

DEED OF AGREEMENT FOR  
BUSFLEET AUSTRALIA TERMS OF SERVICE

This DEED is made on the date of the Order Form

BETWEEN: Busfleet Australia Pty Ltd (ABN 69 165 467 318) ("Busfleet")

AND: The Customer

AND: The Guarantor

(Individually referred to as "Party" or collectively referred to as "Parties" or "the Parties")

RECITALS

- A. Busfleet is the owner and operator of the Business.
- B. The Customer has requested the products and services offered by the Business, for consideration, and subject to the terms and conditions set out in this Deed.

IT IS AGREED

- 1. Interpretation and Definitions
  - a. In this Deed, unless the context requires otherwise, the following shall apply:
    - i. References to this or any other document include the document as varied or amended, and notwithstanding any change in the identity of the Parties.
    - ii. A reference to a gender shall include a reference to all other genders, and the singular will include the plural and vice versa.
    - iii. A reference to a statute, ordinance, code, or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction), and any equivalent of any other legislative authority having jurisdiction that may be relevant to the subject matter of this Deed.
    - iv. Headings are for convenience only and shall not be taken into account in interpreting the provisions of this Deed.
    - v. A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed, in its original form or any varied or amended form that comes into effect.

- vi. An expression importing a natural person includes any assignee, trust, partnership, joint venture, association, body corporate or governmental agency.
  - vii. Reference to ~~2011~~ amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia.
  - viii. Reference to a Party will include a reference to that Party's successors, heirs or assignees permitted by law.
  - ix. An obligation of 2 or more Parties binds them jointly and separately and an obligation incurred in favour of 2 or more Parties is enforceable by them jointly and separately.
  - x. Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- b. In this Deed, unless the context requires otherwise, the following words mean:
    - i. "*The Business*" means the business of providing customised bus / coach services, including but not limited to self-drive, driver-supplied and tour-guided services.
    - ii. "*Claims*" means any claims, without limitation, including any suit, action, cause of action, arbitration, money, debt, costs, demands, verdicts and judgments, whether brought by a private or public entity, including a regulatory body, either at law or in equity or arising under the provisions of any statute, or arising as a result of a Tortious Action, whether in any Australian jurisdiction or otherwise.
    - iii. "*Consumer Law*" means the *Competition and Consumer Act 2010* (Cth), and particularly Schedule 2 thereto, the *Fair Trading Act 1987* (NSW), the *Trade Practices Act 1974* (Cth), any accompanying regulations to those statutes, and the common law relating to consumer transactions, including but not limited to the sale of goods and the issue of misleading and deceptive conduct, and any equivalent, similar or alternative statutes, legislation, regulations, ordinances, codes, or law in any other jurisdiction.
    - iv. "*Corporations Law*" means the *Corporations Act 2001* (Cth) and the accompanying regulations thereto.
    - v. "*Credit Application*" means an application submitted by the Customer to Busfleet for credit pursuant to clause 6 of this Deed in the form set out in the document entitled

