

Agreement to Hire OUSA Ford Transit/Mazda Van

This is an Agreement between the Otago University Students' Association Incorporated ("OUSA"); and

_____ ("the Hirer") [an individual's FULL LEGAL NAME IS REQUIRED, NOT a group name. This agreement and all liability is between OUSA and an individual person – think carefully before you sign]

(together "the Parties").

OUSA agrees to hire to the Hirer, and the Hirer agrees to hire from OUSA, the following van owned by OUSA:
[Tick van to be hired and strike out the other]

- 2017 Silver Ford Transit 9 seat, auto, turbo diesel van with licence plate number KTN767

("the Van")

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

The contact details are the Hirer are:

Contact Email: _____

Contact Phone: _____

*This information will be used to invoice your hire fees

This hire is benefiting which OUSA affiliated club or society: _____

PERSONS TO DRIVE THE VAN

- (1) The Van may only be operated or otherwise used by the Hirer and such other approved persons named in *Appendix One* of this Agreement. 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 OUSA 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 (of two years minimum) and meet any additional criteria specified by OUSA at its sole discretion (on its website or otherwise) including without limitation being:
 - (a) a fully paid member of an affiliated club of OUSA;
 - (b) a paid employee or volunteer of either OUSA or Planet Media Dunedin Limited ("PMDL"); or
 - (c) any other category or categories of persons covered under OUSA's insurance policy from time to time.
- (3) The Hirer must, before operating or otherwise using the Van, supply to OUSA a current FULL driver's licence (for each driver) to be photocopied by OUSA for insurance purposes.

PERMITTED USE OF THE VAN

- (4) The Van may only be used for lawful purposes that will directly benefit OUSA, PMDL or one of OUSA's affiliated clubs.
- (5) The Hirer shall not use or permit the Van to be used for the carriage of passengers for hire or reward unless the Van is hired with the knowledge of OUSA for use in a passenger service licensed under Part 4A of the Land Transport Act 1998 and this is expressly approved by OUSA in writing.

HIRER'S OBLIGATIONS

- (6) Under no circumstances is alcohol to be consumed in (or adjacent to) the van. As per the OUSA Club Conduct policy all events associated with a Club must not have alcohol consumption as a primary focus or intention. And, OUSA assets must be protected and respected. Groups who ignore this rule will have their booking privileges revoked.
- (7) The Hirer shall at all times:
 - (a) Bring the van back with at least ¼ tank

- (b) comply with all laws, by-laws, rules, codes, regulations and other legal requirements relating to the possession, use and operation of the Van, including without limitation the New Zealand Road Code, the Land Transport Act 1998 and the Traffic Regulations 1976;
 - (c) ensure that the Van is never operated without displaying a current warrant of fitness and certificate of registration; and
 - (d) ensure that a copy of this Agreement is kept within the Van throughout the Hire Period and produced without delay for inspection upon demand by an enforcement officer.
- (8) The Hirer shall not:
- (a) sublet or hire the Van to any other person;
 - (b) permit the Van to be operated by any other person;
 - (c) operate the Van 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 van or motor vehicle as recommended in the vehicle owner manual and where the towed trailer or vehicle has a valid warrant of fitness and is road worthy
 - (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 Van; or
 - (ix) in any manner which might prejudice any warranties given for the Van or the recovery of insurance monies payable in relation to the Van or its use; or
 - (d) operate the Van 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 Van.
- (9) The Hirer shall ensure that it operates and cares for the Van 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 Van;
 - (b) the water in the radiator and battery of the Van is maintained at the proper level;
 - (c) the oil in the Van is maintained at a proper level;
 - (d) the tyres of the Van 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 Van is kept reasonably clean and well presented. This includes removing rubbish, wet wiping surfaces, vacuuming the interior, de-odorizing/ventilating the interior, drying seats, sanitizing and giving the exterior a wet wash;**
 - (h) all reasonable care is taken in handling and parking the Van and that it is left securely locked when not in use. If, despite the Hirer's reasonable care, the Van (or any part of it) is lost, stolen or damaged, the Hirer must notify OUSA and the relevant authorities immediately;
 - (i) any minor damage, faults or problems with the Van are to be reported to OUSA immediately upon return of the Van to the OUSA Clubs and Societies Centre ("**Premises**"); and
 - (j) the **Van has at least 2.4 metres clearance** at all times, and particularly when driving under a roof or in a car park building or other confined space.
- (10) 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).
- (11) The Hirer shall not remove the Van from New Zealand and must advise the Owner of its current location on request.
- (12) The Hirer shall properly keep and maintain all keys for the Van in a safe and secure manner and shall not make copies of any keys for the Van (or permit any copies to be made) unless expressly permitted by OUSA.
- (13) If, for any reason, OUSA has any reasonable concerns about the Hirer's use of the Van or compliance with any obligation in this Agreement, the Hirer will at OUSA's request permit OUSA to inspect the Van during the Hire Period to ensure that the Hirer's obligations under this Agreement are being complied with.
- (14) The Hirer shall not except as permitted by the Consumers Guarantees Act 1993 bring or threaten to bring a claim against OUSA for loss or damage incurred or threatened against the Hirer arising directly or indirectly out of the Hirer's use or possession of the Van.

