



## **GO APE ROADSIDE ASSISTANCE ROADSIDE SERVICES MEMBERSHIP AGREEMENT**

This Roadside Services Membership Agreement (hereafter “Agreement”) is entered into as of \_\_\_\_\_, 202\_\_ (the “Effective Date”) by and between **GO APE DELIVERY, LLC**, a California limited liability company dba **GO APE ROADSIDE ASSISTANCE** with business address at 4075 Park Blvd, San Diego, CA 92103, e-mail: garoadside83@gmail.com, and tel.: (619) 684-0566 (hereafter “Company”) and the “Customer” identified below. Company and Customer may be referred to individually as a “Party” or collectively as the “Parties.”

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

### **SECTION A: MEMBERSHIP & FEES**

**1. Services.** In exchange for an annual membership payment of Twenty-Five Dollars and 00/100 (\$25.00; “Membership Fee”), Company agrees to provide the roadside services set forth below (“Roadside Services”) to Customer at a reduced service fee of Fifty-Five Dollars (\$55.00: “Reduced Service Fee”) per event.

a. Roadside Service:

- i. *Battery Service:* Customer’s battery will be jump started, if possible. In the alternative, if available, mobile battery testing and replacement service will be provided. Any battery replacement fee shall be the sole responsibility of Customer.
- ii. *Emergency Fuel & Supplies Delivery:* Company will deliver an emergency supply of gasoline, oil, water, and other accessories and supplies as may be required and available. Cost of materials delivered shall be paid for by the Customer at Company’s standard rates.
- iii. *Flat Tire Service:* If Customer’s spare tire is inflated and serviceable, Company agrees to install the spare tire. Any expenses related to obtaining a spare tire shall be Customer’s sole responsibility.
- iv. *Vehicle Lockout:* If Customer’s keys are locked inside the vehicle, upon request the Company shall attempt to gain entry. If the services of a locksmith are required due to unsuccessful attempts, lost or broken keys, or other emergencies they shall be at Customer’s sole expense.

- b. Coverage: Roadside Services coverage is available 24/7/365 and limited to San Diego County (“Covered Area”). Company may at its sole discretion accept service calls outside of the Covered Area with an additional charge of \$1.25 per mile travelled outside of the Covered Area. Service will be limited to that which can be provided with equipment ordinarily used for roadside assistance by Company. Service will not be provided when the 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. Any third-party expenses related to the Roadside Services shall be Customer’s sole responsibility.
  
- c. Exclusions: The following services are not provided under this Agreement:
  - i. Towing service.
  - ii. Service for trucks in excess of one ton chassis, busses, trailers, tractors, or vehicles of dual wheel class.
  - iii. Service to a vehicle located in an area not regularly traveled by private passenger vehicles such as a beach, desert, open field, creek bed, or forest service road.
  - iv. The installation or removal of snow tires, chains or sleeves.
  - v. Ice or snow removal services.
  - vi. Gas/credit card receipts are not accepted.
  - vii. All parts of motor vehicle, rental battery, return of rental battery, supplies or accessories furnished by Company or third party shall be at the sole expenses of the Customer.
  - viii. All repairs and material used in repairing flat tire, or services requiring more than one trip by Company or service station shall be at the sole expense of the Customer.
  - ix. Rental fees.

**2. Fees & Recurring Billing.** Customer agrees to pay the Membership Fee per year upon execution of this Agreement. By signing the attached *Credit Card Payment Authorization*, Customer authorizes Company to automatically withdraw Membership Fees at the then current rate, and any other charges Customer may incur in connection with its use of the Roadside Services as they come due. Membership fees are fully earned upon payment. Company reserves the right to change the timing of its billing. Customer acknowledges that the amount billed each term may vary from term to term for reasons that may include differing amounts due to promotional offers and/or changing or adding a plan. The Company reserves the right to adjust pricing for the Membership Fee, Roadside Service Fee, or any components thereof in any manner and at any time as the Company may determine in its sole and absolute discretion.

**3. Term.** This Agreement shall become effective as of the Effective Date and, unless otherwise terminated in accordance with the provisions of Section 4 of this Agreement, will automatically renew for successive one-year terms.

**4. Cancellation & Refunds.**

- a. Customer may cancel this Agreement at any time without incurring any cancellation fees by providing written notice of cancellation to Company. Company does not provide refunds or credits for any partial membership periods. As such, Customer will continue to have access to the Roadside Service through the end of your applicable yearly billing period.
- b. Company may terminate this Agreement with or without cause by providing written notice to Customer. Customer shall not be entitled to any refund upon cancellation by Company.