- “Busfleet Australia Credit Application Form”.
- vi. “The Customer” means any person who accepts the terms of this Deed in accordance with clause 15 herein.
- vii. “GST” means Goods and Services Tax, as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- viii. “Guarantor” means the person or persons nominated as such on the Order Form submitted by the Customer to Busfleet, if applicable, and who hereby accept liability under this Deed in so signing.
- ix. “Interest Rate” means:
- A. initially, the rate that is 6% above the cash rate published by the Reserve Bank of Australia for the period immediately preceding the relevant period in which interest commences to accrue under this Deed, while any portion of an invoice is outstanding for up to 21 days from the date specified on an invoice;
  - B. thereafter, the rate that is 9% above the cash rate published by the Reserve Bank of Australia for the period immediately preceding the relevant period in which interest commences to accrue under this Deed, while any portion of an invoice is outstanding for up to 28 days from the date specified on an invoice; and
  - C. thereafter, the rate that is 20% above the cash rate published by the Reserve Bank of Australia for the period immediately preceding the relevant period in which interest commences to accrue under this Deed, while any portion of an invoice is outstanding for more than 28 days from the date specified on an invoice.
- x. “Busfleet’s Privacy Policy” means the policy concerning the management of personal information published by Busfleet on its website and updated or amended from time-to-time, in accordance with the Privacy Law.
- xi. “Order” means the order for products and / or services by the Customer from Busfleet as constituted upon the acceptance of this Deed in accordance with clause 15 herein.
- xii. “Order Form” means the form given to the Customer by Busfleet and completed by the Customer containing a quotation for the relevant services to be provided by Busfleet.
- xiii. “PPSA” means the *Personal Property Securities Act 2009* (Cth) and the accompanying regulations thereto.
- xiv. “Privacy Law” means the *Privacy Act 1988* (Cth) and particularly the “Australian Privacy Principles” set out in Schedule 1 thereto, any accompanying regulations thereto, and any equivalent, similar or alternative statutes, legislation, regulations, ordinances, codes, or law in any other jurisdiction.
- xv. “The Road Laws” means the *Road Transport Act 2013* (NSW), the *Road Transport (General) Regulation 2013* (NSW), the *Road Rules 2014* (NSW), any accompanying or related legislation, regulations or rules, the equivalent or similar of same in other Australian jurisdictions, and the common law relating to same.
- xvi. “Security Interest” means a mortgage, an interest available under the PPSA, a charge as defined in the Corporations Law, and / or a caveat.
- xvii. “The SOGA” means the *Sale of Goods Act 1923* (NSW).
- xviii. “Tortious Action” means any conduct capable of giving rise to a Claim founded on a tort, including but not limited to the torts of negligence, trespass to chattels and / or other property, detinue, conversion, negligent misrepresentation, deceit, interference with contractual relations and public nuisance.

## 2. Purpose and Agreement

The purpose of this Deed is to set out and formalise the terms and conditions upon which the Customer engages Busfleet and procures their services, which the Parties have agreed to be essential, including the:

- a. consideration payable to Busfleet by the Customer;
- b. nature and extent of the product and / or service that Busfleet will provide to the Customer;
- c. way in which personal information is collected, stored and distributed in connection with the services of Busfleet;
- d. limitations in the services provided by Busfleet; and
- e. allocation of various liabilities or potential liabilities and corresponding releases and indemnities.

### 3. Warranties

- a. Before entering into this Deed, the Customer and the Guarantor has obtained, or has had the opportunity and has elected not to obtain, separate and independent legal, accounting and financial advice as to the terms of this Deed and as to the Customer's obligations, rights and liabilities under this Deed. Busfleet relies on this warranty and representation given by the Customer.
- b. All Parties intend for this Deed to be binding.
- c. The Customer and the Guarantor understand that this Deed continues to operate despite the death of the Customer or the Guarantor, and operates in favour of, and is binding on, the legal personal representative of that Party.
- d. The Parties have entered this Deed with the intention that it will still apply with a binding effect to the fullest extent possible notwithstanding any material change in the circumstances of any Party.
- e. No Party has entered this Deed as the result of any undue influence, unconscionable conduct, duress or similar circumstances of pressure, necessity or unequal bargaining power and all Parties were fully cognisant of the advantages and disadvantages of so entering at the time of making an informed choice in the affirmative.
- f. The Customer and the Guarantor will do all things reasonably necessary, including but not limited to the execution and lodgement of any requisite documents, to give effect to the provisions of this Deed.
- g. The Customer and the Guarantor will refrain from doing anything, including but not limited to the execution of a last will and testament with inconsistent provisions to this Deed, that may potentially jeopardise the operation or effect of any of the provisions of this Deed, and the Customer and the Guarantor acknowledge and agrees that any such act will be void or voidable at the discretion of Busfleet.
- h. The Customer and the Guarantor specifically warrant to Busfleet that they understand, acknowledge and accept the provisions of this Deed.
- i. Busfleet makes no warranties to the Customer or the Guarantor with respect to the goods and / or services, and the Customer and the Guarantor rely solely on manufacturer's warranties and the insurance policies of third party contractors engaged by Busfleet.

