# BYKKO On Forbes Electric Bike Sharing Service - Terms and Conditions

## DEFINITIONS

The BYKKO On Forbes Electric Bike Share (the "**Licenced System**") is comprised of a self-serve electronic bicycle rental system which includes:

- Integrated Docking and Recharging Terminals which allow the Bicycles to be securely locked and charged ("**Station/s**", "**Bike Station/s**", "**Docking Station/s**", "**Dock/s**", "**Bicycle Dock/s**", "**Docking Point/s**", "**Docking Terminal/s**");
- Electric bicycles which form part of the Service ("**Bicycle/s**", "**Bike/s**", "**Electric Bike/s**", "**E-Bike/s**");
- Bicycle Locks which allow the Bicycles to be securely locked when they are not docked at the Station ("**Lock/s**", "**Bike Locks**", "**Lock/s and Key/s**")
- Bicycle Helmets that comply with relevant and current Australian safety standards (presently AS/NZS 2063:2008) ("**Helmet/s**")
- BYKKO software licence ("**Software", "Licenced Software")**
- Web application for user access onforbes.bykko.com.au ("**Weblink**", **"Web application", "Website"**)

Your use of the Service is subject to these Terms and Conditions ("**Terms**"). The Terms are governed by the laws of New South Wales. BYKKO may update the Terms without notice by providing the latest version of the Terms on this Weblink. By using the Weblink, you are expressly consenting to the Terms in effect at the time of use.

A reference to the Weblink in the Terms is a reference to all of the content featured or displayed on the Weblink, including but not limited to text, pricing, graphics, photographs, images, moving images, sound, illustrations, data, files, other information and software.

BYKKO does not warrant or guarantee that the content and functionality on the Weblink will be complete or suitable for your specific purposes, error free, current at all times, or that the Weblink will always be available for use.

A range of factors may affect the accuracy, completeness, suitability, timeliness and availability of the information on the Weblink including but not limited to breakdowns, congestion, weather conditions, maintenance, scheduled and unscheduled downtime.

## ACCEPTANCE

By accessing and/or using the Service, you have accepted the terms and conditions in their entirety and a contractual relationship is formed between you and BYKKO. You are responsible for your compliance with these terms and conditions (including any updated versions).

Throughout these Terms and Conditions, a reference to "You" means the individual who is subscribing or has subscribed to the Service in accordance with these Terms and Conditions.

In CONSIDERATION of being permitted to use the Service and to participate in the BYKKO On Forbes Electric Bike Share Service, YOU ACKNOWLEDGE, agree, and represent that YOU are 18 Years of age

or older, you understand the nature of Bicycling Activities and that YOU are qualified, in good health, medically and physically fit to ride a bicycle and YOU further acknowledge that biking will be conducted over public roads and also facilities open to the public and upon which the hazards of traveling are to be expected.

**Please be aware that you must:**

- wear a helmet;
- be 18 years or over and fit to ride a bike; persons aged between 15-18 years can access the Service as ("Permitted Minors"), provided that the Service is subscribed for by or under the responsibility of their Legal Guardian. Access is denied to any person aged less than 15 years.
- check your Bike before you ride it – if there are any defects, don't take it out - lock it back in and take another;
- pay for use in excess of the allocated free usage if any;
- not keep a Bike out for more than 24 hours (after 24 hours we will treat the Bike as lost or stolen and debit your account accordingly);
- lock your Bike if you leave it unattended anywhere except 'locked in' (with a green light showing) at our Bike Station - you will be liable if your Bike is stolen;
- return your Bike by locking it at a Bike Station – if you don't lock it in, time charges will accrue;
- if you leave the bicycle unattended at any time for any reason, you are responsible for securing the bicycle using the Lock and Key provided by us to protect against theft of the bicycle;
- not use a Bike in heavy rain, fog, high wind or lightning storms;
- not use a Bike if you are unwell or are:
    - on medication; or
    - have consumed alcohol; or
    - have consumed other intoxicating substances;
- obey ACT Road Rules and safety guidelines

By subscribing to the Service YOU acknowledge that YOU HAVE READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT, AND YOU ACCEPT AND AGREE TO ALL THE TERMS AND CONDITIONS TO THIS AGREEMENT.

## MEMBERSHIP ACCOUNT

Before You can use the Service, You must create an User account ("Account") through the Weblink. To create an Account, You must complete a registration form through the Weblink. You must provide the correct email address and phone number for verification and access of the Service. You can access Your history of using the Service by logging into Your Account on the Weblink.

