly upon termination of the Agreement for any reason, return to MMAL all documentary information relating to the Products which may have been obtained by the Client, and the Client shall promptly discontinue using any information, knowledge or know-how acquired from such data.
- 14. MISCELLANEOUS**
- 14.1 Notices**
- 14.1.1 A notice by MMAL to the Client under the Agreement may be directed to the address of the Client specified in the Schedule or to any other address the Client notifies to MMAL from time to time. Without limitation, a notice may be hand delivered or sent by prepaid post to that address or sent by facsimile to any facsimile number of the Client known to MMAL.
- 14.1.2 A notice given in accordance with this clause ~~14.1~~ is taken to have been received:
- (a) if hand delivered, upon delivery;
 - (b) if sent by prepaid post, 3 days after the date of posting; or
 - (c) if sent by facsimile, upon receipt of message confirmation by the senders facsimile machine.
- 14.1.3 The provisions of clause ~~14.1~~ are in addition to any other method of service permitted by law.
- 14.2 Time**
- Unless otherwise stated, time wherever mentioned shall be of the essence in the Agreement.
- 14.3 Charges**
- The Client irrevocably authorises MMAL without the need for any prior notice to the Client to debit or charge any moneys (including liquidated damages or Rent) payable to MMAL under or in connection with the Agreement to any account of the Client with MMAL.
- 14.4 Set off**
- MMAL may, at any time at its option without notice to the Client, set off against any account on which MMAL may be indebted to the Client any part or the whole of the money payable under the Agreement. The Client shall not claim any right of set-off or other right or relief at law or in equity against MMAL.
- 14.5 MMAL May Action**
- MMAL may at any time at the sole cost of the Client do anything which the Client is obliged to do but has not

done under the Agreement or may appoint any person to attend to the same, and the Client irrevocably appoints every authorised officer and assignee of MMAL severally the attorney of the Client for the purpose of doing anything which the Client is obliged to do but has not done under the Agreement.

14.6 Assignment by the Client

The Client must not in any way assign, transfer or otherwise dispose of its rights to the Vehicle or under the Agreement without the prior written consent of MMAL. A change in shareholding in the Client (other than the transfer of shares in a company listed on the Australian Stock Exchange) is deemed to be an assignment requiring consent for the purpose of this clause.

14.7 Assignment by MMAL

MMAL may contract with a third party to perform any of MMAL's obligations under the Agreement, or assign any rights under the Agreement to any entity that assumes all of MMAL's obligations under the Agreement by giving written notice to the Client (whereupon the Client shall promptly execute any assignment or novation documentation required by MMAL to give effect to that notice).

14.8 Rights Cumulative

The rights, powers and remedies provided for in the Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of the Agreement.

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14.9 Counterparts

The Schedule may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

14.10 Entire Agreement

The Agreement is the entire agreement between the parties about its subject matter.

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14.11 Amendment

No amendment, modification, change or addition to the Agreement shall be effective or binding on a party unless in writing and signed by both parties.

14.12 Severability

Part or all of any clause of the Agreement that is unenforceable or illegal will be severed from the Agreement and will not affect the enforceability of the remaining provisions of the Agreement.

14.13 No Waiver

Failure by any party to enforce the performance of any of the provisions of the Agreement against the other party shall neither be deemed a waiver by it of its rights under the Agreement, nor shall it affect the validity of the Agreement in any way. Non-exercise by a party of any right which arises as a result of breach of the Agreement on the part of the other party shall not constitute a precedent as to any subsequent breach on the part of the other party.

14.14 **Governing Law**

The Agreement is governed by the laws in force in the State of South Australia. The Client irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of that State and courts of appeal from them.

15. **DEFINITIONS AND INTERPRETATION**

In this document unless the contrary intention appears:

Agreement means a separate agreement between MMAL and the Client on the terms set out in these terms and conditions and a Schedule.

Casualty Event has the meaning given in clause 5.4.

Client means the person named as client in the Master Agreement.

Commencement Date means the date on which the Vehicle is first registered.

