

## Trail Sharing Limited Terms and Conditions

### 1 Introduction

- 1.1 These terms and conditions (**Terms**) are entered into between Trail Sharing Limited (company number 8805750) (**we, us or our**) and you, together the **Parties** and each a **Party**.
- 1.2 We provide a platform (**Platform**) where owners of vehicles can connect to arrange car swaps when completing the same trail (**Car Swap Arrangement**). You can register your vehicle to be part of a Car Swap Arrangement, for the purpose of completing trails and hikes and connect with another registered user to use their vehicle as part of the Car Swap Arrangement (each, a **Member**).
- 1.3 In these Terms, **you** means (as applicable) the person or entity registered with us as a Member or the individual accessing or using the Platform.
- 1.4 If you are using the Platform on behalf of your employer or a business entity, you, in your individual capacity, represent and warrant that you are authorised to act on behalf of your employer or the business entity and to bind the entity and the entity's personnel to these Terms.

### 2 Acceptance and Platform Licence

- 2.1 You accept these Terms by clicking to accept or registering on the Platform.
- 2.2 You must be at least 18 years old to use the Platform, with a full New Zealand drivers' licence.
- 2.3 We may amend these Terms at any time, by providing written notice to you. By clicking "I accept" or continuing to use the Platform after the notice or 30 days after notification (whichever date is earlier), you agree to the amended Terms. If you do not agree to the amendment and it adversely affects your rights, you may cancel your Membership with effect from the date of the change in these Terms by providing written notice to us. If you cancel your membership, (a) you will no longer be able to use the Platform on and from the date of cancellation, and (b) if you have paid any Booking Fees upfront you will be issued a pro-rata refund having regard to the date of termination and the period for which you have paid.
- 2.4 We may use API technology, such as Google translations/Google Maps/Earth mapping services, including Google Maps API(s). Your use of third party APIs may be subject to their terms of use.
- 2.5 Subject to your compliance with these Terms, we grant you a personal, non-exclusive, royalty-free, revocable, worldwide, non-transferable licence to use our Platform in accordance with these Terms. All other uses are prohibited without our prior written consent.
- 2.6 When using the Platform, you must not do or attempt to do anything that is unlawful or inappropriate, including:
  - (a) anything that would constitute a breach of an individual's privacy (including uploading private or personal information without an individual's consent) or any other legal rights;
  - (b) using the Platform to defame, harass, threaten, menace or offend any person;
  - (c) using the Platform for unlawful purposes;
  - (d) interfering with any user of the Platform;
  - (e) tampering with or modifying the Platform (including by transmitting viruses and using trojan horses);
  - (f) using the Platform to send unsolicited electronic messages;
  - (g) using data mining, robots, screen scraping or similar data gathering and extraction tools on the Platform; or
  - (h) facilitating or assisting a third party to do any of the above acts.

### 3 Accounts

- 3.1 You must register on the Platform and create an account (**Account**) to access the Platform's features.
- 3.2 You may only have 1 Account on the Platform which you can use as a Member.
- 3.3 You must provide basic information when registering for an Account including your contact name, phone number, email address, a photo of both sides of your drivers licence (which must be validated on the Platform), and you must choose a password.
- 3.4 Once you have registered an Account, your Account information will be used to create a profile which you may then curate.
- 3.5 You agree to provide and maintain up to date information in your Account and to not share your Account password with any other person. Your Account is personal and you must not transfer it to others.
- 3.6 You are responsible for keeping your Account details and your username and password confidential and you will be liable for all activity on your Account, including purchases made using your Account details. You agree to immediately notify us of any unauthorised use of your Account.
- 3.7 We may make access to and use of certain parts of the Platform subject to conditions or requirements, including identity verification, cancellation history, quality of services and interactions.
- 3.8 At our discretion, we may introduce a booking fee in the future which may be charged on a per trip basis at the time a Confirmed Booking is made under clause 4.4 and/or on an annual basis (in each case, a **Booking Fee**). Any applicable Booking Fee will be as set out on the Platform from time to time (**Variation**). By continuing to use our Platform you will be deemed to have accepted the Variation and agree to payment of any Booking Fee that applies. This clause does not affect your ability to cancel your use of the Platform under clause 14.

