

## BUSTLE LICENCE - TERMS OF USE

### IMPORTANT NOTICE

THE GRANT OF A LICENCE TO YOU TO USE THE APPLICATION IS CONDITIONAL UPON YOU AGREEING TO THESE TERMS OF USE (**THESE TERMS**). THE APPLICATION IS ONLY LICENSED TO YOU ON CONDITION THAT YOU READ AND ACCEPT ALL THESE TERMS. YOUR ACCEPTANCE OF THESE TERMS WILL BIND YOU AND ALL OF YOUR EMPLOYEES, CONTRAXCTORS AND SUBCONTRACTORS TO THESE TERMS. BY CLICKING THE “**I ACCEPT**”, BUTTON, YOU WILL BE DEEMED TO HAVE ACCEPTED THESE TERMS. IF YOU DO NOT WISH TO ACCEPT THESE TERMS, YOU MUST NOT CLICK “**I ACCEPT**” BUTTON, YOU MUST NOT DOWNLOAD THE APPLICATION AND YOU MAY NOT USE THE APPLICATION.

### 1. LICENCE

- 1.1 Bustle grants You a non- exclusive, limited licence (**Licence**):
  - (a) to use the Application on Devices for one month; and
  - (b) following that one month period, to continue to use the Application on a monthly subscription licence, upon and subject to the provisions of these Terms.
- 1.2 You are not entitled to use the Application until the monthly licence fee has been paid in the manner specified on these Terms.
- 1.3 The Licence extends to any accompanying documentation. The documentation may not be copied, modified or used in any way not contemplated or expressly authorised by these Terms.

### 2. OWNERSHIP

- 2.1 The Application:
  - (a) is licensed and not sold or transferred to You;
  - (b) is the sole property of Bustle and its licensors; and
  - (c) Bustle and its licensors retain ownership of the Application whether in its original form or as modified.
- 2.2 These Terms only give You limited rights to use the Application as specified in these Terms. Bustle reserves all other rights.
- 2.3 Bustle and its licensors retain all Intellectual Property Rights in the Application whether in its original form or as modified.
- 2.4 Nothing in these Terms affects the ownership of moral rights in the Application.

### 3. APPLICATION

- 3.1 The Application is a technology platform that enables users (including Your employees, contractors and subcontractors) to manage, contact, arrange, schedule and record details of Transport on a Device.
- 3.2 Bustle will provide You with access to the Application on a real-time basis in accordance with the protocols, standards and procedures set out in attachment 1 to these Terms.
- 3.3 Without limiting clause 3.2, Bustle will, to the extent required by these Terms:
  - (a) provide such support as is necessary to ensure the Application meets the performance criteria set out in attachment 1 of these Terms;
  - (b) consult as necessary with You in order to provide You with such information relevant to the Application as You reasonably require concerning the use and operation of the Application.
- 3.4 If requested by You, Bustle will provide You with training in the use of the Application at Your cost.
- 3.5 Bustle will use reasonable endeavours to ensure the Application is free of viruses and programming errors as a direct result of an act or omission of any of Bustle’s officers, employees or agents.
- 3.6 You acknowledge and agree that:
  - (a) Bustle has the exclusive right (but without obligation) to develop, enhance, improve, update and / or upgrade the Application at any time and / or to make available to You additional materials and / or new features associated with the Application including corrections, patches, service packs, updates or upgrades to, or new versions of, the Application, or any user documentation; and
  - (b) any such development, enhancement, improvement, update and / or upgrade will be deemed to be part of and comprised in the Application and will be governed by these Terms.

- 3.7 Other than inclusion of necessary information to use the Application, and the inclusion of Your logo or other branding indicia where indicated within the Application, You must not customise, alter or adapt the Application.

