

These Terms and Conditions (the “**Terms**”) constitute a legally binding agreement made between you, whether personally or on behalf of an entity (the “**Merchant**”), and Bookedout Fox Australia Pty Ltd ABN 93 607 763 002 and its affiliates trading as Bookedout Fox (collectively, “**Bookedout Fox**”), regarding provision and use of Bookedout Fox’s service Bookedout Fox Software™ (known as “**BF Software**”).

## 1. Definitions

- a. **Functionality** Features available to Merchants in the basic BF Software system
- b. **Extended Functionality** Additional features in the BF Software system available for an additional fee and subject to an additional agreement
- c. **BF Platform** refers to the bookedoutfox.com.au website, any related website or any related service.
- d. **Client** A customer of the Merchant

## 2. Service

- a. The services will commence on the Implementation Date.
- b. On the basis of this agreement, Bookedout Fox will make begin providing the Functionality of the BF Software service on behalf of the Merchant.
- c. Bookedout Fox may introduce Extended Functionality that requires separate, additional charges and is subject to separate agreement.
- d. This agreement will have no fixed end date and will continue until terminated by either party as per the required noticed periods agreed elsewhere in this document.

## 3. Bookedout Fox obligations

- a. Bookedout Fox agrees to take reasonable measures to ensure maximal BF Software service delivery but does not guarantee total uptime.
- b. Bookedout Fox will take on and seek feedback from the merchant for continual development of BF Software
- c. Bookedout Fox will make all efforts and endeavors to provide the best experience possible for Merchants including extensive support, particularly during business hours, however Bookedout Fox does not commit to providing 24 hours a day, 7 day a week support.

## 4. Merchant obligations

- a. The Merchant warrants and represents that data made available to Bookedout Fox for the purposes of providing BF Software services is:
  - i. Their own
  - ii. They have legal right to use
  - iii. That third party details have been collected with the third parties consent to be used in relation to the Merchant’s business
- b. The Merchant undertakes to promptly notify Bookedout Fox of any change to their warranty and representation in Section 4.a
- c. The Merchant is prohibited from attempting to develop alternative systems to BF Software whether or not insights gained from using BF Software are utilized
- d. The Merchant will not provide information about or access to BF Software to any third parties not directly involved in operating their business.

- e. The Merchant will not provide information about or access to BF Software to any parties engaged on or reasonably suspected to be engaged in developing alternative systems or any other party unless approved by Bookedout Fox.

## 5.





- a. As a service package, BF Software will undergo continuous development to improve the Functionality and improve various issues identified from time to time
- b. These Terms constitute an agreement to access BF Software based on existing functionality as at the execution of this contract.
- c. Bookedout Fox makes no warranty for future functionality development or estimated timelines.
- d. Bookedout Fox also reserves the right to alter existing functionality for the improvement of the userbase as determined by its absolute discretion.

- a. **Service Fee** – Each month, the Merchant agrees to pay an applicable monthly fee as agreed at the time of contract execution. This fee may be varied at the mutual agreement of both parties.
- b. **Pass on Costs** - The merchant agrees to pay any fees necessary for BF Software functionality identified in this agreement or notified in future by Bookedout Fox. Bookedout Fox may choose to waive or alter these fees at its discretion after providing appropriate notice to the Client. These Pass on Costs currently consist of:
  - i. No charge for regular SMSs sent as part of BF Software Functionality. Fees may apply for Extended Functionality, bulk SMS marketing, or excessive SMS usage
  - ii. 3.15% including GST, transaction fee for any Client payment processed by Bookedout Fox on behalf of the Merchant (unless waived).
  - iii. Any fees or internal costs related to recovery of outstanding debts from the Merchant

- a. Payment will be made by the Merchant to Bookedout Fox via an online payment gateway.
- b. The merchant will be required to set up a subscription for regular billing by that gateway and maintain this subscription updating details where necessary.
- c. All payments are made in advance of service.
- d. In the event of failed billings Bookedout Fox may, at its discretion:
  - i. Notify the Merchant that they are in arrears via the BF Software platform
  - ii. Restrict access to some BF Software functionality for users
  - iii. Restrict access to all BF Software functionality for users
  - iv. Request a pre-paid balance be maintained in as a credit against the Merchant's account in the case of multiple failed billings. This credit will not exceed approximately one month's Service Fee and Pass on Costs.

a. Unless a specific contract period is agreed elsewhere both parties, this agreement may be terminated by either party with thirty (30) day's notice.

- b. Bookedout Fox may make minor amendments of these terms from time to time with appropriate notice.

9.

### Data Collection and Usage

- a. The BF Software platform will collect and securely store data for the purposes of providing its services. As at October 2019, this data includes client details, venue details and booking history. The scope of this collection may increase in future in line with requirements to offer new services.
- b. This data may be securely shared with third party providers strictly for the purposes of providing BF Software services on behalf of the Merchant. This may include messaging gateways, web hosting providers, application providers or others deemed necessary to provide BF Software services.
- c. This data may be used in an anonymized format for testing and improving the effectiveness of the various services that comprise BF Software Functionality or Extended Functionality.
- d. This data WILL NOT be provided to third parties for uses that don't directly benefit the Merchant. It WILL NOT be shared with other users of the BF Software platform.
- e. This data may also be used for developing future BF Software services or the overall Bookedout Fox.com.au platform that may benefit the Merchant.

### Limit of Liability

- a. To the maximum extent permitted by law, including any relevant Australian Consumer Law, in no event shall we be liable for any direct and indirect loss, damage or expense irrespective of the manner in which it occurs which may be suffered due to your use of our services and/or the information or materials contained on it, or as a result of the inaccessibility of these services and/or the fact that certain information or materials contained on it are incorrect, incomplete or not up-to-date or any other use of the service.
- b. You agree to indemnify and hold Bookedout Fox and applicable affiliates, officers, directors, agents, and employees, harmless from and against any claims, demands, proceedings, losses and damages (actual, special and consequential) of every kind and nature, known and unknown, including legal fees on the indemnity basis, made by any third party due to or arising out of your breach of these Terms or the terms and policies it incorporates by reference, or your violation of any law or the rights of a third party.

### 11. Other

- a. This contract is subject to the law of Victoria, Australia and you submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, Australia
- b. The Terms shall constitute the entire agreement between the Merchant and Bookedout Fox concerning the Services unless you have entered a separate agreement for other services in which case the relevant provisions of all agreements shall apply.
- c. If any provision in these Terms is deemed by a competent authority to be unlawful, invalid or unenforceable for any reason, then that provision shall be deemed severed from the remaining Terms and the remainder of the Term shall continue in full force and effect.
- d. None of the provisions of these Terms shall be deemed to constitute a partnership, agency or joint venture, between the Merchant and Bookedout Fox and the Merchant shall have no authority to bind Bookedout Fox in any for or manner whatsoever.
- e. This contract will be deemed to have been executed when login details or access to their salon management system is provided by the Merchant to Bookedout Fox.
- f. Unless explicitly stated otherwise, all dollar amounts are exclusive of GST.
- g. Unless explicitly stated, all currency amounts in refer to Australian Dollars

#### What Section 9 means:

*In Section 9A we try to give you an idea of the types of data that we need to provide the BF Software service.*

*Section 9B acknowledges that, as a company specifically focused on growing your business, we use the very best cutting-edge communications gateways and cloud computing technology. It lets you know that when we send your customers a personalized Smart Marketing SMS we need to use a trusted third party like Twilio (<https://www.twilio.com/>) to deliver the message for us. Trust us: we've sent over a quarter of a million messages and our thumbs get very sore trying to do it one by one on a mobile phone (Joke 😊). Same goes for our computing power, Amazon (<https://aws.amazon.com/>) and Google (<https://cloud.google.com/>) are the experts at this so rather than fiddling around with cables and drivers on our own servers we stand on the shoulders of their greatness and use the awesome processing power they make available to us!*

*Section 9C is about the thing that makes BF Software so effective: constant testing, learning and developing our techniques. When we send a Smart Marketing campaign stream for you, we monitor the results and try new tweaks to further improve those results. We also look for general patterns across our entire userbase such as 'usually the best approach lead time for Hair customers is at X weeks where as Beauty customers are best approached at Y weeks except when Z occurs'. This is the sort of learning that benefits our whole BF Software family by allowing us to learn and deploy insights in weeks that would otherwise take decades to identify.*

*Section 9D reiterates that we don't sell your information or provide it for use to any other users. Ever.*

*Section 9E is just the generic "we know what we're building over the next 12 months but if we discover some awesome new way to help your business then we want to develop it and make it available to you" type disclosure.*

*We hope this clears up the legal sounding conditions but if you have any remaining questions please let us know and we've be happy to discuss!*

