



**WHERE[®]
THE
TRUCK**



AMFVG
SUPPORTING
THE FOOD TRUCK
INDUSTRY

www.amfv.com.au

Where the Truck Agreement

Australian Mobile Food Vendors Group Pty Ltd
ABN 19 163 764 047 ("**AMFVG**")

and

The party named in Item 2 of Schedule 1
("**Food Truck Vendor**")

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THIS AGREEMENT is made on the date specified in Item 1 of Schedule 1 of this Agreement.

BETWEEN

Australian Mobile Food Vendors Group Pty Ltd ABN 19 163 764 047 of 29 – 31 Malua Street, Reservoir VIC 3073 (**AMFVG**)

and

The party named in Item 2 of Schedule 1 (**Vendor**)

RECITALS

- A. AMFVG have developed an online geolocation platform known as Where the Truck which operates via a web application to connect the Vendor with Customers, and where applicable, Delivery Providers.
- B. The Vendor conducts and operates a Food Truck Vending Business.
- C. AMFVG has agreed to permit the Vendor to use the Where the Truck application to promote, market and sell Vendors Products in accordance with the terms and conditions of this Agreement.

IT IS AGREED AS FOLLOWS:

1 Definition of Words and Interpretation

1.1 Meaning of Words

The following definitions apply unless the context otherwise requires:

Activation Fees means the monthly fees referred to in Item 3 of Schedule 1 payable by the Vendor to AMFVG throughout the Term of this Agreement;

Agreement means this agreement and includes all annexures and Schedules;

AMFVG means the Australian Mobile Food Vendor Group Pty Ltd, and where the context permits, includes AMFVG's Personnel;

AMFVG Data means any information that AMFVG provides or makes accessible to Vendor through the Where the Truck application, including without limitation, Personal Information;

AMFVG Tablet means the equipment supplied by AMFVG to Vendors to receive, process and accept Orders and includes a tablet and technology capable of receiving Orders.

Confidential Information means the terms and conditions of this Agreement and all information provided under or in connection with this Agreement by either party to the other party to this Agreement;

Customers mean the end users accessing the Where the Truck application to view and search for the Vendors menu and place Orders;

Delivery Providers mean independent contractors that provide delivery services;

Dinner Runs mean pre-booked catering locations or functions organised and co-ordinated by AMFVG for and on behalf of Vendors;

Fees mean the Subscription Fees, Activation Fees and Turnover Fees.

Food Truck means any van, trailer, trolley or other mobile food unit that is registered with a local council

or is fit to be registered under the requirements of “Mobile Food Cart Specifications” or “Mobile Food Vehicle Specifications” as provided by the local council and State government or authority within which the Food Truck is located;

Food Truck Vending Business means the business conducted by the Vendor on and from its Food Truck;

Gross Sales means the total value of sales (including GST) received by AMFVG for Orders for Vendor’s Products placed via the Where the Truck application;

GST means the goods and services tax as defined in the New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time;

Materials means a party’s programmes, services, data, hardware, menus and other materials of any nature whatsoever;

Orders mean the orders for Vendor’s Products that Customers place on the Where the Truck application;

Personnel of a party means that party’s employees, agents, contractors, consultants, directors and officers and any of them;

Personal Information means information obtained through the Where the Truck application or in connection with this Agreement that:

- (i) identifies or can be used to identify individuals (including, without limitation, names, telephone numbers, addresses, signatures, email addresses or other unique identifiers); or
- (ii) that can reasonably be used to authenticate an individual (including, without limitation, names, contact information, precise location information, access credentials, persistent identifiers and any information that may be considered 'personal data' or 'personal information' under applicable law;

Schedules mean the schedules attached to and forming part of this Agreement;

Subscription Fees mean the annual fee referred to in Item 4 of Schedule 1 payable on the date of this Agreement and thereafter annually on or before each anniversary of the date of this Agreement;

Term means the period described in Item 6 of Schedule 1;

Turnover Fees means the fees referred to in Item 5 of Schedule 1 payable by the Vendor to AMFVG on the pickup of Orders by the Customer or the Delivery Providers;

Vendor means the person named in Item 2 of Schedule 1 and, where the context permits, includes the Vendor’s Personnel and other persons claiming through or under the Vendor;

Vendors Content means, where applicable, the Vendors name, menu of the Vendors Products, photographs, website details, trademarks, logos and other materials provided by the Vendor to the AMFVG and approved by the AMFVG to be displayed on the Where the Truck application;

Vendor’s Food Truck means the Food Truck used by the Vendor for the conduct of the Food Truck Vending Business;

Vendor’s Products means the products listed in the Vendor’s menu as displayed on the Where the Truck application and prepared and offered for sale by the Vendor from the Vendor’s Food Truck in accordance with the terms of this Agreement;

Where the Truck means the Vendor’s online platform web application described in Recital A above.

