

## **Everywhere Roadie Borrower Agreement**

Everywhere Roadie provides its Platform to enable anyone registered with us (as a Borrower) to borrow Gear that others registered with us (as Lenders) make available for lending.

This is the legally binding agreement that applies between you (as a Borrower, not a Lender) and us regarding such loans and use of our Platform. (If you are also a Lender then a separate Everywhere Roadie Lender Agreement also applies to your role as a Lender.)

### **1. OUR ROLE**

#### **1.1 Everywhere Roadie provides the marketplace**

Both practically and legally it is Lenders, and not Everywhere Roadie, that lend Gear to Borrowers. Everywhere Roadie's role is to provide a marketplace (via the Platform) for Lenders to lend Gear and Borrowers to borrow it, each in their own right. Everywhere Roadie is merely a facilitator of that, and is not responsible for the supply or quality of any Gear. In accepting Offers, and lending Gear, Lenders are not employees or subcontractors of Everywhere Roadie. Similarly, both practically and legally, Borrowers do not make Offers, or lend Gear, on behalf of Everywhere Roadie – they do that in their own right, directly from Lenders. You agree that Everywhere Roadie is not responsible or liable for any breach, act, omission or negligence of any Lender.

Having said that, Everywhere Roadie does provide certain services to Borrowers and Lenders, and imposes certain obligations on Borrowers and Lenders, to make the Platform a good place for Lenders to make Gear available for loan and Borrowers to borrow it. This agreement sets out the services Everywhere Roadie provides to you as a Borrower, and your obligations to us as Borrower.

#### **1.2 Contract map**

To avoid any doubt, this agreement is a two-way agreement between just Everywhere Roadie and you (as a Borrower) about our overall relationship with you. This agreement does not bind any Lender to whom you make an offer to borrow Gear or who lends you any Gear.

By using the Platform, a further separate contract (being a Hire Agreement) should ordinarily apply between you and the relevant Lender for the relevant Gear. Everywhere Roadie is not a party to that contract or bound by it – as that contract is directly between you and the relevant Lender.

### **2. BORROWING GEAR**

#### **2.1 Making an Offer**

You may make one or more Offers at any time. You acknowledge that:

- (a) there is no guarantee that any Offer will be accepted by the relevant Lender;
- (b) there is no guarantee that the relevant Lender will respond at all (i.e. the Lender might not either accept or reject your Offer) before the intended Hire Period commences;
- (c) by making an Offer you (in your own right, not on our behalf) are offering to enter into a legally binding Hire Agreement with the relevant Lender for the relevant Gear;

- (d) the Offer can be accepted via the Platform by the relevant Lender at any time while the Offer remains open; and
- (e) if the Lender accepts the Offer then you will immediately be subject to a Hire Agreement with the Lender (not with us) to borrow the relevant Gear and you will be legally bound to perform the Hire Agreement (including by paying the applicable Hire Fee and Shipping Fee (if applicable)).

We will promptly notify you (via the Platform) when an Offer by you has been accepted by the relevant Lender.

If the Platform provides the ability for you to withdraw any Offer, then you may only do so before the Offer is accepted by a Lender via the Platform. After an Offer has been accepted, you may only terminate the resulting Hire Agreement with the relevant Lender where permitted under that contract.

## **2.2 Collection or shipping (and return)**

The Platform requires that you and the relevant Lender agree via the Platform either:

- (a) that the Lender will make the Gear available for collection by you or on your behalf (**Pickup**); or
- (b) that the Lender (or a person acting on their behalf) will deliver the Gear to you or a person on your behalf (**Shipping**).

You must comply with all your applicable obligations under the Hire Agreement in relation to doing so, including your obligation to pay the Hire Fee and Shipping Fee (if applicable) if you fail to collect, or be available to receive delivery of, the Gear (as applicable) at the beginning of the Hire Period.

Similarly you must comply with all your obligations under the Hire Agreement in relation to the return of the Gear at the end of the Hire Period.

## **2.3 Checking the Gear**

Upon collecting or receiving shipment of the Gear (as applicable), you must promptly check that it complies with the Gear Description, works properly and is not subject to any obvious safety fault.

