

Northern Territory Government
Interpretations and Guidance Notes –
Taxi and Minibus Model Bailment Agreement

Effective Date: DRAFT

Director of Commercial Passenger (Road) Transport

Introduction

This purpose of this document is to assist industry with understanding the inclusions of the Model Bailment Agreement for Taxis and Minibuses as published by the Department of Infrastructure, Planning and Logistics.

This document should be used in conjunction with the Information Bulletin 'CPV39 - Minimum Requirements for Bailment Agreements' and the 'NTG Model Bailment Agreement for Taxis and Minibuses.'

General Interpretations and Guidance

General Interpretations and guidance for use throughout this document are:

1. *The operator is taken to mean the person to which the licence to operate the vehicle has been issued.*
2. *Two accepted methods of bailment are:*
 - i) *A driver and operator percentage split of the takings: the driver and operator receive their income from sharing the total monies earned by the driver through payment of fares by passengers during a shift. The monies are split between parties based on an agreed percentage e.g. the driver receives 50% of the fares and the operator receives the remaining 50%. The costs associated with the running of the vehicle are then negotiated through this agreement e.g. who pays for fuel;*
 - ii) *A fixed fee per shift arrangement: the driver pays to the operator a set amount as total bailment fee to operate the vehicle in the capacity as a driver for a shift. This fixed fee arrangement may span over a weekly or monthly cycle, however cannot be for more than one shift per day i.e. not more than 15 hours in each 24 hour period. The operator remains responsible for the overall operation of the vehicle, including maintaining vehicle regulatory requirements such as licence. Under this arrangement, the driver cannot discharge his or her obligations under the agreement to another party e.g. cannot employ the services of another driver to drive the vehicle.*
3. *The vehicle means the vehicle/s endorsed on the licence/s which is subject to this agreement.*
4. *The Bailor has the same meaning as the operator and owner of the vehicle*
5. *The Bailee has the same meaning as the driver of the vehicle*

Model Bailment Agreement Guidance Notes

2. Bailment

2.1. Agreement to Bail

The Bailor and Bailee agree to the bailment arrangement of the vehicle pursuant to all inclusions set out in this Agreement, including the Schedule and any attachments.

Guidance notes: *Once signed by both parties, the operator of a taxi/minibus and its driver agree to the conditions contained in this agreement and under which the vehicle is bailed (operated by the driver).*

2.2. Period of Bailment

- 2.2.1. The vehicle will be made available by the Bailor to the Bailee during the agreed shift times.
- 2.2.2. Where the law allows an operator to substitute the vehicle with another vehicle e.g. with a substitute taxi, the Bailor may elect to substitute the vehicle with another suitable vehicle.
- 2.2.3. Unless the Bailor reasonably requires the vehicle to be returned during a shift e.g. for maintenance or inspection, the Bailee shall have (without enjoying any proprietary interest in the vehicle) exclusive use and possession of the vehicle for the entire duration of an identified shift, however may not engage the services of another person to drive the vehicle.

Guidance notes: *the operator has a responsibility to make the vehicle readily available to the driver. The driver has limited possession of the vehicle during a specified shift and can operate with limited autonomy.*

2.3. Cancellation of a shift

- 2.3.1. The Bailor may cancel a shift or part of a shift upon giving reasonable notice to the Bailee, but in any event, prior to the scheduled commencement time of that shift.
- 2.3.2. The Bailee may cancel a shift or part of a shift upon giving reasonable notice to the Bailor, but in any event, prior to the scheduled commencement time of that shift.

Guidance notes: Both parties have the ability to cancel a shift if doing so within the timeframes specified in the agreement – timeframes maybe negotiated by parties prior to signing.

Once a shift has commenced, it is taken that the driver will have use of the vehicle for the entire shift, unless for exceptional circumstances e.g. driver injury/illness or vehicle mechanical failure.

'Reasonable notice' is taken to infer notification is given at an appropriate time to ensure the other party has sufficient time to make alternate arrangements, although it is understood this may not occur in some instances due to unforeseen circumstances.

