

Driver Contractor Agreement

This agreement is made on the _____ of _____ [2018] between:

Lifoto Pty Ltd (ACN 38 001 819 174) trustee for Evans Unit Trust trading as Independent Hire Cars Australia ("we", "us", "Independent Hire Cars Australia")

And:

[Insert Name of Contractor/Company providing the Services] of [Insert address - street/town/state] ("you", "yourself", "the Contractor")

1 PURPOSE OF THIS AGREEMENT

- 1.1 The purpose of this document is to formalise an agreement for contracting services between you and Independent Hire Cars Australia whereby you agree to provide chauffeuring and other services from time to time as agreed.
- 1.2 The terms of this agreement outline and govern our arrangement for these Services as follows:

2 DEFINITIONS

"Additional Time" means any additional time where the Drop Off Time is delayed due to events beyond your control such as weather or traffic.

"Agreement" means this agreement, Schedule A and all Job Request documents sent to you.

"Client" means the client as further described in the Job Request.

"Confidential Information" means any written or oral information that is provided by the first party to the second party (in whatever format or medium used, provided directly or indirectly) that is not Excluded Information and that:

- (a) is about affairs, business or identity of the first party and is obtained by the second party (as a result of this Agreement);
- (b) information identified as confidential or that is made to the second party as confidential; or
- (c) is personal information for the purposes of the *Privacy Act 1988* (Cth).

"Drop Off Location and Address" means the drop off location and address as further described in the Job Request.

"Drop Off Time" means the drop off time as further described in the Job Request.

"Excluded Information" means information that either party can establish:

- a) was in the public domain;
- b) becomes part of the public domain, except through disclosure contrary to this Agreement;
- c) was lawfully received from another person who had the unrestricted legal right to disclose that information free from any obligation to keep it confidential.

"Insurance" means the insurance policy requirements as further described in the Job Request.

"Job" means each job as outlined in each Job Request;

"Job Request" means the document named Job Request and Agreement provided to you at the beginning of each job, and a sample provided in Schedule A at the end of this Agreement.

"Payment" means the payment for the Services as further described in the Job Request.

"Pick Up Location and Address" means the relevant address as further described in the Job Request.

"Pick Up Time" means the pick up time as further described in the Job Request.

"Services" means the services described in all Job Requests provided to you.

"Vehicle" means the vehicle you supply or supplied by us and used to provide the Services.

"Waiting time" means any waiting time that may occur where a Client is not at the Pick Up Location and Address at the Pick Up Time.

3 SERVICES

- 3.1 **Standard of the Services:** You agree to provide the Services in accordance with the terms in this Agreement. You must perform the Services yourself unless otherwise agreed. If the Services are to be provided by your authorised representative, you must ensure:
 - (a) we have agreed to the authorised representative in writing;
 - (b) they have the required professional skills, current certifications, licensing and other requirements to perform the Services; and
 - (c) you warrant you will fully indemnify us and be responsible for any authorised person you employ or engage to provide us with the Services.
- 3.2 **Representations and warranties of the Contractor ("you"):** In addition, you represent and warrant that you:
 - (a) are a fit and proper person to provide the Services;

- (b) will only provide information to us that is correct, accurate, up-to date and is not misleading;
- (c) will agree to provide a Driver Consent Form to enable Independent Hire Cars Australia to access the required checks at Transport NSW; and
- (d) have the relevant professional skills, expertise and current certifications, licenses and registrations required to perform the Services including but not limited to:
 - (1) a current satisfactory police criminal background check and medical check;
 - (2) are current NSW Point to Point driver licence;
 - (3) an unrestricted Australian drivers licence which has been held for at least 12 months in the preceding 2 years.
- (e) will disclose to us any conflicts which may exist, such as your personal knowledge of the Client prior to performing the Services;
- (f) will comply with all laws and with professional industry standards; including but not limited to complying with the NSW Point to Point transport laws and regulations;
- (g) will comply with our reasonable directions;
- (h) will act in good faith and in our best interests, and the interests of the Client;
- (i) will not, under any circumstances, contact our Clients directly unless we grant our prior written approval;
- (j) are ready and available to perform the Services as required in the Job Requests;
- (k) will perform the Services in accordance with the Job Request;
- (l) possess sufficient knowledge of the route from the Pick Up Location and Address to the Drop Off Location and Address;
- (m) will meet the Pick Up Times and use your best endeavours to meet the Drop Off Times;
- (n) will ensure the Vehicle is in a clean condition prior to commencing a Job;
- (o) will not eat or drink during performance of the Services;
- (p) will wear appropriate attire and maintain a high level of personal hygiene during performance of the Services;
- (q) will never operate a Vehicle when impaired by fatigue, medication, drugs or alcohol;
- (r) will use common sense and adjust your speed and operation of the Vehicle to conditions and hazards or dangers,