OUSA'S OBLIGATIONS

- (15) OUSA shall arrange for the Van to be available for pick up at the Premises with a fuel card and shall supply the Van 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, OUSA 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 Van promptly upon receipt.

- (16) OUSA shall be responsible for all ordinary costs of running the Van 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. To avoid any doubt, OUSA 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 OUSA as soon as practicable upon OUSA's request where any such costs are incurred by OUSA.

NO WARRANTIES OR REPRESENTATIONS

- (17) The Hirer acknowledges that it relies on its own inspection of the Van and its own skill and judgement, and not that of OUSA, as to the quality and suitability of the Van.
- (18) To the extent permitted by law, OUSA excludes all express and implied warranties (except any warranties expressly stated in this Agreement), guarantees and representations in relation to the Van, and in particular, makes no warranty or representation about the quality, suitability or fitness of the Van for any purpose.
- (19) the Hirer acknowledges and agrees that the Van is supplied by OUSA to the Hirer:
- (a) for the purposes of a business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993; and
 - (b) in trade for the purposes of the Fair Trading Act 1986 and the parties agree to contract out of sections 9 (Misleading and deceptive conduct generally), 12A (Unsubstantiated representations), and 13 (False or misleading representations).
- (20) The Hirer agrees that all warranties, conditions, and other terms implied by the Consumer Guarantees Act 1993 or sections 9, 12A, and 13 of the Fair Trading Act 1986 are excluded from this Agreement to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.

MECHANICAL REPAIRS AND ACCIDENTS

- (21) If the Van is damaged, has any defect, or requires repair or salvage, whether because of an accident or a breakdown or otherwise, the Hirer shall immediately notify OUSA of the full circumstances. In particular, the Hirer shall immediately notify OUSA of any speedometer or odometer breakage, or defect and deliver the Van to a workshop nominated by OUSA to enable OUSA to rectify or replace the speedometer or odometer at OUSA's cost.
- (22) The Hirer shall comply with OUSA'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 OUSA except to the extent that the repairs or salvage are strictly necessary to prevent further damage to the Van or other property or to maintain the Van's security.
- (23) 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 Van.
- (24) The Hirer's obligations under this Agreement shall continue notwithstanding that he or she may be unable to use the Van for any period during the Hire Period.

OWNERSHIP AND RISK

- (25) Ownership of the Van shall at all times remain with OUSA. The Hirer shall have no right to, or interest in the Van other than as hirer and bailee of goods and shall not assert, or endeavour to obtain, any other right or interest in the Van.
- (26) The Hirer is not permitted to deal with the Van in any manner except as expressly provided in this Agreement.
- (27) The Hirer shall not sell, pledge, charge, mortgage, lease out, sublet or part with the possession or control of the Van or to allow any lien or other encumbrance over it, or attempt to do or authorise any of these things.
- (28) Subject to the Hirer's right to be indemnified under clause (29), the Van 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 OUSA

- (29) OUSA holds insurance in relation to the Van. Subject to clauses (30) and (34) and OUSA being indemnified under its insurance policy, the Hirer will be indemnified:
- (a) fully in respect of any liability he or she might have to OUSA in respect of loss or damage to the Van and its accessories and spare parts and any consequential loss of revenue or other expenses of OUSA, including towing and salvage costs associated with the recovery of the Van and its accessories and spare parts; and
 - (b) to the extent of a maximum of ten million dollars in respect of legal liability the driver may have for damage arising out of:
 - (i) accidental bodily injury to any person; and/or
 - (ii) accidental loss to any property arising out of the Hirer's use of the Van.