3. Bailment Payments and Fees

- 3.1. Both Bailor and Bailee agree to comply with the bailment payment arrangements detailed in the Schedule;
- 3.2. The Bailor and Bailee must ensure a policy of insurance is in place which covers the driver of the vehicle from any injury arising from the duty of driving the vehicle for hire or reward.
- 3.3. The Bailor and Bailee agree to make payments necessary under this agreement within the written timeframes agreed to by both parties, whether or not those timeframes are specified in the Agreement.
- 3.4. Notwithstanding any regulatory obligation to present the vehicle to an inspector or member of the Police force, any bailment fee for a shift, or part of a shift, which payable by the Bailee under the Schedule, is not payable where the vehicle is unable to be used for hire or reward, providing the reason for unavailability did not arise from any fault of Bailee.

Guidance notes: Both parties must effect payments identified in this agreement within the specified timeframes.

Where operating under a fixed fee per shift agreement, the driver has an obligation to pay for the shift whether completed or not, unless the shift is cancelled prior to commencement or in exceptional circumstances e.g. vehicle mechanical failure not the fault of the driver.

Regulatory actions are not generally considered to be exceptional circumstances and therefore would not discharge the driver's obligation to pay for a shift where part of a fixed fee per shift arrangement. However, where the regulatory action is the fault of the operator and it is not reasonably expected the driver to have knowledge of that fault, the driver is not compelled to pay for any unused period of the shift.

4. Bailment Obligations for Parties

- 4.1. During the term of the bailment agreement, the Bailor is responsible for:
 - 4.1.1. Maintaining the currency of Operator Accreditation and the Commercial Vehicle Licence under which the vehicle is endorsed and approved to operate for hire or reward, including all costs associated with maintaining these authorities;
 - 4.1.2. Paying for the purchase of the vehicle and all costs associated with the vehicle fitout, service and repair of the vehicle and, unless identified in the Schedule as a Bailee responsibility, fuel and insurance excess;
 - 4.1.3. Ensuring the vehicle is in a roadworthy condition at the start of each shift and complies with the relevant in-service maintenance standards as approved by the Director;
 - 4.1.4. Effecting all repairs to the vehicle in a timely manner and ensuring the vehicle is in a sound condition and fit for purpose;

- 4.1.5. Providing evidence upon request by the Bailee on the currency of the Bailor's operator accreditation, the CVL under which the vehicle is endorsed and the vehicle's registration;
- 4.1.6. Maintaining legal ownership of the vehicle;
- 4.1.7. Maintaining registration and insurance of the vehicle as required under *Motor Vehicles Act* in the name of the Bailor and that the vehicle remains endorsed on the CVL throughout the term of the Agreement;
- 4.1.8. Reporting to the Bailee in a timely manner, any changes to the Bailor's authority to operate a CPV or the vehicle, including any suspensions or cancellations of Operator Accreditation or the CVL under which the vehicle is operated;
- 4.1.9. Reporting to the Bailee in a timely manner, any changes of residential address or contact details relating to the Bailor;
- 4.1.10. Where not directly identified as a Bailee responsibility, supplying, or having readily available to the Bailee, all documentation and equipment necessary to the vehicle's operation in compliance with the Agreement and any other law applicable to the operation of the vehicle;
- 4.1.11. Ensuring the Bailee has received necessary instruction particular to the vehicle and has received appropriate training and refresher training necessary for the legal operation of the vehicle; and
- 4.1.12. Maintaining all records and documents necessary to the Agreement (including the Agreement), for not less than three years after expiry of the Agreement and producing any maintained record or document to the Bailee or the Director when requested.

Guidance notes: as required by law and the conditions of licence issue, the above obligations must remain the responsibility of the operator. It should be expected the other party may make enquiries from time to time about the currency and condition of these inclusions. Documentation includes any ledger necessary for recording journeys and incidents by the driver.

The term 'fitout' includes, but is not limited to, the fitment and certification of a taximeter (where applicable) and complying security camera system, fare structure, vehicle markings and, where relevant, network communications equipment.

