

## **Terms & Conditions**

### **BusMinder Pty Ltd ACN 614 066 769 (Service Provider)**

#### **RECITALS**

- A.** BusMinder has developed the services as described in Schedule 2 to this agreement.
- B.** The customer has agreed to engage the service provider to provide the services described in the Schedule together with all related services for the period set out in the Schedule on the terms and conditions set out in this agreement.
- C.** The service provider has represented that it is experienced in the supply of such services.

#### **OPERATIVE PART 1. Interpretation**

This agreement is governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of that state.

In the interpretation of this agreement:

- (a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (b) Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders;
- (c) Grammatical forms of defined words or phrases have corresponding meanings;
- (d) Parties shall perform their obligations on the dates and times fixed by reference to the capital city of Victoria;
- (e) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (f) If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it shall be done on the next business day;
- (g) References to a party are intended to bind their executors, administrators and permitted transferees; and
- (h) Obligations under this agreement affecting more than one party bind them jointly and each of them severally.

## **2. Appointment**

In consideration of the customer paying the service provider in accordance with rates of pay set out in Schedule 1, the service provider agrees to provide the services set out in Schedule 2 during the contract term in accordance with the provisions of this agreement. The customer acknowledges and agrees that the service provider may employ its own staff.

## **3. Provision of the services**

The parties agree that the service provider shall:

- (a) Exercise all due care, skill and attention in providing the services;
- (b) Do all things necessary to ensure that the services are provided to the satisfaction of the customer;
- (c) Ensure that the services are rendered in compliance with any relevant codes, standards and regulations;
- (d) Maintain a safe environment for customers, guests and staff;
- (e) Ensure that the services are carried out in a proficient manner by professionally trained and qualified staff;
- (f) Ensure an appropriate range of equipment, staff and services as set out in Schedule 2 are operating at all times; and
- (g) Comply with all legal requirements as may from time to time apply to the provision of the services.

## **4. Duration of contract term**

The parties agree that the service provider shall carry out and perform the services during the days and at the times set out in Schedule 1. The scope of the services required may change with changes in the customer's operations and the contract scope may be varied using the agreed rates of pay within this agreement.

## **5. Payment and invoicing**

- (a) Subject to the service provider performing the services in accordance with the terms of this agreement, the customer shall pay the service provider in accordance with the rates of pay set out in Schedule 1 in the manner and at the times provided for in this agreement.
- (b) Where the service provider is entitled to invoice the customer for all or part of the amount owed to the service provider, such invoices shall be paid by the customer within 30 days of the date of the invoice.

(c) In the event that any invoice rendered by the service provider remains unpaid after 30 days of the date of the invoice, interest shall accrue on such an amount is outstanding at the rate prescribed by the *Penalty Interest Rate Act 1983* from time to time.

(d) In the event that any invoice rendered by the service provider remains unpaid for a period exceeding 60 days from the date of the invoice, the service provider may terminate or suspend this agreement at its absolute discretion after providing the Customer with 14 days notice of its intent to do so.

## **6. Provision of equipment of the service provider**

(a) Subject to clause (b) below, the service provider may provide at its own cost and expense all resources and equipment necessary to provide the services in accordance with this agreement.

(b) The resources and equipment referred to in clause (a) may be sourced from a third party, such as device manufacturers, telecommunication and data providers or such other third parties who as the service provider deems necessary.

(c) The service provider may invoice the customer for any expenses incurred in the provision of any resources or equipment required for it to comply with the terms of this agreement after approval by the customer. Such invoices shall be rendered in accordance with clause 5 above.

## **7. Collection & storage of data**

(a) The customer acknowledges that data will be collected by the service and stored in the cloud by the service provider or a third party in accordance with clause 6 hereof. The service provider will ensure that the customer's data is stored in Australia. Such data will be subject to all the inherent risks of cloud storage; however, the service provider will use all its best endeavours to ensure the security of the data collected and stored during the course of this agreement. The service provider will maintain the hosting and storage of data within a commercial grade data centre utilising industry standard security protocols to protect customer data. The service provider makes no warranty in respect of the security or accuracy of the data collected.

(b) Unless otherwise required by law and except as required for the purpose of providing the service, any party to this agreement or any of their officers, employees, agents, end users or any other third parties shall:

(i) Keep any data collected by the service confidential;

(ii) Take reasonable steps to ensure that its employees, contractors, agents and consultants do not disclose the data to a third party or use or reproduce the data in any form;

(iii) Maintain proper and secure custody of the data;

(iv) Not use or reproduce the data in any form without the written consent of the customer;

(v) Deliver the data to any third party upon the written request of the other party ('the requesting party') and it is agreed that the requesting party shall indemnify the other entirely in respect of any breach of clause 9 or any other clause of this agreement by the third party;

(vi) Upon the written request of the other party, destroy all forms of the data including erasing it from the magnetic media on which it is stored so that it is incapable of being revived and provide to the other party a statutory declaration stating that all data has been destroyed in accordance with this clause.

