



## AGREEMENT

THIS AGREEMENT is made and entered into as of this 6th day of July, 2021, by and between

**Kimberly School District**

(herein after referred to as "Organization"),

AND

BUSRIGHT, INC

(herein after referred to as "BR"),

WHEREAS, Organization desires to purchase a bus tracking, routing, and transportation management system for purposes of managing their school bus fleet; and

WHEREAS, BR provides a transportation management system that implements bus tracking, routing, and transportation management; and

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, there Parties hereby agree to the terms set forth in the BUSRIGHT MASTER SUBSCRIPTION AGREEMENT (MSA).

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## **BUSRIGHT MASTER SUBSCRIPTION AGREEMENT (MSA)**

**THIS MASTER SUBSCRIPTION AGREEMENT (MSA)** (this "Agreement") sets forth the terms and conditions pursuant to which BusRight, LLC. ("BusRight") provides its end user subscribers (each, a "Subscriber") with access to BusRight's proprietary bus tracking, routing, and transportation management system, more particularly described on BusRight's website located at [www.busright.com](http://www.busright.com) (the "System"). This includes BusRight software and any additionally-provisioned hardware (tablets, mounts, charging wires, etc...). This Agreement is incorporated into and governs each Terms Sheet, memorialized upon a BusRight Terms Sheet, that BusRight offers to its Subscribers (each, the "Terms Sheet"). Acceptance of the Terms Sheet or Subscriber's use of or access to the System shall constitute Subscriber's unconditional acceptance of this Agreement. This Agreement shall be effective upon the earlier of the date of Subscriber's acceptance of the Terms Sheet or the date of Subscriber's first use of or access to the System (the "Effective Date").

1.01 **Description of Goods or Services Provided.** BusRight shall provide access to the following proprietary software features: Bus Tracking and positioning in its web and mobile apps, Route creation and management tool on the web, Driver navigation and management mobile apps, and web-based management platform including vehicle history, analytics, and data export capability.

1.02 **Grant of License: Subscription.** BusRight hereby grants to Subscriber a limited license to access and use the System during the term specified in the Terms Sheet, including any renewals thereof (the "Term"). Subscriber hereby accepts the subscription to the System more particularly described in the Terms Sheet (the "Subscription").

2. **Billing and Payment.** Subscriber agrees to pay the fees for the Subscription to the System in accordance with the payment terms set forth in the Terms Sheet. BusRight will send an invoice to Subscriber, and Subscriber shall pay the amount due within 30 days of the invoice date by mailing a check or other mutually-agreed upon form of payment. Except to the extent fixed in the Terms Sheet, BusRight's Subscription fee is subject to change by BusRight without notice and in its sole discretion. Subscriber shall be solely responsible for any personal property taxes or local licensing fees resulting from Subscriber's Subscription or in connection with BusRight's delivery of the System under this Agreement.

3. **Ownership.** The System is owned and copyrighted by BusRight and offered through a subscription, not sold, to Subscriber. All right, title, and interest in and to all images, source code, updates, enhancements, modifications, and improvements contained in or related to the System, along with all intellectual property rights related thereto, shall remain with BusRight, regardless of the source giving rise to the intellectual property and despite any modifications or adaptations made for the benefit of Subscriber. The "BusRight" trademark is protected by United States and international trademark laws and treaties, as well as other intellectual property laws. Subscriber is not granted any license to use any of BusRight's trade or service marks and BusRight retains all right, title, and interest in its trade and service marks. Subscriber agrees that BusRight may use, without restriction or royalty obligation, any comments, suggestions or



contributions provided by Subscriber with respect to the BusRight System during the course of Subscriber's use of the System. Subscriber hereby grants and assigns to BusRight any intellectual property rights that Subscriber may incidentally obtain or have with respect to any such comments, suggestions or contributions.

4.01 **Confidential Information.** Subscriber acknowledges that all underlying ideas, algorithms, item calibrations, concepts, procedures, processes, principles, know-how, and methods of operation that comprise the System, including updates, enhancements, modifications, and improvements are confidential and contain trade secrets (collectively, "Confidential Information"), and Subscriber will respect such confidentiality, and shall keep all Confidential Information confidential. Subscriber agrees not to use, disclose, or distribute any Confidential Information, directly or indirectly, without the prior written consent of BusRight, except that BusRight authorizes Subscriber to disclose Confidential Information to Subscriber's employees or agents who have signed written confidentiality and nondisclosure agreements before such disclosure.

4.02 **Family Educational Rights and Privacy Act (FERPA).** BusRight defines "Data" to include all Personally Identifiable Information (PII) and other non-public information. Data include, but are not limited to, student data, metadata, and user content. BusRight will use Data only for the purpose of fulfilling its duties and providing services under this Agreement, and for improving services under this Agreement. BusRight may use de-identified Data for product development, research, or other purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, Provider agrees not to attempt to re-identify de-identified Data and not to transfer de-identified Data to any party unless that party agrees not to attempt re-identification.