It is expected the driver may make enquiries from time to time about the currency and condition of these inclusions.

None of the above inclusions remove or transfer any legal obligation from the driver to the operator.

4.2. During the term of the bailment agreement, the Bailee is responsible for:

- 4.2.1. Complying with any reasonable request from the Bailor to make records of journeys and make documents relating to the operation of the vehicle;
- 4.2.2. Recording all shifts worked by the Bailee;
- 4.2.3. Recording the total amount of Gross Fares earned during each shift;
- 4.2.4. Recording the total number of completed journeys made during each shift;
- 4.2.5. Reporting to the Bailor in a timely manner, any enforcement action taken during the shift by an Inspector, Police Officer or other competent authority in relation to the vehicle or driver;
- 4.2.6. Reporting to the Bailor in a timely manner, any changes to the Bailee's authority to drive a motor vehicle or the vehicle, including any licensing suspension or cancellation;
- 4.2.7. Inspecting the vehicle prior to commencing each shift to ensure it is fit for purpose and complies with the standards approved by the Director. The Bailee must report any faults found to the Bailor in a timely manner, but in any event, by the end of the shift;
- 4.2.8. Reporting to Bailor in a timely manner, any changes of residential address or contact details relating to the Bailee;

- 4.2.9. Providing to the Bailor in a timely manner, records and documents required to be made by the Bailee in accordance with the agreement and applicable laws;
- 4.2.10. Notifying the Bailor on becoming aware of any defect or damage to the vehicle, or any item unlawfully removed from the vehicle – notification must be effected in a timely manner, but in any event, by the end of the shift;
- 4.2.11. Notifying the Bailor as soon as practicable, of any injury caused to a person as a result of the operation of the vehicle;
- 4.2.12. For the duration of each shift;
 - a) Exercising proper care and control of the vehicle,
 - b) Maintaining possession, and being sole driver of the vehicle for the shift;
 - c) Maintaining the vehicle in a clean condition;
 - d) Not modifying, adding or removing any vehicle component or equipment without express permission of the Bailor;
 - e) Complying with applicable road laws, the conditions of CVL, the Act and applicable regulations made under the Act and any codes of conduct approved by the Director; and
 - f) Ensuring the relevant driver's licence, 'h' endorsement and CPV ID Card is current;

Guidance notes: the above inclusions show the obligations placed on the driver in this agreement. It is expected the operator may make enquiries from time to time about the currency and condition of these inclusions.

None of the above inclusions remove or transfer any legal obligation from the operator to the driver.

5. Mutual Obligations

5.1. The Bailor and Bailee agree to;

- 5.1.1. Comply with the provisions of any law in place in the Northern Territory Legislation, including regulations, standards and codes of conduct that apply to the operation of the vehicle, accredited operators and drivers of commercial passenger vehicles;
- 5.1.2. Comply with all rules and by-laws of the Communications and Dispatch Network under which the vehicle operates (if any exist);
- 5.1.3. Both Bailor and Bailee are responsible for ensuring a policy of insurance is in place at all times which covers the Bailee from any injury arising from the act of driving the vehicle for hire or reward;
- 5.1.4. Carry out obligations under the Agreement in a reasonable and responsible way and render reasonable assistance to each other upon reasonable request, in order to give effect to the Agreement;
- 5.1.5. Not do anything, or refrain from doing anything, which could adversely affect the ability of the Communications and Dispatch Network under which the vehicle operates (if any), to comply with its legal obligations; and
- 5.1.6. Not do anything, or refrain from doing anything, which could adversely affect the ability of the other party from carrying out their obligations under the Agreement.

Guidance notes: both parties have obligations to comply with all laws in place and to ensure the driver is insured for injury while driving the vehicle. Both parties must actively carry out their duties without avoidance or hindrance to any other party. The agreement should promote positive working relations between all parties and transparency of the operation.