## **2.4 Everywhere Roadie Countries**

You may only borrow particular Gear if both of the following are located in an Everywhere Roadie Country:

- (a) your street address as registered with us; and
- (b) the location for Pickup or Shipping (as applicable).

## **3. PAYMENT**

For each loan of Gear you must pay the applicable Hire Fee and Shipping Fee (if applicable) to the relevant Lender, via the Payment Facility at the time required by the Platform. Resulting transaction fees are payable to Everywhere Roadie and the provider of the Payment Facility (e.g. Paypal) by the Lender, not by you.

## **4. COURTESY, INFORMATION AND TRUST**

### **4.1 Courtesy**

In all communications and dealings with any Lender (whether in person, by phone, via the Platform or otherwise) you must behave courteously and professionally, even if the Lender does not.

If a Lender acts inappropriately (including by engaging in violent, threatening or offensive behaviour) then you should first contact your local police station and subsequently notify Everywhere Roadie, preferably with a copy of the relevant police report. We may, but are not obliged to, revoke or suspend the registration with Everywhere Roadie of any such Lender but are not liable in any way for the conduct of the Lender.

### **4.2 Accurate and acceptable Content**

All Content that you:

- (a) post on the Platform; or
- (b) provide to us or any Lender, in connection with any Gear, the Platform or any Everywhere Roadie Services,

must be accurate and not misleading and must not include any Unacceptable Content. We have no obligation to monitor, vet or correct any Content you post or provide but have the right to do so for any reason.

### **4.3 Licence of Content**

You hereby grant us (and warrant that you have the right and authority to grant us) a non-exclusive, irrevocable, perpetual transferable licence to copy, use, modify, sublicense, adapt and otherwise exploit in any way, and for any purpose, all Content that you post on the Platform or otherwise provide to us. You agree that (despite anything on the Platform that might suggest otherwise) we are not obliged to publish any such Content and may delete or edit it as we see fit.

### **4.4 Privacy**

You consent to us providing your personal information to others as described in our Privacy Policy. In addition, if at any time you provide the personal information of another person to us, then you must ensure that that person has read and understood our Privacy Policy and separately consented to that personal information being used and disclosed by us as described in the Privacy Policy.

You also consent to us maintaining and publishing (including on the Platform) ratings, statistics and comments about you, based on input by Lenders and data from your transactions via the Platform. You agree that our system for doing that may be automated and that we are not obliged to control or vet the input from Lenders or any resulting rating. To the extent permitted by law, we exclude any and all liability to you (on any basis, including negligence) in relation to any such rating, statistic or comment that we publish. If you are dissatisfied with any comment provided by a Lender then you may request that we delete or amend it and we will consider that request in good faith.

#### **4.5 Everywhere Roadie requests for information**

We expect that ordinarily we would not have any direct communication with you, whether in relation to a particular Hire Agreement or more generally. From time to time, however, it may be necessary or desirable for us to do so, including where any complaint or dispute arises. If at any time we request any information about you, or in relation to any loan, Gear or Lender, then you must provide it to the best of your ability as soon as practical.

#### **4.6 Confirmation of identity**

We may offer services to you that provide a level of comfort about the identity or history of a Lender. You acknowledge that as those services are based entirely or in part upon information provided by third parties (including Lenders or other Borrowers) the services are only intended to provide a degree of comfort, may be inaccurate and are not an absolute guarantee regarding the identity or history of any person or their future behaviour. You acknowledge that we do not undertake background checks on Lenders and agree that we are not obliged to do so.

#### **4.7 Login security**

We will register or issue a user ID and corresponding password (together being a “**Login**”) for your use of the Platform.

You must keep the Login secure and notify us immediately upon becoming aware that the Login may be lost or stolen, or becoming aware or suspecting that another person knows the Login, or has used the Login, without your authority.

You are liable for, and we may rely upon, all instructions, requests, information and Content submitted to the Platform using of the Login, even if the information or request is submitted by a person using the Login fraudulently or without authority. Without limiting the above, we are entitled to treat all use of the Platform made using the Login as use that you have authorised and you are responsible for the payment of all amounts or fees that become payable in relation to such use.