You represent and warrant that the information you provide to the Operator upon use of the Service and at all other times will be true, accurate, current, and complete.

When You subscribe to the Service, You must have a credit or debit card (Visa or MasterCard), a bank account or the wherewithal to deposit funds in an account designated by Us to purchase a Membership and create an Account.

Membership Fees and all other applicable fees are as per the attached schedule and listed on the Weblink and are subject to applicable goods and services taxes (GST) and other local government charges, which may be charged and collected by Us. Your Membership will be automatically renewed at the expiry of Membership You subscribed for. If You do not wish to continue renewal of Your Membership, You can cancel the Membership subscription through your Account.

You must input a valid credit card or debit number and expiration date, or required bank account details when You create Your Account. You represent and warrant that You are authorised to use the credit or debit card or bank account associated with Your Account. You hereby authorise Us to charge such credit or debit card or bank account for all expenses incurred on Your Account.

In the event that the expenses incurred on Your account are not paid in full, You authorise Us to take any necessary actions, including legal actions, to recover monies owed to Us. You will be responsible for all our costs of collection, including reasonable legal fees, if you do not pay amounts owed hereunder when due.

If You dispute any charge on Your Account, then You must contact Us within ten days of receiving Your statement containing the disputed charge. You have an ongoing duty to keep an authorised credit or debit card or bank account on file with Us during Your Membership period and to update all changes relating to Your credit or debit card or bank account through the Weblink.

All denials of a transaction by Your bank, all holds, and all other similar issues are Your sole responsibility and should be dealt with between You and Your bank.

## FARES AND CHARGES

Fares for the Services are displayed on the BYKKO weblink. Fares are determined by BYKKO and may be changed from time to time – current pricing will be available on the BYKKO weblink prior to a Service commencing. Unless otherwise stated, fares are inclusive of all taxes.

Our Monthly/Annual memberships are automatically renewed at the end of their period. That's your monthly membership renews each first day of the month. Our annual membership renews each first day of the new year. If you would like to upgrade, change or cancel your membership, simply login to your account to make any changes.

If you are an ON Forbes resident, you will receive a PROMO Code at registration for special hire rates. Each On Forbes apartment owner is entitled to a free annual membership (valued at $300), courtesy of Art Group.

The On Forbes membership gives you access to free 60-minute rides as many times as you wish while your subscription is valid.

Trips over 60 minutes, will be charged at $5 per hour with a daily cap of $25.

The free annual membership is valid from August 15th 2019 until August 15th 2020.

Starting with September 15th, 2019, the following rates will apply:

**On Forbes Residents**

**Price per bike:**

0 – 1 hr: $0

1 hr – 2 hrs: $5

2 hrs – 3 hrs: $10

3 hrs – 4 hrs: $15

4 hrs – 5 hrs: $20

Over 5 hrs: $25

The access to the electric bikes is restricted to the On Forbes residents only for the first month.

Visitors and general public can hire the bikes using the default payment plan starting with September 15th, 2019.

**Pay-As-You-Go (visitors and general public)**

Price per bike:

0-1 hr: $10

1hr – 2 hrs: $20

2 hrs – 3 hrs: $30

3 hrs – 4 hrs: $40

4 hrs – 24 hrs: $50

## PAYMENT SECURITY

Security compliance matters to Our customers. We do not store raw magnetic stripe, card validation code or PIN block data. All payments are securely processed using Stripe.

Our payment gateway provider, Stripe secures all Our customer and credit-card data with military-grade software and servers, and the highest level of encryption available. **Stripe is tier-one PCI DSS compliant—** which is the highest level of compliance available and is the same levels of data security of the biggest banks in the world.

PCI DSS (Payment Card Industry Data Security Standards) is a set of comprehensive requirements all businesses that handle credit and debit payments must comply with, regardless of the size or number of transactions they process. The requirements for maintaining PCI compliance include completion of an annual PCI self-assessment questionnaire and a quarterly network scan.

## RENTAL PERIOD

You understand and agree that the purpose of the Service is to provide shared access to Bicycles. The rental period of any one Bicycle shall be limited to a period within the operating hours designated by Us on the Weblink, such period beginning when You unlock such Bicycle and ending when such Bicycle is locked and returned to one of the Bicycle Docks at the Bicycle Station ("Rental Period"). The service allows you to rent an electric bike for no more than 24 hours in a single journey.