The Agreement should establish the operator as being responsible for the overall operation of the vehicle, where the driver is responsible for the driving of the vehicle for hire or reward and supporting the operator's responsibilities through the recording and reporting of relevant information – the driver should not have any interest in the operation of the vehicle other than as its driver.

6. Reportable Incidents

6.1. If a Reportable Incident occurs involving the vehicle or its operation, the Bailee will;

- 6.1.1 As soon as practicable, provide a report of the incident to the Bailor, including the following particulars (if known):
- a) Any party involved in the incident
 - b) If the incident involves a collision with another vehicle, the registration details of the other vehicle and the personal details of the driver of that vehicle
 - c) Names and contact details of any witnesses;
 - d) Whether any person suffered an apparent injury as a result of the incident; and
 - e) Any obvious damage to or loss of property arising out of the incident.
- 6.1.2 Within 48 hours of receiving any below notice, give to the Bailor:
- a) A copy of any statement made by the Bailee to the police concerning the incident;
 - b) The incident record number issued to the Bailee by the Police; and
 - c) Any document posted, delivered or served on the Bailee by or on behalf of any person or party making any claim against the Bailee and/or Bailor.

Guidance notes: these inclusions provide parties with obligations relating to a vehicle crash, driver or passenger assault or other reportable or significant event which occurs while the driver has possession of the vehicle. It includes the duties of reporting and the discharge/release of information by parties within specified timeframes. Reportable Incident is defined in the definitions section.

7. Termination and Repossession

7.1. Termination

- 7.1.1 The Bailor or Bailee may immediately terminate the Agreement where:
- a) The other party has breached any clause or obligation under the Agreement, including defaulted payment;
 - b) Where the currency of one or more effecting authorities has changed e.g. suspension/cancellation/non-renewal of a driver licence, operator accreditation or the vehicle registration;
- 7.1.2 The Bailor or Bailee may terminate the Agreement at any time for any other reason where written notice has been provided to the other party, but not before completion of a shift;
- 7.1.3 Upon termination of the agreement by the Bailee, the Bailee shall return the vehicle to the operator's usual place of business (within the approved area of operation) in a similar condition to that on commencement of the shift, unless the vehicle is unsafe or is incapable of being driven. Where the vehicle can be safely driven, the return of the vehicle will be at the Bailee's expense; and
- 7.1.4 Upon termination of the agreement by the Bailor, the Bailor shall collect the vehicle from the Bailee (within the approved area of operation). The collection of the vehicle will be at the Bailor's expense.

Guidance notes: these inclusions establish terms under which either party can elect to terminate the agreement and includes the return of the vehicle to the operator. The agreement prevents the termination of the agreement during a shift unless the operation of the vehicle is contrary to the agreement or a law in place.

In subsection 7.1.3, where the vehicle is unable to be safely driven by the driver e.g. due to vehicle collision or mechanical failure, the operator shall bear the cost of vehicle retrieval.

8. Relationship Limited to Bailment Arrangement

The Agreement does not create a relationship of agency, employment, partnership, subcontractor or franchise between any party, nor does it establish a vehicle or CVL lease arrangement.

Guidance notes: the Agreement is strictly one of a Bailor/Bailee agreement and does not imply or authorise any other relationship between parties. The Agreement does not authorise the leasing of the licence or the vehicle by the driver from the operator.

9. Costs and Taxes

9.1. Agreement Costs

Each party must bear its own costs (including legal costs) of, and incidental to, the preparation, negotiation and signing of the Agreement.

9.2. GST

Both parties agree that any amounts payable under the Agreement are inclusive of any GST that may apply.

Guidance notes: the agreement does not imply the burden of any additional costs associated with the maintenance or preparation of the agreement. Each party has the ability to seek independent legal advice at own expense.

Any monetary amounts included in the Agreement are inclusive of Goods and Services Tax (GST) if GST is applicable under Australian Taxation law.

10. General Provisions

10.1. Entire Agreement

The Agreement;

10.1.1 Constitutes the entire Agreement between Bailor and Bailee as to its subject matter and includes the Schedule and any attachments (if applicable); and

10.1.2 In relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by either party.

Guidance notes: the Agreement should be considered as a complete document with all attached schedules and definitions. No part of the agreement should be considered in isolation or without reference in context with the entire agreement.