### **5. WARRANTIES AND LIABILITY**

#### **5.1 Platform availability and faults**

We do not promise that the Platform will be available on a continuous or fault-free basis. To the extent permitted by law, we exclude all liability in relation to:

- (a) any fault in, or failure of, any equipment, software or third party services used in connection with the supply of use of the Platform to you; or
- (b) any fault or failure in the supply of use of the Platform involving any act, omission or event outside our reasonable control, including any equipment failure, power failure, fire, flood, water, labour dispute or shortage, utility curtailment, explosion, emergency, civil disturbance, war, act of God, governmental action or act or omission of any third party.

If we become aware of any such fault or failure, then we will use reasonable endeavours to address it. You must promptly notify us of any fault of which you become aware.

#### **5.2 Mutual exclusion of other terms**

To the extent permitted by law, and except as expressly provided in this agreement, all terms, conditions, warranties or representations (in each case whether express, implied, statutory or

otherwise) by either you or us to the other, relating in any way to the Everywhere Roadie Services or this agreement, are excluded.

### **5.3 General limitation of liability**

Without limiting clause 5.4, to the extent permitted by law, any liability of ours:

- (a) under any term, condition, warranty or representation that by law cannot be excluded or that is not otherwise excluded under clause 5.1; or
- (b) under any guarantee (including any consumer guarantee) or other right under any law; or
- (c) otherwise in connection with any Gear or Hire Agreement, the Platform, any Everywhere Roadie Services or this agreement, including any advice by us in connection with any of the foregoing,

is, where permitted by law, limited at our option to the resupply of the relevant services provided by us or the payment of the cost of same.

### **5.4 Exclusion of categories of loss**

The following applies only to the extent permitted by law. All liability of ours is excluded in respect of any indirect or consequential Loss suffered or incurred by you, in relation to any Gear, the Platform or any Everywhere Roadie Services, any delay or failure in providing any of them, or otherwise under or in connection with this agreement, and in any event (including where amounting to a direct loss) for any lost profits or goodwill.

Without limiting the above, and only to the extent permitted by law, all liability of ours is excluded in relation to any Gear borrowed by you:

- (a) being in any way unsafe; or
- (b) having any fault, not working fully or at all, or not complying with the Gear Description in any way.

### **5.5 Indemnity**

To the maximum extent permitted by law, you must indemnify us against all Losses incurred by us in relation to:

- (a) any negligence by you in connection with any Gear, the Platform or any Everywhere Roadie Services;
- (b) any breach of this agreement by you;
- (c) any claim by any Lender against us in relation to any Gear where you are the relevant Borrower and have breached the relevant Hire Agreement; or
- (d) any claim by any person (other than the Lender) against us in connection with the Gear in relation to the period that it is borrowed by you (including any claim regarding any personal injury or death of any person, or damage to other equipment, in any way caused by the Gear during that period).

This indemnity may be enforced by us before and without incurring any expense or making any payment to any person.

## **6. TERMINATION**

Either you or we may terminate this agreement with immediate effect at any time by notice to the other. Our and your obligations:

- (a) in relation to any Gear lent before the effective date of termination or any outstanding Hire Agreement as at the effective date of termination; and
- (b) under clauses 3, 4, 5, 7, 8 and 11,

will survive the termination. In addition, your obligations to the relevant Lender under any outstanding Hire Agreement are not affected by any termination.

## **7. USE OF PLATFORM**

### **7.1 Prohibited conduct**

You must not:

- (a) use the Platform to contact any Lender (or other Borrower) other than for bona fide communication in relation to borrowing Gear under a Hire Agreement (or provision of services paid for via the Platform);
- (b) use the Platform to promote, or encourage any Lender (or other Borrower) to participate in, any other product, service or website (including any product, service or website that is competitive with the Platform or Everywhere Roadie);
- (c) use the Platform to find, identify, locate or contact a Lender, and subsequently make or arrange a loan of any equipment (or provision of any services) without payment for it occurring through the Platform;
- (d) use, display, mirror or frame the Platform (or any part of it), the layout of the Platform (or any part of it) or the name or any logo of Everywhere Roadie, except with the express written consent of Everywhere Roadie or the ordinary use or display by you as a normal end user of the Platform;
- (e) use the Platform or any Everywhere Roadie Service for any illegal purpose or in connection with any illegal act; or
- (f) do, or permit to be done, any act that could damage our reputation, or the reputation of the Platform.