### 4. Consideration

- a. In consideration for the services provided by Busfleet, the Customer:

- i. Must pay to Busfleet the fee stated on the Order Form upfront in full, and before Busfleet provides any of the products and / or services specified on the Order Form;
  - ii. In the event that the Customer has submitted, and Busfleet has approved, a Credit Application, must pay to Busfleet the fee stated on the Order Form within fourteen days of Busfleet having provided the products and / or services specified on the Order Form;
  - iii. In the event that the Customer complies with subparagraph i above or, should subparagraph ii be applicable, pays the balance of the said fee to Busfleet on or before the date of delivery specified in the Credit Application, the Customer shall be entitled to a discount of 10% from the stated fee in the Order Form;
  - iv. Must pay interest at the Interest Rate with respect to any late payments due to Busfleet under this Deed unless and until the relevant sum is paid in full (including, but not limited to, any portion of the agreed fee withheld in accordance with an approved Credit Application);
  - v. Must pay interest at a rate equivalent to double the Interest Rate with respect to any disbursements incurred by Busfleet on behalf of the Customer, including but not limited to storage costs, tolls or other charges, until Busfleet is reimbursed by the Customer for the relevant sum and any accrued interest in full; and
  - vi. Acknowledges and agrees to, and must specifically comply with, the terms of this Deed.
- b. Unless otherwise stated, GST is payable by the Customer in addition to any figure cited in this Deed, the Order Form and / or the Credit Application.
  - c. Unless agreed otherwise in writing by a Director of Busfleet prior to payment being made, the cancellation of booked services is as follows;

#### *November – April (Peak)*

Less than 24 hours before booked date = 100%

Within 48 hours of booked date = 50 %

Outside 48 hours of booked date = 25%

#### *May - October (Off-peak)*

Less than 24 hours before booked date = 100%

Within 24-48 hours of booked date = 50%

The cancellation will be deducted from the booking payment made by the Customer to Busfleet with the balance being refunded by the same method of payment.

*Cancellations outside of 14 days prior to booked date incur no penalty.*

- d. A breach of this clause on the part of the Customer gives Busfleet an immediate right to terminate this Deed, to require the immediate return of any and all goods and / or service components, and to refuse the Customer access to any and all documents relating to the services or activities of Busfleet and any future services, without the need to refund or compensate the Customer in any way whatsoever.

5. Supply and Delivery of Goods and / or Services

- a. The Customer acknowledges and agrees that it is the responsibility of the Customer to familiarise itself with the Consumer Law and the SOGA, and the nature of Tortious Actions, and that it is not the responsibility of Busfleet to do so, in any way whatsoever, and that Busfleet will not do so.
- b. The Customer acknowledges and agrees that Busfleet makes or gives no undertaking, assertion or representation with respect to the goods and / or services it supplies to the Customer, which the Customer acknowledges and agrees it sought out from Busfleet without encouragement, and in relation to which the Customer acknowledges assuming risk of damage, destruction and / or law, for which it indemnifies Busfleet in full in accordance with this Deed.
- c. The Customer acknowledges and agrees that, following from the preceding subclause, Busfleet has not acted in any manner amounting to, or likely to amount to, misleading or deceptive conduct, coercion, bait advertising, pyramid selling, an unsolicited offer or supply, unconscionable conduct, unfair practices, third line enforcing or any other conduct or practice capable of constituting a breach of the Consumer Law, or the provision of goods or services not fit for purpose, not fitting their description, or any other conduct or practice capable of constituting a breach of the SOGA.
- d. The Customer also acknowledges that any goods provided by the Customer to Busfleet in connection with the services of Busfleet are not provided on bailment, and that the provisions of the SOGA apply only as between the Customer and its own customers, to the exclusion of Busfleet at all times.
- e. The Customer shall not, under any circumstances whatsoever, give or make any undertaking, assertion or representation in relation to goods and / or services supplied to it by Busfleet, to a third party without the prior written consent of

Busfleet, or engage in any other conduct or practice capable of constituting a breach of the Consumer Law or the SOGA, with respect to the goods and / or services supplied to it by Busfleet, and shall indemnify and keep indemnified Busfleet with respect to any Claim arising from a breach of this clause.