It is Your responsibility to make sure that the Bicycle is secured in the Bicycle Dock at the Bike Station. If the signal light on the left side of the Bicycle Dock is BLUE, the Bicycle has been securely locked and returned. If the signal is RED, the Bicycle is not securely locked and returned, and You must try again to lock the Bicycle. If after several unsuccessful attempts to securely lock the Bicycle, You must contact Us using the details on the Weblink for assistance. Any Bicycle that is not properly locked and secured in the Bicycle Dock shall be considered not returned and remains the sole responsibility of the Member who rented such Bicycle, and the Hourly Rate fees indicated herein and on the Weblink will be charged until the Bicycle is properly locked and returned.

## RENTAL, UNLOCKING AND LOCKING BICYCLE

You agree that all Bicycle rentals are subject to the terms and conditions of this agreement.

You must use your Smartphone to log in to your Account to rent a Bicycle. When you press the Unlock button on your screen, the camera will automatically start and the app will direct you to scan the QR code displayed on the dock or the bike back-wheel lock. You must scan the QR code to unlock the bike. If the QR code scanning operation is unsuccessful or if you do not know how to use the QR code, you can insert the bike number displayed on each bike You will hear a distinctive unlocking sound so you can release the bike. You will have 5 seconds to undock the Bicycle.

If you leave the bicycle unattended at any time for any reason, you are responsible for securing the bicycle using the Steel Cable and Bike Lock on the back wheel to protect against theft of the bicycle. You are also responsible for the electric bike throughout your hire, whether you are riding it or leaving it stationary. Lock your bike to a fixed and strong object, in a visible spot. Pass the steel cable eyelet through the Bile Lock on the back wheel and manually close the Bike Lock. When you return to your bike, Login to your account, press Unlock button and scan the QR code on the until the bike lock is open and release the Steel Cable.

Return the bike to the On Forbes bike station and push the bike firmly into the bicycle dock. Do not use the Bike Lock at the Bike Station; the Bike Lock is for use when the Bike is to be secured at another location.

Return your bike by securely locking it at any available dock at the Docking Station. To securely lock the bike, align your bike squarely in front of the dock. Push the bike firmly into the locking dock. The bike is considered returned and locked when the sign light on the dock will turn blue.

## DAMAGED, LOST, OR STOLEN BICYCLE

You shall immediately report any lost or stolen Bicycle to Us following such event and you shall report any such loss or theft to the local police department within 24 hours of such loss or theft. If You promptly report a lost or stolen Bicycle to Us, file a police report with respect to such loss or theft, and forward Us a copy of such police report within five business days of filing such police report, then We may, in Our sole discretion, waive Our right to charge You fees for a lost or stolen Bicycle. Any use of a Bicycle exceeding the Rental Period with 24 hours shall be deemed a loss or theft of such Bicycle unless and until such Bicycle is found and/or returned to the Bicycle Station.

If a Bicycle You rent is damaged, lost, or stolen during the Rental Period, then the credit or debit card or bank account associated with Your Account will be charged at our sole discretion up to $5,000 per damaged, lost or stolen Bicycle.

Prior to charging Your credit or debit card or bank account for a damaged, lost or stolen Bicycle, We will attempt to locate the Bicycle and will attempt to contact You, using the contact information You provided in Your Account. If a lost or stolen Bicycle is returned to Us within 30 days of charging You, then any fees charged for a lost or stolen Bicycle will be promptly refunded; provided, however, that We may retain a portion of the such fees to compensate Us for reasonable and necessary costs included but not limited to transport and repairs to such Bicycle if such Bicycle is not returned to Us in good and working condition.

## STATE OF GOOD REPAIR

We will make every effort to provides Bicycles that are usable and in a state of general good repair. Before using a Bicycle, You shall inspect such Bicycle for defects and report to Us any such defect. You

shall check the battery level displayed on the station. If You notice a Bicycle with a defect or low level battery voltage, You must use a different Bicycle.

## AVAILABILITY OF SERVICE

We will make every effort to provide the Service, the Bicycles and the Helmets but We do not guarantee that the Service will be available at all times, as use of Bicycles and Helmets by other Members, repairs, force majeure events, or other circumstances might prevent Us from providing the Service. Access to Bicycles is conditioned upon the availability of Bicycles and Helmets at the Station. We do not guarantee, represent, or warrant the availability of the Service or the availability of any Bicycle and Helmet in any Station. Members should use the Weblink map to check the inventory of Bicycles available.