### **7.2 Suspension and revocation**

We may at any time, without prior notice, suspend or revoke your status as a registered Borrower if:

- (a) you breach this agreement or we believe that you are likely to breach this agreement;
- (b) you breach any Hire Agreement or other agreement with any other user of the Platform or are the subject of one or more complaints by any user of the Platform; or
- (c) we believe that you hold, or have previously held, any other registration as a user of the Platform (whether in your own right or through or in co-operation with any other person) and have breached the relevant agreement with us, have had the other registration

revoked or suspended or have been the subject of one or more complaints under that registration by any user of the Platform.

**8. EXTERNAL SERVICES**

The Platform may provide links to, or enable access to, third party services and websites (**External Services**). You agree and acknowledge that:

- (a) we are not the provider of any External Services;
- (b) use of an External Service may require that you accept additional terms;
- (c) any link or access to an External Service is provided solely as a convenience to you and we do not endorse any External Service and have not, and are not required to, examine or evaluate the content, accuracy, completeness, validity, legality, decency, quality, or any other aspect of any External Service; and
- (d) your use of any External Service is at your sole risk and, to the extent permitted by law, we will have no liability to you in connection with any External Service or its use.

**9. LOANS OUTSIDE PLATFORM**

If you arrange the supply of any equipment outside the Platform from any Lender then this agreement does not apply to that supply and we are not liable for, or in relation to, the relevant equipment or Lender in any way. We discourage you from arranging to borrow equipment from Lenders outside the Platform and note that the disadvantages of doing so include the following:

- (a) the supply of the Gear and any feedback provided will not be available to add to your reputation on the Platform; and
- (b) the practical benefits provided through the Platform (including payment arrangements) are not available.

**10. AMENDMENT**

From time to time we may amend this agreement or the Hire Agreement by notice to you via the Platform. Any such amendment will not take effect earlier than 10 Business Days after the date on which we notify you. If an amendment is not acceptable to you then you may terminate this agreement in accordance with clause 6.

**11. NOTICES**

Any notice given under this agreement by either party to the other must be in writing sent via the Platform, or by ordinary prepaid mail or email to the corresponding address below, unless either party notifies the other of a change of the relevant address.

You                      Your current email or street address as registered with us.

Us                         [roadiesupport@everywhereroadie.com](mailto:roadiesupport@everywhereroadie.com)

## **12. MISCELLANEOUS**

### **12.1 Independent contractors**

The relationship between you and us is that of independent contracting parties and, except to the extent (if any) expressly stated in this agreement, no employment, agency, partnership or fiduciary relationship will arise as a result of this or any related agreement. You have no right, power or authority to bind us to any agreement, arrangement or understanding in any manner whatsoever.

### **12.2 Intellectual property**

All intellectual property (including copyright) in the Platform, and anything provided to you in connection with this agreement or the Platform, will remain our property.

### **12.3 Applicable law**

This agreement is to be construed according to, and is governed by, the laws of Victoria, Australia. The parties submit to the non-exclusive jurisdiction of the courts in and of Victoria, Australia in relation to any dispute arising under this agreement.

### **12.4 Assignment and subcontracting**

You may not transfer or assign your rights or obligations under this agreement to any other person. We may assign our rights, and subcontract our obligations, under this agreement.

### **12.5 Severance**

If any provision of this agreement or its application to any person or circumstance is or becomes invalid, illegal or unenforceable then the provision will so far as possible be read down to the minimum extent necessary to ensure that it is not. If any provision or part of it cannot be so read down, then the provision or part of it will be deemed to be void and severable and the remaining provisions of this agreement will not be affected or impaired in any way.

