

## Terms and Conditions

This website is wholly owned and operated by Tarenberg Pty Ltd trading as Simcocks' Bus Services.

This Agreement including any other terms incorporated by reference are a binding agreement between us and any person accessing information, tools and services available from the Website, including making a Booking for Services.

By visiting any part of the Website and/or making a Booking, the Customer agrees to be bound by this Agreement, including any additional terms and conditions incorporated by reference or made available by hyperlink.

The Customer warrants that they are at least 18 years of age, and they are legally capable of entering into binding contracts. If the Customer is under 18 years of age, you warrant that you have obtained consent from their parent or legal guardian, and they agree to be bound by this Agreement on their behalf.

If the Customer does not agree to this Agreement and to the Privacy Policy, do not access or otherwise use this Website or making any Bookings.

### 1. General Website Terms and Conditions

The term 'Simcocks' Bus Services' or 'us' or 'we' refers to the owner of the website. The term 'you' refers to the user or viewer of our website.

- (a) The use of this website is subject to the following terms of use:
- (i) The content of the pages of this website is for your general information and use only. It is subject to change without notice.
  - (ii) This website uses cookies to monitor browsing preferences.
  - (iii) Neither we nor any third parties provide any warranty or guarantee as to the accuracy, timeliness, performance, completeness or suitability of the information and materials found or offered on this website for any particular purpose. You acknowledge that such information and materials may contain inaccuracies or errors and we expressly exclude liability for any such inaccuracies or errors to the fullest extent permitted by law.
  - (iv) Your use of any information or materials on this website is entirely at your own risk, for which we shall not be liable. It shall be your own responsibility to ensure that any products, services or information available through this website meet your specific requirements.
  - (v) This website contains material which is owned by or licensed to us. This material includes, but is not limited too, the design, layout, look, appearance and graphics. Reproduction is prohibited without prior permission.
  - (vi) All trademarks reproduced in this website which are not the property of, or licensed to, the operator are acknowledged on the website.
  - (vii) Unauthorised use of this website may give rise to a claim for damages and/or be a criminal offence.

- (viii) From time to time this website may also include links to other websites. These links are provided for your convenience to provide further information. They do not signify that we endorse the website(s). We have no responsibility for the content of the linked website(s).

## 2. Customer Obligations

### 2.1 General

The Customer undertakes to:

- (a) Do all things that are reasonably necessary to provide Simcocks' Bus Services with all assistance and co-operation in the performance of this Agreement to enable Simcocks' Bus Services to perform its obligations under this Agreement including providing any information as reasonably required by Simcocks' Bus Services from time to time;
- (b) provide Simcocks' Bus Services with:
  - (i) accurate and timely forecasting information as it relates to the provision of the Services;
  - (ii) access to relevant Personnel of the Customer, on reasonable notice; and
  - (iii) all information, materials, and documentation as is otherwise necessary for Simcocks' Bus Services; and
- (c) perform any obligations specified in a Booking.

#### Acceptable Use

In using the services of Simcocks' Bus Services, the Customer will comply with

- (i) The Terms and Conditions agreement specified within
- (ii) The terms of the booking which include any specifications set out
- (iii) All applicable laws

The customer must also not interfere with the operation of the Services or use the Services in a manner that could harm or impair anyone else's use of the services.

### 2.2 Simcocks' Bus Services Bus and Vehicle Fleet

(a) If and to the extent the Booking relates to hire of a vehicle from Simcocks 'Bus Services Bus Fleet, the Customer:

- (i) will not assert any right, interest or lien in any vehicles under Simcocks 'Bus Services Bus Fleet or any other property or assets that Simcocks 'Bus Services may own, manage and operate; and
- (ii) the Customer must not part with possession of any vehicles under Simcocks 'Bus Services Bus Fleet without the prior written consent of Simcocks 'Bus Services

(b) The Customer must:

- (i) properly operate and maintain any vehicles under Simcocks 'Bus Services Bus Fleet in accordance with any reasonable requirements and instructions of Simcocks 'Bus Services;
- (ii) ensure that the Bus Fleet is maintained in substantially good repair and condition subject to fair wear and tear during the relevant Booking Term; and
- (iv) ensure that the Customer's use of Simcocks 'Bus Services Bus Fleet does not damage, hinder or unduly interfere with Simcocks 'Bus Services or any other Third Party.

(c) Subject to any negligent act or omission of, or contravention of any applicable law, the Customer remains solely responsible and liable for its use of the Simcocks 'Bus Services Bus Fleet including all claims, losses, liabilities, damage and injury incurred by the Customer, Simcocks 'Bus Services or any Third Party by or as a result of its use of the Simcocks 'Bus Services Bus Fleet.