1.2 Interpretation

In this Agreement, headings are for convenience only and do not affect interpretation. The following

rules apply unless the context otherwise requires:

- (a) The singular includes the plural and conversely;
- (b) A gender includes all genders;
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, is a reference to a clause in this Agreement;
- (f) A reference to a party to this Agreement includes the party's successors, permitted substitutes and assigns;
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (h) A reference to "party" is a reference to a party to this Agreement;
- (i) No rule of construction applies to the disadvantage of a party only because that party was responsible for preparing this Agreement;
- (j) A reference to an "authority" means any State or local or federal government statutory or public authority or any person or body having jurisdiction over a matter offering, touching or concerning any of the terms or conditions of this Agreement;
- (k) Third party means any person who is not a party to this Agreement; and
- (l) Dollars \$ means Australian dollars;

2 Use of Where the Truck Application

AMFVG grants the Vendor the right during the Term, via the Where the Truck application, to promote and market the Vendor's Products for sale from the Vendor's Food Truck subject to the terms and conditions set out in this Agreement.

3 Nature of Right of Use

3.1 Vendor's rights are contractual and personal

The Vendor's rights under this Agreement:

- (a) Are contractual rights only and nothing in this Agreement shall be deemed to constitute the Vendor or its Personnel as employees, servants or agents of AMFVG;
- (b) Are personal to the Vendor who cannot assign, license, sub-license, transfer, dispose of or otherwise deal with all or any part of its rights, benefits or obligations under this Agreement to or in favour of any other person;
- (c) Are not exclusive and do not give the Vendor any right to exclusive use of the Where the Truck application; and
- (d) Do not create or give the Vendor any interest or any other rights except as provided for in this Agreement

3.2 Exercise of AMFVG Rights

AMFVG may:

- (a) Exercise its rights and perform its obligations under this Agreement itself;
- (b) Sublicense, novate or assign some or all of its rights or obligations under this Agreement to a third party; or
- (c) Permit a third party to exercise or perform some or all of its rights or its obligations under this Agreement.

4 What the Vendor Must Pay

4.1 Fees

- (a) The Vendor shall, in consideration for the rights granted by AMFVG to the Vendor to use the Where the Truck application pursuant to the terms of this Agreement, pay to AMFVG the Fees as provided for in this Agreement.
- (b) Except for the payment of Subscription Fees, the Vendor consents and authorises AMFVG to deduct from monies received by AMFVG for Orders placed by Customers on the Where the Truck application, Fees payable by the Vendor to AMFVG pursuant to this Agreement.
- (c) On the date of this Agreement and on and before each anniversary of the date of this Agreement the Vendor shall pay AMFVG the annual Subscription Fees for the twelve (12) month period following each anniversary of the date of this Agreement failing which AMFVG may terminate this Agreement should payment of Subscription Fees not be made in accordance with this clause 4.1(c).

4.2 GST

The parties acknowledge that, unless expressed otherwise in this Agreement, all consideration payable under this Agreement is inclusive of GST.

4.3 Legal Costs and Stamp Duty

Each party shall bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All stamp duty (including fines, penalties and interest) which may be payable on or in connection with this Agreement and any instrument executed under this Agreement shall be borne by the Vendor.

4.4 Adjustments and Errors

If either the Vendor or AMFVG proves an error in any calculation, the party in error must correct the error and any necessary adjusting payment must be made as soon as possible.