EXCLUSIONS

- (30) The indemnities referred to in clause (29) above shall not apply, and OUSA's insurance policy will not cover, damage, injury or loss arising as a result of:
- (a) mysterious disappearance;
 - (b) the Hirer's negligent acts or omissions;
 - (c) the driver, or any passengers of the Van being under the influence of any drug, alcohol, or any other intoxicating or prohibited substance;
 - (d) the driver of the Van failing to supply a blood or breath sample as required by law, or where the driver of the Van fails to stop or remain on the scene following an accident as required by law;
 - (e) the Van being 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 Van;
 - (f) the driver being disqualified from holding or having never held a driver's licence appropriate for the Van, or who breaches any condition of their driver's licence;
 - (g) wilfully or reckless damage by the Hirer, or the Van being lost, stolen or damaged as a result of the wilful or reckless behaviour of the Hirer;
 - (h) the Van being operated in any conditions which are contrary to those recommended by the manufacturer as appropriate for the Van or in any conditions where the Van 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;
 - (i) the Van being operated outside the term of the Hire Period or, if the Hire Period is extended, any agreed extension of that period;
 - (j) the Van being operated by any person other than the Hirer;
 - (k) the relevant damage, injury or loss (including any damage, death, illness, loss, liability, cost, or expense of any nature) being 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;
 - (l) the Van being used for the purpose of, in the course of, or in furtherance of any criminal activity;
 - (m) the Van being loaded or operated in excess of the manufacturers recommended specifications or contrary to any legal requirements; or
 - (n) the Hirer being in breach of any of its obligations under this Agreement.
- (31) 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.

LIABILITY FOR EXCESS

- (32) All claims under OUSA's insurance are subject to the following excess charges, which shall be payable by the Hirer each and every time that the Hirer is indemnified in respect of any loss, damage or liability under clause (29):
- (a) The standard excess charge is \$500.
 - (b) In addition to the standard excess charge payable under (32)(a), the following amounts will be payable:
 - (i) \$500 if the driver is aged 21 to 25 years old; and
 - (ii) \$1000 if the driver is under 21 years old.
- (33) The Hirer acknowledges that the excess amounts in clause (32) include GST and are based on the existing excess amounts payable under OUSA's relevant insurance policy at the date of this Agreement. OUSA 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.

HIRER TO COVER COSTS WHERE AMOUNT LESS THAN EXCESS

- (34) Where the loss or damage caused to the Van is less than the excess amounts in clause (32) and OUSA does not make a claim under its insurance policy, the Hirer shall be liable to pay the full amount of such loss or repair.

ACKNOWLEDGEMENT AND INDEMNITY BY HIRER

- (35) In the event that OUSA is not indemnified under its insurance policy for any reason, the Hirer accepts by signing this Agreement, that:
- (a) the Van is hired at the Hirer's own risk in respect of loss or damage to the Van and consequential loss to OUSA;
 - (b) the Hirer shall be liable to OUSA for damage to or loss of the Van and consequential loss;
 - (c) the Hirer has no insurance cover under this Agreement in respect of damage, injury, or loss caused to any person or property; and
 - (d) the Hirer will indemnify OUSA against all losses (including legal costs) which OUSA incurs as a result of:
 - (i) the (full or partial) loss or destruction of the Van;
 - (ii) the Hirer failing to comply with any of its obligations under this Agreement;

- (iii) any negligent act or omission by the Hirer or any person for whom the Hirer is responsible for;
- (iv) the Hirer's possession and use of the Van; and
- (v) any damage or liability caused in respect of any third party property or personal injury or death of any person that may arise out of the Hirer's use of the Van.