## 3. Fees and Payment

### 3.1 Fees

The Customer will pay Simcocks' Bus Services the fees and any agreed Expenses as set out in the relevant Booking Confirmation.

### 3.2 Invoicing

Simcocks' Bus Services will issue a Tax Invoice to the Customer for the Fees and Expenses as set out in the Booking Confirmation

### 3.3 Deposits

In some instances, Simcocks' Bus Services may require a booking confirmation deposit. This is dependent on the specific booking. We will notify the Customer if this is necessary and will be required to secure the booking in place. If this Booking Deposit is not paid within Seven (7) days of the date of the invoice, the booking will be cancelled.

### 3.4 Payment Terms

- (a) Full payment for charter customers is required within 30 days of the date that the charter is performed. Simcocks' Bus Services will send invoices within 3-5 business days of charter completion to allow for any unforeseen extraneous costs or changes to be made.
- (b) Payment of a Tax Invoice can be made by bank transfer, cheque, money order or by credit card. The Customer will pay any bank or service charges applicable to its payment by credit card.

### 3.5 Cancellations

- (a) If the Customer cancels a Booking with less than 12 hours' notice prior to or at the first pick-up point, Simcocks' Bus Services reserves the right to charge a cancellation fee of up to 50% of the total charter price outlined in the booking confirmation. If a Booking is cancelled after the first pick-up point, then Simcocks' Bus Services reserves the right to charge the full amount of the Fees as set out in the Booking Confirmation.
- (b) Simcocks' Bus Services may cancel a Booking due to a Force Majeure Event. In such circumstances, Simcocks' Bus Services will reimburse the Customer the amounts paid but will not be responsible for any Losses incurred by the Customer.

### 3.6 Additional Amounts

- (a) The Customer agrees upon Booking Confirmation and commencement of the Services that the Fees charged by Simcocks' Bus Services for provision of the Services will be amended for any additional time and/or distance provided on the day or total duration of the Services.
- (b) Additional Fees will be calculated on a pro-rata basis and will depend on the extent of the additional time and/or distance travelled.
- (c) Simcocks' Bus Services does not guarantee to provide additions or amendments during Booking Term any such variation will be considered only and subject to, time taken, driving hours, deviation from route and additional vehicles required.
- (d) Simcocks' Bus Services reserves the right to impose additional Fees for cleaning the interior of any vehicle that is in our sole judgement left in an unsatisfactory manner either during or at the

conclusion of the Booking Term, including wilful damage by Invitees to either the interior or exterior of any vehicle in Simcocks' Bus Services Bus Fleet.

### 3.7 Overdue Amounts

Subject to our Payment Terms, if any amount payable to Simcocks' Bus Services under these Terms and Conditions has not been paid by the Customer by the due date set out in the Invoice provided, and Simcocks' Bus Services has provided written notice of such failure and the Customer has not paid, Simcocks' Bus Services may:

- (a) charge penalty interest a rate of 2% higher than the current rate fixed under the Taxation Administration Act 1996 (SA); or
- (b) suspend the provision of the Services under the Booking to which the unpaid amount relates to.

### 3.8 Fee review

Simcocks' Bus Services may vary the Fees under a Booking:

- (a) under an amended Booking setting out a pricing update, provided in writing to the Customer in accordance with clause 2.2; and
- (b) in accordance with the terms set out in the current or renewing Booking.

### 3.9 GST

(a) If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this Agreement, the recipient must pay to the supplier an amount (GST Amount) equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the net consideration for the supply.

(b) If a party is required to make any payment or reimbursement, that payment or reimbursement must be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.

(c) A supply may be GST-free if the recipient of the supply is outside of Australia, and the use of the supply is outside of Australia.

(d) This clause is subject to any other specific agreement regarding the payment of GST on supplies.

## 4.0 Confidentiality

### 4.1 Confidentiality obligations

The Recipient receiving, possessing or otherwise acquiring Confidential Information of the Discloser acknowledges that the Discloser's Confidential Information is the property of and confidential to or a trade secret of the Discloser. Subject to clause 5, the Recipient must:

- (a) keep the Discloser's Confidential Information confidential and not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the prior written approval of the Discloser;
- (b) take all reasonable steps to secure and keep secure all Discloser's Confidential Information coming into its possession or control; and
- (c) not memorise, use, modify, reverse engineer or make copies, notes or records of the Discloser's Confidential Information for any purpose other than in connection with the performance by the Recipient of its obligations under this Agreement.