5 Vendor's Obligations

5.1 Compliance with Laws, Regulations and Directions

The Vendor must throughout the Term:

- (a) Comply with any authority having jurisdiction over the activities of the Vendor including but not limited to occupational, health and safety regulations and all state and local government requirements relating to the conduct of the Food Truck Vendors Business conducted from the Vendor's Food Truck;
- (b) Provide AMFVG with the Vendor's menu including the price of each item on the menu and notify AMFVG of any updates made to the Vendor's menu at least three (3) days prior to the date of any updates;
- (c) Accept and confirm Orders from AMFVG in a prompt and timely manner;
- (d) Prepare the Vendors Products for each Order for pickup or delivery to the Customer as applicable at the designated time;
- (e) Process Orders in the order in which they are received;
- (f) Promptly notify AMFVG of any changes to the pricing, availability, description or other characteristics of the Vendors Products;

- (g) Notify AMFVG of its days or hours and location of operation and remain open for business on Where the Truck application for the same hours of operation;
- (h) Notify all the Vendors Personnel of the Vendor's relationship with AMFVG and train staff members to receive and fulfill orders on an ongoing basis;
- (i) Provide the same utensils, bags and other materials that the Vendor typically would provide in a standard takeout or delivery orders;
- (j) Use its standard business practices to prepare Vendor's Products that are subject of each Order;
- (k) Procure that its Personnel do not do or omit to do anything which may invalidate or render avoidable any insurance policies taken out by the Vendor relating to the Vendors Food Truck Business; and
- (l) Without limiting anything contained in this clause 5.1 at all times procure that the Vendors Products are safe and fit for human consumption and comply with all relevant health and food safety laws, rules and regulations.

6 AMFVG's Responsibilities

6.1 AMFVG will:

- (a) Promote the Vendor's Content in a standard format supported by the Where the Truck Application and as provided by the Vendor to AMFVG and approved by AMFVG;
- (b) Accept Orders for Vendor's Products through the Where the Truck application from Customers;
- (c) Forward each Order to the relevant Vendor; and
- (d) If required by the Vendor, make the Order opportunity available to Delivery Providers to pick up and deliver Orders to Customers or, if collect is enabled pursuant to the Vendor's request, notify the Customer to collect the Order from the Vendor's Food Truck.

7 AMFVG Tablet

- 7.1** AMFVG shall provide the Vendor with an AMFVG Tablet which allows the Vendor to access the Where the Truck application to receive, process and accept Orders pursuant to the terms of this Agreement.
- 7.2** In consideration for the right to use the AMFVG Tablet, the Vendor shall pay Activation Fees to AMFVG in accordance with this Agreement.
- 7.3** The AMFVG Tablet shall at all times remain the sole and exclusive property of AMFVG and shall be used by the Vendor solely for the purposes related to accessing the Where the Truck application in order to fulfil Vendors responsibilities under this Agreement.
- 7.4** The Vendor shall be responsible for any loss or damage to the AMFVG Tablet and shall return the AMFVG Tablet to AMFVG on the expiration of the Term in the same good order and condition (fair wear and tear excepted) and the Vendor will promptly reimburse AMFVG for the replacement cost of any damage to or the loss of the AMFVG Tablet.

8 Title to the Vendors Products

- 8.1** The Vendor agrees that title to the Vendors Products passes from the Vendor to the Customer when the Vendors Products are picked up by the Customer or picked up by the Delivery Providers on behalf of the Customers and that neither the Delivery Providers nor AMFVG acquire or hold any title to the Vendors Products.

9 Vendors Content

- 9.1** The Vendor grants to AMFVG throughout the Term a non-exclusive, royalty free, irrevocable licence to use and display the Vendors Content on the Where the Truck application in such format as AMFVG shall determine.

- 9.2** If AMFVG determines, in its reasonable discretion, that the Vendor Content or any part thereof or the Vendors Products would subject AMFVG to undue regulatory or health and safety risk or other risk or liability, then AMFVG may without prior notice, remove such Vendor Content and Vendors Products from the Where the Truck application. AMFVG will co-operate in good faith with the Vendor to restore such Vendor Content and Vendor Products to the Where the Truck application as soon as reasonably practical.
- 9.3** The Vendor warrants that nothing contained in the Vendors Contents infringes or will infringe any third party's intellectual property rights or other rights of any nature whatsoever.

10 Confidentiality

- 10.1** Each party to this Agreement undertakes to the other that it, and it will procure that its Personnel, will not, without the consent of the other party, which consent may not be unreasonably withheld or delayed, disclose Confidential Information to any person, unless disclosure is required by law.
- 10.2** Each party must take all steps reasonably necessary to ensure that Confidential Information is disclosed only to such Personnel as require that knowledge in order to carry out their obligations in accordance with this Agreement.