5. **Subscriber Information.** Subscriber hereby permits BusRight to use information regarding its organizational units to the extent said information is reasonably necessary to perform its obligations hereunder and to be used and disclosed to internal and external researchers and other third parties that have executed confidentiality agreements. However, BusRight shall seek permission from Subscriber before including such information that is identifiable to the school or organization in any publication.

6. **Renewals; Termination.** Unless otherwise specified in the Terms Sheet: (a) the Term shall automatically renew for 1-year periods, unless Subscriber provides 30 days written notice to BusRight prior to such renewal, and (b) Subscriber or BusRight may terminate this Agreement before the end of the applicable Term by providing a written notification to BusRight or Subscriber, at least 30 days in advance of termination. BusRight may terminate this Agreement in the event Subscriber commits a breach hereof and fails to cure such breach within 30 days from written notice thereof. Upon the termination or expiration of this Agreement for any reason, BusRight will be under no obligation to refund any fees paid by Subscriber for the System and BusRight shall, for a period of 30 days following such termination or expiration, maintain student information and permit Subscriber with access to such data, in a commonly-accepted reporting form. The parties agree that Sections 2-4 and 9-13 shall survive any termination or expiration of this Agreement.



7. **Support & Maintenance.** BusRight may, from time to time, provide to Subscriber updates, enhancements, modifications, improvements in and to the System which shall all be subject to the terms and conditions of this Agreement. BusRight has system maintenance periods throughout the year that will affect Subscriber's ability to interact with the System. BusRight will use commercially reasonable efforts to notify Subscriber in advance of any disruptions.

8. **Limited Warranty.** BusRight warrants to Subscriber that: (a) BusRight will comply with all applicable laws, rules and regulations, and (b) the BusRight System will perform substantially in accordance with its specifications. In the event the BusRight System fails to conform to these warranties, BusRight will use its best efforts to correct the System. If BusRight is unable to correct the error after using its best efforts, BusRight will refund the unused Subscription fees paid by Subscriber, as depreciated over the Term on a straight line basis, and terminate this Agreement. The limited warranties provided in this Section are void if the failure of System results from (x) use of the System in connection with software or hardware not compatible with the System or not meeting the technical specifications provided by BusRight; (y) improper or inadequate maintenance of Subscriber's equipment or software; or (z) inadequate Internet connectivity or bandwidth. Subscriber is responsible for the results obtained and decisions made from its use of the System. The System may include open source software components and use of such components may be subject to additional terms and conditions.

9. **Disclaimer.** EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN SECTION 8, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SYSTEM IS PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, QUALITY, PRODUCTIVENESS OR CAPACITY, OR THAT THE OPERATION OF THE SOFTWARE WHEN SUBSCRIBER'S PRACTICES ARE INCONSISTENT WITH THE STANDARDS FOR EDUCATIONAL AND PSYCHOLOGICAL TESTING (1999) BY THE AMERICAN EDUCATIONAL RESEARCH ASSOCIATION. WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY FOR PERFORMANCE ISSUES (A) CAUSED BY FACTORS OUTSIDE OF BUSRIGHT'S REASONABLE CONTROL; OR (B) THAT RESULTED FROM ANY ACTION OR INACTION OF SUBSCRIBER OR SUBSCRIBER'S THIRD PARTIES; OR (C) RESULTING FROM SCHEDULED MAINTENANCE PERIODS.

10. **Additional Disclaimer.** BUSRIGHT DOES NOT AND CANNOT CONTROL PERFORMANCE OF THE SYSTEM BASED ON THE FLOW OF DATA TO OR FROM BUSRIGHT'S NETWORK AND OTHER PORTIONS OF THE INTERNET, WHICH DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT SUBSCRIBER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH BUSRIGHT WILL USE COMMERCIALY REASONABLE EFFORTS TO REMEDY AND AVOID SUCH EVENTS, BUSRIGHT CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, BUSRIGHT DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.



11. **Limitation.** THE REMEDIES PROVIDED UNDER THE LIMITED WARRANTY ARE SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY VIOLATION OF THIS AGREEMENT. EXCEPT TO THE EXTENT THE FOLLOWING LIABILITY LIMITATION IS PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL BUSRIGHT, ITS DEVELOPERS, OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES OR EXPENSES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST OPPORTUNITY, LOST SAVINGS, LOSS OF GOODWILL, LOST BUSINESS, LOSS OF ANTICIPATED BENEFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF OR DAMAGE TO DATA, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL DAMAGES, OR PECUNIARY LOSSES, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE SYSTEM. IN ANY CASE, BUSRIGHT'S, ITS DEVELOPERS' AND ITS SUPPLIERS' ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY SUBSCRIBER FOR THE RIGHT TO USE THE BUSRIGHT SYSTEM IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY.