#### **4. BUSTLE ACCOUNT**

- 4.1 To use the Application, You must:
- (a) use a Device to access the internet;
  - (b) download the Application or access the Application by the Website; and
  - (c) create a Bustle Account.
- 4.2 You must create a Bustle Account using the form and providing the information required by Bustle including .
- (a) Your full name, address, Australian Business Number, email address, contact telephone number;
  - (b) details required for payment to Bustle of the Charges including payment by direct debit; and
  - (c) a password for Your Bustle Account.
- 4.3 You must keep Your Account Information accurate, complete, and up to date at all times. If You fail to do this, Bustle may deny You access to the Application or suspend and / or terminate Your Bustle Account.
- 4.4 You may only register one Bustle Account but that account may grant access to your employees, contractors and subcontractors as multiple users of the Application.
- 4.5 The Application is licensed as a single product and You may not separate the components and install or use any of them separately.
- 4.6 You are responsible for all activity on Your Bustle Account including maintaining its secrecy and security, and apart from Your employees users authorised, You must not allow any third party to use Your Bustle Account.
- 4.7 Bustle is responsible for maintaining the secrecy, security and privacy of any data entrusted to us via Your use of the Application, and will use its best efforts to not permit or allow any third party to use or access Your information without Your written permission.
- 4.8 You agree Bustle may request You or Your employees and other authorised users to provide proof of identity to use the Application and, if not provided to Bustle's satisfaction, Bustle may suspend use of the Application.
- 4.9 You represent and warrant that You have full power, authority, and legal capacity to agree to these Terms.

#### **5. USE OF THE APPLICATION**

- 5.1 You may permit the Application to be accessed and used for the purposes of Your business by You and Your employees, contractors, subcontractors and other persons authorised by You subject to such access and use being in compliance with these Terms and Bustle being able to verify the authority of any such persons to access and use the Application. You acknowledge and agree that Bustle may disable, restrict or prevent access and use of the Application if any such person tampers with the technical protection or security mechanisms in relation to the Application or otherwise breaches these Terms.
- 5.2 You acknowledge and agree that neither You nor any of Your employees, contractors, subcontractors and other persons authorised by You may access and use the Application except for the purposes of Your business.
- 5.3 You will at all times maintain security systems and procedures no less stringent than those which it applies to Your own confidential or sensitive data and / or systems to prevent any unauthorized access to, misuse of, or disruption to the Application. Bustle reserves the right to employ security measures to monitor usage of the Application to ensure Your compliance with these Terms. Any attempt to circumvent such access restrictions or security measures will be a breach of these Terms.
- 5.4 Bustle will maintain cyber and information security controls in line with cyber security standards accepted in the industry having regard to the size of Bustle's business and the type and amount of data that Bustle has access to.
- 5.5 Subject to the provisions of these Terms, Bustle will take all reasonable steps to protect Your information in its possession, and to return to You and/or securely dispose (as appropriate) any of Your information when no longer required.
- 5.6 Bustle will notify You as soon as practicable after it becomes aware of any suspected or actual breach or loss of Your information in its possession, and agrees to co-operate with You in any investigation into whether a data breach or data loss has occurred and the circumstances of that data breach or data loss.
- 5.7 Without limiting clause 5.3, You agree to use commercially reasonable efforts to protect Bustle and its licensor's proprietary rights in the Application including the Intellectual Property Rights in the Application, and agree to immediately notify Bustle upon becoming aware of any infringement or unauthorised or unlawful use of the

Application together with reasonable detail the nature of the breach and the measures taken to cure such breach.

- 5.8 You may use the Application only as expressly permitted in these Terms and in doing so must comply with any technical limitations in the Application that only allow it to be used in certain ways. Without limiting the foregoing, You must not:
- (a) work around any technical limitations in the Application;
  - (b) use the application in a manner inconsistent with its intended usage;
  - (c) circumvent, or attempt or assist any other party to circumvent, the technological measures that control access to and use of the Application;
  - (d) unbundle individual or component parts of Application for independent use;
  - (e) copy, reverse engineer, disassemble, decompile, create derivative works from, attempt to derive any source code from or otherwise translate, customize, localize, modify, add to, alter or modify the Application in any way;
  - (f) disclosure, duplicate, reproduce or make copies of the Application;
  - (g) publish the Application or any part of it via any data transfer or other means that enables any other party to view or copy it;
  - (h) rent, lease, lend, sub-licence or otherwise share the Application with any other party; or
  - (i) transfer its rights to access and use the Application to any third party without Bustle's prior written consent.
- 5.9 You bear the risk of using the Application. You expressly acknowledge and agree that to the extent permitted by applicable law, use and operation of the Application is at Your sole risk including the entire risk as to satisfactory quality, performance and accuracy of the Application.
- 5.10 You agree that nothing in this agreement prohibits, restricts or limits in any way the right of Bustle to market, sell and / or license the Application as, when and where it sees fit.
- 5.11 You must not:
- (a) use the Application for any purpose that is illegal or prohibited by these Terms;
  - (b) use the Application to publish any information or content which is defamatory, hateful, obscene, unlawful or offensive;
  - (c) use the Application to spam, bully, intimidate, harass or defraud any person;
  - (d) cause any nuisance or damage in Your use of the Application;
  - (e) knowingly introduce viruses, spyware, malware, or other similar material in Your use of the Application;
  - (f) provide or upload false information, create false identities, or use or attempt to use another user's Personal Information or Bustle Account;
  - (g) take any action which would unduly hinder or interfere with the operation and/or functionality of any aspect of the Application;
  - (h) transmit via the Application any unsolicited advertising or promotional materials, or any other forms of solicitation, unless expressly authorised by Bustle; or
  - (i) violate the legal rights (such as rights of privacy) of others.
- 5.12 You must not advertise or promote Your use of the Application, in any form or medium, unless expressly authorised by Bustle.
- 5.13 You must access and use the Application only for lawful purposes in accordance with these Terms and all applicable laws.
- 5.14 You must ensure Your officers, employees, agents and other persons who you authorise to access the Application are made aware of and comply with these Terms.