## 4.2 Exceptions

(a) The obligations of confidentiality under clause 5 do not apply to any information that:

- (i) is generally available to the public (other than by reason of a breach of this Agreement);
- (ii) is disclosed to the Recipient on a non-confidential basis by a third party entitled to do so; or
- (iii) was independently developed by the Recipient without reference to any Confidential Information of the Discloser.

(b) A Party is not in breach of clause 5 in respect of any disclosure of Personal Information that is required to be disclosed by any applicable law.

## 4.3 Publicity

Subject to Simcocks 'Bus Services obtaining the Customer's prior written consent, Simcocks 'Bus Services may reference the Customer by name and use the Customer's logo in all customer lists and in sales and marketing communications.

## 5.0 Privacy

### 5.1 Compliance with Privacy laws

Both Parties agree to comply with the Privacy laws in relation to the provision and use of the Services.

### 5.2 Specific requirements

The Customer's Personal Information will be dealt with in accordance with the Privacy Policy.

## 6.0 Warranties

### 6.1 Customer warranties

The Customer warrants to Simcocks 'Bus Services and agrees that:

- (a) any information or materials it has provided to Simcocks 'Bus Services under this Agreement (including prior to the Commencement Date) is true, accurate, and are not misleading or deceptive in any way; and
- (b) in using the Services, the Customer will:
  - (i) ensure that the Intellectual Property Rights and other proprietary rights in the Services are not infringed in any way;
  - (ii) comply with the directions of Simcocks 'Bus Services in relation to the use of the Services; and
  - (iii) immediately cease to use the Services in every manner whatsoever upon expiration or termination of this Agreement or upon an earlier written request by Simcocks 'Bus Services which is not inconsistent with this Agreement.

### 6.2 Simcocks 'Bus Services warranties

Simcocks 'Bus Services warrants to the Customer that:

- (a) it has and will maintain all licences, authorisations, consents, approvals and permits required in order to perform its obligations under this Agreement; and
- (b) it will exercise all due care and skill in the performance of the Services.

### 6.3 Consumer law

(a) The Australian Consumer Law (ACL) in the Competition and Consumer Act 2010 (Cth) and other similar consumer protection laws and regulations may imply certain rights, consumer guarantees, warranties and remedies relating to the Services which cannot be excluded, restricted,

qualified or modified by Simcocks 'Bus Services (Non-Excludable Rights). Nothing in this Agreement excludes or attempts to exclude your Non-Excludable Rights as a consumer under the ACL.

(b) To the maximum extent permitted by law or any statutory consumer guarantee contained in, any applicable law, Simcocks 'Bus Services liability to the Customer for a breach of this Agreement or the ACL will be limited to:

(i) offering the Customer a refund for a major failure of the Services; or

(ii) re-performing the Services where it fails to be of an acceptable quality, but the failure does not amount to a major failure.

(c) If the Customer is not satisfied with the quality of the Services, please contact Simcocks 'Bus Services to discuss options. Where applicable, Simcocks 'Bus Services will comply with its obligations under the ACL.

## 6.4 Disclaimer of warranty

(a) Any representation, warranty, condition or undertaking that would be implied in this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

(b) Simcocks 'Bus Services expressly disclaims and excludes any and all warranties (whether express or implied), and offers no indemnities or guarantees, in respect of Third Party Materials (including in relation to the availability, suitability, performance, or fitness for a particular purpose).

## 7.0 Indemnity

### 7.1 Simcocks 'Bus Services general indemnity

Simcocks 'Bus Services indemnifies the Customer from and against any liability suffered or incurred by the Customer arising from or in connection with any of the following:

(a) fraud, or fraudulent misrepresentation or wilful misconduct by Simcocks 'Bus Services or its Personnel;

(b) damage or loss to any real and tangible property of the Customer or any other person caused by the wrongful, unlawful or negligent act or omission of Simcocks 'Bus Services or its Personnel under this Agreement; or

(c) death of or injury to any person caused by the wrongful, unlawful or negligent act or omission of Simcocks 'Bus Services or its Personnel under this Agreement.