The Agreement replaces any previous arrangements which may have existed between the parties for the bailment of the vehicle, whether verbal or in writing i.e. any prior arrangement becomes of no effect upon both parties signing the most recent agreement.

10.2. Variations

10.2.1 The Bailor and Bailee may make amendments from time to time to the 'Additional Items' clause or vary the agreed Shifts specified in the Schedule. Any amendment or variation must be agreed to, and signed by, both parties.

10.2.2 Any amendment or variation made to a general clause of this agreement or the Schedule must not alter the implied general obligations of either party, diminish or remove a party's obligation under a law in place in the Northern Territory or render the Agreement non-compliant with the Minimum Requirements for Bailment Agreements for Taxis and Minibuses, as approved by the Director.

Guidance notes: while parties may make amendments to this model bailment agreement, they must not alter the any part necessary for a bailment agreement to comply with the minimum requirements as determined by the Director. Any alteration made to a general clause which renders the agreement as no longer compliant with the minimum requirements is in breach of conditions of licence issue and may result in administrative and/or prosecution action against parties.

Without altering or affecting any general clause in the Agreement, amendments can be freely made to the 'Additional Items' section or shift times with approval and signing by both parties. Additional Items may include such things as when and how to make payments, agreed timeframes, daily monetary floats and the supply of non-essential equipment. The 'Conditions of Bailment' section provides both parties with the opportunity to negotiate the bailment type and some operational costs associated with the vehicle such as fuel and insurance excess.

10.3. Waiver

10.3.1 The failure of either party to fulfil an obligation under the Agreement is not a waiver of a party's right:

- a) To claim damages for breach of that obligation; and
- b) To fulfil another obligation under the Agreement, unless written notice to that effect is given by that party to the other.

Guidance notes: despite a breach by either party of the terms and conditions of the agreement, the Agreement does not remove a legal right of a person to commence civil action against the other party, claim compensation or to lay a complaint for criminal proceedings.

Neither party is released from obligations under the agreement for reason of the other party being in breach i.e. both parties are obligated to carry out their obligations regardless of whether a breach of the terms or conditions of the agreement has occurred.

10.4. Authority

10.4.1. The Bailor and Bailee authorise a copy of the Agreement to be made available to any Communications and Dispatch Network and to the Director or an Inspector upon request.

10.4.2. The Bailee authorises the Bailor to make enquiries to Communications and Dispatch Networks about the details of any complaints made about the Bailee while in the capacity of a driver of a Commercial Passenger Vehicle;

10.4.3. The Bailee authorises the Bailor to make enquiries about the status of the Bailee's driving authorities from the Communications and Dispatch Network or the Director;

10.4.4. The Bailor authorises the Bailee to make enquiries about the status of the Bailor's accreditation and the vehicle's registration and CVL from the Communications and Dispatch Network or the Director.

Guidance notes: in this section the driver gives permission for the operator to make enquiries into the driver's complaint history held by a network. It also gives permission for the operator and driver to check and ensure the currency of the relevant authorities such as operator accreditation, CVL and the driver's driver licence, 'h' endorsement and identity card.

The purpose for the granting of the authority is to ensure each party has confidence the vehicle can be operated legally and that the operator can effectively manage the compliance and service of their taxi or minibus.

The responsibility for the operation of the vehicle and its compliance with applicable laws ultimately rests with the operator. Where the operator is aware a driver has operated the vehicle in breach of law, the operator has the option of terminating the agreement with the driver or putting in place better driver management tools to effect compliance with the agreement and applicable laws.

A driver may freely terminate the Agreement where the operator has failed to maintain the necessary authorities e.g. accreditation, CVL and vehicle registration.

