

Victorian Taxi Association (VTA) Model Bailment Agreement

Instructions for use

What is Bailment?

The term 'bailee' is derived from the word 'bailment', which is the legal term for the kind of arrangement between a Driver and a Operator (formerly known as Operators) for use of a taxi. A bailment relationship exhibits certain characteristics, which are:

- the delivery of the exclusive right of possession by the bailor (Operator);
- the voluntary assumption of possession by the bailee (Driver);
- an assumption of the responsibility by the bailee (Driver) to keep the taxi safe; and
- the obligation to return the taxi.

Taxi drivers whose sole responsibility in the industry is to drive a taxi using their Operator's vehicle are called 'bailee drivers'.

The essence of bailment is that possession is transferred from the bailor (Operator) and is voluntarily accepted by the bailee (Driver), but ownership is not.

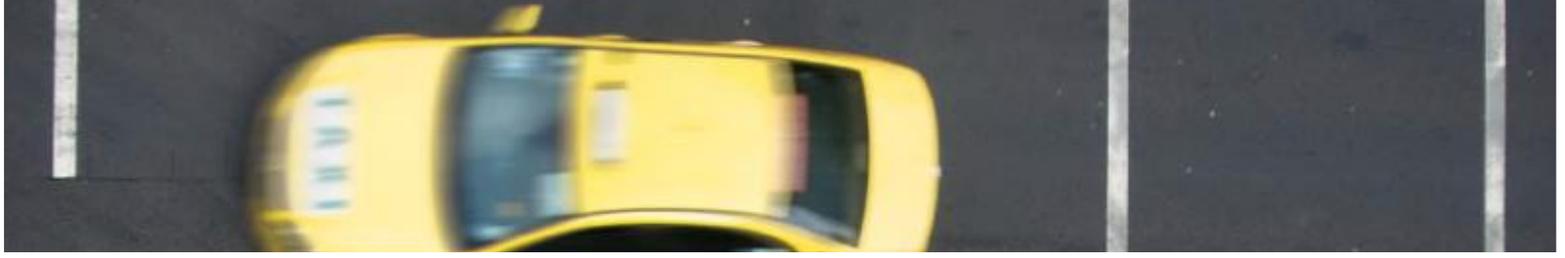
Drivers are individual small businesses. By entering into a bailment agreement Drivers agree to terms with Operators to use their licensed taxi for a period of time, and in exchange, pay a percentage of the earnings from that period to the Operator. At the end of the agreed period, the Driver must return the taxi to the Operator.

The VTA model bailment agreement

The VTA strongly encourages all Operators and Drivers to have a written bailment agreement in place that complies with legal and regulatory requirements, including the implied conditions set by the Taxi Services Commission under section 162L of the Transport (Compliance and Miscellaneous) Act 1983) Vic.

The VTA has created this agreement to assist all Operators and Drivers in Victoria to agree to terms for bailment in a written form which comply with all applicable laws and regulations and clearly outlines roles and responsibilities of both parties.

The Bailment Agreement is a legal document and the Operator and Driver will both be bound by its terms. If you have any questions or are unsure about anything in the document, you should consult a lawyer before signing it and before a Operator gives possession of a taxi-cab to a Driver.



How to use this Agreement

Please read these instructions carefully before completing the Agreement.

This agreement has been prepared so that the only sections you need to complete are:

- the names of the parties on the cover page; and
- the Schedules at the end.

If you want to add, change or delete any terms, you need to do this in Schedule 3 (Special Conditions).

If a box appears around a clause in the Agreement, that clause is an 'implied condition' as set by the Taxi Services Commission under section 162L of the *Transport (Compliance and Miscellaneous) Act 1983* Vic.

The implied conditions cannot be excluded, edited or deleted.

Even if they are removed from the Agreement, the Operator and Driver will continue to be bound by those conditions.

How to complete the schedules:

Schedule 1 - Insert the name and contact details of the Operator and the Driver.

Schedule 2 - Complete all sections in schedule 2. Note the advice below about some of the sections.