### 7.2 Customer's indemnity

The Customer indemnifies Simcocks 'Bus Services and each member of the Simcocks 'Bus Services Group from and against any liability suffered or incurred by Simcocks 'Bus Services and each member of the Simcocks 'Bus Services Group arising from or in connection with any of the following:

(a) the Customer's, its Personnel's or Invitee's use of the Services;

(b) the Customer's, its Personnel's or Invitee's breach of this Agreement or any Booking;

(c) any Third Party claims;

(d) fraud, or fraudulent misrepresentation or wilful misconduct by the Customer, its Personnel or Designees;

(e) damage or loss to any real and tangible property of Simcocks 'Bus Services or any other person caused by the wrongful, unlawful or negligent act or omission of the Customer, its Personnel or Invitee's under this Agreement or any Booking; or

(f) death of or injury to any person caused by the wrongful, unlawful or negligent act or omission of the Customer, its Personnel or Designees under this Agreement or any Booking.

## 8.0 Liability

### 8.1 Limitation of liability

To the maximum extent permitted by law, the maximum aggregate liability of Simcocks 'Bus Services for all Losses, damages and claims arising out of this Agreement whether arising under contract, in negligence or in tort or for any other common law or statutory action, is limited to an amount equal to 100% of the amounts paid by the Customer to Simcocks 'Bus Services in respect of the applicable Services under that Booking for the period specified in the Booking.

### 8.2 Exclusion of Liability

Notwithstanding the above, Simcocks 'Bus Services accepts no liability for:

- (a) Consequential Loss;
- (b) substitution of any Services for reasons beyond our control;
- (c) any loss of enjoyment experienced by Invitees due to circumstances beyond its control;
- (d) loss or damage to clothing and/or luggage;
- (e) failure to meet connections due to unexpected delays;
- (f) any other costs incurred by the customer; and
- (g) third party claims associated with a Hire Agreement.

### 8.3 Proportionate liability

To the extent permissible by law, a Party's liability under the Agreement (including under an indemnity) is reduced proportionately to the extent that such liability is caused or contributed to by the breach of this Agreement or the wrongful, unlawful or negligent act or omission of other Party or its Personnel.

### 8.4 Duty to mitigate

Each party must use all reasonable endeavours to mitigate its liability

## 9.0 Dispute Resolution

- (a) A Party claiming that a dispute has arisen must give written notice to the other Party specifying the nature of the dispute and the Parties must submit themselves to the dispute resolution procedure specified in this clause 10.
- (b) The Parties agree that if a dispute arises out of or relates to this Agreement, a Party may not commence any legal proceedings relating to the dispute unless it has complied with the provisions of this clause 10 except to seek urgent equitable or interlocutory relief.
- (c) When a dispute arises between the Parties in relation to this Agreement, then:
  - (i) all amounts payable by the Customer to Simcocks 'Bus Services which are not in dispute must be paid in accordance with the Booking;
  - (ii) if the Parties cannot resolve the dispute within 20 Business Days after notice has been given, then the dispute is to be referred to the respective authorised representatives or their nominees of each Party (jointly referred to in the remainder of this clause 10 as Authorised Representatives) for resolution; and
  - (iii) if the Authorised Representatives cannot resolve the dispute within 20 Business Days after referral, then the Parties must submit the dispute to a mediator appointed by the Chair of Resolution Institute (Victoria) for consideration in accordance with the Resolution Institute Mediation Rules, which are taken to be incorporated into this Agreement.
- (d) Each Party must pay its own internal and legal costs in relation to complying with this clause
- (e) The mediator's costs are to be shared equally between the Parties.

## 10.0 Termination

### 10.1 Termination due to default

If an Event of Default under a Booking occurs in relation to a Party (Defaulting Party):

- (a) the other Party may give a notice of termination of that Booking (Default Notice) to the Defaulting Party specifying the Event of Default and requiring the Defaulting Party to remedy the default within 20 Business Days after the Default Notice is given to the Defaulting Party; and
- (b) if the Defaulting Party does not comply with the notice within the relevant period referred to in clause 11.1(a) then the other Party, without limiting its other rights and remedies, may terminate the Booking to which the Event of Default relates, by giving to the Defaulting Party notice with immediate effect.

### 10.2 Suspension

- (a) Without limiting any rights or remedies of Simcocks 'Bus Services, Simcocks 'Bus Services may suspend the provision of the Services:
  - (i) in accordance with clause 4.6(b);
  - (ii) in any of the circumstances set out in clause 11.1, in lieu of termination; or
  - (iii) if Simcocks 'Bus Services is required by a regulatory authority or any applicable law.
- (b) Simcocks 'Bus Services may continue the suspension under this clause 11.2 and may restrict or block the Service until Simcocks 'Bus Services is satisfied (acting reasonably) that the relevant event giving rise to the suspension is resolved in favour of Simcocks 'Bus Services and that the event is not likely to reoccur.
- (c) The Customer will be liable to continue to pay the Fees for the Services while the Services are suspended.