11 Termination of Agreement

- 11.1** This Agreement will terminate:
- (a) Should the Vendor fail to pay Subscription Fees in accordance with clause 4.1(c); or
 - (b) Within thirty (30) days of receipt by either party of notice from the other party of its intention to terminate this Agreement on the expiration of the thirty (30) days notice; or
 - (c) In the event that a party breaches the terms of this Agreement and fails to rectify the breach within seven (7) days of receipt of notice from the non defaulting party to do so.
- 11.2** Except as otherwise provided for in this Agreement, neither party will, as a result of such termination, be liable to pay the other party any damages or losses including without limitation any damages or losses for the loss of goodwill, loss of prospective profits or anticipated income or any other losses of any nature whatsoever provided that each party shall remain liable to the other for any amounts earned or owing up to the date of termination.

12 General

12.1 Notices

Any notice under this Agreement must be given by one party to the other by email to the email addresses of that party as set out below and will be taken to be delivered to the recipient on the day the email was sent provided no notice has been received by the sender of a delivery failure and that the email is sent to the recipient between 9 am and 5 pm Monday to Friday both days inclusive.

12.2 Further Action by Vendor

Without limiting any other provision of this Agreement, the Vendor must do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable and do anything else that is necessary or that AMFVG reasonably requests to give full effect to the provisions of this Agreement and the transactions contemplated by it.

12.3 Entire Agreement

This Agreement contains the entire agreement of the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties.

12.4 Variation of Agreement

No amendment or variation of this Agreement is valid or binding on a party unless made in writing and executed by both parties.

12.5 Survival of Provisions

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement.

12.6 Severability of Provisions

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

12.7 AMFVG's Right of Set-off

If at any time AMFVG has any liability to pay money to the Vendor, whether under this Agreement or otherwise, AMFVG may elect to set-off that liability (either in whole or in part) against any amount due or due and payable by the Vendor to AMFVG under this Agreement.

12.8 No Waiver

No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A 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. A waiver is not valid or binding on the party granting that waiver unless made in writing.

12.9 Governing Laws and Jurisdiction

This Agreement is governed by the laws of the State within which the Vendor is located. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement and waives any rights to claim that those courts are an inconvenient forum.

13. Representations and Warranties

13.1 AMFVG and the Vendor represent and warrant to each other that:

- (a) They have full rights, powers and authority to enter into and perform their obligations under this Agreement and that entering into this Agreement is not in breach of any obligation to any third party;
- (b) All materials supplied by either party to the other party do not infringe or violate any third party's intellectual property or other rights; and
- (c) Each party will comply with all applicable laws and regulations in operating its business and performing its responsibilities under this Agreement.

13.2 The Vendor warrants that:

- (a) It will disclose all common allergens in the Vendor's menu relating to Vendors Products listed on the Where the Truck application;
- (b) It will not include any alcohol or tobacco products in the Vendor's menu on the Where the Truck application or request delivery of alcohol or tobacco products through the Where the Truck application;
- (c) Title to the Vendors Products are transferred from the Vendor to the Customer as soon as the Vendors Products are picked up by or on behalf of the Customer or picked up by the Delivery Services;
- (d) It has informed AMFVG of any required consumer warnings associated with the Vendors Products and will keep AMFVG advised of any such warnings that may become required in the future.

13.3 Other than as provided for in this clause 13 and to the extent permitted by law, AMFVG hereby expressly disclaims all warranties, express, implied or statutory, regarding the Where the Truck application or AMFVG's Tablet or the services it is providing, including but not limited to any implied warranties of merchantability, title, satisfactory quality results or fitness for a particular purpose and non- infringement.