#### 4 Platform summary

- 4.1 The Platform is a marketplace where Members can connect online to enter into a Car Swap Arrangement. We provide the Platform to Members (including hosting and maintaining the Platform), to connect and arrange Car Swap Arrangements only (the **Trail Sharing Services**). You understand and agree that we only make available the Trail Sharing Services. We are not party to any agreement entered into between Members and we have no control over the conduct of Members or any other users of the Platform. We are not liable for any Liability which arises as a result of an agreement for a Car Swap Arrangement entered into between Members.
- 4.2 A Member wanting to enter into a Car Swap Arrangement creates an Account on the Platform. They may post an accurate and complete description of the Car Swap Arrangement they would like to enter into, including details such as their location and available times, information about their vehicle and insurance cover and the trail they wish to complete (**Listing**). A Member can delete a Listing they have posted at any time prior to it becoming a Confirmed Booking.
- 4.3 A Member wanting to enter into a Car Swap Arrangement for a trail can also view and browse other Listings.
- 4.4 If a Member wants to proceed with the Car Swap Arrangement described in a Listing it becomes a **Confirmed Booking**.
- 4.5 By entering into a Confirmed Booking, the Members each confirm that they are legally entitled to and capable of supplying the Car Swap Arrangement described in the relevant Listing. The Members also each acknowledge and agree that they are responsible for arranging a key swap with the other Member in a Confirmed Booking and we are not liable for any Liability which arises in relation to a key swap.

#### 5 Warranties

- 5.1 You represent, warrant and agree that:
- (a) you will not use our Platform, including Our Intellectual Property, in any way that competes with our business;
  - (b) there are no legal restrictions preventing you from entering into these Terms, including any restriction on your driver's licence;
  - (c) all information and documentation that you provide to us in connection with these Terms is true, correct and complete;
  - (d) you are responsible for complying with all laws, rules and regulations which apply to providing the services in your Listings;
  - (e) your vehicle being offered as part of the Car Swap Arrangement has the insurance shown in a Listing, and is roadworthy and safe for use, including holding a current registration, warrant of fitness, and sufficient road user charges (where appropriate);
  - (f) you will not use a vehicle in a Car Swap Arrangement in a dangerous manner or in any way in breach of the New Zealand Road Rules or the Land Transport Act 1998;
  - (g) you will not operate a vehicle under the Car Swap Arrangement while under the influence of any drugs or alcohol;
  - (h) you will be the only driver of the vehicle while under the Car Swap Arrangement, unless agreed otherwise between you and the other Member;
  - (i) you will only use the vehicle provided under the Car Swap Arrangement for what is reasonable to complete the journey, unless the prior express written consent is obtained from the other Member;
  - (j) the vehicle provided under the Car Swap Arrangement will, at the completion of the Confirmed Booking, be left in the same condition as it was when you took over the vehicle at the commencement of the Confirmed Booking as evidenced by photos in accordance with clause 6.1;
  - (k) if you are involved in an incident, to call the required emergency services/ report the incident to the nearest police station, and advise the other Member of the event;
  - (l) any traffic infringement notices provided either in person or via speed camera, including for traffic, speeding or parking, while you are in possession of the vehicle, will be passed on to you and you agree to arrange prompt payment of same;
  - (m) if a vehicle used as part of a Car Swap Arrangement breaks down at no fault of the driver, to contact the other Member where possible to arrange delivery to a mechanic at the other Member's cost.

