

**BETWEEN**

**Competitive Towing & Roadside Assistance**

**(‘CRA’)**

**AND**

**CRA Members**

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**TERMS & CONDITIONS OF CRA MEMBERSHIP**

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## Membership Agreement

**Date****2017**

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**Parties**

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**Competitive Towing & Roadside Assistance ABN 74 384 758 911 ('CRA')****and****CRA Member****Background**

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- A. CRA offers road service products to CRA Members only within the Service Area. To be eligible for CRA Member Services you must be an approved CRA Member or a Qualified CRA Member at the time of the breakdown.
- B. CRA Members and Qualified CRA Members agree to be bound by the terms and conditions outlined in this Agreement which terms and conditions may be amended from time to time by CRA. The Agreement forms part of each CRA Membership and at all times will be displayed on the CRA Website.

**Agreement**

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**1. Definitions and Interpretation****1.1 Background**

The background set out above forms part of this Agreement and the parties agree that the background is true and accurate.

**1.2 Definitions**

- 1.2.1 '**Allowable Kilometre Rate**' means the number of allowable towing kilometres included in a CRA membership referred to on the CRA Website for the relevant membership package which rate may vary from time to time.
- 1.2.2 '**Allowable Service Calls**' means the number of service calls available during a Membership Term as published on the CRA Website for each membership package.
- 1.2.3 '**Agreement**' means this Agreement and any annexures, schedules and appendices;
- 1.2.4 '**Business Days**' means any day that banks are generally open for business in Adelaide but not a Saturday or Sunday or a Public Holiday;
- 1.2.5 '**Commencement Date**' means the date the member becomes an approved CRA Member and holds an approved CRA Membership;

- 1.2.6 ‘**CRA Member**’ means the primary CRA Membership holder whose membership may extend to Qualified CRA Members only;
- 1.2.7 ‘**CRA Membership**’ means a member who has been approved by CRA to hold a membership for the Membership Term;
- 1.2.8 ‘**CRA Member Services**’ means the services referred to in clause 4 herein;
- 1.2.9 ‘**CRA Website**’ means [www.competitivetowing.com.au](http://www.competitivetowing.com.au);
- 1.2.10 ‘**Excess Kilometre Rate**’ means the rate charged per kilometre where the Allowable Kilometre Rate per membership has been exceeded;
- 1.2.11 ‘**Force Majeure**’ means an event or circumstance which prevents CRA from complying with any of its obligations under this Agreement and which CRA did not cause, is unable to control or influence or prevent or avoid through prudent management processes, policies, precautions or other reasonable steps;
- 1.2.12 ‘**Membership Fees**’ means the annual roadside assistance fee for the various CRA packages prescribed by CRA and published on the CRA Website. Membership Fees are subject to change by CRA annually;
- 1.2.13 ‘**Membership Term**’ means a 12 month period from the Commencement Date or where the membership has been renewed, 12 months from the Renewal Date each year;
- 1.2.14 ‘**Premium Membership**’ means the highest level of membership with full member benefits available to CRA Members as displayed on the CRA Website from time to time;
- 1.2.15 ‘**Qualified CRA Members**’ means:
- (a) one (1) adult associated to the primary CRA Member and who resides with the primary CRA Member; and
  - (b) two (2) dependent children of the primary CRA Member between the ages of 16 and 24 years inclusive who reside with the CRA Member.
- The CRA Member must provide name, address, birth dates and student details of each Qualified CRA Member and is at all times responsible for the membership.
- 1.2.16 ‘**Regular Membership**’ means a lower level membership package which package has limited CRA Member Services available as displayed on the CRA Website from time to time.
- 1.2.17 ‘**Renewal Date**’ means the 12 month anniversary of the Commencement Date each year.
- 1.2.18 ‘**Renewal Period**’ means 30 days from the Renewal Date.
- 1.2.19 ‘**Salisbury CBD**’ means the Salisbury Central Business District, John Street Salisbury SA 5108.

1.2.20 **‘Service Area’** means:

- (a) With respect to a Regular Membership - within a twenty kilometres (20KM) radius from the Salisbury CBD area;
- (b) With respect to a Premium Membership – within a forty kilometres (40KM) radius from the Salisbury Central Business District (the Salisbury CBD area).