### 10.3 Consequences of termination

- (a) Termination of a Booking will not affect any other Bookings which are in effect between Simcocks 'Bus Services and the Customer at the time of the termination and such other Bookings will continue in accordance with their respective terms, unless otherwise stated in the Booking Confirmation.
- (b) On the expiry or termination of a Booking for any reason:
  - (i) the Customer will pay any Fees that are due and payable (including those which may not have been invoiced prior to expiry or termination) for the Services under that Booking up to the date of expiry or termination;
  - (ii) the Booking will be at an end as to its future operation except for the enforcement of any right or claim in relation to the Agreement that arises on, or has arisen before, the expiry or termination;
  - (iii) subject to the Customer complying with its obligations under clause 11.3(b)(i), the Customer will be entitled to retain and use that part of the Deliverable provided by Simcocks 'Bus Services and paid for in full by the Customer on or before the date of expiry or termination;
  - (iv) the Customer must immediately cease using and return to Simcocks 'Bus Services any part of Simcocks 'Bus Services Bus Fleet that is in the Customer's possession;
  - (v) the Customer must immediately cease using and return to Simcocks 'Bus Services any of Simcocks 'Bus Services Confidential Information, at the Customer's risk and cost, or if such Confidential Information is incapable of being returned, permanently destroying it; and
  - (vi) the Customer must immediately return to Simcocks 'Bus Services any Equipment, property or assets owned or licensed by Simcocks 'Bus Services within the Customer's possession or control.
- (c) If a Booking is terminated by Simcocks 'Bus Services in accordance with clause 11.1 due to the Customer's Event of Default, the Customer will pay Simcocks 'Bus Services Unavoidable Costs.



## 12.0 Survival

Clauses 5, 6, 8, 8.2, 10, 11, 12, and all other provisions that, by their nature, are intended to survive termination of this Agreement, will survive termination and expiry of this Agreement.

## General provisions

### Force Majeure Events

(a) Neither Party will be liable to the other for any delay or failure to perform its obligations under this Agreement (other than for an obligation to make payment) as a result of a Force Majeure Event.

(b) If Simcocks 'Bus Services is affected by a Force Majeure Event:

(i) Simcocks 'Bus Services will notify the Customer as soon as practical of any anticipated delay or failure to provide the Services as a result of the Force Majeure Event.

(ii) Simcocks 'Bus Services may, at its option, notify the Customer and substitute the affected Services with an equivalent or substantially similar replacement service on a temporary or permanent basis.

(c) If the Force Majeure continues for a period of more than 90 days, the Party not affected by the Force Majeure Event may terminate the relevant Booking affected by the Force Majeure Event by written notice to the affected Party.

### Assignment

(a) The Customer must not transfer any right or liability under this Agreement without the prior consent of Simcocks 'Bus Services

(b) Simcocks 'Bus Services may transfer any right or liability under this Agreement without the prior written consent of the Customer.

### Notices

Simcocks 'Bus Services may give notices to the Customer by the most appropriate means, including by email, SMS, telephone, instant messaging or post.

### Entire agreement

This Agreement:

(a) expresses and incorporates the entire agreement between the Parties in relation to its subject-matter, and all the terms of that agreement; and

(b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject-matter or any term of that agreement.

### Governing law and jurisdiction

(a) This Agreement is governed by and construed under the law of Victoria, Australia.

(b) Any legal action in relation to this Agreement against any Party or its property may be brought in any court of competent jurisdiction set out in Victoria, Australia.

(c) Each Party by execution of this Agreement irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

### Waivers

Any failure by any Party to exercise any right under this Agreement does not operate as a waiver and the single or partial exercise of any right by that Party does not preclude any other or further exercise of that or any other right by that Party.

### Severability

Any provision of this Agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

## Changes to terms

- (a) The Customer can review the most current version of this Agreement at any time at this page.
- (b) Simcocks 'Bus Services reserves the right, at our sole discretion, to update, change or replace any part of this Agreement by posting updates and changes to the Website.
- (c) It is the Customer's responsibility to check the Website periodically for changes. The Customer's continued use of or access to the Website or the Services following the posting of any changes to this Agreement constitutes acceptance of those changes.