#### 6 Damage and Accidents

- 6.1 At the commencement of a Confirmed Booking and at the completion of a Confirmed Booking, each Member must take photos with date and time stamps on them evidencing the condition of the other Member's vehicle and provide such photos to the vehicle owner Member.
- 6.2 If a Member's vehicle is damaged during the operation of a Confirmed Booking (other than pursuant to clause 6.3) and the other Member is unable to prove that such damage either existed when they collected the vehicle, or existed when they parked the vehicle for return to the owner Member, then the other Member will be liable to pay the owner Member for any repairs required to remedy the damage, or for the insurance excess in full (if the owner Member elects to have the repairs covered by their insurance).
- 6.3 If a Member participating in a Confirmed Booking is involved in an accident concerning the other Member's vehicle and such accident is their fault, then, subject to you/the other Member (as applicable) having complied with clause 5, the Parties agree that the vehicle owner Member's insurance will be used to cover the cost of repairing/replacing the damaged vehicle and the Member at fault agrees to pay any insurance excess to the owner Member in full and without delay. If the

cost of repairs to the damaged vehicle is less than the insurance excess, then the Member at fault will, upon receipt of evidence of such repair cost from the owner Member, pay such amount to the owner Member in full and without delay.

- 6.4 You acknowledge and agree that you drive another Member's vehicle and provide your vehicle to another Member to drive at your sole risk.

## 7 Communication

- 7.1 Members can communicate offline using the contact details contained in a Listing. Members must not use the contact details to organise the provision of the services off the Platform, or otherwise to attempt to circumvent the payment of any Booking Fees to us (if applicable).

## 8 Memberships

- 8.1 Membership is free of charge, subject to clause 3.8.

## 9 Cancellation Policy

- 9.1 The cancellation or variation of any Confirmed Booking is strictly a matter between the relevant Members. If you want to cancel, or are unable to complete, a Confirmed Booking for any reason, you must inform the other Member as soon as possible. If, when you proceed with a Confirmed Booking, you believe the other Member is not the same person as shown in the drivers licence on the relevant Listing, you may refuse to continue with the Confirmed Booking.

- 9.2 For disputes between Members, we encourage Parties to attempt to resolve disputes (including claims for returns or refunds) with the other Party directly and in good faith, either on the Platform or through external communication methods. In the event that a dispute cannot be resolved through these means, the Parties may choose to resolve the dispute in any manner agreed between the Parties or otherwise in accordance with applicable laws.

- 9.3 This clause will survive the termination or expiry of these Terms.

## 10 Identify verification

- 10.1 If we choose to conduct identity verification or background checks on any Member, to the extent permitted by law, we disclaim all warranties of any kind, either express or implied, that such checks will identify prior misconduct by a Member or guarantee that a Member will not engage in misconduct in the future. Any verification of Members on the Platform is not an endorsement or recommendation that the Member is trustworthy or suitable. You should do your own due diligence before engaging in a Car Swap Arrangement with another Member.

- 10.2 You acknowledge and agree that you should make your own inquiries as to the accuracy, legitimacy, validity, credibility or authenticity of any users of the Platform.

## 11 Intellectual Property

- 11.1 All intellectual property (including copyright) developed, adapted, modified or created by us or our personnel (including in connection with the Terms, any content on the Platform, and the products) (**Our Intellectual Property**) will at all times vest, or remain vested, in us.

- 11.2 We authorise you to use Our Intellectual Property solely for the purposes for which it was intended to be used.

- 11.3 You must not, without our prior written consent:

- (a) copy, in whole or in part, any of Our Intellectual Property;
- (b) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of Our Intellectual Property to any third party; or
- (c) breach any intellectual property rights connected with the Platform, including (without limitation) altering or modifying any of Our Intellectual Property; causing any of Our Intellectual Property to be framed or embedded in another website; or creating derivative works from any of Our Intellectual Property.

- 11.4 Nothing in the above clause restricts your ability to publish, post or repost Our Intellectual Property on your social media page or blog, provided that:

- (a) you do not assert that you are the owner of Our Intellectual Property;
- (b) unless explicitly agreed by us in writing, you do not assert that you are endorsed or approved by us;
- (c) you do not damage or take advantage of our reputation, including in a manner that is illegal, unfair, misleading, or deceptive; and
- (d) you comply with all other terms of these Terms.

- 11.5 This clause will survive the termination or expiry of these Terms.