## SECTION B: GENERAL PROVISIONS

- 1. Disclaimer.** THIS IS NOT AN INSURANCE, NOR PART OF AN INSURANCE LIABILITY POLICY. THIS ROADSIDE SERVICES MEMBERSHIP AGREEMENT IS OPTIONAL AND DOES NOT COMPLY WITH ANY FINANCIAL RESPONSIBILITY LAW.
- 2. Independent Contractor and Third-Party Services.** Company is an independent contractor, not an employee of Customer. Company may engage third parties to provide or fulfill the Services at its own discretion. Customer hereby authorizes Company to engage third parties as necessary to provide the Services.
- 3. Notice.** All notices or other communications that must or may be given pursuant to this Agreement must be in writing and will be deemed to have been duly given upon receipt, in case of personal delivery; five (5) days following mailing, registered or certified mail with postage prepaid; or, one (1) day following transmission by facsimile or other electronic means (with a hard copy thereof mailed to the recipient with postage prepaid), addressed to the Parties at the addresses set forth herein, or to such other address which has been specified by the receiving Party in a prior written notice.
- 4. Limited Liability:** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, COMPANY SHALL IN NO EVENT BE LIABLE TO CUSTOMER OR ANY OTHER PERSON, FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ROADSIDE SERVICES, WHICH INVOLVE INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. THE FOREGOING LIMITATIONS SHALL SURVIVE AND APPLY REGARDLESS OF THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. COMPANY'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER RELATED TO OR ARISING UNDER THIS AGREEMENT OR A ROADSIDE SERVICE SHALL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER TO COMPANY FOR THE ROADSIDE SERVICE AT ISSUE PLUS THE MEMBERSHIP FEE. THE PARTIES UNDERSTAND AND AGREE THAT THIS IS MATERIAL CLAUSE TO THIS AGREEMENT.
- 5. Limitation of Claims.** No claim arising out of or related to any Roadside Service may be brought by either Party more than twelve (12) months after the Roadside Service is provided, except that Company may bring an action to collect unpaid charges at any time prior to the expiration of the applicable statute of limitations.
- 6. No Waiver.** The failure by either Party at any time to require performance by the other Party of any provision of this Agreement shall in no way affect its right to require performance at any time thereafter, and no term or provision of this Agreement is deemed waived, and no breach excused unless such waiver or consent is in writing and signed by the Party to have so waived or consented.
- 7. Governing Law and Jurisdiction/Forum.** This Agreement will be governed by, and interpreted and construed in accordance with, the internal laws of the State of California, without regard for, or reference to principles of conflicts or choice of law. The state and federal courts of the State of California, San Diego County shall have exclusive jurisdiction for disputes arising from, as a result of, or in relation to this Agreement; both parties agree to such choice of venue and will submit to the jurisdiction of such courts without contest or challenge on account of, by way of example and not limitation, forum non conveniens.

**8. General Provisions.** This Agreement is binding and non-transferrable by Customer. Company may assign this Agreement without prior written notice or consent. The section headings which appear throughout this Agreement are provided for convenience only and are not intended to define or limit the scope of this Agreement. If any term, covenant, condition, or provision of this Agreement is held to be void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and shall in no way be affected, impaired, or invalidated. Time is of the essence. Use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

**9. Entire Agreement.** This Agreement contains the entire understanding between the Parties with regard to the matters herein set forth and supersedes any prior Agreements. There are no representations, warranties, agreements, oral or written, between or among the parties hereto relating to the subject matter of this Agreement, which are not fully expressed herein. This Agreement may be supplemented, amended, or modified only by a writing signed by all the Parties. **THE PERSONS SIGNING THIS AGREEMENT HEREBY WARRANT THAT THEY HAVE, PRIOR TO SIGNING, FULLY READ AND UNDERSTOOD THIS AGREEMENT.**

COMPANY

CUSTOMER

By: \_\_\_\_\_  
Name:

By: \_\_\_\_\_  
Name:

### Credit Card Payment Authorization

I \_\_\_\_\_ hereby authorize **GO APE DELIVERY, LLC** (“Company”) to charge my Credit Card below the Membership Fee upon execution of the Roadside Services Membership Agreement (“Agreement”) and every year thereafter until cancelled pursuant to the terms of my Agreement. I further authorize Company to process any other charges that I may incur as they relate to Roadside Services as they come due.

#### Billing Details

Same as provided in Agreement.

Other:

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

#### Credit Card Information

Visa  MasterCard  AMEX  Discover

Cardholder's Name: \_\_\_\_\_

Credit Card Number: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Expiration Date: \_\_\_\_\_ / \_\_\_\_\_

Security Code (CVV) \_\_\_\_\_

I understand that this authorization will remain in effect until I cancel it in writing, and I agree to notify Company in writing of any changes in my account information or termination of this authorization at least fifteen (15) days prior to the next billing date. If the above noted payment dates fall on a weekend or holiday, I understand that the payments may be executed on the next business day. In the case of any transaction being rejected for Non-Sufficient Funds (NSF) I understand that Company may at its discretion attempt to process the charge again and agree to an additional \$25.00 NSF charge per month. I certify that I am an authorized user of this credit card and will not dispute these scheduled transactions with my bank; so long as the transactions correspond to the terms indicated in this authorization form and my Agreement.

Individual's Signature: \_\_\_\_\_

Date: \_\_\_\_\_