## **6. CARRIERS**

- 6.1 You acknowledge and agree that Bustle:
- (a) is not a Transport service provider and does not provide Transport;
  - (b) is not a Carrier;
  - (c) does not employ or engage any Carrier;
  - (d) does not act as agent for any Carrier; and

- (e) does not approve, recommend, endorse or sponsor any Carrier, nor the goods or services that a Carrier may provide, unless expressed in writing by Bustle.
- 6.2 Bustle does not warrant or guarantee that Transport offered or provided by any Carrier is suitable for Your requirements.
- 6.3 You must enter a separate agreement with a Carrier (independent of Bustle) for the provision of Transport.
- 6.4 You acknowledge that Bustle is not responsible nor liable for:
  - (a) any goods or services provided to You by a Carrier or received via Your use of the Application;
  - (b) any damage to Goods or other property or injury or death to any person arising out of or in connection with a Carrier providing Transport for You or goods or services provided or received via Your use of the Application;
  - (c) any data or information You submit or upload using the Application or any content produced by the Application; or
  - (d) You or any of Your employees, contractors, subcontractors and other persons authorised by You failing to comply with any law, regulation or other requirement concerning the safety of any Transport activities (including fatigue hours monitoring, management and compliance) arising from, relating to or in any way connected with the use of the Application, including the Electronic Work Diary in the Application,and Bustle expressly disclaims any and all such liability.
- 6.5 If any Claim arises out of any of the matters referred to in clause 6.4, You agree that the Claim must be resolved directly between You and the Carrier or any relevant third party, and that You will ensure that Bustle is not a party to any legal proceedings with respect to any such Claim.
- 6.6 If a Carrier fails to provide to You any Transport contracted for, You agree that Bustle has no liability to You in respect thereof and is not responsible for any refunds or discounts.

## **7. CHARGES**

- 7.1 In consideration of the grant of the Licence to You in accordance with these Terms, You must pay the Charges to Bustle.
- 7.2 Bustle will issue invoices to You on or about 15th of each month for the Charges for the prior month and You must pay each invoice on or before the first day of the following month.
- 7.3 You must pay to Bustle by direct debit, credit card or electronic funds transfer to the bank account nominated by Bustle:
  - (a) the Charges within the time specified in Bustle's invoice;
  - (b) any other moneys payable to Bustle under these Terms within the time specified in Bustle's invoice; and
  - (c) if no time for payment is specified in Bustle's invoices within 7 days of You receiving the invoice.
- 7.4 In the event of a failure by You to make a payment within 7 days of the time for payment required under these Terms, Bustle may suspend or terminate Your Bustle Account by written notice to You.
- 7.5 Where You dispute an invoice or part thereof, You must pay the undisputed part of the invoice and if the resolution of the dispute determines that You are to pay an amount to Bustle, You must pay that amount forthwith upon resolution of the dispute. You and Bustle must negotiate with the other expeditiously and in good faith to resolve any such dispute as soon as practicable.
- 7.6 Unless otherwise stated, all amounts payable under these Terms are exclusive of GST. A recipient of a taxable supply made under these Terms must pay to the supplier an amount equivalent to any GST paid or payable by the supplier in respect of the taxable supply subject to the supplier issuing a valid tax invoice in accordance with the GST law to the recipient. The GST amount must be paid at the same time as the other consideration for the supply is to be paid or provided.
- 7.7 If You do not pay any moneys payable to Bustle under these Terms on time, You must pay interest to Bustle upon demand on the outstanding amount calculated daily at the rate of 1.0% per month from the date the payment was due until the date the payment is made.
- 7.8 Bustle may adjust and increase the Charges not more often than once every 6 months by giving You not less than 30 days prior written notice of the adjusted Charges.