## HOURS OF OPERATION

The bikes are available for rent 24 hours per day, 7 days per week, except the scheduled maintenance services. The scheduled maintenance service hours will be announced on our Weblink and signs will be displayed at the station.

## NOTICES/COMMUNICATIONS

BYKKO can be contacted directly through the following avenues:

Email: support@bykko.com.au

Phone: 1300-1-BYKKO (1300-1-29556)

Business Hours: 9.00AM to 6.00PM, Monday to Friday

Head Office: 810 Hunter Street, Newcastle West, NSW 2302

BYKKO will send notices to Users both by email and text message. It is the Users responsibility to ensure the contact information linked to their Account is both valid and regularly monitored. Users can unsubscribe from notices at any time. The User acknowledges that unsubscribing from notices may affect the User's ability to use the Weblink and/or the Services and under no circumstances will BYKKO be liable for a failure of the Weblink or the Services due to the same.

## PRIVACY, CONFIDENTIALITY AND USE OF PERSONAL INFORMATION

Users of the Weblink are entitled to expect that any information gathered while using the Weblink will be treated within the terms of the New South Wales government's privacy responsibilities and obligations. The New South Wales government's privacy practices are regulated by the *Privacy and Personal Information Protection Act*1998 (NSW) (**PPIPA**) and *Health Records and Information Privacy Act* 2002 (NSW) (**HRIPA**).

This Privacy Policy sets out how BYKKO collects, uses, discloses and stores information collected through your use of the Weblink, which may include personal information, and how individuals may access and correct personal information that we may hold. BYKKO will only collect, use and disclose this information in accordance with PPIPA, HRIPA and any other applicable laws.

Use of Weblink may require individuals to disclose personal information when creating their user profile. The Weblink will also collect information about the Users use of the Services, including trips booked, trip information and payments made.

Personal Information received by BYKKO will be treated in accordance with our Privacy Policy, located on our Weblink. Users are responsible for any Personal Information they disclose to third parties through their use of the application. In addition, the Personal Information of a User may be provided to third parties, such as law enforcement agencies, insurers and external legal advisors, in the event of a claim or accident.

## ASSUMPTION OF RISK

YOU are solely and fully responsible for safely operating a Bicycle at all times. YOU agree that Bicycles are machines that may malfunction, even if a Bicycle is properly maintained, and that such malfunction may cause injury or damage. YOU understand that using a Bicycle can be dangerous and involves inherent risks, including risks of property damage, physical injury, or death (collectively, “Risks”) of YOU or others. YOU hereby freely and voluntarily assume all Risks, including the Risks of using a Bicycle with any defects. YOU understand that wearing a helmet and other safety equipment does not eliminate the Risks but that under certain circumstances using a helmet and other safety equipment may reduce the risk of injury or death. YOU agree that if YOUR use of the Service and/or a Bicycle, or use by others of a Bicycle rented by YOU, causes any injury or damage to another person or property, then YOU may be liable for all resulting injuries, damages, and related costs. By choosing to participate in the program, YOU assume full and complete responsibility for all related risks, dangers, and hazards, and YOU agree that We and all other RELEASED PARTY (defined below) are not responsible for any injury, damage, or cost caused by YOU with respect to any person or property (including the Bicycle itself) including as a result of any act, omission or negligence to the extent permitted by law.

The Service, Bicycles, Helmets, Docks, Stations or related information and Weblink are provided “as is” and “as available”. We and all other released parties do not represent or warrant that the Service, Bicycles, Docks, Helmets, or related information and Weblink will be in good repair or error-free, and delays, omissions, interruptions, or inaccuracies could exist. You assume full responsibility and risk of loss for using the Service, Bicycles, Helmets, Docks, Stations or related information and Weblink and We and all other released parties are not liable for any claim attributable to any of the foregoing.

