

## **User Terms & Conditions**

These User Terms and Conditions of Service (the “**Agreement**”) set forth the legally binding engagement between the Bookmesherpa.com team (hereinafter referred to as “**Bookmesherpa**” and also ‘**us**’, ‘**its**’, ‘**ours**’ and/or ‘**we**’), and you (hereinafter referred to ‘**you**’, ‘**your**’, and/or ‘**yourself**’), a user/visitor/browser of our websites, products and services, whether registered under an account or not.

Overall, this Agreement governs your access and use of the Bookmesherpa booking software, API and other products and services provided by us from time to time (collectively, the “**Software**”); and the Bookmesherpa websites (the “**Site**” including its sub-domains and its mobile optimized versions), both offered by us (they shall be collectively referred to herein as the “**Services**”).

This Agreement shall be supplemented our Privacy Policy, and our other guidelines, terms and policies made available by us from time to time, all incorporated herein by reference.

### **Services Provided**

Bookmesherpa provides the Software with the functionalities of a booking, appointment, scheduling and customer management platform. As an example, you can provide your services and implement our Software suite in your home page in order to accept and manage your customer bookings online. Please take into account that we are not an online marketplace, and all transactions are and will be the ultimate responsibility of you, as service provider, and your customers.

You can choose from our products or develop with us your own, customized to your specific requirements. We are ready to help you to effectively manage your business online, and as a result you can focus on issues that are more important.

### **User Acceptance**

If you browse the Site or use our Services, you hereby acknowledge and agree to be bound by and under the terms of this Agreement, either by simple use or through a clickable action, such as the “I Agree” button or otherwise. Overall, your access to the Services is licensed only for your individual use, and not for the use or benefit of any third-party you may represent. Bookmesherpa hereby reserves all rights not expressly provided in this Agreement.

### **Support Services**

If you have any questions or complaints regarding the Site, the Software or the Services, please contact us as indicated in our contact page. We may offer live-chat services where you will be able to chat with one of our customer agents in order to express your queries. Of course, you can also email us. We will undertake our commercially reasonable efforts in order to respond as quickly as possible. You must provide us full details of your service query so that we can clearly identify your issue of concern.

### **Software Updates and Upgrades**

By default, our Software is automatically updated, and can also be upgraded at our discretion and without need for any action on your part. We make no representations or warranties, and hereby disclaim any liability regarding such updates and upgrades, which may include error corrections, bug fixes, updates, upgrades, software compatibility components, security updates and new features or functionalities. The updates or upgrades are deemed part of our Software, and therefore are and will be subjected to the terms of this Agreement; unless the updates or upgrades are expressly provided as subject to a separate agreement or license. We reserve the right to change, modify or alter the Software, or any portion thereof (including their names, title, logo or design) and/or to completely cease providing the Services, in our sole and final discretion.

### **Beta Software and Features**

You hereby acknowledge and agree that part of the Software may or will be provided in beta stage, and that therefore you may encounter bugs and/or limited functionalities thereof. The Software have not been completely tested in all situations or devices, and they may contain operational malfunctions, errors, viruses, bugs, worms, trojan horses, bots and other harmful and destructive components or defects.

### **Subscription Terms**

We offer a free trial for our Services with limited functionalities. We also offer a paid version of our Services with full functionalities. By selecting a subscription tier (as indicated from time to time), you agree to pay us the indicated subscription fees (e.g. weekly, monthly or per batch of bookings). Payments will be charged on a pre-paid basis on the day you sign up and will cover the use of the Services for the indicated period.

Your subscription will be renewed automatically unless you notify us at least seven (7) days before the end of the then-applicable subscription period. If you do not choose to pause or cancel your subscription, your subscription will automatically renew and by that action you authorize us to charge you the then-applicable subscription fee. All outstanding invoices must be paid within seven (7) days. Please take into account that accounts in arrears and payments denied by third-party processors will result in Service suspension.

