
MCCSA - BUS HIRE AGREEMENT

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MCCSA - Bus Hire Agreement

Date

2024

Parties

1. **MULTICULTURAL COMMUNITIES COUNCIL OF SA INC. (ABN 13 253 714 844)** of 113 Gilbert Street, Adelaide SA 5000 ('**MCCSA**')
2. The party referred to in **Item A** of the Reference Schedule ('**the Hirer**')

Background

- A. MCCSA owns the Bus.
- B. MCCSA has agreed to hire the Bus to the Hirer and the Hirer has agreed to hire the Bus from the MCCSA for the Hire Period on these terms and conditions.
- C. The parties agree they will comply with the terms and conditions during the Hire Period.

Agreement

1. **Hire of the Bus**
 - 1.1 MCCSA agrees to hire the Bus to the Hirer and the Hirer agrees to hire the Bus from MCCSA for the Hire Period subject to the terms and conditions in this Agreement.
2. **Payment for the Hire**
 - 2.1 The Hirer agrees to pay to the MCCSA the Hire Fee set out in **Item 4** of the Reference Schedule.
 - 2.2 The Hire Fee is payable by the Hirer upon completion of the Hire Period.
 - 2.3 Where the Hirer cancels a booking within three (3) days of the Commencement Date, MCCSA may charge the Hirer a Cancellation Fee.
 - 2.4 The Hirer must pay all other fees and charges which become due and payable by the Hirer pursuant to the terms of this Agreement.
3. **Fuel**
 - 3.1 The Hirer must:
 - 3.1.1 return the Bus with a full tank of fuel.

3.1.2 refuel the Bus with the correct type and grade of fuel as advised by MCCSA and which is included in the information in **Item 1** of the Reference Schedule.

3.2 The Hirer will be liable for any loss and damage caused by inserting the wrong fuel type into the Bus.

4. **Extension of Hire Period**

4.1 At the request of the Hirer, MCCSA may agree to extend the Hire Period.

4.2 Any extension of the Hire Period shall be evidenced in writing by the parties prior to the expiration of the Hire Period.

5. **Hirer's Obligations**

The Hirer must:

5.1 Not use the Bus other than for the Hire Purpose.

5.2 The Hirer must send by sms to 0481 948 728 or by email to Geoffrey.brown@mccsa.org.au a video or photograph covering 360 degrees of the exterior of the Bus prior to and on return of the Hirer's journey. In the absence of proper disclosure in accordance with this clause, the Hirer will be liable for the damage occurring between the previous and following hire.

5.3 Not allow any other user to operate the Bus other than an Authorised Driver.

5.4 Operate, maintain, store, and transport the Bus in a proper manner and where required strictly in accordance with any instructions provided by MCCSA or as required in the Bus Driver Policy.

5.5 Comply with occupational health and safety laws and regulations relating to the use of the Bus and Motor Vehicle Legislation.

5.6 Not use the Bus for any illegal purpose.

5.7 Ensure that the Authorised Driver does not operate the Bus whilst under the influence of drugs or alcohol.

5.8 Not exceed the maximum number of passengers allowed to be transported in the Bus.

5.9 Ensure that each passenger wears a seat belt restraint. Where passengers are children under the age of seven (7) years, the use of a Booster Seat is permitted. Baby capsules are not permitted to be installed on the Bus.

5.10 Return the Bus to MCCSA clean and tidy (including floor swept, rubbish and personal items removed, arm rests sanitised, seats clean and carwash if needed) and agrees that in the event the Bus is not returned in a manner acceptable to the MCCSA, it will be liable to MCCSA for any reasonable cleaning fees incurred by the MCCSA to the Bus.

5.11 Not allow the Bus to be driven outside of a 250-kilometre radius of the Adelaide CBD without prior written approval from MCCSA.