## 12 Content you upload

- 12.1 You may be permitted to post, upload, publish, submit, or transmit relevant information and (**User Content**) on the Platform. We may run campaigns via the Platform and via social media that encourage you to post User Content on social media using specific hashtags (#) (**Tag**).

- 12.2 If you make any User Content available on or through the Platform, including on social media using a Tag, you grant to us a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free licence to use the User Content, with the right to use, view, copy, adapt, modify, distribute, license, transfer, communicate, publicly display, publicly perform, transmit, stream, broadcast, access, or otherwise exploit such User Content on, through or by means of the Platform and our social media platforms.

- 12.3 You agree that you are solely responsible for all User Content that you make available on or through the Platform, including on social media using a Tag. You represent and warrant that:
- (a) you are either the sole and exclusive owner of all User Content or you have all rights, licenses, consents and releases that are necessary to grant to us the rights in such User Content (as contemplated by these Terms); and
  - (b) neither the User Content nor the posting, uploading, publication, submission or transmission of the User Content or our use of the User Content on, through or by means of our Platform (including on social media) will infringe, misappropriate, or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.
- 12.4 We do not endorse or approve, and are not responsible for, any User Content. We may, at any time (at our sole discretion), remove any User Content.
- 12.5 This clause will survive the termination or expiry of these Terms.

### 13 New Zealand Consumer Law

- 13.1 Certain legislation, may confer you with rights, warranties, guarantees and remedies relating to the provision of the Platform by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**).
- 13.2 If the Consumer Guarantees Act 1993 (**CGA**) applies to you as a consumer, nothing in these Terms excludes your Consumer Law Rights as a consumer under the CGA. You agree that our Liability for the Platform provided to an entity defined as a consumer under the CGA is governed solely by the CGA and these Terms.
- 13.3 Subject to your Consumer Law Rights, we exclude all express and implied warranties, and all material, work and services (including the Platform) are provided to you without warranties of any kind, either express or implied, whether in statute, at law or on any other basis.
- 13.4 This clause will survive the termination or expiry of these Terms.

### 14 Limitations on liability

- 14.1 To the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with:
- (a) the use or results of any Third Party ID Service or Identity Check; and
  - (b) any aspect of your interaction or arrangements with other Member including a Car Swap Arrangement, your or their driving of a vehicle, the description in a Listing, any advice provided, the performance of a Confirmed Booking or the other Member meeting their obligations to you under a Car Swap Arrangement.
- 14.2 Despite anything to the contrary, to the maximum extent permitted by law:
- (a) neither Party will be liable for Consequential Loss;
  - (b) each Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party or any of that Party's personnel, including any failure by that party to mitigate its losses; and
  - (c) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to \$50.
- 14.3 As an exception to clause 13.2, during the Car Swap Arrangement, each Member will be liable to drive the relevant vehicle in a safe and responsible manner and agrees to let the other Member know if there is an issue with the vehicle or an accident occurs. Where anything done to a vehicle while in a Member's possession under the Car Swap Arrangement is exempt from Insurance cover, the Member in control of the vehicle at the time of the damage will be liable for the excess and any other costs in relation to same.
- 14.4 This clause will survive the termination or expiry of these Terms.

### 15 Termination

- 15.1 Your Account and these Terms may be terminated by you at any time, using the 'cancel Account' functionality (or similar) in the Account page section of your Account settings.
- 15.2 These Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:
- (a) the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
  - (b) the Defaulting Party is unable to pay its debts as they fall due.
- 15.3 Should we suspect that you are in breach of these Terms, we may suspend your Account while we investigate the suspected breach.
- 15.4 Upon expiry or termination of these Terms:
- (a) we will remove your access to the Platform and your account will be deleted;
  - (b) we will immediately cease providing the Trail Sharing Services;
  - (c) where we terminate the Terms as a result of your unrectified default, you also agree to pay us our reasonable additional costs directly arising from such termination, including recovery fees.
- 15.5 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.
- 15.6 This clause will survive the termination or expiry of these Terms.