You can elect to cancel your subscription at any time, by accessing your account and following the necessary steps. If you cancel your current subscription during the active period, you will be able to use the paid functionalities of the Services until the period ends. As a general rule, we offer no refunds on paid fees.

### **Payments**

You must provide us valid and current billing information. Except as expressly set forth herein, all purchases are final and non-cancelable or non-refundable. If we detect any chargeback or if any payment is not received by us for any reason from your card or account, you will promptly pay us any and all amounts due to us upon notice. Any failure or inability by us to process any payment hereunder does not relieve you from payment obligations.

You hereby authorize us the charging of your credit card or payment processing account. In connection thereto, we will submit period charges without further authorization from you, and such authorization shall remain effective until the subscription is cancelled by you.

We use a Stripe, a worldwide accepted third-party payment processor to bill you through a payment account linked to your account with us. The processing of payments will be subject to the fees, terms, conditions and privacy policies of such payment processor. Bookmesherpa is not responsible for any and all errors, fees and currency conversions fees by the payment processor, and you should review its terms and policies from time to time, which will govern the provision of services to you.

### **Account Registration & Security**

In order to use our Services, you may need to create an account, including all mandatory fields on the registration form. You must provide accurate and complete information. You agree to keep secret the password chosen upon creating your account and not to communicate it to anybody. If you lose or disclose it, you must promptly inform us. You are solely responsible for the activity that occurs on your account and for keeping your password secure and confidential, and must notify us immediately of any breach of security or unauthorized use of your account.

You are solely responsible for the activity that occurs in your account. You will be liable for any and all misuse of your account, including the fraudulent use by a third-party, or even the disclosure of your password.

### **Account Suspension & Termination**

Bookmesherpa encourages you to report violations of this Agreement. Users undertaking conducts that may constitute a factual –or even alleged– breach thereof, including but not limiting, using automated mechanisms to

make fraudulent communications, may become subject to immediate account suspension / termination, at our sole and final discretion, without notice and without responsibility.

We reserve the right, at our sole and final discretion, to deactivate, freeze, suspend or terminate any account upon any factual or alleged breach. You must notify us immediately of any change in your eligibility to use our Services, or if you suspect a breach of security or unauthorized use of your account.

You acknowledge and agree that we may report any activity that we believe may violate any law enforcement, agency or other relevant third-parties, and that any violation of the aforementioned provisions may result in the immediate termination of your access to our Services.

## **User Privacy**

By disclosing any information to us, you agree to the terms of our Privacy Policy, including the terms for the collection, process, storage and disclosure of such personally identifiable information, including to our affiliates, partners and clients. We will ask for your express consent, including for inclusion into our newsletters, updates, and follow ups. For more information, please read our Privacy Policy.

## **Updates & Amendments**

Bookmesherpa reserves the right to modify, amend, suspend, terminate, upgrade, update or otherwise modify this Agreement, the Services, the Software, the Features and the Site, at any time and without notice. Any changes to this Agreement will be displayed on the Site, and we may also notify you through by email. Please refer to the last effective date where changes were last undertaken by us. Your use of our Services after the effective date of update— either by an account registration or simple use – thereby indicates your acceptance thereof.

## **User Licenses**

Limited License. Bookmesherpa grants you a limited, non-exclusive, revocable and non-transferable license to utilize and access any purchased instance of the Software. You are prohibited from duplicating, re-engineering, reverse engineering, modifying or otherwise using the Software, in whole or in part. Bookmesherpa does not grant any express or implied right to you under any patents, trademarks, copyrights or trade secret information; and you shall have no right, either directly or indirectly, to own, use, loan, sell, rent, lease, license, sublicense, assign, copy, translate, modify, adapt, improve or create any new or derivative works from, or display, distribute, perform or in any way exploit any downloaded software and computer applications, in whole or in part.