- f. The Customer acknowledges and agrees that, under no circumstances whatsoever, will Busfleet provide advice to the Customer about its goods and / or services, or suggest goods and / or services to suit a particular purpose, and the Customer selects its goods the subject of any Order independently.
- g. The Customer acknowledges and agrees that Busfleet is entitled to claim and maintain a lien over the goods of the Customer in the event that the Customer fails in any way with respect to its obligation to pay for those goods and / or services, unless and until full compliance occurs, and that the exercise of such right does not disentitle Busfleet to seek damages and / or enforce a Security Interest in accordance with this Deed.
- h. The Customer acknowledges and agrees that Busfleet will provide approximate delivery or collection times only, and such times are not to be taken under any circumstances whatsoever as being essential provisions of this Deed.
- i. The Customer acknowledges and agrees that Busfleet will under no circumstances whatsoever be held to be liable in any way for Claims made by the Customer or a third party with respect to goods and / or services the subject of an Order, whether collected by the customer of the Customer or the Customer itself from the trading premises of Busfleet, or delivered by Busfleet.
- j. Unless otherwise agreed to in writing between the Parties, the timing for delivery or collection of the goods and / or services will be as close as possible as Busfleet can achieve to the delivery or collection date stated on the Order Form.
- k. The Customer acknowledges and agrees that, unless otherwise agreed to in writing between the Parties, and where appropriate and / or applicable (at the sole discretion of Busfleet), Busfleet will only deliver the goods and / or services to the Customer's designated delivery venue in a semi-completed form, to ensure against damage during transportation.
- l. Busfleet will not be responsible to the Customer in any way whatsoever for any delays, although the Customer will be liable to Busfleet for liquidated damages delaying delivery, completion and / or return at the rate of \$250.00 per hour up to a

maximum of eight hours per day and five days per week, and irrespective of whether such delay is the fault of the Customer or its own customer. For the avoidance of doubt, delays for the purpose of this clause incorporate, as the Customer's responsibility, both delays to the agreed or delivery date and the agreed return date by reason of a failure on the part of the Customer to disclose any relevant factors which could lead to delay, or to otherwise fail to prepare the designated delivery venue for delivery in any way.

- m. In the event that, through the fault of the Customer or its own customer, Busfleet cannot deliver the goods and / or services on the delivery or collection date stated in the Order Form, clause 5.1. above will continue to apply, up to a maximum of twenty days, until Busfleet can re-attempt delivery or provision for collection at the earliest possible opportunity.
- n. To the extent permitted by law, the provisions of the SOGA and the Consumer Law are excluded from operation in any manner that would be adverse to the interests of Busfleet.
- o. All risk remains with the Customer at all times and under all circumstances.
- 6. Provision of Trade Credit
  - a. The Parties acknowledge and agree that, owing to the circumstances of the transactions envisaged by this Deed, the provisions of the *National Consumer Credit Protection Act 2009* (Cth), the accompanying regulations thereto or the code made thereunder do not apply to any credit arrangement provided by Busfleet to the Customer.
  - b. Busfleet will not extend any credit to the Customer without receiving and approving a Credit Application from the Customer.
  - c. Busfleet will not extend any credit to the Customer without being satisfied that a credit worthy Guarantor has accepted the position of guarantor for the Customer's obligations arising pursuant to this Deed, and Busfleet reserves the right to request further information and / or documentation from the Guarantor to verify same, including but not limited to security documentation, as a condition precedent to extending credit to the Customer.
  - d. Busfleet reserves the right to reject a Credit Application submitted by the Customer or to decline to continue to provide credit to the Customer at any time and at the sole discretion of Busfleet.
  - e. Busfleet reserves the right to make acceptance of a Credit Application by the Customer contingent on

the provision and investigation of further information and / or documentation from the Customer, and / or the offering up and securing of a sufficient Security Interest by the Customer in the opinion of Busfleet.