**2. Membership Eligibility**

- 2.1 All applications and renewals for membership are subject to approval and acceptance by CRA.
- 2.2 If at any time during the Membership Term a CRA Member decides that they do not want to continue the CRA Membership they agree that the full Membership Fee for the Membership Term remains payable to CRA and where the fee has been paid in full no refund will be made to the CRA Member. Where the CRA Member is on a payment plan the CRA Member agrees it will be liable for the Membership Fees for the full year.
- 2.3 The CRA Member is responsible for the membership and the payment of the Membership Fees. If a breach of the terms and conditions of this Agreement occurs, the primary CRA Member will be held responsible for the breach.
- 2.4 An individual member has the benefit of only one membership at any given time and is not eligible to use multiple memberships.

**3. Membership Fee & Renewal**

- 3.1 The primary CRA Member in whose name the CRA Membership was approved is liable to pay the Membership Fee for the Membership Term or any Renewal Term.
- 3.2 At the expiration of each Membership Term the CRA Member agrees that the CRA Membership will be automatically renewed unless the CRA Member notifies CRA of its intention to terminate the CRA Membership during the Renewal Period.
- 3.3 In the absence of notification of termination by the CRA Member of the CRA Membership within the Renewal Period the CRA Membership will be taken to be renewed for a further Membership Term.

**4. Service Area**

- 4.1 The CRA Member Services included in Regular Memberships and Premium Memberships relate to the Service Area only.
- 4.2 In the event CRA is required to travel outside of the Service Area the CRA Member will be charged an additional fee at the Excess Kilometre Rate.

**5. CRA Member Services**

CRA Member Services are strictly limited to the following categories which are subject to change by CRA and subject to the exclusions in clause 7. The services provided will depend on the Membership Package obtained by the CRA Member which are outlined on the CRA

Website. Reference to a CRA Member in this clause shall be taken to include a Qualified CRA Member.

#### **5.1 Flat Tyre Service**

Where a CRA Member's vehicle has a spare tyre that is inflated and serviceable, CRA will install the spare tyre to replace a flat tyre where possible. If a serviceable spare tyre is not available or cannot be installed, CRA will provide towing services in accordance with clause 4.7 herein. The flat tyre service is limited to vehicles and/or towed units weighing less than 2 tonnes and vehicles that do not require specialised equipment to safely provide a wheel change.

#### **5.2 Battery Jump Start**

Where a CRA Member's battery ceases to work, CRA will attempt to jump start the vehicle if possible. If it cannot be started, towing will be provided in accordance with clause 4.7 herein.

#### **5.3 Emergency Fuel Delivery**

Where a CRA Member's vehicle runs out of fuel, a limited supply of fuel will be delivered, if available in an emergency situation to enable the member to reach the nearest fuel station.

Premium Membership holders will not be charged for the limited supply of fuel. Regular Membership holders will be charged for the fuel provided. Vehicles requiring diesel must notify CRA prior to the requested service. Diesel may not be available in all circumstances. In the event fuel is not able to be provided, the vehicle may be towed in accordance with clause 4.7 herein.

#### **5.4 BOG Towing**

Where a CRA Member's vehicle becomes bogged, CRA will arrange for one normal equipped service vehicle and one driver to extricate or winch the vehicle when it can be safely reached from a normal travelled road or established thoroughfare. Service does not include shovelling dirt from around the vehicle or clearing a road or driveway. If special equipment is required or more than one service vehicle is required and/or more than one person is required the costs will be at the expense of the CRA Member if the CRA Member has only a Regular Membership.

Premium Membership holders requiring extracting or winching will be provided up to two service vehicles if needed at no additional charge.

#### **5.5 Towing Services**

5.5.1 Where a vehicle does not start or is unable to be safely driven due to sudden breakdown or general towing is required, CRA can tow the vehicle in any direction from the breakdown location within the Service Area.

5.5.2 Regular Memberships provide towing to any destination of the members' choice within 10 Kilometres from the breakdown location on Allowable Service Calls within the Service Area.

- 5.5.3 Premium Memberships have available to them one (1) only long distance allowable roadside assistance service call per household per membership year for a tow up to 100 kilometres outside the Service Area. The long distance allowable service tow is subject to a tow in the direction of the Salisbury CBD.
- 5.5.4 The balance of Allowable Service Calls in the Premium Membership package allows for tows up to 40 kilometres from the breakdown point. A long distance tow may have to be deferred to a time suitable to CRA without affecting the normal roadside service provided.
- 5.5.5 Regular Membership holders will be limited to 10 driving kilometres free towing and will pay the Excess Kilometres Rate where this is exceeded. The number of roadside assistance and towing service calls allowed per Regular CRA Membership shall be capable of being used interchangeably between those services up to the total number of calls as published on the CRA Website.
- 5.5.6 Premium Membership holders are entitled to 4 tows in any given Membership Term and will enjoy unlimited roadside assistance subject to clause 7 herein.