## Definitions and interpretation

### Definitions

In this Agreement:

Agreement means these terms and conditions, a Booking, subject to a Booking Confirmation, and any schedules, recitals, attachments or annexures;

Booking means a written statement (including any schedules, annexures or attachments) for the provision of the Services by Simcocks 'Bus Services to the Customer, substantially in the form approved by Simcocks 'Bus Services from time to time;

Booking Confirmation means the confirmation received from Christian's Bus Co. following acceptance of a Booking;

Booking Term means the term of each Booking, as specified in the relevant Booking;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Victoria, Australia;

Bus Fleet means any bus or coach vehicle provided by Simcocks 'Bus Services. to the Customer as specified in the Booking;

Simcocks 'Bus Services means:

- (a) Tarenberg Pty Ltd ACN trading as "Simcocks 'Bus Services"
- (b) any of its related bodies corporate trading as "Simcocks'", "Metro Melbourne", "RailynX".

Commencement Date means the date set out in Booking Confirmation;

Confidential Information means, in respect of a Discloser:

- (a) the terms of this Agreement, any Booking and their respective subject matter, including information submitted or disclosed by either Party during negotiations, discussions and meetings relating to this Agreement or a Booking;

- (b) information that at the time of disclosure by a Discloser is identified to the Recipient as being confidential; and

- (c) all other information belonging or relating to a Discloser, or any Related Entity of that Discloser, that is not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement or which the Recipient knows, or ought reasonably to be expected to know, is confidential to that Discloser or any Related Entity of that Discloser;

Consequential Loss means an indirect loss (not being a loss which arises naturally as a result of a breach of this Agreement or other event giving rise to the relevant claim), and specifically includes loss of reputation, loss of goodwill, lost profits, lost revenue, loss of or damage to data, loss of use by Third Parties, or any failure to realise anticipated savings and loss of opportunities;

Controller means, in relation to a person:

- (a) a receiver, receiver and manager, administrator or liquidator (whether provisional or otherwise) of that person or that person's property; or

- (b) anyone else who (whether or not as agent for the person) is in possession, or has control, of that person's property to enforce an encumbrance;

Corporations Act means the Corporations Act 2001 (Cth);

Customer means the person so specified in the Booking;

Discloser means the Party disclosing Confidential Information to the Recipient;

Event of Default means, in relation to a Party, the occurrence of any one or more of the following events or circumstances:

- (a) the Party commits a material breach of its obligations under the Agreement or a Booking;
- (b) an Insolvency Event occurs in relation to the Party;
- (c) a notice of deregistration of the Party is given under sections 601AA(5) or 601AB(5) of the Corporations Act; or
- (d) the Party fails to pay by the due date any undisputed amount due and payable by it under a Booking;

Expenses mean out-of-pocket expenses incurred by Simcocks 'Bus Services in connection with the provision of the Services, which are set out in a Booking or have been approved in writing by the Customer;

Fees mean the fees specified in the Booking Confirmation and payable by the Customer to Simcocks 'Bus Services for provision of the Services;

Force Majeure Event means in relation to a party, any event or circumstance affecting a party or as a result of which a party is prevented from or delayed in performing any of its obligations under this Agreement and that is beyond the reasonable control of that party, including an act of God, war, act of public enemy, blockage, revolution, riot, insurrection, civil commotion, lightning, storm, flood, fire, tempest, earthquake, explosion, embargo, unavailability of any essential equipment, services or material, unavoidable accident, epidemic or pandemic (whether declared or undeclared), or anything done or not done by or to a person, government or other competent authority;

GST means any tax, levy, charge or impost implemented under the GST law or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST law;

GST law has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Insolvency Event means, in relation to a Party, any one or more of the following events or circumstances:

- (a) being in liquidation or provisional liquidation or under administration;
- (b) having a Controller or analogous person appointed to it or to any of its property;
- (c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) being unable to pay its debts or being otherwise insolvent;
- (e) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
- (f) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
- (g) any analogous event or circumstance under the laws of any jurisdiction;

Invitee means a person authorised by the Customer to use the Services for or on behalf of the Customer;

Loss includes any direct loss, damage, liability, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense on a full indemnity basis) however it arises and whether it is present or future, fixed or unascertained, actual or contingent (but not Consequential Loss);

Party means Simcocks 'Bus Services or the Customer and Parties means both of them;

Personal Information has the same meaning as is given to that term in the Privacy Act;

Personnel in relation to a Party, are the directors, officers, employees, agents or subcontractors of that Party;

PPS Act means Personal Property Securities Act 2009 (Cth);

Privacy Act means the Privacy Act 1988 (Cth);