## **8. WARRANTIES AND DISCLAIMERS**

- 8.1 You acknowledge that:
- (a) prior to entering into the Licence on these Terms, You had a reasonable opportunity to assess the suitability of the Application for Your purposes and to examine the Application for any apparent defects; and
  - (b) at no time prior to entering into the Licence on these Terms have You relied on any representation by or on behalf of Bustle regarding the Application which You have not been able to verify, or had the opportunity to verify, independently.
- 8.2 The Application is provided “as is” and “as available” with all faults, inaccuracies, defects or errors, and, except as expressly stated in these Terms, to the maximum extent permitted by law, without warranty, guarantee or condition of any kind.
- 8.3 No oral or written information or advice given by or on behalf of Bustle shall create a warranty, guarantee or condition of any kind. To the maximum extent permitted by law, Bustle disclaims all express, implied and statutory warranties, guarantees and conditions with respect to the Application, including implied warranties and / or conditions of merchantability, satisfactory quality, fitness for a particular purpose, accuracy, quiet enjoyment and non-infringement of third party rights.
- 8.4 You agree that the liability of Bustle for breach of a guarantee conferred by the Australian Consumer Law (other than those conferred by sections 51 to 53 of the Australian Consumer Law) is limited to supplying the Application again or payment of the cost of having the Application supplied again.
- 8.5 Bustle expressly disclaims any liability in relation to:
- (a) any data or information You submit or upload to the Application; or
  - (b) any information provided by You or a Carrier in the course of using the Application.
- 8.6 You acknowledge that it is Your responsibility:
- (a) to ensure that the Application and the services it provides meet Your requirements; and
  - (b) to protect any of Your or Your employees’ Device that uses the Application from damage.
- 8.7 Notwithstanding any of provisions of these Terms, subject to clause 8.8 You agree that the total and aggregate liability of Bustle to You under these Terms in contract, tort (including negligence) or otherwise howsoever is limited to the amount actually paid by You to Bustle in the 12 months prior to the date of the liability arising or being incurred, provided that this clause does not apply in respect of any loss or damage suffered or incurred by You:
- (a) as a result of unauthorized access or a cyber security breach of any Bustle computer network, system or software;
  - (b) where the amount of the loss and damage is covered by proceeds of an insurance claim paid by Bustle’s insurer; or
  - (c) where the loss and damage results from Bustle’s intentional misrepresentation, wilful misconduct or fraudulent act.
- 8.8 Bustle’s liability for any claim relating to these Terms will be reduced to the extent to which You contributed to the loss or damage arising from the claim.
- 8.9 You agree that Bustle will not be liable for any personal injury, death or property damage, or any incidental, special, indirect or consequential loss or damage of any kind however caused, arising out of Your use of the Application, a defect or error in the Application or a breach of these Terms.

## **9. INDEMNITIES AND INSURANCE**

- 9.1 You indemnify Bustle and its officers, employees and agents from any and all Claims arising out of or in connection with:
- (a) Your use of the Application;
  - (b) any breach by You or Your officers, employees or agents of these Terms; and
  - (c) Your infringement or violation of the rights of any Carrier or third party.
- 9.2 You indemnify Bustle and its officers, employees and agents from any and all Claims against any one or more of them in respect of:
- (a) personal injury to or the death of any person whatsoever;
  - (b) loss of or damage to any property; or

(c) any other Claim whatsoever,

arising out of or as a consequence of Your use of the Application, an unlawful or negligent act or omission by You or Your officers, employees and agents in connection with the Application or its use or Your use of Your Bustle Account, and also from any costs and expenses that may be incurred in connection with any such Claim.

9.3 Subject to clauses 8.7, 8.8 and 8.9, Bustle indemnifies You from any and all Claims arising out of or in connection with:

- (a) a negligent, fraudulent or wilful act or omission of Bustle or its personnel;
- (b) personal injury (including sickness or death) caused by the negligent act or omission of Bustle or its personnel;
- (c) a successful claim brought against You by a third party alleging that the Bustle Intellectual Property Rights, any modification to the Bustle Intellectual Property Rights or the provision of the Application infringes the Intellectual Property rights of another person; or
- (d) Bustle's breach of these Terms..