- 5.12 Collect the Bus and the keys to the Bus from the Premises, unless advised otherwise by MCCSA.
- 5.13 Deliver the Bus to MCCSA at the expiration of the Hire Period by delivering it to the Premises.
- 5.14 Return the Bus to MCCSA clean and in good repair subject only to fair wear and tear.
- 5.15 Operate the Bus only for the Hire Purpose and in accordance with MCCSA's Bus Hire Policy and any manufacturer's instructions supplied by MCCSA or included with the Bus.
- 5.16 Use the Bus safely and ensure that any person operating the Bus is an Authorised Driver and suitably instructed in its safe and proper use.
- 5.17 Comply with all reasonable directions from MCCSA required for the safe use of the Bus including complying with the MCCSA's Bus Hire Policy.
- 5.18 Cease to use the Bus immediately the Hirer becomes aware of any defect in the Bus or it fails to operate properly and immediately notify MCCSA of such problem with the Bus.
- 5.19 Comply with all laws relating to the use and operation of the Bus including without limitation all Motor Vehicle Legislation and occupational health and safety laws.
- 5.20 Not tamper with or attempt to repair the Bus.
- 5.21 Not sell, lease, rent or hire or dispose of the Bus, grant any further Security Interest in or part with possession of the Bus or any interest in the Bus (or purport or attempt to purport to do such thing) or permit any lien over the Bus.
- 5.22 Maintain a Logsheet provided in the Bus and keep the Logsheet up to date.
- 5.23 Accept responsibility for any parking fine or other traffic violation issued to MCCSA relating to the Hire Period when the Bus was in the possession of the Hirer.
- 5.24 Return the Bus to the Premises prior to at the expiration of the Hire Period and within an hour of the pre-arranged return time agreed between the parties.

6. MCCSA's Obligations

- 6.1 The MCCSA agrees to:
 - 6.1.1 Keep the title and ownership of the Bus throughout the term of the Hire Period.
 - 6.1.2 Allow the Hirer to take possession of the Bus and use it until the end of the Hire Period.
 - 6.1.3 Provide the Bus to the Hirer in good working order.
 - 6.1.4 Re-supply or repair the Bus (at its sole discretion) if it fails to operate properly as a result of a defect in the Bus other than a defect which is
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caused or contributed to by the use or misuse of the Bus while the Bus is in the possession of the Hirer or any other breach of this Agreement by the Hirer.

- 6.1.5 provide the Hirer with a code to the key box located at the Premises for the collection of the keys to the Bus.

7. Authorised Drivers

7.1 Community Registered Authorised Drivers

7.1.1 The Hirer is responsible for all actions of an appointed Community Registered Authorised Driver, including the health and welfare of the driver(s) and passengers. The Hirer is responsible for any financial risk brought about by an appointed Community Registered Authorised Driver.

7.1.2 The Hirer acknowledges that the MCCSA is required to keep up-to-date evidence of all Community Registered Authorised Drivers operating its buses. At the time of entering into this Agreement, the Community Registered Authorised Driver appointed by the Hirer must:

- (a) be appropriately licensed to operate the buses;
- (b) hold a South Australian, unrestricted 'C' class license;
- (c) be 25 years or older;
- (d) Have held the appropriate license class for a minimum of two (2) years; and
- (e) Have had no suspensions, endorsements, cancellations within the last three (3) years.

7.1.3 To ensure that a Community Registered Authorised Driver meets the requisite requirements of an Authorised Driver as detailed in 7.1.2, MCCSA requires that at the time of entering this Agreement, and every 12 months subsequent, the Community Registered Authorised Driver must provide to MCCSA:

- (a) An Applicable license (in person and a copy); and
- (b) A Driver's License History Report (www.sa.gov.au)

7.2 MCCSA registered Authorised Drivers

7.2.1 MCCSA is responsible for all actions, including the health and welfare of drivers, passengers and any financial risk, brought about by MCCSA registered Authorised Drivers.

7.2.2 MCCSA requires and will hold data for MCCSA registered Authorised Drivers including:

- (a) South Australian Police Check
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- (b) Medical clearance for all duties expected of volunteer drivers
- (c) Personal emergency contacts and information
- (d) License details in line with requirements set out in sub-clause 7.1.2.

7.2.3 The Hirer acknowledges that where an MCCSA registered Authorised Driver is used by the Hirer, the Hirer must provide the driver with the travel reimbursement amount identified in **Item 4** of the Reference Schedule.