# BusRight

## 12. **Miscellaneous**

12.1 **Publicity**. Subscriber may not use BusRight's name or trademark without BusRight's prior written consent

12.2 **No Disassembly**. Subscriber shall not modify, adapt, translate, reverse engineer, decompile, or disassemble the System or any software consisting thereof.

12.3 **Force Majeure**. Neither party shall be liable for any delay or failure to perform any obligation hereunder due to causes beyond its control, including without limitation, war, riot, insurrection, civil commotion, terrorist activity, fire, industrial disputes of whatever nature, acts of nature, computer crimes, epidemics, acts or omissions of third party vendors or suppliers, equipment failures, public enemies of government, failure of telecommunications, system malfunctions, fire, or other casualty.

12.4 **Waiver and Severability**. Waiver of any default or breach under this Agreement by BusRight does not constitute a waiver of any subsequent default or a modification of any other provisions of this Agreement. If any part of this Agreement shall be held invalid, illegal, in conflict with any law, or otherwise unenforceable by a court of competent jurisdiction, the remainder of this Agreement will nevertheless remain in full force and effect.

12.5 **No Third Party Beneficiaries**. The parties do not intend to confer any right or remedy on any third party.

12.6 **Entire Agreement**. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.

12.7 **Assignment**. Subscriber may not assign this Agreement to any third party without the prior written consent of the BusRight. Any such purported assignment shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, and permitted assigns, if any.

12.8 **Notices**. Any notice required under this Agreement shall be in writing and effective when (a) delivered personally against receipt, (b) deposited in the mail and registered or certified with return receipt requested, postage prepaid, (c) shipped by a recognized courier service and addressed to either party as designated in this Agreement, (d) delivered by email to an email address designated by the recipient, or (e) delivered via any of the foregoing at the addresses specified in the Terms Sheet or such other address as may be provided by the recipient in accordance with this Section.

12.9 **Controlling Law and Venue**. This Agreement shall be construed and controlled by the laws of the State of Delaware, U.S.A., without giving effect to principles of conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed and shall not apply to this Agreement. Courts located in New York, New



York shall be the exclusive forum for any litigation arising out of this Agreement. Subscriber hereby waives any objections to venue, personal jurisdiction, or forum non conveniens.

12.10 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, notwithstanding that all of the parties are not signatory to a single original or the same counterpart. The parties may also deliver and accept facsimile or electronically scanned signatures, which shall be binding upon the parties as if the signature were an original.

12.11 **Independent Contractor.** The parties are acting and shall act as independent contractors. Neither party is, nor will be deemed to be, an agent, legal representative, joint venturer or partner of the other party for any purpose. Neither party will be entitled to (a) enter into any contracts in the name of or on behalf of the other party; (b) pledge the credit of the other party in any way or hold itself out as having authority to do so; or (c) make commitments or incur any charges or expenses for or in the name of the other party. Neither party's personnel are, nor shall they be deemed to be at any time during the term of this Agreement, employees of the other party.

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**The Parties record their understanding of, and agreement with, the above by signing below:**

For and on behalf of:  
BusRight, Inc.

For and on behalf of:

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**STATEMENT OF WORK**



This agreement is between:

- (1) BusRight, LLC, (herein "BusRight"), a transportation software company which provides its end user subscribers (each, a "Subscriber") with access to BusRight's proprietary bus tracking, routing, and transportation management system ; and
- (2) **Kimberly School District**, (herein the "Organization").

BusRight and the Organization together shall be referred to as the "Parties," and individually shall be referred to as a "Party."

### 1. PURPOSE

This Statement of Work (SOW) represents an agreement between the Organization and BusRight for the purchase of services (e.g., software licensing, training) in connection with BusRight's transportation management system and pursuant to the Master Services Agreement (MSA). All costs are detailed below.

### 2. APPLICABILITY OF MASTER SERVICES AGREEMENT (MSA)

The Master Services Agreement (MSA) governs your acquisition and use of the services set forth in this SOW. By executing this Terms Sheet, you acknowledge that you have read, understood, and agreed to be bound by the terms and conditions of the MSA and set forth herein.

### 3. PROVISIONS GOVERNING THE MASTER SERVICES AGREEMENT

The Parties intend that the MSA contains terms based on the following principles:

License Grant:	20 licenses for \$750/bus/yr on a 2-year contract, beginning July 1 <sup>st</sup> , 2022.
License Term:	
Product Services and Features:	Full product suite
Payments:	Payment due within 30 days of the invoice date by mailing a check or other mutually agreed upon form of payment
Support Services:	Email and phone support with 24-hour response time





# BusRight

**The Parties record their understanding of, and agreement with, the above by signing below:**

For and on behalf of:  
BusRight, Inc.

For and on behalf of:

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

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Title

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Date

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Date