User Generated Content License. You hereby grant Bookmesherpa an unlimited, non-exclusive, sub-licensable, assignable, royalty-free, perpetual, irrevocable, for all the countries and territories through the world, right and license to use, host, store, reproduce, modify, create derivative works (such as those resulting from translations, adaptations or other changes), communicate, publish, publicly perform, publicly display and distribute such any content you may upload, disseminate, deliver, create or transfer any post, original audio file, message, chat, files uploaded, data inputted, e-mails sent, or otherwise any content delivered to Bookmesherpa via the Site, the Software or the Services. You represent and warrant to Bookmesherpa that you have all rights, authorizations or otherwise hold sufficient title for any and all content submitted to Bookmesherpa as set forth herein.

Feedback License. You hereby grant to Bookmesherpa, an unlimited, non-exclusive, assignable, transferable, sub-licensable, irrevocable, royalty free, perpetual and for all the countries and territories in the world, right and license to use, exploit any feedback, suggestion, enhancement, request, recommendation, correction or comment provided by you to us.

## **Proprietary Rights**

The trademarks, copyright, service marks, trade names and other intellectual property rights and proprietary notices displayed on the Site and the Services are the property of or otherwise are licensed to Bookmesherpa and

its licensors and affiliates, whether acknowledged (or not), and which are protected under intellectual property laws, including copyright laws and treaties and other jurisdictions throughout the world.

Respective title holders may or may not be affiliated with us or our affiliates, partners and advertisers. No section hereof shall be construed as intent to grant to you any right transfer or interest in the Site or our Services, in whole or in part.

This Agreement does not convey to you any interest in or to the Software, Site or the Services, but only a limited, revocable right of use in accordance with the terms of this Agreement. Nothing in this Agreement entails a waiver of our intellectual property rights under any applicable law. The Bookmesherpa logos and trademarks are our registered and protected trademarks and no right, license, or interest in any such trademarks is granted hereunder to you.

For ease of understanding, 'intellectual property rights' shall mean any and all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, including any versions, revisions, corrections, modifications, enhancements and/or upgrades thereto, accompanying materials, services and any copies you are permitted to make under this Agreement.

You acknowledge and agree that any and all infringing use or exploitation of copyrighted content in the Site and/or the Services may cause us, our affiliates, licensors or content providers irreparable injury, which may not be remedied solely at law, and therefore our affiliates, licensors or content providers may seek remedy for breach of this Agreement, either in equity or through injunctive or other equitable relief.

### **Third-party Websites and Content**

From time to time, our Site and Services may contain hyperlinks to other websites. These links are for your personal convenience and to provide you with further information which may be of interest to you. The provision of such links does not imply any endorsement of such third-party websites (or their products and services). Please review the applicable terms and policies of such websites, including their privacy and data collection practices.

We may place ads and promotions from third-party sources in the Site. Accordingly, your participation or undertakings in promotions of third-parties other than Bookmesherpa, and any terms, conditions, warranties or representations associated with such undertakings, are solely between you and such third-party. Bookmesherpa is not responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of third-party advertisers on the Site.

### **User Code of Conduct**

As our user, you agree to not undertake, motivate, or facilitate the use or access of the Site, the Features, the Software and/or the Services, nor allow others to:

- a. Infringe this Agreement, or allow, encourage or facilitate others to do so.
- b. Plagiarize and/or infringe the intellectual property rights or privacy rights of any third-party, including any breach of confidence, copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right.
- c. Distribute, post or otherwise make available any content that: (i) infringes or endangers the intellectual property rights of any person (e.g. trademark, moral rights, trade secret, copyright, ancillary rights or other); (ii) enables any act that could promote or cause discrimination, racism, harm, libel, hatred or violence against any individual or group; (iii) endangers children and underage persons; (iv) is or allows illegal or fraudulent activities to take place; (v) is or may constitute a criminal or capital offense or otherwise infringes any applicable law; and/or (vi) is or can be considered to be obscene, threatening/defamatory, plagiarized, firearms, tobacco, alcohol, marijuana, gambling, binary options, Forex, pornographic or analogous material.
- d. Collect, receive, transfer or disseminate any personally identifiable information of any person without due consent from the title holder.