### **12.6 Waivers**

Any failure by any party to exercise any right under this agreement does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

### **12.7 Entire agreement**

This agreement constitutes the entire agreement between you and us in relation to its subject matter. Any prior arrangements, agreements, representations or undertakings are superseded and, except as expressly provided, each party warrants that it has not relied on any arrangement, agreement, representation or understanding which is not expressly set out in this agreement or incorporated by reference.

## **13. INTERPRETATION**

### **13.1 Dictionary**

In this agreement the following phrases have the following meanings:



**Borrower** means a person who has successfully registered with us as a Borrower and has not had their registration suspended or revoked.

**Business Day** means a day on which the major trading banks are open for ordinary business in Sydney, excluding a Saturday, Sunday or any public holiday in Sydney.

**Content** means all information, data, documents, pictures, graphics, video, audio, text or other content, in each case in any form and for the avoidance of doubt includes any recipes, photographs, prices, comments, reviews or feedback.

**Everywhere Roadie** means SingleRider Pty Ltd (ABN 22 125 380 510) trading as "Everywhere Roadie".

**Everywhere Roadie Country** means a country listed as such on the Platform.

**Everywhere Roadie Services** means all the services that we agree to provide, or in fact provide, to you under or in connection with this agreement or any Gear or Offer, including the provision of the Platform and its functionality.

**Gear** means the musical instruments, amplifiers, speakers or other equipment described in the relevant Gear Description.

**Gear Description** means the Gear description provided via the Platform in connection with the relevant Offer.

**Hire Agreement** means the standard form of agreement published by us from time to time with that title. At any given time you can obtain a copy on the Website of the version applicable at that time.

**Hire Fee** means the price (as stated on the Platform) payable by you to the Lender for borrowing the relevant Gear.

**Hire Period** means the period, as applicable under the relevant Hire Agreement, for which the relevant Lender agrees to lend the relevant Gear to you.

**Lender** means a person who has successfully registered with us as a Lender and has not had their registration suspended or revoked.

**Loss** means any loss, damage, cost, interest, expense, fee, penalty, fine, forfeiture, assessment, demand, action, suit, claim, proceeding, cause of action, liability or damages incurred by a person, and includes legal costs on an indemnity basis and indirect or consequential losses.

**Offer** means an offer made via the Platform to borrow Gear.

**Payment Facility** means the facility provided by a third party (e.g. Paypal) via the Platform through which Borrowers can pay Lenders for or in relation to borrowing Gear.

**Platform** means the Website and any other technology that we provide for you to use.

**Privacy Policy** means our privacy policy, as applicable from time to time. At any given time you can obtain a copy on the Website of the version applicable at that time.

**Shipping** has the meaning given in clause 2.2(b).

**Shipping Fee** has the meaning given in the Hire Agreement.

**Unacceptable Content** means any Content that:

- (a) is racist, hateful, violent, defamatory, harassing, abusive, threatening, malicious, inflammatory or otherwise objectionable;
- (b) is pornographic, sexually explicit, obscene or excessively profane;
- (c) is unlawful or encourages unlawful conduct;
- (d) is fraudulent, false, misleading or deceptive;
- (e) infringes, or encourages the infringement of, a third party's rights, including intellectual property, confidentiality or privacy rights;
- (f) contains any Virus;
- (g) amounts to commercial advertising of any other website, product or service; or
- (h) contains any link to any website that includes any of the above types of content.

**us** means Everywhere Roadie.

**Virus** means any computer program, virus or other code that is harmful, destructive, disabling or which assists in or enables theft, alteration, denial of service, unauthorised access to or disclosure, destruction or corruption of information, data or software.

**Website** means our website at [www.everywhereroadie.com](http://www.everywhereroadie.com)

## 13.2 Rules of interpretation

In this agreement:

- (a) **Inclusive Terms.** Use of inclusive terms such as “includes” or “including” will be read as “includes, without limitation” or “including, without limitation”.
- (b) **Numbers.** Words importing the singular include the plural and vice versa.
- (c) **Persons.** References to persons include corporations.
- (d) **Writing.** References to writing include any mode of representing or reproducing words in visible form, and include email and other electronic transmissions.