9.4 Your and Bustle's liability to indemnify the other is reduced to the extent that any wilful, unlawful or negligent act or omission of the other contributed to the relevant Claim.

9.5 For the duration of this Licence:

- (a) You must effect and maintain the following insurances with a reputable insurer:
  - (1) public and product liability insurance for a minimum amount of \$20,000,000 in any one occurrence and in the aggregate;
  - (2) cyber liability insurance for a minimum amount of \$1,000,000 in any one occurrence and in the aggregate; and
  - (3) any other insurance as is required by law;
- (b) Bustle must effect and maintain the following insurances with a reputable insurer:
  - (1) public and product liability insurance for a minimum amount of \$20,000,000 in any one occurrence and in the aggregate;
  - (2) cyber liability insurance for a minimum amount of \$1,000,000 in any one occurrence and in the aggregate;
  - (3) professional indemnity insurance for a minimum amount of \$10,000,000 in any one occurrence and \$20,000,000 in the aggregate; and
  - (4) any other insurance as is required by law.

9.6 For the insurance required under clause 9.5, each party must:

- (a) deliver to the other party certificates of currency as evidence of the existence of the insurances required to be effected and maintained by it under these Terms;
- (b) pay each premium on or before the due date for payment;
- (c) at all times at its own cost comply with all requirements of the insurers;
- (d) not , cancel or allow to lapse any policy of insurance;
- (e) not do or permit anything to be done which contravenes or may render void or voidable any such insurance; and
- (f) apply the proceeds received under a policy of insurance to reinstate, replace or restore the loss or damage insured under clause 9.5.

## 10. TERMINATION

10.1 Bustle may terminate the Licence and cancel Your Bustle Account at any time without cause by giving You not less than 1 month's notice of termination.

10.2 Bustle may terminate the Licence and cancel Your Bustle Account if You:

- (a) fail to pay the Charges by the due date for payment;
- (b) breach any other provision of these Terms and fail to remedy the breach within 7 days of notice from Bustle requiring You to rectify the breach;
- (c) being a body corporate:
  - (1) have a liquidator or provisional liquidator appointed;
  - (2) have a receiver or receiver and manager appointed to You or any of Your property;

- (3) become an insolvent under administration;
  - (4) have a receiver or receiver and manager appointed to You or any of Your property;
  - (5) are unable to pay Your debts as and when they fall due and payable due; or
  - (6) enter into any compromise, arrangement or assignment, whether formal or informal, with any of Your members or creditors.
- (d) being a natural person:
- (1) die;
  - (2) are unable to pay Your debts as and when they fall due and payable;
  - (3) have a trustee in bankruptcy appointed;
  - (4) cease to be of full legal capacity or otherwise becomes incapable of managing Your own affairs for any reason; or
  - (5) enter into any compromise, arrangement or assignment, whether formal or informal, with any of Your creditors or any analogous event occurs; or
- 10.3 Upon the termination of the Licence and cancellation of Your Bustle Account, You must cease all use of the Application.
- 10.4 Without limiting Bustle's rights under clause 10.1 or 10.2, Bustle may suspend Your access to and use of the Application or Your Bustle Account if:
- (a) Bustle is unable to provide access to the Application or Your Bustle Account;
  - (b) You fail to pay the Charges by the due date for payment; or
  - (c) You breach any other provision of these Terms and fail to remedy the breach within 7 days of notice from Bustle requiring You to rectify the breach.
- 10.5 You may terminate the Licence and cancel Your Bustle Account, or cancel any of your authorised users of Your Bustle Account, at any time by not less than 1 month's notice. Any such termination and / or cancellation does not relieve You from any liability (including any payment liability) incurred to the date of cancellation.
- 10.6 Termination of the Licence for any reason does not affect Your and Bustle's rights that arise before the termination, or as a consequence of the event or occurrence giving rise to the termination, or as a consequence of the breach of any obligation under these Terms which continues to take effect after termination.