8. Damage, Accidents and Bus Breakdowns

8.1 The Hirer agrees, subject to clause 10 herein, that:

8.1.1 The MCCSA may, acting reasonably, determine whether damage has occurred during the Hire Period by having regard to the damage recorded in the Damage Report as well as evidence provided in the pre-departure and return photographic evidence required in accordance with clause 5.2.

8.1.2 It has checked the Damage Report prior to or on the Commencement Date and confirms that:

- (a) The Bus has been received in good order and condition subject to any matters specifically noted in the Damage Report; and
- (b) The Hirer has received detailed instructions on the operation of the Bus and understands the safety procedures that are to be followed including who is an Authorised Driver for the purpose of operating the Bus.

8.1.3 Subject to clauses 9.2, 9.3 and clause 10, the Hirer is liable for any damage caused or allowed to the Bus by the Hirer and for the payment of the full replacement value of the Bus if it is not returned to MCCSA.

8.1.4 In the event of a breakdown, the Hirer will notify MCCSA immediately for appropriate action to be taken.

8.1.5 In the event of an accident, the Hirer must promptly notify MCCSA and the Police.

8.1.6 The Hirer must not without MCCSA's written consent make or give any offer, promise of payment, settlement waiver, release, indemnity or admission of liability.

8.1.7 The Hirer and its Authorised Driver must permit MCCSA or its insurer at its own cost to bring, defend, enforce or settle any legal proceedings against a third party in the name of the Hirer and/or Authorised Driver; and

- 8.1.8 The Hirer and its Authorised Driver must complete and furnish to MCCSA within a reasonable time any accident statement, information or assistance that the MCCSA may reasonably require including all cooperation in the attendance in Court to give evidence if so necessary.

9. Liability for Loss or Damage

- 9.1 Subject to clauses 9.2, 9.3 and clause 10 the Hirer agrees:
- 9.1.1 It is liable to compensate the MCCSA for any damage to or loss of the Bus, including hail, flood or storm related damage or theft of the Bus, during the Hire Period.
- 9.1.2 It is liable for damage to third party property which is caused or contributed to by the Hirer or the Authorised Driver or any person the Hirer allows to drive the Bus and to the extent permitted by law, the MCCSA will not be responsible for such liability.
- 9.1.3 When a Community Registered Authorised Driver operates the Bus during the Hire Period, a \$2,500 excess is payable for damage claims.
- 9.2 If, acting reasonably, MCCSA accepts that the loss or damage referred to in clause 9.1 was not the fault of the Hirer or the Authorised Driver, then in the MCCSA's absolute discretion, the Hirer may not be held liable to compensate MCCSA provided the Hirer complies with the process set out in clause 8.1 for dealing with an incident and MCCSA reasonably believes that it will recover the amount of loss or damage from a third party. The Hirer and the Authorised Driver must cooperate and furnish appropriate information of the incident including the details of any persons involved in the incident.
- 9.3 The MCCSA is liable for any damage to or loss of the Bus that occurs where the MCCSA has failed to properly maintain the Bus and/or loss or damage occurred directly from the MCCSA's negligence or wilful default.