- e. Purchase our digital products with the intent to resell, sublicense or commercially exploit them in online marketplaces.
- f. Purchase our digital products with the intent to use them in printable media (e.g. photo albums, books, booklets, posters, memorabilia and other physical goods).
- g. Upload infringing, false, duplicated, altered or otherwise misleading purchase information.
- h. Use any automated or manual process to obtain, copy, process, access and/or use our Services or any part therefrom to capture unauthorized data or content, for any purpose.
- i. Enable, undertake, program or execute any type of system, computer program or technique in order to data-mine, retrieve, scrape, index or otherwise extract unauthorized information from the Site or any portion or data feeds therefrom. For purposes of clarification, such actions will include the use of persons, site search/retrieval applications, software 'robots' and 'spiders' and any analogous data gathering and extraction tools, regardless of the type and amount of information intended for extraction.
- j. Use the Site to disseminate any type of computer viruses, worms, defects, Trojan horses or other items of a destructive nature.
- k. Undertake any action that will or may cause an unreasonable load on Bookmesherpa's and/or its partners' and affiliates' technology or infrastructure, or otherwise make excessive traffic demands from the Site.
- l. Intercept or monitor activity via our Services without our express authorization.
- m. Otherwise reverse engineer, decompile or extract the proprietary code of the Services.

You also acknowledge and accept that any violation of the aforementioned provisions may result in the immediate termination of your access to the Software, Site and Services, without refund or reimbursement on our part.

### **Parental Notice, User Eligibility**

Bookmesherpa does not provide its Services to persons under the age of eighteen (18). All of our users are prohibited from providing us with personally identifiable information of persons under the age of thirteen (13).

### **Representations and Warranties**

You hereby represent, warrant and covenant that: (i) your use of our Services and all your uploaded and used data shall be at all times compliant with this Agreement and all local, state, federal and international laws and regulations applicable to you and your organization; (ii) you have obtained all necessary rights, releases and permissions to provide all your data to Bookmesherpa and its affiliates, licensors and agents and to grant the rights granted to Bookmesherpa in this Agreement; and (iii) your data and its transfer to and use by Bookmesherpa and its affiliates, licensors and agents as authorized by you under this Agreement shall not violate any export control and electronic communications regulations the rights of any third-party, including without limitation any intellectual property rights, rights of privacy, or rights of publicity, and any use, collection and disclosure authorized herein is not inconsistent with the terms of any applicable privacy policies.

### **Warranty Disclaimer**

To the fullest extent permissible under applicable law, the Services, the Software, the Features and the Site are provided to you "as is", with "all faults" and "as available", with all faults, without warranty of any kind (including support or other services by us or our licensors, and any use thereof shall be at your sole risk. The entire risk of satisfactory quality and performance resides with you. Bookmesherpa, and its affiliates, clients, agents, officers, licensors and/or distributors, do not make, and hereby disclaim, any and all express, implied or statutory warranties, either by statute, common law, custom, usage of trade, course of dealing or otherwise, however arising, including implied warranties of description, quality, fitness for a particular purpose, operation, integration, adequacy, suitability, title, non-infringement, non-interference with use and/or enjoyment. No oral or written advice provided by Bookmesherpa, its affiliates, clients, agents, officers, licensors, distributors and/or any authorized representative, shall create any implied warranty.

Bookmesherpa does not offer any guarantees regarding your client's payments for appointment bookings, service purchases or other transactions, which are and will be between you and your clients. We take no responsibility or liability for any products and services provided by you to your clients, whether they were purchased or not.

Neither Bookmesherpa, nor its affiliates, subsidiaries, officers, employees and agents warrant that the Services, the Software, the Features or the Site will be error-free, uninterrupted, secure, or produce any particular results; that they will meet any requirements or that any error will be fixed. No advice or information given by Bookmesherpa or its employees, affiliates, contractors and/or agents shall create a guarantee.