### 16 Insurance

16.1 We may request that you provide evidence of your insurance for your vehicle prior to finalising any Car Swap Arrangement. Where we do so, we are not confirming that the insurance you have is sufficient or suitable for the Car Swap Arrangement with the other Member. If we do not ask you to provide evidence of insurance this does not indicate that we believe you do not require insurance. You acknowledge and agree it is your responsibility to make your own investigations and receive professional advice on the insurance you require.

## 17 General

- 17.1 **Assignment:** Subject to the below clause, a Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).
- 17.2 **Confidentiality:** Other than where the disclosure is permitted by law, each Party agrees not to disclose any confidential information it may access on or through the Platform to a third party, or otherwise misuse such confidential information. Confidential information may include confidential information supplied to you by us, or by another Member.
- 17.3 **Disputes:** In relation to a dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) between an Advertiser and us, or a Provider and us, a Party may not commence court proceedings relating to a Dispute without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the New Zealand to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 17.4 **Entire Terms:** Subject to your Consumer Law Rights, these Terms contains the entire understanding between the Parties and the Parties agree that no representation or statement has been made to, or relied upon by, either of the Parties, except as expressly stipulated in these Terms, and these Terms supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- 17.5 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under these Terms if such delay or failure is caused or contributed to by a Force Majeure Event, provided the Party seeking to rely on the benefit of this clause, as soon as reasonably practical, notifies the other party in writing about the Force Majeure Event and the extent to which it is unable to perform its obligations, and uses reasonable endeavours to minimise the duration and adverse consequences of the Force Majeure Event.
- 17.6 **Further assurance:** You agree to promptly do all things and execute all further instruments necessary to give full force and effect to these Terms and your obligations under it.
- 17.7 **Governing law:** These Terms are governed by the laws of New Zealand. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New Zealand and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 17.8 **Notices:** Any notice given under these Terms must be in writing addressed to us at the details set out below or to you at the details provided in your Account. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 17.9 **Privacy:** Each Party agrees to comply with the legal requirements of the New Zealand Privacy Principles as set out in the *Privacy Act 2020* and any other applicable legislation or privacy guidelines.
- 17.10 **Publicity:** You agree that we may advertise or publicise the broad nature of our supply of the Trail Sharing Services to you, including on our website or in our promotional material.
- 17.11 **Relationship of Parties:** These Terms are not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 17.12 **Severance:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.
- 17.13 **Third party sites:** The Platform may contain links to websites operated by third parties. Unless we tell you otherwise, we do not control, endorse or approve, and are not responsible for, the content on those websites. We recommend that you make your own investigations with respect to the suitability of those websites. If you purchase goods or services from a third party website linked from the Platform, such third party provides the goods and services to you, not us. We may receive a benefit (which may include a referral fee or a commission) should you visit certain third-party websites via a link on the Platform (**Affiliate Link**) or for featuring certain products or services on the Platform. We will make it clear by notice to you which (if any) products or services we receive a benefit to feature on the Platform, or which (if any) third party links are Affiliate Links.

## 18 Definitions

- 18.1 **Consequential Loss** means , whether under statute, contract, equity, tort (including negligence), indemnity or otherwise; any loss or damage that cannot be considered to arise according to the usual course of things from the relevant breach, act or omission, whether or not such loss or damage may reasonably be supposed to have been in the contemplation of the Parties at the time they entered into these Terms as the probable results of the relevant breach, act or omission, and/or, any real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data. The Parties agree that your obligation to pay us the Fee under these Terms will not constitute “Consequential Loss”.
- 18.2 **Force Majeure Event** means any event or circumstance which is beyond a Party’s reasonable control.
- 18.3 **Intellectual Property** means any and all existing and future rights throughout the world conferred by statute, common law, equity or any corresponding law in relation to any copyright, designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or confidential information, circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing, whether or not registered or registrable.
- 18.4 **Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a party to these Terms or otherwise.

**For any questions or notices, please contact us at:**

Trail Sharing Limited (company number 8805750)

**Email:** trailsharing@gmail.com

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