10. Damage Waiver

- 10.1 Damage Waiver is not insurance but is an agreement by the MCCSA that the Hirer's liability for damage to the Bus can be limited in some circumstances only to an amount equivalent to the Damage Waiver Excess.
- 10.2 Notwithstanding sub-clauses 9.1.1 and 8.1.3, the MCCSA agrees to limit the Hirer's liability for damage to the Bus subject to the Hirer paying the Damage Waiver Excess.
- 10.3 A Damage Waiver fee is included in the Hire Fee.
- 10.4 The Hirer must pay the Damage Waiver Excess for each separate event involving:
- 10.4.1 Damage (including hail damage) to, or loss of, the Bus; or
- 10.4.2 Damage which is caused by the Hirer or an Authorised Driver.
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- 10.5 Damage covered by this waiver includes but is not limited to:
- 10.5.1 Impact with a fixed or moving object (eg. damage caused if the Bus is in an accident).
 - 10.5.2 Loss of control of the Bus.
 - 10.5.3 Unavoidable natural events, such as snow, hail, flood or storm related damage or rock fall; and
 - 10.5.4 Fire caused by a Bus defect, including an electrical fault, or from an adjacent fire or explosion, criminal or terrorist acts.
- 10.6 The waiver in clause 10.2 will not apply and the Hirer may be liable for the full cost of any damage in the following circumstances:
- 10.6.1 Where the Bus is lost or stolen unless the Hirer reports the Bus as stolen to the Police immediately on becoming aware of the theft, providing full details of the theft and provide a copy of the Police report to the MCCSA as soon as it is received.
 - 10.6.2 Where the Hirer has breached any clause of this Agreement.
 - 10.6.3 Where the damage is caused by the misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and or overloading the Bus.
 - 10.6.4 Loss or damage to the Hirer's property, the property of a community group member of the Hirer.
 - 10.6.5 The Hirer and the Authorised Driver drives the Bus in a manner that results in total or partial inundation or immersion of the Bus in water or exposure of the Bus to saltwater including, without limitation, damage which occurs as a result of the Bus driving through floods creeks or rivers;
- 10.7 The Hirer acknowledges that the waiver in this clause 10 does not entitle the Hirer or its Authorised Driver to any compensation for any liability the Hirer owes to a third party.

11. **Ownership, Security Interest and the PPSA**

- 11.1 The Bus is the property of MCCSA and will always remain the property of MCCSA.
 - 11.2 The Hirer will not encumber the Bus or allow the Bus to be encumbered as Security in any manner during the Hire Period or any extension of the Hire Period.
 - 11.3 Should this Agreement provide for a Security Interest for the purposes of the PPSA, the Hirer agrees that MCCSA's Security Interest in the Bus is paramount to any other interest in the Bus and that it will do all things necessary to ensure that MCCSA's Security Interest is enforceable, given first priority, perfected and otherwise given effect under the PPSA.
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- 11.4 To the extent that this Agreement provides for a Security Interest, MCCSA may register its Security Interest.
- 11.5 The Hirer agrees it will not create or attempt to create a Security Interest in the Bus other than with the express written consent of MCCSA.
- 11.6 The Hirer must not lease, hire, bail or give possession of the Bus (**'sub-hire'**) to anyone else unless MCCSA first consents in writing to the sub-hire.

12. Default & Termination

12.1 Events of Default

12.1.1 An Event of Default occurs if:

- (a) **Non-payment** – a party does not pay the whole or any part of an amount due or payable pursuant to this Agreement when the obligation to pay falls due;
- (b) **Obligation not complied with** – a party does not comply with an obligation under this Agreement;
- (c) **Creating Security Interest** – the Hirer attempts to create a Security Interest over the Bus;

12.1.2 If before the expiration of the Hire Period, a party defaults (**'defaulting party'**) in that party's observance or performance of this Agreement, or an Event of Default occurs, the other party (**'innocent party'**) may give a Default Notice to the defaulting party.

A Default Notice:

- (a) may be given at any time after the default occurs and before it is remedied;
- (b) Is without prejudice to any other rights or remedies the party that serves the Default Notice may have;
- (c) Must identify the default and require the Defaulting Party to remedy the default within ten (10) Business Days from the service of the notice; and
- (d) Time is of the essence in respect of any period of time specified in a Default Notice.

12.1.3 If the defaulting party fails to remedy the default within the specified time, the innocent party may terminate this Agreement without prejudice to any other rights and remedies it has pursuant to this Agreement or at law.

12.1.4 Should an Event of Default occur, and this Agreement is terminated, the innocent party may seek compensation from the defaulting party. Where costs are incurred by the innocent party in attempting to recover its loss, the defaulting party will be liable to pay the innocent party's costs on a solicitor and client basis.

12.1.5 A party may terminate this Agreement immediately if an Insolvency Event occurs.

12.1.6 MCCSA may terminate this Agreement if required to do so by the Police or other regulatory authority and take possession of the Bus effective immediately.

12.2 Repossession and remedies on default

MCCSA may take immediate possession of the Bus if:

12.2.1 The hire is terminated where an Event of Default occurs and is not remedied in accordance with a Default Notice issued to the Hirer.