### **Disclaimer of Damages**

In no event shall Bookmesherpa, its affiliates, clients, agents, officers, licensors, distributors and/or any authorized third-party, be held liable for any special, indirect, incidental or consequential damages, including losses, costs or expenses of any kind resulting from possession, access, use or malfunction of the Site, the Software, the Features and/or the Services, loss of data or profits, or for inability to use the Service, loss of revenue, profits, business, loss of use or lack of availability of computer resources, lost or corrupt data, re-procurement amount, anticipated savings, wasted expenditure, or other commercial or economic loss; or for any indirect, incidental, special, punitive, aggravated, exemplary, or consequential damages whatsoever arising out of or related thereto, whether arising in tort (including negligence), contract, strict liability or other legal or equitable theory and whether or not Bookmesherpa, its affiliates, clients, licensors and/or distributors have been advised of the possibility of such damages.

### **Limitation of Liability**

Bookmesherpa, its affiliates, subsidiaries, officers, employees and agents assume no liability or responsibility and disclaim all warranties for: any (i) property damage of any nature whatsoever, resulting from your access to and use of the services or to any third-party site; (ii) unauthorized access to your device or use of our secure servers; (iii) personal information or financial information stored therein; (iv) interruption or cessation of transmission regarding the Services. For purposes of this limitation of liability, Bookmesherpa's affiliates, licensors, resellers, affiliates and distributors are third-party beneficiaries to the limitations of liability specified herein and they may enforce this Agreement against you.

In no event, shall Bookmesherpa's, or its affiliates', clients', licensors' and/or distributors' liability for all damages (except as required by applicable law) exceed; (i) the actual price paid by you for the license and/or use of the Services in the twelve (12) months preceding the claim; or (ii) the amount of USD\$120.00 (One Hundred and Twenty United States Dollars); whichever amount results less; and henceforth any award for direct, provable damages shall not to exceed such total amount.

This Agreement provides you specific legal rights, and you may have other rights that may vary from jurisdiction to jurisdiction. Legislation of some states/countries does not allow certain limitations of liability, and henceforth this limitation of liability shall apply to the fullest extent permitted by law in the applicable jurisdiction.

### **Indemnification**

You shall indemnify, hold harmless, and defend Bookmesherpa, its affiliates, clients, agents, officers, licensors, distributors and/or any authorized representatives, and the officers, directors and employees of each (jointly, the "**Indemnitees**") from and against any and all third-party liabilities, claims, causes of action, suits, losses, damages, fines, judgments, settlements and expenses (including any and all reasonable outside attorneys' fees and court costs) which may be suffered, made or incurred by any of such Indemnitees arising out of or relating to: (i) any breach of any warranties, representations and/or covenants made by you hereunder (to the extent not arising substantially from any breach hereof by Bookmesherpa); and/or (ii) any third-party claim arising out of or in relation to the Site, the Software, the Features and/ or the Services or use thereof in combination with your business platform, including without limitation, any claim arising out of any use thereof or alleged use of your account or your password by any person, whether or not authorized by you, your violation or breach of this Agreement or your violation of any proprietary or intellectual property right of any third-party, including without limitation, any privacy right of any person.

### **Events outside of Our Control**

In no event shall Bookmesherpa be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, force majeure, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that Bookmesherpa shall use reasonable commercial efforts which are consistent with accepted practices in the industry to resume performance as soon as practicable under the circumstances.

## **Term and Termination**

The term hereof shall begin on the date that comes first among: (i) first access to the Site; or (ii) your first access or execution of our Services. You may terminate your engagement with us at any time, by either permanently deleting and/or making inaccessible any and all instances of our Services for which you have access.

This Agreement, along with any and all licenses granted hereof may or will automatically terminate if you breach any of the terms and conditions herein. The term hereof will automatically end on the earlier date of either your: (i) account deactivation, suspension, freezing or deletion; (ii) access termination or access revocation for our Services; (iii) Bookmesherpa's termination of this Agreement, at its sole and final discretion; (iv) the termination date indicated by Bookmesherpa to you from time to time; or (v) Bookmesherpa's decision to make the Site or Services no longer available for use, at its sole and final discretion.