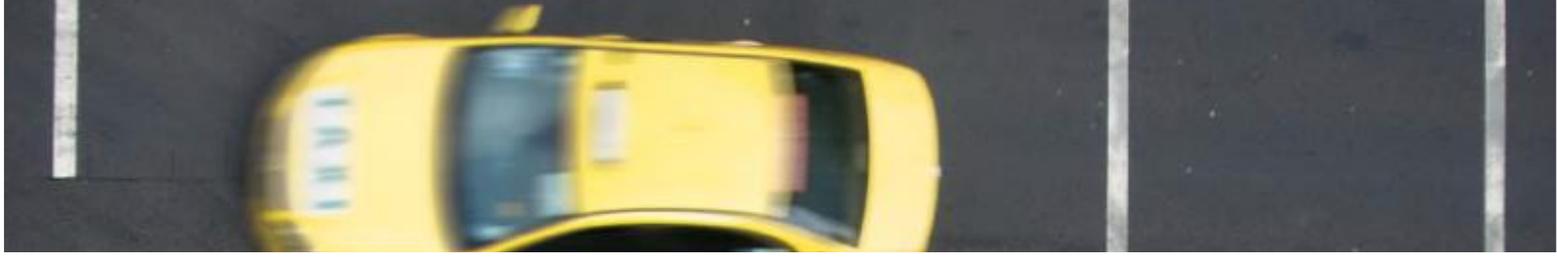
- Item 1, the Commencement Date, is the date the parties sign the Agreement, or a later date (being the date the Driver will begin bailing the Taxi-Cab).
- Items 2 and 3 relate to the duration of the Agreement. The VTA suggests a term of 12 months for each of the Initial Term and Further Term. Either party can terminate with two weeks notice.
- Item 10 is where a Operator can set out any services provided to the Driver, and fees payable. Note that any fees payable must relate to services that directly benefit the Driver and do not constitute operational or maintenance costs of the Taxi-Cab.
- Items 11 and 12 relate to the Bond. If the entire Bond is payable up-front, insert the words "paid upfront" in Item 12. Otherwise insert the amount payable per Shift into Item 12.

Schedule 3 - This space should be used if the Operator and Driver have agreed on additional terms or want to change or remove any terms in the Agreement. You cannot remove any of the implied conditions.

Instructions for signing

The Operator should select the appropriate signing block based on whether it is a person, single director or multi-director company. The document needs to be signed in front of a witness who then signs on left of the relevant signature block.

The Driver should print their name and sign on the right in front of witness who then signs on the left.



Checklist

Insert names of Operator and Driver on cover page

Operator and Driver to complete Schedules 1 and 2

If the Operator & Driver have agreed to any additional terms, include in Schedule 3

Both parties to sign and date **two** copies of the Agreement

Driver keeps one signed copy of the Agreement

Operator keeps one signed copy of the Agreement



Summary of terms

Clause	Summary
1. Definitions and Interpretation	This is a standard clause which defines words that are used regularly in the Agreement and describes how certain terms are to be interpreted.
2. Commencement and Term	This clause discusses the commencement and duration of the Agreement. Note that the Agreement is automatically renewed at the end of each term.
3. Bailment	This clause describes the relationship between the Operator and the Driver as one of bailor and bailee. It also sets out the Driver's rights while the Taxi-Cab is bailed to the Driver. Clause 3.4 states that the Driver is not obliged to take certain shifts or bail the Taxi-Cab at any time. However the clause requires the Driver to give the Operator reasonable notice of his or her intention to take time off.
4. Driver obligations	Clause 4 lists all of the things the Driver must do under the Agreement.
5. Operator obligations	Clause 5 lists all of the things the Operator must do under the Agreement.
6. Warranties	This clause contains statements that each party makes to the other. The Operator will rely on the Driver's statements, and the Driver will rely on the Operator's statements, in agreeing to enter into the Agreement. The Driver and Operator must both make sure that the statements are correct.
7. Bond	The provisions of clause 7 relate to the Driver's payment of a bond to the Operator, and the circumstances in which the Operator can take money from the bond. These are implied conditions set by the TSC.
8. Incidents and Accidents	This clause describes both the Driver's and the Operator's responsibilities if the Taxi-Cab is involved in an accident.
9. Insurance and Indemnity	This clause sets out the Operator's requirement to hold insurance. This clause is an implied condition set by the TSC. It notes at 9.2 that the Operator must pay the excess on any claim, and at 9.4 that the Operator must pay for any vehicle damage except from the bond (which is limited to \$1,000).
10. Network	Clause 10 is only applicable where the Operator is affiliated to a network. It states what the Driver must do, and how the Operator may communicate with the Network.



11.Surveillance and Data	In this clause the Driver acknowledges and consents to the use of surveillance devices in the Taxi-Cab and the collection of information via these devices.
12.Fares and Fare Split	This clause sets out the Driver's entitlement to of 55% of gross fares. Because sometimes the Driver will collect fares, and sometimes the Operator, this clause provides a mechanism for a true-up payment to be made.
13.Fines, Services, Fees	Clause 13 deals with traffic infringements and offences. It also allows the Operator to charge the Driver for services that benefit the Driver, and to charge fees if the Operator incurs costs as a result of the Driver's breach of the Agreement.
14.Disputes	This clause explains what happens if there is a dispute under the Agreement. This is an implied condition set by the TSC.
15.GST	This is a standard clause included in contracts where the provision of goods or services might attract GST.
16.Alternate Taxi-Cab	Clause 16 allows an alternative taxi-cab to be used by the same Driver. The terms of the Agreement will apply to the use of the alternate taxi-cab.
17.Termination	This clause explains that either party can end the Agreement by giving two weeks' notice. It also describes what needs to happen when the Agreement is terminated.
18.Special Conditions	This clause simply states that anything included in Schedule 3 forms part of the Agreement. This gives the Operator and the Driver an opportunity to insert terms specific to their relationship that may not be addressed in the standard Agreement.
19.General	These clauses are standard general provisions regarding the legal effect of the Agreement and dealing with some miscellaneous matters.