## **11. CONFIDENTIALITY**

- 11.1 During the term of the Licence and for a period of 5 years after termination
- (a) You must keep, and must ensure that Your officers, employees and agents keep, all information concerning or relating to the Application or Bustle's Intellectual Property Rights strictly confidential and not disclose any of it.
  - (b) except as permitted by clause 12, Bustle must keep, and must ensure that their officers, employees and agents keep all Your data and information contained within the Application strictly confidential and not disclose any of it.
- 11.2 Nothing in these Terms prohibits disclosure of information:
- (a) to the extent permitted or envisaged by these Terms;
  - (b) required by any applicable law or court order;
  - (c) that is the property of the person disclosing it; or
  - (d) to the extent that it is in the public domain otherwise than as a result of a breach of these Terms or other obligation of confidence.
- 11.3 The obligations in this clause 11 survive the termination of the Licence.

## **12. PRIVACY**

- 12.1 You acknowledge that:
- (a) Bustle collects and uses information, including Personal Information, which You provide to Bustle through Your use of the Application;
  - (b) Your use of the Application includes the creation of a user profile consisting of Your information and any other information which Bustle may obtain from publicly accessible databases;
  - (c) the primary purpose of the creation of a user profile is to better assist the functionality of the

Application; and

- (d) Bustle expressly reserves the right to use all such information including the user profile for the purposes described in these Terms.

12.2 Bustle will comply with the *Privacy Act* in respect of all Personal Information collected pursuant to these Terms or Your use of the Application and act in accordance with its published privacy statement.

12.3 You agree that:

- (a) Bustle may collect and use technical information about any Device used by You or Your employees when using the Application, provided that the information is anonymized so that it cannot be connected to You, Your employees or customers;
- (b) Bustle may collect and use location data from any Device used by You or Your employees, provided that the information is anonymized so that it cannot be connected to You, Your employees or customers, and that if You or Your employees turn off the location services of a Device, the Application may not function as intended;
- (c) information You provide to Bustle through Your or Your employees, contractors, subcontractors or other authorised persons use of the Application may be viewed by other users of the Application whom You have authorised to view Your information;
- (d) Bustle may communicate with You by telephone, text, email or other form of communication when You are using the Application; and
- (e) Bustle may disclose Personal Information:
  - (1) for any reason and to any person permitted by the *Privacy Act*; and
  - (2) without limiting clause 12.3(e)(1), it collects about You (including Your name and contact details) to any government agency, authority, body or department, or to any claims processor or insurer, if there is a complaint, dispute or Claim concerning the Licence or Your use of the Application.
- (f) subject to clause 12.2, Bustle may use and disclose any and all information it collects or which You provide to Bustle through Your use of the Application for commercial purposes (including environmental, social, governance, marketing and reporting purposes) and to any industry body or organisation, provided that the information is anonymized so that it cannot be connected to You, Your employees or customers.

### **13. BUSTLE MAY AMEND THESE TERMS**

13.1 Bustle may from time to time amend and supplement these Terms as it reasonably sees fit by giving You not less than 30 days' notice of the changes.

13.2 You may accept Bustle's changes to these Terms by giving written notice of Your acceptance to Bustle or by Your continued use of the Application.

13.3 You may choose not accept the changes to these Terms by giving written notice to Bustle that You do not accept the changes within 14 days of Bustle giving You notice of the changes, in which event the Licence will terminate on the giving of such notice.

### **14. NO ASSIGNMENT**

14.1 You must not assign Your Bustle Account, the Licence or any of Your rights or obligations under these Terms to any other person without Bustle's prior written consent.

14.2 Where You are a corporation (except a corporation listed on a stock market conducted by Australian Stock Exchange Ltd), any change in Your shareholding which alters:

- (a) effective control of the composition of Your board of directors of;
  - (b) control of more than one half of Your voting shares at a general meeting in; or
  - (c) the ability to cast more than one half of the votes at a general meeting You hold,
- will be deemed to be an assignment that requires Bustle's consent under clause 14.1.

### **15. NOTICES**

Any notice or other communication in connection with these Terms:

- (a) must be in writing and signed by the party giving it or its solicitor or agent, but an email does not have to be signed;



- (b) must be given or served in any of the following ways, namely:
  - (1) in a manner authorised by law or by personal delivery;
  - (2) sent by prepaid post to the address of the addressee specified in the Account Information; or
  - (3) sent by email to the email address of the addressee specified in the Account Information, or if the addressee notifies another address or email address in accordance with this clause then to that address or email address.
- (c) takes effect from the time it is received and, unless a later time is specified, is taken to be received:
  - (1) if served or given by personal delivery, at the time it is delivered;
  - (2) if left at the address of the addressee specified in the Account Information, at the time it is left;
  - (3) if sent by prepaid ordinary post to the address of the addressee, at the expiration of 3 Business Days after posting; or
  - (4) if sent by email to the email address of the addressee specified in the Account Information, 2 hours after the email is sent (unless the sender receives an automated message that the email has not been delivered),provided that if notices are received after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am on the next Business Day.