## RELEASE

In consideration for Your participation in the Program, You, for and on behalf of You and Your heirs, administrators, executors, successors and assigns (“Releasors”), agree to, and hereby do, release, waive, and discharge all Claims (defined below) which may arise against Us, BYKKO Pty Ltd, Art Group, Vantage Strata and associated parties, all officers, directors, managers, shareholders, members, owners, employees, partners, suppliers, vendors, sponsors, advertisers, insurers and agents of each of the foregoing, owners and lessors of other premises on which the Service takes place and the successors, assigns, and heirs of each of the foregoing (each considered one of the "RELEASED PARTY" herein), from all Claims, direct or indirect, arising out of or related to the Service, Bicycles, Helmets, Docks, Stations or related information and Weblink, or Your use of the Service, Bicycles, Helmets, Docks, Stations or related information and Weblink, including Claims based on any Released Party’s alleged or actual negligence, breach of this agreement, or breach of any express or implied warranty (collectively, the “Released Claims”), and do hereby covenant not to sue the Released Parties for the Released Claims. “Claims” means, collectively, any and all claims, injuries, demands, liabilities, disputes, causes of action including statutory, contract, negligence, proceedings, obligations, debts, liens, fines, charges, penalties, contracts, promises, costs, expenses (including attorneys' fees, whether incurred at trial, on appeal, or otherwise), damages (including consequential, compensatory, or punitive damages), or losses (whether known, unknown, asserted, un-asserted, fixed, conditional, or contingent).

Minor Release (Participants under the age of 18)

AND YOU, THE MINOR'S PARENT AND/OR LEGAL GUARDIAN UNDERSTAND THE NATURE OF BICYCLING ACTIVITIES AND THE MINOR'S EXPERIENCE AND CAPABILITIES AND BELIEVE THE MINOR TO BE QUALIFIED, IN GOOD HEALTH AND PROPER PHYSICAL CONDITION TO PARTICIPATE IN SUCH ACTIVITY. YOU HEREBY RELEASE, DISCHARGE, COVENANT NOT TO SUE, AND AGREE TO INDEMNIFY AND SAVE AND HOLD HARMLESS EACH RELEASED PARTY FROM ALL NEGLIGENCE OF THE RELEASED PARTY OR OTHERWISE, AND FURTHER AGREE THAT IF, DESPITE THIS RELEASE, YOU, THE MINOR, OR ANYONE ON THE MINOR'S BEHALF MAKES A CLAIM AGAINST ANY OF THE RELEASED PARTY NAMED ABOVE, YOU WILL INDEMNIFY, SAVE AND HOLD HARMLESS EACH OF THE RELEASED PARTY from any litigation expenses, attorney fees, loss, liability, damage, or cost which may occur as the result of such claim.

## INDEMNIFICATION

Releasors shall indemnify the Released Parties, and will hold harmless the Released Parties against any Claim which the Released Parties may incur in connection with the Service, Bicycles, or related information, or assertion of a Released Claim by Releasors, or third parties in connection with Your use of the Service, Bicycles, or related information.

## LIMITATION ON LIABILITY

You do hereby acknowledge and agree that, except as may otherwise be limited by the laws of NSW or the Commonwealth of Australia, We, BYKKO, Art Group, Vantage Strata and all other released parties, are not responsible or liable for any claim, including those arising out of or relating to:

1. Any risk, danger, or hazard described in this agreement
2. Your use of, or inability to use, the Service, Bicycles, Helmets, Docks, Stations or related information and Weblink
3. Your breach of agreement or your violation of any law
4. Any negligence, misconduct, or other action or inaction by You
5. Your failure to wear a helmet while using a Bicycle, or
6. Any negligence, misconduct, or other action or inaction of any third party

You do hereby waive all claims with the respect of the foregoing, including those based in agreement, tort (including negligence), statutory, or other grounds, even if we or any of the other released parties has been advised of the possibility of such claims.

## MODIFICATIONS TO AGREEMENT

We reserve the right to unilaterally amend, modify, or change this agreement (each a “Modification”), at any time and from time to time, in Our sole discretion, without Your consent. By continuing to use the Service after any Modification, You agree to be bound by all such Modifications. Whenever a Modification is made to this agreement, We will post a notification of such Modification on onforbes.bykko.com.au (“Weblink”). You must carefully review this agreement on the Weblink from time to time in order to maintain awareness of all Modifications.

## TERMINATION OF AGREEMENT

This agreement is effective when You pay Your Membership Fee and automatically renews upon expiry of the Membership plan chosen by You unless earlier terminated in accordance with this agreement; provided, however, that Your payment obligations shall survive any termination. At any time and from time to time, and without Your consent, We may unilaterally terminate Your right to use the Service, in Our sole discretion and without any notice or cause. If We terminate this agreement without notice or cause, then You will be entitled to a pro rata refund of Your Membership Fee (defined below) for the Membership period in effect as of the date of such termination. If You terminate this agreement, then You will not be entitled to any refund.

## GOVERNING LAW

This agreement is governed by the laws, and subject to the exclusive jurisdiction, of New South Wales.