- (s) will operate the Vehicle in a courteous manner, irrespective of the behaviour of others;
 - (t) will immediately notify us if your licence is cancelled, or becomes subject to any conditions, or you are disqualified for any reason.
- 3.3 **Permissions:** You permit us to perform any relevant background, reference and other checks required. You consent to us contacting your referees and other persons, previous employers and educational institutions to verify any information that you provide us including your qualifications, experience and positions held by you.
- 3.4 **Inability to provide the Services:** If, an event occurs beyond your reasonable control which prevents you from attending to a Job Request, you agree to notify us as soon as possible, in writing of the reason.
- 3.5 **Variations:** From time to time or at any point, we may request or require a variation ("Variation") to the Services or a Job Request in writing with a full description. If you agree to proceed, the agreed Variation will form part of and be on the same terms as the Services in this Agreement.
- 3.6 **Variation to Job Request by Client:** From time to time or at any point, a Client may request a variation to the Job to you. You must refer the client to us to seek our prior written approval prior to any variation to a Job Request.

4 DISPUTES

- 4.1 If at any time any aspect of the Services are not reasonably acceptable to us, or we disagree for any reason on the Services, we can ask you to stop work and pay you for your Services up to and including all agreed and finalised work.
- 4.2 In the event of any dispute on the work both parties agree to obtain an independent professional arbitrator/dispute resolution specialist to make a determination on the dispute and each of us agrees to pay our own costs.

5 RELATIONSHIP

- 5.1 **Independent contractor:** Our relationship with you under this Agreement is that of principal and independent contractor. This Agreement does not make either party a joint venturer, partner, employee or agent of the other. No act or omission of either party is to bind the other party except as expressly set out in this Agreement.
- 5.2 **No withholdings:** We are not responsible for withholding or remitting any payment for an impost such as tax or superannuation in respect of you or any of your representatives.
- 5.3 **No entitlements:** As an independent contractor you are only paid for the work that you do and you have no entitlement to annual leave, sick leave or any other form of leave. You are also not entitled to any expenses

during the Job Request such as meals, phone usage, tolls or fuel or any traffic offence tickets.

6 TERM AND OWNERSHIP

- 6.1 **Term:** This Agreement continues up to and including the last Drop Off Time of the last Job Request unless otherwise terminated prior by either you or us in accordance with this Agreement.
- 6.2 You acknowledge and agree that we may terminate this Agreement after the completion of any Job Request, and we do not guarantee to give you any further work after each Job Request. We also do not guarantee any minimum work hours or any particular income.

7 INFORMATION PROVIDED TO PERFORM THE SERVICES AND GENERAL REQUIREMENTS

- 7.1 **Confidentiality:** Each party agrees that it will:
- (a) keep confidential;
 - (b) not use directly or indirectly; and
 - (c) not disclose directly or indirectly,
 - (d) the Confidential Information of the other party, except:
 - (1) as required by law or any regulatory authority;
 - (2) with the other parties' express written consent.
- 7.2 You will not at any time disclose or allow access by any person or third party to any of the Confidential Information unless required to perform the Services in which case, you must ensure the third party is under the same duty of confidentiality as each party is under this Agreement.
- 7.3 You acknowledge and agree that any information which is passed to you under this Agreement to be considered Confidential Information unless otherwise agreed.
- 7.4 You must notify us immediately upon becoming aware of any unauthorized disclosure, copying, use or loss of all or any part of the Confidential Information and you accept that you shall be fully responsible for any breach of any of the terms of this undertaking, including any consequential or indirect loss which may be suffered as a result.
- 7.5 Each party agrees, upon completion of the Services or upon termination of this Agreement for any reason, to immediately return all materials (or if in electronic form, erase or destroy and deliver evidence of such erasure or destruction) all documents and other materials containing or referring to Confidential Information of the other party which is in its possession, power or control and to ensure any other person who has received this do the same.

- 7.6 **Work Health and Safety:** You will be required to carry out your work activities with due regard to relevant *Workplace Health and Safety Act 2011* and Regulations including policies of safe working practices. You are responsible for and assume all liability for ensuring a safe working environment.

Failure to comply with these conditions may lead to termination of this Agreement.

- 7.7 **Promotional Material:** You may from time to time be required to wear clothing or use equipment with our logo or other images promoting our business during provision of the Services. You agree to maintain these items in good working order. You also agree and acknowledge that the use of these items does not establish an employment arrangement outside of this Agreement.