## 16. GENERAL

- 16.1 You shall sign, execute and do all agreements, acts, documents and things as Bustle may reasonably require to carry out and give effect to the terms and intentions of these Terms.
- 16.2 You agree with Bustle that these Terms Agreement contains the entire agreement between You and Bustle as to their subject matter and supersede all prior agreements understandings and negotiations as to such subject matter.
- 16.3 If any provision of these Terms becomes invalid, the provision is enforceable to the extent that it is not invalid, whether it is in severable terms or not, provided that this clause does not apply where enforcement of a provision of these Terms in accordance with this clause would materially affect the nature or effect of the parties' obligations under these Terms.
- 16.4 No party may rely on the words or conduct (including a failure or delay in the exercise of a right, power or remedy arising under or in connection with these Terms) of the other party as a waiver of any right, power or remedy under or in connection with these Terms unless the waiver is in writing and signed by the party granting the waiver, and any single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- 16.5 Except as provided in clause 13 a variation of these Terms must be in writing and signed by the parties.
- 16.6 Except as provided in these Terms and permitted by law, the rights, powers and remedies provided in these Terms are cumulative with and not exclusive to the rights, powers or remedies provided by law independently of these Terms.
- 16.7 You agree that:
  - (a) any document required to be executed pursuant to or as a result of these Terms may be executed electronically through an electronic signature platform such as DocuSign or a similar platform;
  - (b) subject to clause 15 (notices), any notice or other communication in connection with these Terms may be given by email or other forms of electronic communication; and
  - (c) a transaction in connection with these Terms may take place wholly or partly by means of one or more electronic communications.
- 16.8 These Terms shall be governed by the law of Western Australia and You and Bustle agree to submit to the jurisdiction of the courts of Western Australia in all matters arising out of these Terms and any court hearing appeals from those courts, and waive any right to object to an action being brought in any of those courts.

## 17. DEFINITIONS

- 17.1 In these Terms, unless the context otherwise requires:

**Account Information** means information required to be provided by a user of the Application in order to create and maintain a Bustle Account.

**Application** means the software application known as Bustle which will be made available to You pursuant to these Terms.

**Bustle** means Bustle Technology Pty Ltd (ACN 609 031 129) of Suite 15, 8 Welshpool Road, EAST VICTORIA PARK WA 6101, Australia.

**Bustle Account** means the account You as a user of the Application are required to open with Bustle before accessing or using the Application.

**Carrier** means either a person, including a body corporate and an independent driver, who provides Transport for users of the Application.

**Charges** means the charges set out in attachment 2 of these Terms as reviewed in accordance with these Terms.

**Claim** means any claim, demand, application, suit, cause of action, proceeding, allegation, liability, debt, cost, expense, loss and damage howsoever arising including but not limited to claims for legal costs and other consequential losses (whether under any agreement, at law, in equity or based on statute, whether fixed or unascertained, and whether present, future or contingent).

**Device** means the device (including a mobile device) and operating system You use to access and use the Application.

**Goods** means any goods and freight, including the containers and packages containing those goods and freight, which are the subject of Transport provided to You by a Carrier.

**GST law** has the same meaning as GST law in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and **GST** means the same as in the GST law.

**Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, business and domain names, inventions, confidential information and trade secrets and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable including all rights in all applications to register these rights, all renewals and extensions of these rights and all rights in the nature of these rights.

**Licence** means the licence grant to You to access and use the Application in accordance with these Terms.

**Moral Right** means:

- (a) a right of attribution of authorship;
- (b) a right not to have authorship falsely attributed;
- (c) a right of integrity of authorship; or
- (d) a right of a similar nature,

which is conferred by statute, and which exists or comes to exist anywhere in the world, in a deliverable.

**Personal Information** has the same meaning as defined in the *Privacy Act 1988* (Cth).

**Transport** means the transport or shipping of Goods (including, if required, the loading and unloading of Goods) by a Carrier for You and in respect of which You use the Application.