We hereby reserve the right to take any of the following actions in our sole discretion at any time without any prior notice to you: (i) restrict, deactivate, suspend, or terminate your access to the Services, including deleting your accounts and all related information and files contained in your account; (ii) refuse, move, or remove any material that is available on or through the Services; (iii) establish additional general practices and limits concerning any use of the Services.

Upon termination for breach, your rights to use our Services and any information provided or generated thereby shall cease and you shall not be entitled to any compensation, credit, remedy or refund of any nature. Termination by us for non-payment will not relieve you from your payment obligations, which will continue in full force and effect. We reserve the right to reinstate your account and your access to the Services once you pay all accrued amounts to us.

## **Compliance with Export Controls**

You will comply with all applicable export laws and restrictions and regulations of the US Department of Commerce, or other United States or foreign agency or authority, and you will not use the Services to export, or allow any export or re-export in violation of any such restrictions, laws or regulations. You represent and warrant to Wajooba that you are not a prohibited party or located in, under the control of, or a national or resident of any restricted country, and that you will otherwise comply with all applicable export control laws. If you reside outside Australia, then, in addition to complying with the foregoing, you will comply with any relevant export control laws in your local jurisdiction.

## **Generals**

Entire Agreement. This Agreement shall constitute the full and entire understanding and agreement between the parties with regard to the subject matter hereof, and supersede and replace all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter.

Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively, only with the written consent of Bookmesherpa. Any waiver or amendment effected in accordance with this Section shall be binding upon each party to this Agreement.

Assignment. This Agreement will inure to the benefit of any successors of the parties. You may not assign, sublicense, or delegate your rights under this Agreement. You agree that this Agreement and our rights hereunder may be assigned, in whole or in part, by us or our affiliate to any third-party, at our sole discretion, including an assignment in connection with a merger, acquisition, reorganization or sale of substantially all of our assets, or otherwise, in whole or in part.

Force Majeure. Bookmesherpa shall not be liable for any failure of performance on its obligations as set forth herein, where such failure arises from any cause beyond Bookmesherpa's reasonable control, including but not limited to, electronic, power, mechanic or Internet failure.

Notifications. From time to time, we may be legally required to notify you of certain matters. In that regard, you hereby acknowledge and consent that such notices will be effective upon our posting them on the Site or through the Services or delivering them to you via email. You may update your email address through your account or where you have provided us with your contact information otherwise. If you do not provide us with accurate contact, we cannot be held liable if we fail to notify you.

Language. This Agreement may be translated into other languages, but English shall be and remain the official language of this agreement and in any conflict between the English language version and any other version, the English language version shall control.

No Relationship. You and Bookmesherpa are independent contractors, and no agency, partnership, joint venture, employee-employer, or franchiser-franchisee relationship is intended or created by this Agreement.

Severability. If any provision of this Agreement is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Agreement will remain in full force and effect.

Applicable Law. Your use of this Site and any cause of action, claim and/or dispute that might arise between the parties hereon, shall be subject to the laws of Australia, without regard to conflict of law principles.

Forum. You agree that any dispute arising from or relating to this Agreement will be heard solely by a court or tribunal of competent jurisdiction in or nearest to the City of New Castle, New South Wales, Australia. If you bring a dispute in a manner other than in accordance with this section, you agree that we may move to have it dismissed, and that you will be responsible for our reasonable attorney's fees, court costs, and disbursements in doing so. Notwithstanding the foregoing, we may seek injunctive relief in any court of competent jurisdiction. In this Agreement, there shall be no third-party beneficiaries to this Agreement.

You agree that the unsuccessful party in any dispute arising from or relating to this Agreement will be responsible for the reimbursement of the successful party's reasonable attorney's fees, court costs, and disbursements.

## **Contact**

If you have any questions or queries about us, our Site, our Services or this Agreement, please contact as indicated in our contact page.

**Date of last effective update is [-----], 2017.**