- f. If Busfleet approves a Credit Application, the effect of the approval will be to stay the operation of a portion only of the Customer's payment obligation, as set out in clause 4 herein.
- g. Clauses 4.a.iv. and 4.a.v. will continue to apply notwithstanding that Busfleet may have extended credit to the Customer pursuant to this clause.
- h. In submitting any Credit Application, the Customer warrants to Busfleet that it has and will keep current all appropriate insurances relating to its business and the goods and / or services to be supplied, and delivery of those goods and / or services, by Busfleet, sufficient to cover any relevant Claim, and that it will indemnify Busfleet for any such Claim.
- i. Both the Customer and the Guarantor acknowledge and agree that, in submitting any Credit Application, Busfleet becomes entitled to charge any real, personal or other property owned by them, or to otherwise secure any monies payable to Busfleet through that property, and to procure from the Customer and / or the Guarantor a duly executed Security Interest for lodgement and / or registration and / or enforcement, at the expense of the Customer and / or the Guarantor, as the case may be, including any legal costs incurred, on a full indemnity basis.
- j. The Customer and the Guarantor acknowledge and agree that Busfleet may pursue them jointly and / or severally at the election of Busfleet in the event of a material breach of this Deed.
- 7. Privacy
  - a. The Customer warrants to Busfleet that the Customer has familiarised itself, or will familiarise itself at the first available opportunity, with the Privacy Law, and that it is not the responsibility of Busfleet to do so, in any way whatsoever, and that Busfleet will not do so.
  - b. The Customer warrants to Busfleet that the Customer has read Busfleet's Privacy Policy.
  - c. The Customer accepts the terms of Busfleet's Privacy Policy.
  - d. The Customer hereby consents and gives express permission for Busfleet to use the Customer's personal information and any information the Customer provides to Busfleet in the following manners:

- i. To register the Customer's account with Busfleet;
  - ii. To ensure the Customer's compliance with clause 4 herein;
  - iii. To defend any Claim brought by a customer of the Customer, or by the Customer itself; and
  - iv. To disclose, if required to do so by law.
- e. The Customer understands that, notwithstanding that Busfleet takes the most appropriate measures possible in the circumstances to ensure against such occurrences, other persons or entities with whom Busfleet deals, or hackers or other cyber criminals, may use the Customer's information or content in a manner that breaches the Privacy Law or Busfleet's Privacy Policy or this clause. The Customer engages Busfleet knowing and accepting that this is a risk that the Customer assumes in full, and the Customer hereby forever releases and indemnifies in full Busfleet for any such occurrence or any similar or like occurrence.
- f. Any act inconsistent with this clause on the part of the Customer, including but not limited to a breach or the pursuit of a Claim in relation to the Customer's personal information or the Privacy Law, gives Busfleet an immediate right to terminate this Deed and cancel the Customer's access to any and all documents relating to the services or activities of Busfleet and any future services, without the need to refund or compensate the Customer in any way whatsoever.
8. Contraventions and other Tortious Actions
- a. The Customer warrants to Busfleet that the Customer has familiarised itself, or will familiarise itself at the first available opportunity, with the Road Laws, the SOGA the Consumer Law and the Corporations Law, and the nature of Tortious Actions, and that it is not the responsibility of Busfleet to do so, in any way whatsoever, and that Busfleet will not do so.
  - b. The Customer hereby warrants to Busfleet that it will not involve itself in any way whatsoever with any act or omission that gives rise to an actual or potential breach or contravention of the SOGA, the Consumer Law or the Corporations Law, or in any way that would otherwise give rise to the operation of the Agency Law or provide a cause of action in favour of the Customer in relation to any Tortious Actions, as the case may be.
  - c. The Customer understands that, notwithstanding that Busfleet itself takes the most appropriate measures possible in the circumstances to ensure against its services falling foul of the requirements of the laws referred to in this clause, limitations apply as set out in clause 10 herein. The Customer engages Busfleet and procures the goods and / or services from Busfleet knowing and accepting that this is a risk that the Customer assumes in full, and the Customer hereby forever releases and indemnifies in full Busfleet for any such occurrence or any similar or like occurrence.
- d. The Customer also acknowledges and agrees that the Customer remains liable, to the exclusion of Busfleet under any and all circumstances whatsoever, to its principle contractor or another relevant third party the Customer is obligated to, including but not limited to its own customer, at all times.
- e. Any act inconsistent with this clause on the Part of the Customer, including but not limited to a breach or the pursuit of a Claim, gives Busfleet an immediate right to terminate this Deed and cancel the Customer's access to any and all documents relating to the services or activities of Busfleet and any future services, without the need to refund or compensate the Customer in any way whatsoever.
- f. To the extent necessary, the provisions of this clause apply in full, *mutatis mutandis*, with respect to Tortious Actions, as the case may be.
9. Additional Charges
- a. In the event that Busfleet, through the fault of the Customer or a customer of the Customer, receives any infringement, charge or other notice requiring payment of a penalty, charge or other levy of any nature, the Customer will be liable to Busfleet for the full amount of same, together with an administration fee of \$80.00, and interest will be payable on same at the Interest Rate.
  - b. In the event that, through the fault of the Customer or a customer of the Customer, the goods provided to the Customer require cleaning or repairs, the Customer will be liable to reimburse Busfleet for the full amount of same, together with any lost income arising as a result, subject only to insurance payments made to Busfleet, and interest will be payable on same at the Interest Rate.
  - c. Notwithstanding the above:
    - i. in the event that any such loss or damage is caused by reason of intoxication or drug consumption or carrying more than the prescribed limit of persons in any given vehicle, the Customer will not be entitled to any offset on account of Busfleet's insurance; and
    - ii. the Customer will be liable in full to any third party, with any such third party Claim to be

recoverable by Busfleet from the Customer with interest payable at the Interest Rate.

#### 10. Indemnification

The Customer and the Guarantor expressly acknowledge and agree that:

- a. Busfleet may be relying on representations made and / or warranties given by other Parties in this Deed and that, as such, Busfleet may, and may continue to, assume considerable risk, including but not limited to through the fulfilment of Busfleet's obligations in reliance upon the Customer's warranties, that Busfleet may not otherwise have endeavoured to assume in absence of the Parties' execution of this Deed;
- b. The Customer and the Guarantor acknowledge that, in the event of a breach, derogation from, inability, unwillingness or refusal of the Customer or the Guarantor to comply with the terms of this Deed, Busfleet would have relied upon the Customer's representations and / or warranties to its detriment and that, as such, the Customer and / or the Guarantor will indemnify Busfleet for any reasonable costs or expenses, whether direct or indirect, present or future, incurred by Busfleet in connection with this Deed;
- c. Subject to Busfleet acting in breach, or outside the scope, of the provisions of this Deed, the Customer and the Guarantor specifically indemnify Busfleet against the following occurrences:
  - i. Any and all Claims arising in relation to the Customer's use of the goods and / or services provided by Busfleet generally;
  - ii. Any and all Claims arising in relation to the use by third parties of the goods and / or services of Busfleet generally that may affect or relate in any way whatsoever to the Customer or the Guarantor and that may have a bearing on Busfleet;
  - iii. Any Claim based on negligence, other Tortious Actions, the Agency Law, the SOGA, the Consumer Law or the Corporations Law, as the case may be; and
  - iv. Any ancillary loss or damage, suffered by the Customer or any third party.
- d. Without limiting any other right or obligation which a Party may have under this Deed or a covenant herein or otherwise, the Customer and the Guarantor indemnify Busfleet and will keep Busfleet indemnified for any Claims or other loss or damage suffered as a result of a breach by Busfleet or a third party or the Customer or the Guarantor of this Deed or a contravention of any law, regulation, by-law or order of any relevant

competent authority or the covenants of this Deed;