12.2.2 There is damage to the Bus or if injury to persons or property is likely to occur.

12.2.3 An Insolvency Event occurs.

12.3 All costs incurred by MCCSA in repossessing the Bus are recoverable in full by the Hirer; and

12.4 The Hirer grants and authorises MCCSA permission to lawfully enter any premise where the Bus is situated to remove that Bus. The Hirer agrees to obtain all necessary consents from the owner, occupier and other interested persons (eg any mortgagee) of the relevant premises where the Bus is located to enable possession of the Bus to be reclaimed.

13. Interest

A party must pay interest on any amount payable under this Agreement or the outstanding part thereof until it is paid in full. The interest rate will be two percentage points above the highest lending rate charged by the Commonwealth Bank of Australia on overdrafts of \$100,000 or more as published in the Australian Financial Review on that day. That interest will accrue and be recoverable from day to day.

14. Assignment

The rights and obligations of the parties under this Agreement are personal to them and cannot be assigned, charged or otherwise dealt with, and the parties will not attempt or purport to do so, without the prior written consent of the other party which must not be unreasonably withheld.

15. Definitions Used in this Agreement

15.1 Definitions

In this Agreement the following definitions apply:

15.1.1 **'Authorised Driver'** means the person(s) named at **Item 3** of the Reference Schedule being a person who:

(a) is over twenty-five (25) years of age;

(b) holds a current South Australian unrestricted 'C' class license;

- (c) has held the appropriate license class for the operation of the Bus for a minimum of two (2) years;
 - (d) holds a current and valid licence (not being a restricted licence, learner's licence or provisional licence) to drive and operate a bus of the same category as the Bus and has held that license for at least twelve (12) consecutive months immediately prior to the signing this Agreement and who has not had a licence cancellation, endorsement or suspension within the last three (3) years.
- 15.1.2 **'Bus'** means the bus, or such other vehicle as described in Item 1 of the Reference Schedule, including the Bus's accessories hired by the Hirer from time to time.
- 15.1.3 **'Cancellation Fee'** means a reasonable amount charged to the Hirer by the MCCSA for the cancellation of the Bus hire being an amount not exceeding the Hire Fee;
- 15.1.4 **'Commencement Date'** means the date the Hire Period commences.
- 15.1.5 **'Community Registered Authorised Driver'** means an employee or a volunteer of the Hirer who meets the criteria of an Authorised Drive.
- 15.1.6 **'Daily Hire Fee'** means a daily hire fee payable to the MCCSA until the Bus is returned to the Premises as set out in **Item 5** of the Reference Schedule;
- 15.1.7 **'Damage Report'** means the report set out at **Item 6** of the Reference Schedule.
- 15.1.8 **'Damage Waiver'** is an agreement between the parties that the Hirer's liability for damage to the Bus can be limited in some circumstances reducing the Hirer's financial responsibility for loss or damage done to the Bus to an amount equivalent to the Damage Waiver Excess;
- 15.1.9 **'Damage Waiver Excess'** means the excess set out in **Item 7** of the Reference Schedule;
- 15.1.10 **'Hire Fee'** means the amount payable by the Hirer to MCCSA as set out in **Item 4** of the Reference Schedule. The Hire Fee shall include tolls, fines, penalties, levies or other charges related to the hiring of the Bus during the Hire Period;
- 15.1.11 **'Hire Period'** means the hire period set out in **Item 2** of the Reference Schedule and includes an extension of the Hire Period if so agreed, which period shall not exceed 2 years unless otherwise agreed in writing;
- 15.1.12 **'Hire Purpose'** means for the transportation of community groups supported by the Hirer from time to time;
- 15.1.13 **'Insolvency Event'** in relation to a party means anything that reasonably indicates that there is a significant risk that that party is or
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will become unable to pay its debts as they fall due. This includes any of the following:

- (a) A meeting of that party's creditors being called or held;
- (b) A step being taken to wind that party up;
- (c) A step being taken to have a receiver, receiver and manager, administrator, liquidator or provisional liquidator appointed to that party or any of its assets or such appointment taking place;
- (d) That party entering into any type of agreement, composition or arrangement with, or assignment for the benefit of, any or all of its creditors; and
- (e) That party ceases or threatens to cease to carry on its main business;

15.1.14 **'loss'** means any direct loss, including any liability (whether in contract, tort or equity, under statute or otherwise), cost, expense (including legal costs on a full indemnity basis), claim, proceeding, action, prosecution, demand or damage, whether or not presently ascertained, immediate, future or contingent;

15.1.15 **'Motor Vehicle Legislation'** includes the Motor Vehicles Act 1959 (SA), Road Traffic Act 1961 (SA) and the Australian Road Rules as amended from time to time.