- 7.8 **Vehicle: Where we supply the Vehicle** you must only use the Vehicle as agreed. At the beginning of each Job Request you must check the Vehicle. If you notice any damage or defects to the Vehicle you must tell us immediately. You must only use the Vehicle for the purposes of this Agreement and not part with possession of the Vehicle. You must not allow any other person to drive the Vehicle, and you must not use it for your personal use. You must not make any modification to the Vehicle. At the end of a Job Request you must return the Vehicle to us in a clean condition.

- 7.9 You are liable for all fines, or driver offences incurred during your operation of the Vehicle, any tolls and fuel usage. You are also liable for all expenses for any failure to return the Vehicle in a clean and well maintained manner.

- 7.10 We will maintain the Vehicle and pay for all maintenance costs, including oil, repairs, tyres and replacement parts. However, in the event of an if we are uncontactable in the event of an emergency, you are authorised to purchase an item to assist with the maintenance or repairs. You must provide us with the receipt of the purchase to enable reimbursement.

- 7.11 We will comprehensively insure the Vehicle. However, in the event of an incident or accident, where you are found to be at fault, you are liable for any damage and/or towing charges to the Vehicle and any damage or towing charges to another parties' vehicle or property, including, but not limited to any excess on an insurance policy related to a possible claim.

- 7.12 If an incident or accident occurs you must tell us about it as soon as possible and give us copies of any statements you make to police or other persons in relation to the incident.

OR

- 7.13 **Vehicle: Where you supply the Vehicle** it must be approved by us prior to performing the Services. It must be owned or leased by you, and you must have the full right and title to use and operate the Vehicle for the purpose required under the terms of this agreement. The Vehicle must be regularly maintained by you, at your cost, and you permit us to inspect the Vehicle at any time with 24 hours' notice. The Vehicle must also be comprehensively insured by you at your cost. The insurance cover must be

held only in your own name and must be current. Evidence of insurance must be provided on request.

- 7.14 You are liable for all fines, or driver offences incurred during your operation of the Vehicle, and any tolls and fuel usage.
- 7.15 You indemnify us for any loss or damages arising out of the use of the Vehicle including for legal costs and any other costs associated with such loss or damage. You are responsible for any excess on an insurance policy payable in relation to any claim.
- 7.16 If an incident or accident occurs you must tell us about it as soon as possible and give us copies of any statements you make to police or other persons in relation to the incident.

8 PAYMENT AND DELIVERY

- 8.1 Payment will be made on satisfactory delivery of each Job Request or as agreed from time to time and within 7 days of receipt of your invoice (or as otherwise agreed in writing between both you and Independent Hire Cars Australia). Delivery of the Services must be done to both the Client and our reasonable satisfaction for payment as agreed. Payment will be made in accordance with the Job Request.
- 8.2 In the event of any Waiting Time or Additional Time you must ensure the Client signs the Job Request form acknowledging the amount of time and so additional costs incurred.
- 8.3 You will provide, before the date for Payment, an invoice for each Job Request as agreed, inclusive of any and all GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). You are responsible for the payment of all GST to the tax office.
- 8.4 Invoices must be issued by email to us not to the Client.

9 INSURANCE POLICIES

- 9.1 While this Agreement is in force, you warrant that you are covered by relevant Insurance policies whose terms and amounts are satisfactory to Independent Hire Cars Australia as further specified in the Job Request.
- 9.2 If at any time, any insurance policies expire, become outdated, or you are required to make any claim which affects an insurance policy, you agree to immediately notify us in writing and, where relevant, rectify the issue.
- 9.3 You are responsible for the cost of all insurance policies.
- 9.4 **Evidence of policies:** you must provide a current copy of the insurance policies or certificates of currency on request.
- 9.5 **No limit to liability:** In any event, your liability to the Client and Independent Hire Cars Australia will not be and must not be limited in any way because of any insurance.

10 TERMINATION AND NON COMPETE

- 10.1 If you breach any of the obligations of this Agreement, you will immediately remedy or rectify the breach promptly and we may terminate this Agreement by notice to you in writing.
- 10.2 We also have the right to immediately terminate this Agreement in the event that you are engaging in any misconduct, and/or that we receive any complaints about you or your Car.
- 10.3 The Confidentiality clauses being 7.1, 7.2, 7.3, 7.4 and 7.5 survive and continues in the event of any dispute or termination and, in any event, after the delivery of the Services.
- 10.4 If you become bankrupt, or commit any criminal offence then we may terminate this Agreement without notice to you.
- 10.5 During the period of this Agreement and for a period of 18 and if not, 9, or if not, 6 months following the end or termination of the Agreement, you will not directly or indirectly:
- a. enter the employ of, or render any services to, any person, firm or corporation engaged in any business competitive with Independent Hire Cars or any affiliates of ours;
 - b. engage in a business the same or similar to ours on your own account; or
 - c. become interested in any business, directly or indirectly, as an individual, partner, director, officer, principal, agent, employee, trustee, consultant or in any other relationship or capacity;
- unless agreed to do so in writing by us.