**Website** means [www.Bustle.tech](http://www.Bustle.tech).

**You** or **Your** means a user of the Application who has a Bustle Account.

17.2 In these Terms, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa.
- (b) a gender includes all other genders.
- (c) words denoting an individual include a firm, body corporate, unincorporated association and any government or governmental, administrative, monetary, fiscal or judicial agency, authority, body, commission, department, tribunal or entity of any kind and vice versa.
- (d) references to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (e) headings and italicized, highlighted or bold type do not affect the interpretation of these Terms.
- (f) references to a clause, paragraph, annexure, attachment or schedule is a reference to the same in these Terms.
- (g) a reference to a party in these Terms includes a party's personal representatives, successors in title and permitted assigns.
- (h) a promise, agreement, representation or warranty by or in favour of (as the case may be) more than one person is for the benefit of or binds them (as the case may be) jointly and severally.

- (i) a reference to a document includes that document as amended or replaced.
- (j) a reference to a whole thing includes a reference to part of that thing.
- (k) a party to these Terms that is a trustee of a trust is bound in the party's own personal capacity and as trustee of the trust.
- (l) a provision of these Terms may not be construed adversely to a party solely because that party, or its representative, was responsible for the preparation of these Terms or the preparation of that provision.
- (m) other parts of speech and grammatical forms of a word or phrase defined in these Terms have a corresponding meaning.
- (n) "include", "including", "for example", "such as" and other similar words or expressions in this Agreement do not limit what else is included and are to be construed as if they are followed by the words "without limitation".
- (o) if a period of time is specified and dates from a day or the day of an act or event, it is to be calculated exclusive of that day.
- (p) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00pm on that day, it is taken to be done on the next day.
- (q) if anything under these Terms must be done on a specified day that is not a Business Day then that thing must be done on the next Business Day.

### Bustle Platform System service level agreement

#### SERVICE UPTIME

Service uptime is covered by the service level agreement within the Google Cloud Platform as noted in the Google Cloud Platform Service Level Agreement (SLA).

#### SERVICE LEVEL TARGETS

Severity	Support Type	Description	Response Time	Resolution Time and Description
Critical	P1	<b>Total loss of service</b> impacting one or all customers	30 minutes	4 ordinary hours from SLA classification, issue resolved or temporary workaround in place with resolution plan agreed. 95% of issues within SLA.
High	P2	<b>Degraded Service or Issue:</b> Issue has high impact on customers' business, <i>with no work around</i>	4 business hours from reported	8 business hours from SLA classification, issue resolved or temporary workaround in place with resolution plan agreed. 85% of issues within SLA
Medium	P3	<b>Degraded Service or Issues:</b> Issue has medium to high impact on customers' business, <i>with available work around available during agreed Resolution Time.</i>	8 business hours from reported	2 business days from SLA classification, issue resolved or temporary workaround in place with resolution plan agreed. 75% of Issues within SLA
Low	P4	Little or no customer business impact	Best efforts	N/A

#### SERVICE LEVEL TARGET CONDITIONS

1. Bustle's system is available and accessible 99.9% of the time.
2. Bustle's system is required to be online 24/7.
3. Bustle's ordinary business hours are 7.00am to 5.00pm Australian Western Standard Time (GMT+8)
4. Bustle holds a primary and secondary server where should its main platform go down; Bustle can spin up the secondary environment and point traffic at this to ensure users remain online.
5. Resolution times are relevant to what could cause Bustle's platform to go offline.
6. Bustle has scheduled updates which occur every 3 to 4 weeks which occur outside of normal office hours when system usage is at its lowest.

Attachment 2

**Charges**

ITEM	COST ITEM	YEAR 1
1.	Subscription (per active user <sup>1</sup> per month)	\$59.95
2.	Infrastructure and Support	
	(a) Base (per month); or	\$495.00
	(b) Tier 2 & 3 (per month); or	\$950.00
	(c) Tier 1 (per month); or	\$1,950.00
	(d) Ultimate Customers (per month)	\$4,950.00
3.	Integrations <sup>2</sup>	tba
4.	Customer Development & System Configuration <sup>2</sup>	tba
5.	Project Management <sup>2</sup>	tba

- 1 An active user is an employee, contractor, subcontractor or authorised user who may log into and uses the Application or has an activity reported against its profile (for example, assignment of job, submitted form, fatigue action).
- 2 These items are only applicable if mutually agreed by the parties.