#### 5.6 **Towing Caravans & Trailers**

CRA Members with a caravan, trailer, horse float or similar vehicle are eligible for towing services where a breakdown occurs. CRA will tow the vehicle and the unit as follows:

For Premium Memberships: Towed unit under 2 Tonnes that do not require special towing equipment (does not apply for the 100 kilometre towing service offer in clause 4.7 herein).

Regular Membership: Towing service will be at CRA Member's expense.

#### 5.7 **Accident Towing**

With respect to Government towing regulations relating to accident towing in the metropolitan area CRA will only provide non collision accident towing.

### 6. **Service Limitations**

CRA Member Services are limited to services that are available using standard equipment normally used for roadside assistance by service providers in the area. Services will not be provided when the disabled vehicle cannot be safely reached or serviced without damage to the vehicle or servicing equipment. Service may not be used as a substitute for regular maintenance necessary to keep a vehicle in good operating condition. CRA does not render services repeatedly to a vehicle in need of repair. A CRA Membership may not be used by a business or organisation to provide service for its customers, employees or vehicles.

Towing services included in a CRA Membership are intended for personal non-commercial use only and are not available to be used for convenience tows only. A person who applies for a CRA Membership and requires immediate towing service included in the CRA Membership must pay the CRA Membership Fee in full. Further, where a CRA Member requires towing services other than for vehicle disablement or qualified general towing needs, the towing

services will be charged to the CRA Member e.g. if the driver cannot drive due to alcohol influence or the like. Without limiting any other rights or remedies, CRA may seek reimbursement from a CRA Member or a Qualified CRA Member for roadside assistance services fraudulently or wrongfully obtained by the member. Primary CRA Members are at all times responsible for the conduct and service demands of Qualified CRA Members.

## **7. Service Exclusions**

Subject to CRA's approval, the following services are not available to CRA Members notwithstanding the level of the membership package:

- 7.1 Service to vehicles located in non-accessible areas or locations travelled by private passenger vehicles (e.g. beaches, open fields, creek beds, private roads or forest serving roads);
- 7.2 Shovelling dirt from around a vehicle or clearing a road or driveway;
- 7.3 Servicing or extrication of vehicles on inaccessible streets, backroads, driveways, parking lots or alleyways;
- 7.4 Towing of vehicles without keys;
- 7.5 Service where the member fails to produce CRA Membership card and Drivers Licence;
- 7.6 Use of two or more roadside assistant service calls to extend the member tow benefit for the same breakdown;
- 7.7 Towing services where the distance travelled requires more than 10 driving kilometres of towing per allowable roadside assistance call service under a Regular Membership;
- 7.8 Towing services where more than 100 driving kilometres from the Service Area on one allowable road side assistance service call under a Premium Membership is sought or more than 40 driving kilometres of towing on the remaining allowable Roadside Assistance service calls is sought.
- 7.9 Caravans and trailers are excluded from the 100 kilometre tow notwithstanding the membership package obtained.
- 7.10 Service to farm equipment, earth moving equipment and forklifts;
- 7.11 Wheel changing on vehicles or caravans and trailers or the like vehicle that exceed 2 tonnes gross weight;
- 7.12 Towing of vehicles or caravans, trailers or the like where the vehicle's physical dimensions exceeds 5.5 metres in length, 2.3 metres in width, 2 metres in height or wheel span of 1.8 metres and exceeds 2 tonnes.

## **8. CRA Discretion**

CRA has the right to refuse service to a CRA Member where the member is offensive, abusive or if the conduct of the CRA Member is determined to be harmful to the welfare of CRA, its employees, contractors or the member demonstrates behaviour consistent with being under the influence of alcohol or drugs.



Further CRA has the right to refuse service if the member refuses to produce identification including but not limited to drivers licence and CRA Membership card or where the member misrepresents its right to the CRA Member Services and/or where the CRA Member has failed to comply with the terms and conditions of this Agreement for the non-payment of any amount due and payable including accrued interest and costs.

#### 9. **PPSR Registration**

The CRA Member grants to CRA a security interest in the CRA Member's vehicle (or where the vehicle is registered in the name of a Qualified Member, that vehicle) which security interest is capable of being registered on the Personal Property Security Register. Where a CRA Member and/or a Qualified CRA Member fails to meet the Membership Fees CRA has the right to terminate the Membership effective immediately and enforce its security interest for the recovery of the debt due to CRA including interest accrued and costs incurred from the date of the breach.