Costs means all legal costs and disbursements on a full indemnity basis, all Taxes and registration fees, together with any related interest, penalties, fines and expenses in connection with any of them.

Default Rate means on any day the aggregate of 4% per annum and the rate set down from time to time under section 2 of the Penalty Interest Rates Act (Vic).

Early Termination Amount means the Termination Value (provided that the Termination Value is greater than zero).

End Date means the earlier of the last day of the Term or the day on which the Agreement is terminated.

Event of Default has the meaning given to it in clause 8.1.

FWT Guide means the "Fair Wear & Tear Guide" published by the Australian Fleet Lessors Association (AFLA), or any other successor policy nominated in writing by MMAL.

Good Condition means in respect of the Vehicle that:

- (a) it is in sound mechanical order, fair wear and tear (being the deterioration of the Vehicle through general use under the normal conditions for which the Vehicle is designed) only excepted, having regard to the distance travelled and the period during which the Vehicle has been used (assuming that the Vehicle has been properly maintained and used by the Client), as further defined in the FWT Guide and subject to paragraphs (h) to (m) below;
- (b) it is in good condition and appearance throughout (including, without limitation, all paintwork and trim);
- (c) it has all equipment and accessories as originally supplied (including, without limitation, hub-caps, radio and mud flaps, where fitted);
- (d) it complies in all respects with the requirements of any governmental authority or body and insurance company with respect to registration (including roadworthiness, exhaust emissions) and insurance;

- (e) it has no scratches, (other than stone chips or scratches not through to the metal) body or coach work damage;
- (f) all sign writing and other distinctive markings and all residual evidence of those signs or markings have been removed from the Vehicle so as to leave the exterior paintwork unblemished; and
- (g) it has the same number of tyres and batteries as the Manufacturer's original equipment (including spares) and each tyre has a tread which complies with roadworthiness requirements of the relevant motor asset registration authority and is known in the used vehicle trade as "saleable tread".

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The following factors, inter alia, shall be used in determining whether the condition of the Vehicle is due to fair wear and tear or otherwise:

- (h) bodywork damage: fair wear and tear shall be superficial scratches and scuffs to bumpers, stone chippings on front and lower sides of the Vehicle, minor scratches to paint work (which shall be its original colour) provided that the surface of the paint is not broken and that the undercoat or metal is not visible. Fair wear and tear shall not include scrapes and scratches where the paint surface is broken (ie, where repainting is necessary) or paint discolouration on the exterior of the Vehicle; dents or other impact damage; broken or cracked lenses; roof and gutter damage caused by the fitting of a roof rack or similar device; any patent or visible signs of having been involved in an accident;
- (i) interior, boot, carpet and trim: fair wear and tear shall not include any tears, rips and cuts to seats, interior trim, carpets and head lining; oil, glue, chemicals or other substances which cannot be removed using proprietary upholstery cleaners; cigarette burns;
- (j) windshield: fair wear and tear shall not include any cracks scratches and stone chips which will not pass the roadworthy test;
- (k) battery: fair wear and tear shall not include a battery which does not charge and operate efficiently in all respects;
- (l) engine and accessories: any engine components or accessories missing shall not constitute fair wear and tear; and
- (m) tyres: any damage to tyre treads and sidewalls or insufficient tread to pass a roadworthy test of the relevant motor Vehicle registration authority shall not constitute fair wear and tear.

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GST has the meaning it does in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 and any related or similar legislation.

Inspection Report means a "ManheimFowles Inspection Report" for the Vehicle, or another report commissioned by MMAL from an independent third party regarding the state and condition of the Vehicle.

Loss Proceeds means the estimated sale value of the Vehicle immediately prior to the Casualty Event (as determined by an independent valuer nominated by MMAL in the event of any disagreement between the parties).

Manual means the scheduled servicing manual for the Vehicle supplied by MMAL.

Manufacturer means the Vehicle's manufacturer (Mitsubishi Motors Corporation of 33-8, Shiba 5-chome, Minato-ku, Tokyo, Japan).

Master Agreement means the Master Agreement entered into between MMAL and the Client, of which these Terms and Conditions form part as Appendix 3.