15.1.16 **'Premises'** means the Latvian Hall Car Park, 4 Clarke Street Wayville, unless otherwise advised by the MCCSA;

15.1.17 **'PPSA'** means *Personal Property Securities Act 2009 (Cth)* as amended from time to time;

15.1.18 **'Reference Schedule'** means the reference schedule attached to this Agreement which forms part of this Agreement;

15.1.19 **'Security'** means the Security Interests granted by the MCCSA in favour of a Security Holder over the Bus and/or this Agreement.

16. General

16.1 Time is of the essence

Unless otherwise specified, time is of the essence in this Agreement.

16.2 Waiver

An obligation under this Agreement cannot be waived except by a written instrument executed by the party and specifying the waiver.

16.3 Failure to enforce rights

The failure or omission of a party to enforce or require strict compliance with a provision of this Agreement does not affect or impair that party's right to

subsequently enforce or require strict compliance with that provision or to avail itself of any remedies it may have in respect of any breach of that provision.

16.4 No Merger

The rights and obligations of the parties will not merge on completion of any transaction under this Agreement or upon the execution of any other agreement or other document in connection with the subject matter of this Agreement.

16.5 Amendment

This Agreement may not be amended except by a written document executed by all parties who may be affected by the amendment and specifically referring to the provisions of this Agreement as being amended.

16.6 Governing Law

This Agreement is governed by the laws of South Australia. The parties submit to the jurisdiction of the Courts of South Australia and any proceeding brought in the Federal Court of Australia must be instituted in its Adelaide Registry.

16.7 Counterparts

This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one instrument. An executed counterpart may be delivered by facsimile

16.8 Relationship

Nothing in this Agreement creates a relationship of principal and agent, employer and employee, partnership or joint venture between the parties.

16.9 Severance

Any provision of this Agreement that is invalid or unenforceable must be read down to the extent necessary to avoid that effect or if that is not possible, it must be excluded from this Agreement but only to the extent necessary. All other provisions of this Agreement continue to be valid and enforceable in accordance with their terms.

EXECUTED AS AN AGREEMENT on the date hereinbefore mentioned

**THE COMMON SEAL of MULTICLUTURAL
COMMUNITIES COUNCIL OF SA INCORPORATED**

was affixed hereto with the authority of the Board
of Management in the presence of:

.....
Signature of authorised person

.....
Signature of authorised person

.....
Office Held

.....
Office Held

.....
Name

.....
Name

Hirer

The Hirer agrees it has read and accepts the terms and conditions of the hire and the warnings and notices. The Hirer is aware that it is responsible for the safekeeping of the Bus against damage or theft subject to the provisions of Damage Waiver in this Agreement.

Signed by the Hirer or its authorised agent/officer:

For and on behalf of the Hirer

.....

Signed

.....

Name of signatory/ authorised person

Reference Schedule

Item A Hirer

Hirer Name

Hirer ABN:

Hirer Address:

Item 1 Bus

Bus:

Registration No:

Accessories Hired:

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.....

Odometer Start End

Fuel level Start End

Fuel Grade required

Item 2 Hire Period

Commencement Date

Expiry Date

Item 3 Authorised Driver(s)

(a) Age..... Licence No

(b) Age Licence No

Item 4 Hire Fee

..... (incl GST) (per km/day/week/month)

Item 5 Daily Hire Fee

..... (incl. GST)

Item 6 Damage Report

Existing at commencement of Hire Period

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Diagram:

Additional damage at end of Hire Period

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Diagram:

Item 7 Damage Waiver Excess(incl. GST)

Item 8 Address for Notices

MCCSA: 113 Gilbert Street Adelaide SA 5000

Hirer: