



## Terms & Conditions of the website

Last updated January 2017

### Introduction

1. We, Nowboat Limited, operate the adventure-booking website [www.nowboat.com](http://www.nowboat.com) ("**Site**") which provides an online platform to facilitate users to make a booking to purchase adventure-related services offered from brokers, agencies and operators on the Site ("**Services**").
2. These terms and conditions ("**Terms and Conditions**") govern the relationship between you and Nowboat Limited ("**We**" or "**Us**") in relation to the Services.

### 3. Key Terms

- 3.1. "**Buyer**" means a Member who requests from the Captain a booking of Services on the Site.
- 3.2. "**Captain**" means a broker, agency or operator who registers as a Member and creates a Listing via the Site.
- 3.3. "**Listing**" means a Service that is listed by a Captain as available via the Site.
- 3.4. "**Member**" means a person who completes the registration process on the Site.

**Your use of the Site and Services is subject to these Terms and Conditions. By using the Site and Services, you will be deemed to have accepted and agreed to be bound by these Terms and Conditions. If you do not agree to these Terms and Conditions, you must not use our Site and Services.**

**Please note that the Site is intended to be used to facilitate Captains and Buyers connecting and booking Services directly with each other. We do not control or guarantee the content contained in any Listings and the condition, legality or suitability of any Services. Accordingly, any booking and Listing will be made at the Buyers' and Captains' own risk.**

**As a Buyer, you agree to accept the Terms and Conditions of the Captain when you request a booking for the Services on the Site, and acknowledge that we are not a party to the Terms and Conditions of the Captain. In the event of conflict between**

**the Terms and Conditions of the Captain and these Terms and Conditions, these Terms and Conditions will prevail.**

### **Using our Services**

4. We may make changes to these Terms and Conditions from time to time. We will notify you of such changes by posting the revised version of these Terms and Conditions on the Site. For Members, we will notify you of such changes by sending a notification through the Site. You can also determine when we last changed these Terms and Conditions by referring to the 'LAST UPDATED' statement above. Your use of the Site or Services following changes to these Terms and Conditions will constitute your acceptance of those changes.
5. The Site may provide links to other websites and online resources. We are not responsible for and do not endorse such external sites or resources. Your use of third party websites and resources is at your own risk.
6. The Site may contain links to other websites or may frame material from other websites. Such material has been created by or for the respective owners of those websites and is not under our control. We have not undertaken to verify the truth or accuracy of any such material and make no representation or warranty with respect to any such content.

### **Accessing our Site**

7. You are responsible for all access to the Site using your internet connection, even if the access is by another person.
8. You are responsible for ensuring that all persons who access our Site through your internet connection are aware of these Terms and Conditions and that they comply with them.
9. We hereby reserve the right to restrict your access to the Site or part of it.
10. We will use reasonable efforts to ensure that the Site is available at all times, however, we cannot guarantee that the Site or any individual function or feature of the Site will always be available and/or error free. In particular, the Site may be unavailable during periods when we are implementing upgrades to or carrying out essential maintenance on the Site. We may suspend, discontinue or change all or any part of our Site without notice. We will not be liable to you if for any reason our Site is unavailable at any time or for any period.
11. We may cancel any accounts that have been inactive for a long time or modify or discontinue the Site at any time.

### **Accounts**

12. To use our Services or post a Listing, Buyers and Captains will be required to complete the registration process to create an online account ("**Account**") in which you provide:
  - 12.1. Personal information;
  - 12.2. Billing information;

12.3. Personal password; and

12.4. Any other information reasonably requested by us.

13. We have the right to disable any Account, at any time, if, in our reasonable opinion you have failed to comply with any of the provisions of these Terms and Conditions.

14. If you know or suspect that anyone other than you knows your identification code or password, you must promptly notify us at *info@nowboat.com*.

### **Listing a Service**

15. As a Captain, you may create a Listing, you will be asked a variety of questions about the Service to be listed, including, but not limited to, the location, size, features, availability and pricing. Listings will be made publicly available via the Site. Other Members will be able to make a booking for your Services via the Site based on the information provided in your Listing.

16. As a Captain, you acknowledge and agree that you are responsible for the accuracy of any Listings you post and the availability and condition of the any Services you provide.

17. As a Captain, you represent and warrant that any Listings you post and the booking of the Service in a Listing you post (i) will not breach any agreements you have entered into with any third parties; (ii) will be in compliance with all applicable laws, rules and regulations that may apply and (iii) not infringe the rights of any third parties. We do not assume any responsibility for a Captain's compliance with the law or any agreements with or duties owed to any third parties.

18. We reserve the right, at any time and without prior notice, to amend, remove or disable access to any Listings for any reason, including Listings that we, in our sole discretion, consider to be objectionable for any reason, or otherwise harmful to the Site or the Services provided therein.

19. We do not act as the insurer or the agent of the Captain. If a Buyer requests a booking of the Service, any agreement entered into between the Buyer and the Captain is between the Buyer and the Captain alone, and we are not a party thereto.

20. A Listing may not be immediately searchable by keyword or category on the Site. We do not make any guarantee as to:

20.1. the exact Listing duration; or

20.2. the appearance or placement of Listing in search and browse results.

### **Booking and Fees**

21. Terms relating to Booking and Fees:

- 21.1. "**Adventure Fees**" means the amount due and payable from a Buyer as indicated in the booking confirmation.
- 21.2. "**Balance of Adventure Fees**" means 90% of the Adventure Fees.
- 21.3. "**Nowboat Fees**" means the fee that we charge for the use of the Site, which is 10% of the Adventure Fees.
22. The content of the Listing on the Site is an invitation to treat from the Captains to potential Buyers.
23. If you are a Buyer and request a booking for the Services on the Site, this constitutes an offer to enter into an agreement sent by you to the Captain. When the Buyer requests a booking, the Buyer also agrees to the Terms and Conditions of the Captain.
24. If you are a Captain and a booking for your Services is requested via the Site, you will be required to confirm or reject the booking request within the time stipulated by us on the Site. When a Captain confirms a booking requested by a Buyer, this will serve as an acceptance of the offer made by the Buyer. We will then send to both the Buyer and the Captain a confirmation through the Site and also by email, which will include details, including but not limited to, the name of the adventure, the date of the adventure, the Adventure Fees, which will constitute the agreement between the parties. The Buyer and the Captain should check the details of the confirmation carefully to ensure that it reflects the booking requested, and immediately inform us of any discrepancies.
25. The escrow agents indicated on the Site will collect the Nowboat Fees from the Buyer at the time of the booking confirmation and immediately transfer the Nowboat Fees to us. The Buyer acknowledges that the Nowboat Fees are non-refundable to the Buyer under all circumstances.
26. The Captain shall, from the date of confirming a booking request, exclusively reserve the relevant booking for the Buyer for a period 7 (seven) days and the Buyer should pay the Balance of Adventure Fees directly to the Captain, on or before 30 (thirty) days prior to the date of the adventure, in accordance with the Terms and Conditions of the Captain.
27. The Captain is solely responsible for honoring any confirmed bookings and making available the Services, in accordance with the Terms and Conditions of the Captain.

### **Cancellation**

28. If, as a Buyer, you cancel your requested booking prior to receiving a booking confirmation from us, no fees will be charged by us or the Captain.
29. If, as a Buyer, you cancel your booking after receiving a booking confirmation, the Booking Fee will not be refunded to you. We may, at our sole discretion, publish a review on the Site that you had previously cancelled a confirmed booking.
30. Where a force majeure event takes place after a booking confirmation is received by the Buyer, we shall, in our sole and absolute discretion, credit the Buyer the equivalent Nowboat Fees of which may only be used towards a new booking for the Services on the Site. Any

credit issued to a Buyer must be used within 1 (one) year of the credit being issued.

31. If the Balance of Adventure Fees is not received by the Captain, on or before 30 (thirty) days prior to the date of the adventure, and in accordance with the Terms and Conditions of the Captain, a reminder will be sent through the Site to the Buyer. If the Balance of Adventure Fees is not received by the Captain within 3 (three) days after the reminder is sent, the confirmed booking will be deemed cancelled and the Booking Fee will not be refunded to the Buyer.
32. If, as a Captain, you cancel a confirmed booking, we may apply penalties or consequences to you and your Listings, including but not limited to, publishing a review on your Listing that you had previously cancelled a confirmed booking.

### **No Reliance on Information**

33. We make no representations, warranties or guarantees as to the quality, completeness or accuracy of any content, made available on the Site, including but not limited to the identity, suitability or authenticity of any Member, Captain or Listing.
34. The information and prices shown on the Site are updated from time to time and therefore may have changed by the time you come to complete your booking. Although we make every effort to ensure the accuracy of all such information and prices, errors do occasionally occur. Therefore, you must ensure all details of your booking are correct at the time of receiving the booking confirmation.
35. To the maximum extent permitted by law, we expressly exclude all conditions, warranties and other terms which might otherwise be implied by law into these Terms and Conditions.
36. To the maximum extent permitted by law, we expressly exclude any and all liability (including for negligence) to you, whether arising under these Terms and Conditions or otherwise in connection with, inter alia, your use of the Site for:
  - 36.1. any technical errors, corruption of data, unauthorized access to your personal data, inaccuracies in information supplied by third parties, or failure by us to complete a booking;
  - 36.2. the condition and quality of a Service, or any inconvenience caused or expense incurred to you or any third party, as a result of any unsuitability of Service for your needs;
  - 36.3. any failure or delay on the part of the Captain in providing the Service to you where your booking has been confirmed; or
  - 36.4. any acts or omissions of the Captain in the course of delivery of any Service.
37. To the maximum extent permitted by law, we expressly exclude all liability (including for negligence) for, inter alia, direct, indirect or consequential damages, loss of enjoyment, loss of or damage to property and claims of third parties.

## **Indemnity**

38. You agree to indemnify us, and our employees, against any claims, liabilities, damages, losses and expenses, including, without limitation, legal fees arising out of or in any way connected with (a) your access or use of the Site; (b) your Member content on the Site; (c) your (1) interaction with Members on the Site, (2) booking of the Services, (3) creation of a Listing; (c) the use and enjoyment of the Services by you, including but not limited to any injuries, losses or damages (compensatory, direct, incidental, consequential or otherwise) of any kind arising or in connection with or as a result of a booking, use or enjoyment of the Services.

## **Intellectual Property Rights**

39. The intellectual property rights on the Site and all of the text, pictures, videos and other content made available on it are owned by us and/or our licensors. You may not print or otherwise make copies of any such content without our express prior permission.

## **Undertaking by Site user**

40. Your permission to use the Site is personal to you and non-transferable. Your use of the Site is conditional on your compliance with these Terms and Conditions and you agree that you will not:

40.1. use the Site if you are not able to form legally binding contracts in the country where you are domiciled or are suspended from using our Site;

40.2. fail to pay for Services purchased by you, unless you have a valid reason subject to determination by us;

40.3. use the Site for any fraudulent or unlawful purpose;

40.4. transfer your account and user identification to another party without our consent;

40.5. use the Site to defame, abuse, harass, stalk, threaten or otherwise violate the rights of others, including without limitation others' privacy rights or rights of publicity;

40.6. impersonate any person or entity, falsely state or otherwise misrepresent your affiliation with any person or entity in connection with the Site; or express or imply that we endorse any statement you make;

40.7. interfere with or disrupt the operation of the Site or the servers or networks used to make the Site available; or violate any requirements, procedures, policies or regulations of such networks;

40.8. transmit or otherwise make available in connection with the Site any virus, worm, Trojan horse or other computer code that is harmful or invasive or may or is intended

to damage the operation of, or to monitor the use of, any hardware, software, or equipment;

40.9. resell the Services or any other products and services accessed by means of the Site;

40.10. reproduce, duplicate, copy, sell, resell, or otherwise exploit for any commercial purposes, any portion of, use of, or access to the Site;

40.11. modify, adapt, translate, reverse engineer, decompile or disassemble any portion of the Site;

40.12. remove any copyright or trademark from the Site or materials originating from the Site;

40.13. frame or mirror any part of the Site without our express prior written consent;

40.14. create a database by systematically downloading and storing Site content;

40.15. use any manual or automatic device in any way to gather Site content or reproduce or circumvent the navigational structure or presentation of the Site without our express prior written consent. Notwithstanding the foregoing, we grant the operators of public online search engines limited permission to use search retrieval applications to reproduce materials from the Site for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of such materials solely in connection with each operator's public online search service.

If we believe or discover that you are abusing our Site in any of the ways mentioned above, we reserve the right to take any steps, at our sole discretion, to prevent such abuse, including but not limited to suspending your Account.

### **Your Information**

41. We may use any personal information collected by us about you in accordance with our Privacy Policy available. We may also provide such personal information to the Captains as is required to complete your booking.

### **Entire Agreement Clause**

42. These Terms and Conditions constitute the entire agreement between you and us, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between you and us, whether written or oral, relating to the Services.

### **Governing Law**

43. These Terms and Conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed

by and construed in accordance with the law of Hong Kong.

### **Dispute Resolution**

44. You and we agree that any dispute, controversy, difference or claim arising out of or relating to these Terms and Conditions, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it, shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the UNCITRAL Arbitration Rules in force when the Notice of Arbitration is submitted, as modified by the HKIAC Procedures for the Administration of International Arbitration, except that each party retains the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyright, trademarks, trade secrets, patents or other intellectual property rights.

### **Severance**

45. If any provision or part-provision of these Terms and Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of the Terms and Conditions.