MMAL means Mitsubishi Motors Australia Limited.

MMAL Services means the provision by MMAL (at MMAL's cost) of the following in respect of the Vehicle:

- (a) motor vehicle registration and compulsory third party insurance as required by law throughout the Term;
- (b) stamp duty imposed on the initial motor vehicle registration;
- (c) all routine scheduled servicing as specified in the Manual;
- (d) roadside assistance throughout the Term, in accordance with MMAL's roadside assistance program;
- (e) the replacement of up to 4 tyres, if and as required; and
- (f) the replacement of up to 4 brake pads, if and as required,

but excludes the supply (and cost) of the following:

- (g) electricity used to charge the Vehicle;
- (h) oil used for topping up between service intervals;
- (i) towing and vehicle recovery charges unless specifically indicated in the Schedule;
- (j) charges in respect of damage to glass, lenses, plastic, body or trim however caused;
- (k) charges resulting from accidental damage, driver error, negligence, abuse, vandalism, forcible entry, any form of civil or military upheaval, strife or disturbance, whether politically instigated or otherwise and any "Acts of God";
- (l) charges in respect of rust prevention, paint trim preservation, body cleaning or treatment, including provision of additives not specified by the Manufacturer, and engine cleaning, unless MMAL's authorisation has been obtained;
- (m) charges in respect of any item or part missing from the Vehicle;

- (n) charges directly or indirectly caused by the Client failing to comply with its obligations under the Agreement; and
- (o) the cost of repairs to and replacement of tyres or brake pads unless otherwise specified in the Agreement.

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Products means the Vehicle and Spare Parts.

Rent means the rent payable by the Client to MMAL under an Agreement as specified in Item 3 of the Schedule.

Schedule means a schedule in the form set out in Appendix 1 to the Master Agreement or in such other form as MMAL agrees to accept as a Schedule.

Spare Parts means replacement parts and accessories manufactured or procured by MMAL or the Manufacturer and designed for use in the Vehicle, but not including parts or accessories incorporated solely in products other than Vehicles, or any parts or accessories supplied to third parties other than the Client for incorporation into a product including Vehicles.

Taxes means all taxes, charges, and duties (including, without limitation, stamp and transaction duties and usage and Vehicle and services taxes howsoever named), together with any related interest, penalties, fines and expenses in connection with any of them, except if imposed on the overall net income of MMAL.

Term means the period of time specified in Item 2 of the Schedule.

Termination Value means the total financing costs incurred by MMAL (as reasonably determined by MMAL on the basis of the costs imposed by MMAL's financiers) in respect of the Vehicle between the Commencement Date and either the date of the Casualty Event (if clause 5.4.1 applies) or the date that MMAL sells or leases the Vehicle to a third party (if clause 8.2.2 applies), minus the total Rent paid by the Client in respect of the Vehicle.

Vehicle means the vehicle or vehicles described in Item 1 of the Schedule, including all goods forming part of that vehicle or vehicles as provided for in clause 7.1.

Words or expressions importing the singular include the plural and vice versa, and words denoting individuals include corporations, firms, unincorporated bodies, authorities and instrumentalities.

Where a word or phrase is defined or given meaning, any other part of speech or grammatical form has a corresponding meaning.

A provision of the Agreement must not be construed to the disadvantage of a party because that party was responsible for the preparation of the Agreement.

The Schedules, Recitals and Attachments to the Agreement form part of the Agreement and have effect as if set out in full in the Agreement.

The expressions "including", "such as" and similar expressions shall not imply any limitation.

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A reference to any thing (including but not limited to any right) includes a part of that thing.

A reference to two or more persons means those persons jointly and severally.

A reference to any legislation or any provision of any legislation includes all regulations, orders or instruments issued under it and any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision.

Where a consent or approval is required under the Agreement, it will unless something else is clearly intended mean prior written consent or approval.

Where an act would be required to be done, or a time limit or period would expire, on a day which is not a business day, the act may be done, or the limit or period will expire, on the following business day.

A reference to \$ or dollars is a reference to Australian dollars.