Provided, however, that nothing contained in this item shall be deemed to prohibit you from acquiring solely as an investment shares or stock in any publicly listed corporation.

11 LIMITATION OF LIABILITY

You agree that you are performing the Services at your own risk. We do not warrant or guarantee that there will be any number of Job Requests.

You agree that we are not liable for any direct, indirect, consequential or incidental loss or damage (including but not limited to reputational risk, financial loss, loss of revenue or profits) which may result directly or indirectly from this Agreement. In any event, our liability is limited to the fees paid for the most recent Job Request provided to you.

12 INDEMNITY

You agree to indemnify Independent Hire Cars Australia and any of its and representatives and keep Independent Hire Cars Australia indemnified against any and all actions, claims, proceedings or demands which may be brought against us in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) which arises by reason of any breach of warranty, default, act or omission, these terms or any negligence by yourself, or by any employee, agent or subcontractor

which you may employ. In addition, risk of any Car you may use remains with you. You also agree to take over any action by any third party or Client which is a direct or indirect result of any action or inaction by you or your representatives.

13 COUNTERPARTS

This agreement may be executed in counterparts. For example, you may sign one copy of this agreement and we may sign another copy of this agreement and exchange signed original copies. Both agreements will be valid original agreements for the purposes of any dispute, litigation or similar action.

14 MISCELLANEOUS

This agreement is governed by the laws from time to time in force in the State of NSW and both you and we agree to unconditionally submit to the exclusive jurisdiction of the Courts in the State of NSW for determining any dispute concerning this Agreement.

This is the entire agreement between the parties in relation to its subject matter, and it supersedes all previous written or oral negotiations, promises and understandings.

No alterations of this Agreement will be binding unless made in writing and signed by both parties.

If a court considers any provision of this Agreement unlawful, invalid or unenforceable that will not affect the validity and enforceability of the remaining provisions.

Neither party is permitted to assign their rights and obligations under this Agreement unless with the prior written consent of the other party.

Any failure to take action does not mean that a party has consented to the other party's actions, nor does it prevent a party from taking action later. Rights can only be waived if the waiver is in writing.

SCHEDULE A

Job Specific Request & Agreement

CONTRACTOR [insert contractor]

POSITION & JOB TITLE: [insert title]

VEHICLE: [insert vehicle requested]

CLIENT: [insert client name]

CLIENT PHONE: [insert client phone no]

EVENT DATE: [insert event date]

NUMBER OF PASSENGERS: [insert no of passengers]

PICK UP LOCATION AND ADDRESS: [insert pick up location and address]

PICK UP TIME: [insert the Pick Up Time]

DROP OFF LOCATION AND ADDRESS: [insert the Drop Off Location and Address]

DROP OFF TIME: [insert the Drop Off Time]

SPECIAL INSTRUCTIONS: [insert any special instructions]

WAITING TIME/ ADDITIONAL TIME: [insert if waiting time and additional time is approved and if so to what amount (ie if you have the Client's bond and credit card and approval to deduct so that you can pay the Driver)]

Payment and terms of payment are:

PAYMENT [insert the fee, incl GST]

The agreed fee will be paid on completion of the job. Invoice to be forwarded to us.

INSURANCE

You must hold the following insurances:

Workers Compensation

Professional Indemnity in the sum of [insert amount]

Public liability in the sum of [insert amount]

Comprehensive insurance for any Vehicle you provide.

Statement of the Contractor:

I acknowledge that this Job Request and agreement operates in conjunction with the Service Agreement. All references to standards, expectations, responsibilities from the Service Agreement apply to this Job Request Agreement.

Date original Service Agreement signed: [insert date]

Copy of original Service Agreement attached: [tick]

I accept the accountabilities of this position and agree to produce the results, perform the work, and meet the standards set forth in this Job Specific Request and Agreement, in conjunction with the original Service Agreement

SIGNATURES:

Date:

Signature:

Print Name:

SIGNATURES:

Date:

Signature:

Print Name:

This agreement shall be effective when signed by both parties below.

Agreed and acknowledged:

SIGNED by the **Contractor/** an authorised officer of the **Contractor**

SIGNED by an authorised officer of **Independent Hire Cars Australia**

Print Name

Print Name