“THE SCHEDULE”

Period of Bailment

The Agreement between the named Bailor and Bailee remains in force, unless otherwise terminated, for the below period (dates inclusive):

Start Date: **01 / 07 / 2018** To End Date: **30 / 06 / 2019**

Operator Section (Bailor to Complete)

Name of Bailor (Operator) Mr John Robert Smith		ABN 12345678912
Name of nominated company director or manager if CVL held by company -NA-		ACN (if company) -NA-
Operator Accreditation number 1234	CVL number/s 2345	Vehicle Registration Number/s (use Attachment A if required) TAXI123
Principle Place of Business (Address)	(street number and name) 1/17 Industry Street	
	(suburb) Palmerston NT	(Postcode) 0800
Telephone contact	(1) (08) 8900 0001	(2) 0400 123 456
Name of Communications and Dispatch Network under which the Vehicle operates (indicate N/A if not operating under a network) Territory Taxi Company PTY LTD		

Driver Section (Bailee to Complete)

Name of Bailee (Driver) Mr Brian Ronald Smith		ABN 23456789123
Driver Licence number DL-123457	CPV ID card number 56789	Approved CPV ID card Categories Taxi and Minibus
Principle Place of Business (Address)	(street number and name) 8 Long Street	
	(suburb) Casuarina , NT	Postcode 0810
Telephone contact	(1) (08) 8912 3456	(2) 0411 123 456

Agreed Shifts of Bailment

(Each shift must not exceed 15 hours in each 24 hour period)

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Start	-----	6am	6am	6am	6am	6am	8am
Finish	-----	6pm	6pm	6pm	6pm	6pm	1pm

Conditions of Bailment		
ITEM	Party responsible for payment (Delete party not applicable)	Amount / Percentage
1. Bailment Fee — Fixed Fee (Item 1 is only valid where Item 2 is not used)	Bailee to Pay	\$ _____ per shift (NOTE: only available if Item 2 not valid)
2. Bailment Fee – Percentage split of fares taken during a shift by Bailee	Bailor and Bailee to make necessary payment adjustments of fare takings as required	Bailee = 50 % Bailor = 50 % (Percentages must add up to 100%)
3. Fuelling of the Vehicle	Bailor / Bailee	
4. Driver Injury Insurance	Bailor / Bailee	Insurer: <i>TIO</i> Policy #: <i>123456789</i>
5. Excess – Driver Injury	Bailor / Bailee	Excess Amount: \$ 800.00
6. Excess – Public Liability	Bailor / Bailee	Excess Amount: \$ 1500.00
7. Excess - Vehicle Insurance Claim	Bailor / Bailee	Excess Amount: \$ 800.00
8. -----NA-----	----- NA -----	----- NA -----


Equipment		
(The Bailor shall provide with the Vehicle the following additional equipment for each shift)		
1. Emergency Vouchers relating to the Transport Subsidy Scheme	2. EFTPOS Terminal suitable to transact a payment under the Transport Subsidy Scheme	3. Documents and equipment suitable for make any records required to be made by the Bailee under the Agreement e.g. job totals, vehicle inspections, incidents
4. <i>Money change dispenser</i>	5. <i>Mobile Phone</i>	6. -----NA-----
7. -----NA-----	8. -----NA-----	9. -----NA-----

Additional Terms of Agreement
(no additional inserted term may contravene any law in place or another clause of the Agreement)
1. <i>Driver to provide pay-ins to Territory Taxi network every Friday</i>
2. <i>Driver to wash exterior of vehicle and clean interior at end of every shift</i>
3. <i>Driver to report any warnings or corrective actions issue by Inspectors or Police</i>
-----NA-----
-----NA-----


Execution / Acceptance provisions:

Before signing, both parties have considered and agree to the terms and conditions of the Agreement, including the Schedule.

Upon signing, both parties affirm that any information provided as part the Agreement is true and correct to the best of their knowledge.

SIGNED: _____

(Bailee/ Driver)

DATE: 1 July 2018


SIGNED: _____

(Witness)

DATE: 1 July 2018

SIGNED: _____

(Bailor/ Operator)

DATE: 1 July 2018

SIGNED: _____

(Witness)

DATE: 1 July 2018