TRAFFIC VIOLATIONS

- (36) The Hirer is responsible for violations and insurance liabilities due to unsafe or incorrect driving, parking or maintaining the Van in an un-roadworthy condition.
- (37) The Hirer shall pay for all infringement notices incurred in relation to the Van during the Hire Period. The Hirer acknowledges that an administration fee of \$50 including GST will be charged by OUSA to the Hirer to process these infringements.

RETURN OF THE VAN

- (38) The Hirer shall, at or before the expiry of the Hire Period, deliver the Van in the same good order, repair and condition as it was in at the commencement of the Hire Period (except fair wear and tear) together with all keys and accessories to the Premises or obtain OUSA's consent for an extension of the Hire Period. If OUSA in its sole discretion agrees to extend the Hire Period, the Hirer shall deliver the Van together with all keys and accessories (in the same good order, repair and condition as at the commencement of the initial Hire Period) to the Premises on or before the expiry of the extended period.
- (39) The Hirer must return the Van to the Premises with a full petrol tank.

TERMINATION

- (40) OUSA shall have the right to immediately terminate this Agreement and take immediate possession of the Van if the Hirer fails to comply with any term of this Agreement, if the Van or any part of it is damaged, lost or stolen, or if any adverse circumstance exists which may materially prejudice OUSA or adversely affect OUSA's rights or obligations under this Agreement. Any termination under this clause shall be without prejudice to the rights of OUSA under this Agreement or otherwise arising prior to termination.
- (41) On termination by OUSA, the Hirer shall promptly deliver the Van to the Premises and all amounts payable under this Agreement shall become immediately due and payable by the Hirer.
- (42) The Hirer grants OUSA, or will ensure that the OUSA is granted, an irrevocable right and authority to enter at any time onto any place where the Van is situated or thought to be situated to remove the Van.
- (43) Notwithstanding that OUSA may have terminated this Agreement, the Hirer indemnifies OUSA against any cost, claim, damage, expense or liability suffered or incurred by OUSA whether arising directly or indirectly from OUSA exercising its rights under this Agreement or otherwise acting to recover the Van or monies payable by the Hirer under this Agreement.
- (44) OUSA will not be liable to the Hirer or to any other persons for any loss suffered or liability incurred arising from termination of this Agreement or repossession of the Van.
- (45) Any obligations that the Hirer has to OUSA under this Agreement which remain wholly or partly unfulfilled at the time of termination of this Agreement or the end of the Hire Period shall continue and not be released notwithstanding the end of the Hire Period or the termination of this Agreement.

PERSONAL PROPERTY SECURITIES ACT 1999

- (46) All terms in these clauses (46) to (49) have the meaning given in the Personal Property Securities Act 1999 ("**PPSA**") and section references are to sections of the PPSA.
- (47) On the request of OUSA, the Hirer shall promptly execute any documents, provide all necessary information and do anything else required by OUSA to ensure that the security interest created under this Agreement in favour of OUSA constitutes a perfected security interest in the Van and its proceeds which will have priority over all other security interests in the Van.
- (48) The Hirer will pay to OUSA all fees and expenses incurred by OUSA in relation to the filing of a financing statement in connection with this Agreement.
- (49) The Hirer waives its rights under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, 134 and 148 of the PPSA.

PRIVACY ACT 1993

- (50) If the Hirer is an individual, these clauses (50) to (52) shall apply. This Agreement collects personal information about you. The information is principally collected to evaluate the hire of the Van to you and such information is collected and held by OUSA.

- (51) Under the Privacy Act 1993, you have rights of access to and correction of your personal information held by OUSA. You authorise the disclosure of personal information held by any other party regarding any previous hire agreements entered into by you. You agree to OUSA releasing to other parties information regarding this Agreement.
- (52) You authorise OUSA:
- (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness and traffic offence history;
 - (b) to disclose information about you:
 - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to OUSA; and
 - (ii) to such persons as may be necessary or desirable to enable OUSA to exercise any power or enforce or attempt to enforce any of OUSA's rights, remedies and powers under this Agreement.