Privacy Law means all Commonwealth, State and Territory legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to the Personal Information including the Privacy Act and includes the Australian Privacy Principles as contained within the Privacy Act;

Quotation means a quote provided by Simcocks 'Bus Services in accordance with a Booking;  
Recipient means the Party to whom Confidential Information is disclosed or who possesses or otherwise acquires Information belonging or relating to a Discloser;  
Related Entity has the meaning given to that term in the Corporations Act;  
Services means the Bus Fleet services as described in Booking and Booking Confirmation;  
Service-specific Terms means the terms applicable to the relevant Service as set out in the Schedules (as applicable);  
Tax Invoice has the meaning under GST law;  
Third Party means any party other than Simcocks 'Bus Services or the Customer;  
Unavoidable Costs means reasonable costs incurred by Simcocks 'Bus Services, in connection with the performance of its obligations under this Agreement or any agreement with any Third Party in connection with this Agreement which cannot be cancelled, refunded or re-allocated to Simcocks 'Bus Services other operations or business activities, including, for example labour and Third Party costs incurred to deliver a change request or Booking, then terminated by the Customer; and  
Website means the website maintained by Simcocks 'Bus Services and accessed via the following address: <https://www.simcocks.com.au>

## Interpretation

In this Agreement, unless the context requires otherwise:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) a reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) any reference to a Party to this Agreement includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word includes or including is not to be taken as limiting the meaning of the words preceding it;

## Schedule 1 – Terms of Use

This Schedule 1 – Terms of Use apply to the provision of bus charter services, including for generic charters or school charters.

The provision of any Services within Simcocks 'Bus Services Bus Fleet is subject to the state of Victoria's Bus Safety & Passenger Transport Regulations.

Simcocks 'Bus Services reserves the right to enforce its legal obligation in compliance with the law in all aspects of its Services. This includes, but is not limited to its right to:

1. ensure domestic pets (excluding Recognised Assistance Animals) are not allowed onto a vehicle unless caged correctly, and prior agreement to transport has been obtained from the Simcocks 'Bus Services in writing;
2. refuse entry to the vehicle of persons under the influence of alcohol or drugs;
3. stop consumption of hot food or drink, alcohol, or tobacco products on the vehicle;
4. authorise a Simcocks 'Bus Services driver to act in the best interests of the Customer or the Invitees 'safety irrespective of consequences to the Services or the Booking;
5. obey road speed restrictions irrespective of unscheduled delays in travel time;
6. stop to render assistance to others when judged in the public interest for safety or rescue;

7. report to authorities any person acting in a manner that endangers others, and terminate the Booking immediately;
8. refuse to carry dangerous, flammable, or illegal items/goods on any part of a person or the vehicle;
9. determine the suitability and nature of any luggage or items intended to be carried by, or for, the Customer or the Invitees on or within the vehicle cabin or storage areas and to refuse such items deemed as unacceptable. Simcocks 'Bus Services takes no responsibility for luggage lost or damaged whilst being handled, on tour or any time in transit; all items carried are at the owner's risk;
10. render first aid in the best interest of the Customer or the Invitees and take such measures deemed necessary to enlist assistance in an emergency from any available services. Costs of such emergency service provision rest with the Customer or the Invitees;
11. maintain legal driving hours and driver rest periods in line with current regulations;
12. discontinue the Services due to road or surface being unsafe to travel on; and
13. remove waiting vehicles from a hire pick up point due to the Customer or the Invitees being overdue by time exceeding 10 minutes, with or without notification by the Customer's group or representative of such a delay, at Simcocks 'Bus Services discretion. Due to other operational commitments this may result in cancellation of the Booking (refer to Fees).

The Customer agrees and acknowledges that any issues arising from the Services must be notified to Simcocks 'Bus Services in writing within thirty (30) days of the termination or expiry of the Booking Term for an official response. Any issues or compensation claims made after this time may not receive a response.

## Schedule 2 – Multi-Day Tour Terms

This Schedule 2 – Terms of Use apply to the provision of multi-day tour services.