14 Acknowledgement

- 14.1** The Vendor acknowledges that the Where the Truck application may from time to time encounter technical and other difficulties and may not necessarily continue uninterrupted or without technical or other errors and that AMFVG shall not be responsible to the Vendor for any such errors or problems or discontinuance of the Where the Truck application. The Vendor acknowledges that it has not received any assurance from AMFVG for future business or that the Vendor will obtain any anticipated amount of profits by virtue of this Agreement.
- 14.2** Insofar as the law permits, AMFVG's liability to the Vendor under this Agreement is limited to one or more of the following:
- (a) At AMFVG's option in the event of AMFVG's Tablet failing to operate other than as a result of any act or omission by the Vendor or its Personnel, the replacement or repair of the AMFVG Tablet at AMFVG's cost; or
 - (b) The re-supply of services.
- 14.3** As far as the law permits, neither party shall be responsible to the other party for consequential or other like damages except in the event of the Vendors Content breaching or infringing the intellectual property rights of any third party.

15 Limitation of Liability

- 15.1** Insofar as the law permits, the accumulative liability of AMFVG to the Vendor under this Agreement will be limited to the amount paid by the Vendor to AMFVG under this Agreement during the twelve (12) month period preceding the date upon which the claim arose.

16 Indemnification

- 16.1** Notwithstanding anything contained in this Agreement the Vendor indemnifies and shall at all times during and subsequent to the Term indemnify AMFVG from and against any losses, claims, costs or expenses AMFVG may suffer or incur with respect to any third party claims alleging, arising out of or related to:
- (a) Any bodily injury or death or damage to real property to the extent caused or alleged to be caused by the Vendor or the Vendors Products;
 - (b) Any claims that the Vendor breached its representations and warranties in this Agreement; or
 - (c) The violation or infringement by the Vendor of the intellectual property rights of any third party.

17 Insurance

- 17.1** The Vendor must take out and keep current during the Term public and product liability insurance specified in item 7 of Schedule 1, for any one occurrence or in the aggregate for products liability.
- 17.2** The Vendor agrees to maintain throughout the Term and for a period of not less than one (1) year following the termination of this Agreement insurance cover as required pursuant to clause 17.1.

18 Privacy and Security

- 18.1** AMFVG's Data is the Confidential Information of AMFVG.
- 18.2** The Vendor undertakes not during or subsequent to the Term to access, collect, store, retain, transfer, use or otherwise process in any manner the AMFVG Data, including without limitation, Personal Information, except as required to perform it's obligations under this Agreement.
- 18.3** The Vendor shall at all times during and subsequent to the Term keep all AMFVG Data confidential.
- 18.4** The Vendor shall not during or subsequent to the Term allow any third party to use the AMFVG Data or copy, modify, sell, reverse engineer or otherwise attempt to gain access to the source code of the AMFVG Data, destroy or impede the services provided through the Where the Truck application or attempt to bypass or breach any security protection of the AMFVG Data.

Schedule 1

- Item 1 Date: _____

- Item 2 Vendor: _____

- Item 3 Activation Fees
Twelve dollars (\$12.00) per month payable by the Vendor to AMFVG in accordance with clause 4.1(b)

- Item 4 Subscription Fees
Four hundred and ninety nine dollars per annum (\$499.00) payable by the Vendor to AMFVG pursuant to clause 4.1(c)

- Item 5 Turnover Fees
An amount equivalent to seven percent (7%) of Gross Sales payable by the Vendor to AMFVG in accordance with clause 4.1(b) provided that where Orders received from Customers relate to Dinner Runs the Turnover Fees payable by the Vendor to AMFVG in accordance with clause 4.1(b) shall be an amount equivalent to fifteen percent (15%) of Gross Sales

- Item 6 Term
One (1) year commencing on the date of this Agreement and thereafter renewable annually provided the Vendor pays to AMFVG the annual Subscription Fees prior to each anniversary of the date of this Agreement

- Item 7 Insurance:
Supply copy of Certificate of Currency for Public and Product Liability Insurance

Executed as an Agreement:

EXECUTED on behalf of _____ (Food Truck Vendor)

I hereby confirm that I have read and understand this Agreement in full, I am the owner, or where applicable, an authorised director of the Food Truck Vendor with appropriate delegated authority to enter into and make agreements on the Food Truck Vendor's behalf. Consequently, my signature below represents agreement and acceptance of this Agreement in its entirety by the Food Truck Vendor I am representing.

Signature Authorised Representative Date: / /

Full Name: _____ Position: _____

EXECUTED on behalf of **AUSTRALIAN MOBILE FOOD VENDORS GROUP Pty Ltd**

Signature of Director Date: / /

Full Name: _____