GENERAL

- (53) 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.
- (54) The Hirer shall not assign all or any part of its interest under this Agreement without OUSA's prior written consent.
- (55) If OUSA 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 OUSA must be in writing and will be effective only in the specific instance and for the specific purpose for which it is given.
- (56) The rights and remedies provided in this Agreement are cumulative. They do not exclude any of OUSA's rights or remedies provided by law.
- (57) 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.
- (58) The Hirer will pay all costs (including legal fees) incurred by OUSA in enforcing or attempting to enforce its rights under this Agreement.
- (59) This Agreement may be executed in counterparts (which may include electronic copies) which read together will constitute one agreement.

INSURANCE ACCEPTANCE

- (60) Without limiting any other provision of this Agreement, the Hirer accepts the insurance cover details of which are set out in clause (29) of this Agreement. The Hirer acknowledges and accepts that they are aware of the exclusions set out in clause (30). The Hirer also accepts that they are aware of and accept the conditions set out in clause (31) to (35).

DURATION OF HIRE

- (61) OUSA shall charge the Hirer from:

_____ (time) on _____ (dd/mm/yyyy) ("**the Start Time**") until
 _____ (time) on _____ (dd/mm/yyyy) ("**the End Time**")

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

RENTAL CHARGES AND PAYMENT

- (62) There is a **minimum four hour hirer period** for the van
- (63) The hire agreement can be cancelled without charge in advance of the hire commencement date
- (64) **The kilometres (KM's) driven is taken from the vehicle logbook. It is the responsibility of the hiree to fill in the vehicle logbook. Where the logbook is not filled in OUSA will estimate the KM's driven at their own discretion.**
- (65) The Hirer will be charged the following rental for the Hire Period:

\$120.00 including GST per day OR \$60.00 including GST per four hour period for ____ (number of days)

PLUS .27 cents including GST per KM driven for ____ (km)

**PLUS a cleaning fee at the full discretion of OUSA, where the van has not been returned in a clean state. See 8g.
 PLUS any fees OUSA acquires due to the vehicle not being returned on time. For example, compensation to another group where they need to hire externally, because the van is not available for their agreed hire period**

- (66) All payments are to be made to OUSA in cleared funds without set-off or deduction of any kind in the manner set out in Appendix Two and as otherwise directed by OUSA. Unless otherwise agreed, any payment invoiced by OUSA must be received by OUSA in full within 30 days from 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 OUSA. If any payment is not received by the agreed date, OUSA 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. The Hirer shall pay to OUSA all costs and expenses incurred by OUSA in recovering money or in connection with the exercise or attempted exercise of any of OUSA's rights or remedies under this Agreement, including commissions and legal costs on a solicitor and client basis.
- (67) OUSA reserves the right to edit or increases charges in advance of the hire start time. Changes will be communicated to the hiree as soon as possible.
- (68) The hire invoice will be sent the hiree's contact information as listed at the start of this agreement. If the hiree has arranged for another individual or group to pay the hire fee, please listed their contact details below. Note, liability for payment remains with the individual hiree at all times.

Full Legal Individual/Group Name:
 Contact Number:
 Contact Email:

ACKNOWLEDGEMENT AND EXECUTION

- (69) OUSA agrees to hire the Van to the Hirer for the Hire Period set out above in clause (61). 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 (29) to (35).**

Signature of Hirer _____ Date _____

Signature of OUSA _____ Date _____

APPENDIX ONE: DRIVER DETAILS

NB: OUSA recommends you have more than one individual capable and confident to drive the van. ALL DRIVERS MUST HOLD THEIR FULL LICENCE FOR A MINIMUM OF TWO YEARS. Please provide a copy of your licence to OUSA to photocopy and keep on file.

FULL NAME OF DRIVER #1 _____

CONTACT NUMBER _____

LICENCE NUMBER _____

FULL NAME OF DRIVER #2 _____

CONTACT NUMBER _____

LICENCE NUMBER _____

FULL NAME OF DRIVER #3 _____

CONTACT NUMBER _____

LICENCE NUMBER _____

FULL NAME OF DRIVER #4 _____

CONTACT NUMBER _____

LICENCE NUMBER _____

APPENDIX TWO: KM's driven

Kilometre Gauge Readings:

Start: _____

End: _____