#### 10. **Default**

If a CRA Member fails to comply with a condition or obligation which he/she must comply with under this Agreement ('Default'), CRA may (without affecting its other legal rights or remedies) terminate the CRA Membership effective immediately until such time as the defaulting member remedies the Default. Where the member fails to remedy the default within a period of ten (10) Business Days from the date of Default CRA will have the right to exercise its rights against the defaulting party including but not limited to full payment for the duration of the Membership Term and the defaulting member grants to CRA a charge over the defaulting member's Vehicle.

#### 11. **Goods and Services Tax**

##### 11.1 **Interpretation**

Unless the contrary intention appears, the terms and phrases used in this clause have the same meanings as those terms and phrases in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

##### 11.2 **GST Exclusive**

The amount payable for any taxable supply made under or in accordance with this Agreement is exclusive of GST.

##### 11.3 **GST Inclusive**

The amount payable for any taxable supply made under or in accordance with this Agreement shall be increased by the rate of GST imposed by law.

##### 11.4 **Tax Invoice**

A party making a taxable supply under or in accordance with this Agreement must give to the party receiving the taxable supply a tax invoice. The tax invoice must be given at the same time payment is received or if that is not practicable, within five Business Days of receiving payment.

**12. Interest**

A CRA Member must pay interest on any amount overdue and payable under this Agreement or the outstanding part thereof until it is paid in full. The interest rate will be Fifteen Percent (15%) per annum. That interest will accrue and be recoverable from day to day.

**13. Force Majeure****13.1 Obligations Suspended**

An obligation of CRA under this Agreement shall be suspended to the extent and for so long as the performance of that obligation is prevented or delayed by a Force Majeure.

**13.2 Notification**

The party whose obligation is suspended under the preceding clause must:

- 13.2.1 notify the other parties to this Agreement as soon as it becomes aware of the effect of the Force Majeure upon its obligations;
- 13.2.2 use its best endeavours to work around or overcome the effect of the Force Majeure;
- 13.2.3 keep the other parties informed of any changes in the Force Majeure and of the measures taken to comply with this clause;
- 13.2.4 recommence performance of its obligations as soon as possible without delay.

**14. Costs**

The CRA Member shall be liable for costs incurred by CRA on an indemnity basis where Default has occurred.

The CRA Member hereby indemnifies CRA and agrees to keep CRA indemnified at all times hereafter in respect of any and all actions claims proceedings demands costs expenses losses and/or damages which CRA may suffer sustain or incur by reason or on account or arising out of the failure neglect or Default of the CRA Member or a Qualified CRA Member to duly and punctually pay the said Membership Fees as and when due or to duly observe and perform the Covenants herein.

**15. Notice****15.1 Deemed to have been given**

A notice under this Agreement is deemed to have been given if it is in writing and signed by the sender or its agent and is:

- 15.1.1 delivered to the recipient's last known place of business;
- 15.1.2 sent by pre-paid mail to the recipient's last known place of business;
- 15.1.3 sent by facsimile transmission to the recipients last known facsimile number;

15.1.4 sent or delivered to the recipient in accordance with the *Corporations Act 2001 (Cth)* or any other legislation.

**15.2 When received**

A notice given in accordance with this clause is deemed to have been given and received:

15.2.1 on the day of delivery if delivered before 5.00 pm on a Business Day;

15.2.2 if sent by pre-paid mail, on the third Business Day after posting; or

15.2.3 if transmitted by facsimile, on the day of transmission if the transmitting machine issues a report stating that the transmission occurred before 5.00 pm on a Business Day.

**15.3 Two or More Persons**

Where two or more persons comprise a party, notice to one is effective notice to all.

**16. Assignment**

The rights and obligations of the CRA Member under this Agreement are personal to them and cannot be assigned, charged or otherwise dealt with.

**17. Privacy**

17.1 CRA complies with the Australian Privacy Principles pursuant to the *Privacy Act 1988 (Cth)* and will deal with personal information in accordance with its Privacy Policy.

17.2 Personal Information is collected to process membership and applications for membership and to provide and administer CRA Member Services.

**18. General**

**18.1 Waiver**

An obligation under this Agreement cannot be waived.

**18.2 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.

**18.3 Agreement**

This Agreement records the entire agreement between the parties with respect to the CRA Membership. All members are bound by these terms and conditions as amended from time to time by CRA.

**18.4 Amendment**

The terms and conditions of the CRA Membership including but not limited to Membership Eligibility, Membership Fees and CRA Member Services and benefits

are subject to change without notice. CRA encourages CRA Members to periodically view these Terms & Conditions of the CRA Membership on the CRA Website for up to date terms and conditions.

**18.5 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.

**18.6 Relationship**

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

**18.7 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.