- e. The costs of any action required to be taken on the part of Busfleet to enforce the provisions of this Deed, including legal action and / or and the engagement of commercial or debt collection agents, shall be reimbursed by the Customer in full at the indemnity rate, together with interest at the Interest Rate; and
- f. Any indemnity under this Deed will be independent of any other obligation of any Party and is irrevocable and will continue despite expiration or termination of this Deed. Busfleet may enforce any indemnity without or before incurring any actual expense or suffering any actual loss or damage.

#### 11. Limitations

The Customer acknowledges and agrees that, while Busfleet has taken all reasonable measures to ensure that the goods and / or services provided by Busfleet are exemplary in nature, the goods and / or services rendered by Busfleet have the following limitations:

- a. Busfleet does not guarantee the absolute accuracy or conclusiveness of its planning services under any circumstances whatsoever;
- b. Busfleet does not warrant that its goods and / or services will be sufficient for the purposes of the customer of the Customer, and maintains that it is the responsibility of the Customer to serve and account to its customer, unless agreed in writing between the Parties;
- c. Busfleet does not give any warranties with respect to the work provided by contractors engaged by Busfleet, or the input goods used by Busfleet in providing the goods and / or services, or the finished product provided by Busfleet to the Customer;
- d. The responsibility of Busfleet is to provide goods and / or services that reflect the instructions provided by the Customer on the Order Form only.

#### 12. Security

The Customer hereby grants to Busfleet the right to a Security Interest, or multiple Security Interests, whether registered or equitable, in order to secure any payments owing to Busfleet under this Deed, and shall not refuse consent to the registration of same or refuse to sign any documents required to effect or perfect same.

#### 13. General Terms

- a. All drivers must be over 21 years of age with at least 12 months' driving experience;

- b. All drivers must hold a valid and non-provisional Australian driver's license appropriate for the particular vehicle used, and must enable Busfleet to scan a copy of same;
- c. Carrying more persons than allowed for a particular vehicle is strictly prohibited;
- d. The consumption of alcohol or drugs is strictly prohibited;
- e. Smoking is strictly prohibited;
- f. The consumption of food or dairy products is strictly prohibited;
- g. Seat belts must be worn at all times if fitted;
- h. The fitting of child restraints is the sole responsibility of the Customer;
- i. Taking any vehicle into an area, or through a terrain, not expressly disclosed to, and consented to by Busfleet in writing, prior to doing so, is strictly prohibited;
- j. The Customer must check the fuel and oil prior to each use of a vehicle, and must fill and / or replace same where required at the Customer's expense;
- k. One rental day is strictly 24 hours, and return at least one minute over any given rental day will attract an additional day of rental charges;
- l. In the event that a vehicle requires repairs or breaks down, through no fault of the Customer, Busfleet will use all reasonable endeavours to ensure the vehicle is repaired or a replacement is issued at the first available opportunity, subject to the costs of same exceeding any fees charged by Busfleet, in which case the Customer shall be solely responsible for paying the difference; and
- m. Any breach of this clause or this Deed generally will disentitle the Customer to the benefit of the provisions of this Deed, including but not limited to any offset on account of Busfleet's insurance.

#### 14. Relationship of the Parties

Nothing in this Deed, and nothing in relation to the goods and / or services of Busfleet, is to be construed as constituting the Parties as partners, or as creating between the Parties the relationship of employer and employee, master and servant, or principal and agent, and no Party has (and must not represent that it has) any power, right or authority to bind the other, unless the contrary intention is expressed in the provisions of this Deed.

#### 15. Variation

No variation of this Deed will be of any force or effect unless it is in writing and signed by both Parties.