(c) The obligations contained in this clause shall continue notwithstanding termination of this agreement.

## **8. Confidentiality**

The parties covenant on behalf of themselves and their financial, legal and other advisors that they will keep confidential and not divulge either directly or indirectly to any person any information relating to the business, processes, systems or affairs of the other party which is of a confidential nature or which is not otherwise in the public domain, including the terms of this agreement, save to the extent that the disclosure may be required by statute or may reasonably be required for the purpose of enabling the parties to fulfil their respective obligations under this agreement or as may otherwise be required by law. This clause shall have force after the termination or expiry of this agreement.

## **9. The service provider's warranties**

The service provider warrants at all times during the contract term that:

(a) It is a company duly incorporated in Australia and has the power and authority to enter into this agreement on the terms set out herein;

(b) It has the expertise, resources and capacity to perform to the highest standard all of its obligations under this agreement;

(c) It will have all permits, licences and authorisations required in relation to the provision of the services;

(d) It will comply with all statutory provisions, regulations, orders and by-laws of any government, municipal or statutory authority which relate to the provision of the services;

(e) This agreement constitutes a legally valid and binding obligation on the service provider, enforceable in accordance with its terms;

(f) It has made all enquiries of the customer for the purpose of making an informed assessment of its ability to enter into and to perform all of the obligations of this agreement;

(g) It has exercised its own judgement in entering into this agreement and has not relied on any warranty or representation made by the customer, its officers, employees or agents, save as specifically set out in this agreement; and

(h) Subject to any other provisions of this agreement it will use its best endeavours to provide an accurate and reliable service.

## **10. The customer's warranties**

The customer warrants at all times during the contract term that:

(a) It or any of its officers, employees, agents or end users will not use the service:

(i) in any manner which constitutes a violation or an infringement of any duty or obligation in contract, tort or otherwise to a third party or any intellectual property rights owned or licensed by a third party; or

(ii) in connection with the commission of an offence against the laws of the Commonwealth, States or Territories, including without limitation defamation or contempt of Court, or contrary to any relevant regulation or code.

(b) It acknowledges that the arrangements contemplated under this agreement are exclusive;

(c) It acknowledges that the provision of the services may be affected by a range of factors, including but not limited to, telecommunication network coverage, global positioning satellite coverage and availability of power within the bus, all of which are beyond the control of the service provider.

## **11. Release, discharge and indemnity**

(a) The customer agrees that its use of the services provided by the service provider is at its own risk and hereby releases and discharges the service provider, its officers, employees and agents from all claims and demands of any kind whatsoever and from any liability including, without limitation, liability for negligence which may arise in respect of any accident, damage, destruction, debt or injury to the customer, its employees, agents, end users or any other third party or to any property of the customer, which occurs in relation to the provision of the services, save where such liability arises from any wilful or negligent act or omission of the service provider, its employees or agents.

(b) The customer shall indemnify, and keep indemnified the service provider, its officers, employees, volunteers and agents against all claims, actions, demands, proceedings, liabilities, damages, costs and expenses whatsoever and howsoever arising, paid, suffered or incurred by the service provider, its officers, employees or agents, directly or indirectly as a result of or in connection with the provision of the services save where such liability arises from any wilful or negligent act or omission of the service provider, its employees or agents.

(c) The customer acknowledges that the service provider makes no warranty in relation to the manufacturing, operation, accuracy or at all in respect of the equipment and resources provided by the service provider and the customer shall indemnify, and keep indemnified the service provider, its officers, employees, volunteers and agents against all claims, actions, demands, proceedings, liabilities, damages, costs and expenses whatsoever and howsoever arising, paid, suffered or incurred by the customer, its officers, employees, agents, end users or any other third party directly or indirectly as a result of or in connection with the operation of or otherwise of the equipment or resources provided pursuant to this agreement.

(d) The customer acknowledges that the service provider makes no warranty in respect of the accuracy and security of the data produced by the service or the time in which such data is produced by the service and the customer shall indemnify, and keep indemnified the service provider, its officers, employees, volunteers and agents against all claims, actions, demands, proceedings, liabilities, damages, costs and expenses whatsoever and howsoever arising, paid, suffered or

incurred by the customer, its officers, employees, agents, end users or any third party directly or indirectly as a result of or in connection with the operation of or otherwise of the equipment or resources provided pursuant to this agreement save where such liability arises from any wilful or negligent act or omission of the service provider, its employees or agents.

(e) The release and indemnities granted herein shall continue notwithstanding the completion or termination of this agreement.

## **12. No assignment**

This agreement is personal to the service provider and shall not be assigned without the prior written consent of the customer. Such consent may be given or withheld at the customer's absolute discretion. Any assignment or purported assignment shall be void and of no effect.

## **13. Subcontracting**

The service provider may engage subcontractors or subcontract any of its obligations under this agreement without the prior written consent of the customer. The service provider remains wholly responsible for acts or omissions of the subcontractor.