1. Inclusions: Includes coach, motel accommodation with private facilities on a twin share basis. Meals and entry fees as per the itinerary. Drinks, telephone calls, laundry and items of a personal nature are not included.
2. Payment: A deposit nominated by the special conditions within each tour is required at the time of booking. Balance is due 45 days prior to departure. Cancellation fees will be levied as follows:
  - (a) 45 days and over prior to departure – loss of deposit;
  - (b) between 45 to 30 days inclusive prior to departure: 50% of Fees retained by Simcocks 'Bus Services,
  - (c) between 29 and 14 days inclusive prior to departure: 75% of Fees retained by Simcocks 'Bus Services; and
  - (d) under 14 days prior to departure, non-attendance or non-completion of tour: No refund.
1. Liability: Simcocks 'Bus Services has arranged this tour upon the express condition that it will not be liable for any injury, damage, loss, accident, delay or irregularity which may occur either by reason of defect in any vehicle, vessel or aircraft of another company engaged to provide transportation on behalf of Simcocks 'Bus Services. Whilst Simcocks 'Bus Services will take all reasonable steps to provide an enjoyable tour, it accepts no liability whatsoever for any loss of enjoyment experienced by the Customer or the Invitees due to circumstances beyond its control.
2. Pricing: Prices are based on twin share unless specified otherwise. Information as stated is correct at time of publication, but is subject to change without notice. We reserve the right to change or alter the itinerary should circumstances beyond our control make it necessary. If the tour has insufficient Bookings, it may be cancelled by Simcocks 'Bus Services in its sole discretion with full refund paid to the Customer.

3. Food & Drink: Hot food and drink must not be consumed on the coach.
4. Smoking: Smoking is prohibited under applicable laws. The Customer and the Invitees are requested to restrict their smoking to stops en route in the interests of other passengers.
5. Luggage: one medium size suitcase plus one carry bag per passenger – maximum combined weight of 20kgs.
6. Seating: to enable everyone to enjoy forward and window seating, a seat rotation system will operate and passengers will be required to change seats each day.
7. Travel Insurance: Travel Insurance is not compulsory however is highly recommended and is available from our head office.
8. Acceptable Behaviour: No passenger will be permitted to embark or continue on the tour while their mental or physical condition is, in the opinion of any representative of the company, such as to render them incapable of caring for themselves, or whereby they become objectionable to other passengers, or they become a hazard to themselves or other passengers. Simcocks 'Bus Services will not be responsible for expenses resulting in such persons being precluded from completing the tour for any reason.
9. Special passenger requirements: Any special passenger requirements, including any pre-existing medical conditions, must be notified to Simcocks 'Bus Services at the time of booking. Each Customer must provide Simcocks 'Bus Services their emergency contact information. It is a requirement of Simcocks 'Bus Services that each of the Customer and the Invitees is able to negotiate coach steps or steps at destinations or venues without the aid of the coach crew or other passengers. The Customer or any Invitees who requires assistance in this regard is required to have a personal carer travelling with them. Simcocks 'Bus Services reserves the right to accept, decline or terminate the Customer's participation if it reasonably believes that it is in the Customer's or other customers 'best interests to do so. If the Customer's participation is terminated while on tour, no refund will be provided and the Customer will be responsible for their return transportation arrangements and costs.

## Schedule 3 – Special Events, Theatre, Day Trips, Musicals and Concerts

This Schedule 3 – Terms of Use apply to the provision of special events, theatre, day trips, musicals and concerts services.

1. To the maximum extent permitted by law, all Bookings, once the subject of a Booking Confirmation, are non-cancellable and non-refundable.
2. If the Services are cancelled by Simcocks 'Bus Services, the Fees will be refunded to the Customer in full.
3. Food & Drink: Hot food and drink must not be consumed on the coach.
4. Smoking: Smoking is prohibited under applicable laws. The Customer and the Invitees are requested to restrict their smoking to stops en route in the interests of other passengers.
5. Acceptable Behaviour: No passenger will be permitted to embark or continue on the tour while their mental or physical condition is, in the opinion of any representative of the company, such as to render them incapable of caring for themselves, or whereby they become objectionable to other passengers, or they become a hazard to themselves or other passengers. Simcocks 'Bus Services. will not be responsible for expenses resulting in such persons being precluded from completing the tour for any reason.
6. Special passenger requirements: Any special passenger requirements, including any pre-existing medical conditions, must be notified to Simcocks 'Bus Services at the time of booking. Each Customer must provide Simcocks 'Bus Services their emergency contact information. It is a requirement of Simcocks 'Bus Services that each of the Customer and



the Invitees is able to negotiate coach steps or steps at destinations or venues without the aid of the coach crew or other passengers. The Customer or any Invitees who requires assistance in this regard is required to have a personal carer travelling with them. Simcocks' Bus Services reserves the right to accept, decline or terminate the Customer's participation if it reasonably believes that it is in the Customer's or other customers' best interests to do so. If the Customer's participation is terminated while on tour, no refund will be provided and the Customer will be responsible for their return transportation arrangements and costs.