#### 16. Assignment

- a. The Customer may not assign its rights or obligations under this Deed under any circumstances whatsoever.
- b. In the event that Busfleet merges with another entity, transfers its intellectual property to another entity, sells the Business, or on the occurrence of a similar or like event, the rights and obligations of Busfleet will automatically be assigned and subrogated to the relevant new entity, as the case may be.

#### 17. Acceptance and Agreement

The Customer acknowledges and agrees that the Customer was made aware of the terms of this Deed, and physically and / or electronically acknowledged and accepted those terms, by signing the Order Form or otherwise, as a condition precedent to the provision of services by Busfleet.

#### 18. Document to Enure

Subject to any express terms of this Deed evincing a contrary intention, all of the clauses of this Deed survive the termination of this Deed for any reason and continue to be binding upon the Parties and enure for the benefit of the Parties.

#### 19. Entire Agreement

This Deed embodies the entire agreement between the Parties relating to the subject matter of this Deed, and this Deed supersedes and replaces any prior and / or contemporaneous agreements and understandings between the Parties in that regard.

#### 20. Governing Law and Jurisdiction

- a. This Deed is governed by the law of New South Wales and the Parties:
  - i. submit to the jurisdiction of its courts or tribunals and courts of appeal from those courts or tribunals ; and
  - ii. will not object to the exercise of jurisdiction by those courts or tribunals on any basis.
- b. For the avoidance of doubt, clause 18a above is intended to have the effect that any litigious dispute should be heard and determined by a court or tribunal in New South Wales, Australia, and according to the laws applicable in New South Wales, Australia.

21. Dispute Resolution

- a. If a dispute arises out of or relates to this Deed (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of the Deed or as to any claim in tort, in equity or pursuant to any statute) ("Dispute") a Party may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with the following paragraphs of this clause, except where the Party seeks urgent interlocutory relief.
- b. A Party claiming that a Dispute has arisen under or in relation to this Deed must give written notice to the other Party specifying the nature of the Dispute.
- c. On receipt of that notice by the other Party, the Parties must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.
- d. If the Parties do not agree within seven (7) days of receipt of the notice (or such further period as agreed in writing by them) as to:
  - i. The dispute resolution method and/or procedures to be adopted;
  - ii. The timetable for all steps in those procedures; and
  - iii. The selection and compensation of the independent person required for such technique;
  - iv. The Parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.
- e. In the event the Dispute is not resolved by mediation within fourteen (14) days of written notice by one Party to the other of the Dispute (or such further period agreed in writing between the Parties), either Party may refer the Dispute to arbitration. The arbitrator shall be agreed between the Parties within ten (10) days of written notice of the referral by the referring Party to the other, or failing agreement such as appointed by the President of the Law Society of New South Wales or the President's nominee. In either case the arbitrator shall not be a person who has participated in an informal resolution procedure in respect of the Dispute.
- f. This clause does not operate with respect disputes solely concerning payment for Residential

Building Work, in which case the provisions of the Building Law apply instead.

22. Severance

- a. In the event of any covenant or other provision of this Deed being declared invalid, illegal, unlawful or otherwise being incapable of enforcement, all other covenants and provisions of this Deed shall nevertheless prevail and remain in full force and effect.
- b. In the event of any such provision being severed the Parties must endeavour to agree upon provisions in substitution for the severed provision that are not illegal and that substantially express the meaning of the severed provision, as suggested by Busfleet.

23. Independent Advice

- a. The Customer acknowledges and represents to Busfleet that the Customer has obtained, or has had the opportunity to obtain and has elected not to obtain, separate and independent legal, accounting and / or financial advice as to the terms of this Deed and as to any obligations, rights or liabilities that may arise under this Deed.
- b. Busfleet relies on the acknowledgement and representation given in this clause by the Customer.

24. Absolute bar

This Deed may be pleaded and tendered by any Party as an absolute bar and defence to any proceeding or Claim brought in breach of the terms of this Deed or otherwise in relation to this Deed.