## **14. Termination**

(a) This agreement may be terminated by either party in the event of the other party breaching a term of this agreement and failing to remedy the breach within 14 days after having received notice in writing of the breach. The breaching party will be provided with 14 days' notice in writing from the other party of their intent to terminate the agreement.

(b) Either party may terminate this agreement by written notice to the other party if the other party becomes subject to insolvency proceedings or events. The breaching party will be provided with 14 days' notice in writing from the other party of their intent to terminate the agreement.

(c) The parties may terminate this agreement upon written notice to the other if one of them commits a fundamental breach of this agreement within the meaning of this agreement after providing the other party 14 days' notice in writing.

(d) If such termination is disputed, it shall be dealt with in accordance with the dispute resolution provisions of this agreement.

## **15. Dispute resolution**

(a) If a dispute arises, before any proceeding is commenced the party claiming that a dispute has arisen shall give 14 days' notice to the other party setting out the dispute and seeking discussion and compromise to resolve the dispute.

(b) If after 14 days, the dispute is not resolved then it shall be referred to mediation on the same terms as those ordered by the Supreme Court of Victoria and the costs of the mediation shall be borne by the parties equally.

(c) Notwithstanding the preceding provisions of this clause, the service provider shall continue to provide the services and perform its obligations under this agreement pending resolution of the dispute.

(d) Nothing in this clause will prevent either party from seeking urgent interlocutory relief.

## **16. Notices**

A notice or other communication to a party shall be in writing and delivered to that party or that party's practitioner in one of the following ways:

(a) Delivered personally; or

(b) Posted to their address when it will be treated as having been received on the fourth business day after posting; or

(c) Faxed to their facsimile number when it will be treated as received when it is transmitted; or

(d) Sent by email to their email address when it will be treated as received when it enters the recipient's information system.

## **17. Relationship of the parties**

The parties acknowledge that this agreement is intended as a contract of service and not any other relationship and, in particular, not the relationship of employer and employee, principal and agent or the relationship of partnership.

## **18. Counterparts**

This agreement may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the agreement will be the date on which it is executed by the last party.

## **19. Costs**

Each party will pay their own costs in relation to this agreement save for where either party incurs costs associated with the enforcement of the other's obligations under this agreement, such as the costs of recover of any money due under this agreement, then such costs shall be payable by or recoverable against the party that is in breach of the agreement.

## SCHEDULE 1

**Commencement Date:**

**Initial Term:**

No lock in contract

Month to month billing

**Fees: to be discussed**

**School supplies hardware (see the proposal for details)**

**BusMinder's Particulars of Service:**

Attn: Ross Spearritt

Phone: 1300 55 42 42

Email: [support@busminder.com.au](mailto:support@busminder.com.au)

**The Customer's Particulars of Service:**

Attn:

Address:

Phone:

Fax:

Email:

## SCHEDULE 2

### SERVICES DESCRIPTION

**BusMinder Gateway Services:**

BusMinder will supply a website for the use of End Users. The web site will have the following functionality:

- (a) Student Management;
- (b) Active Run Display;
- (c) Run History;
- (d) Bus Usage Reporting;
- (e) User Access Management;
- (f) School Run Management;
- (g) School Setup;

BusMinder will use its best endeavours to ensure each bus is tracked and student usage recorded via a mobile network for delivery to the BusMinder Server. BusMinder shall attempt to contact the server up to 3 times over a period of 10 minutes until such time as the network either acknowledges successful receipt of the message from BusMinder or rejects the transaction.

BusMinder has sole discretion in its choice of network provider but in making such choice shall give consideration to the shortest path of delivery to the destination server, the relative rates charged by network providers, service levels of the network providers and any factors that BusMinder considers relevant in delivering an optimal service to its customers. BusMinder will not knowingly change the network provider that will deliver a lesser service to the customer than what the customer has experienced using the services provided under this agreement.

Transactions sent by a BusMinder unit are logged and these logs are made available to the Customer and its End Users via the website.

**System Support:**

BusMinder will endeavour to ensure that the BusMinder Services are available 24 hours a day, 7 days a week, with the exception of scheduled outages.

BusMinder will give the Customer at least 48 hours' notice of scheduled outages but makes no warranties as to uptime, response time or delivery speeds. For urgent upgrades, BusMinder will endeavour to give the customer at least 24 hours notice of any expected outage.

BusMinder will support the BusMinder Gateway System with upgrades and remedial and preventative maintenance.

Each BusMinder unit installed in a bus comes with remote support installed and BusMinder can connect to this remote service at any time for the purposes of troubleshooting and support. The customer agrees that BusMinder can connect to

their units at any time regardless of the Bus operational status for service and support.

**Customer Support:**

**Business Hours Support**

BusMinder staff will be available to provide support via Email at all times.

Email: [support@busminder.com.au](mailto:support@busminder.com.au)

**Urgent Support**

BusMinder will provide a number for the Customer and its staff to page

BusMinder technical staff for urgent support in the event of any service difficulty.

Email: [support@busminder.com.au](mailto:support@busminder.com.au)