

Clubman Software Terms and Conditions

These Clubman Software Terms and Conditions (“**Terms**”) should be read by you (“**you**” or the “**User**”) in its entirety prior to your use of Notbad Software’s services or products. Please note that these Terms constitute a legally binding agreement between you and CRNR Pty Limited trading as Notbad Software (ABN 95 146 697 305) (“**NBS**,” “**we**,” “**us**” or “**our**”). NBS owns and operates the website at <https://clubman.app/> (the “**Site**”). These Terms govern your use of the Site and access to our services including to the NBS Software and the Services defined below.

By accepting these Terms, or by accessing or using the NBS Software, you represent and acknowledge that you have read, understood, and agree to be bound by these Terms. If you are entering into these Terms on behalf of a company or another entity, you represent that you have the authority to bind such entity and its affiliates to these Terms in which case the terms “you,” “your” or related terms herein shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree with these Terms, you are not permitted to use the NBS Software or the Services.

The Terms may be updated by us from time to time. If we make any material changes to the Terms, we will notify you. Your continued use of the NBS Software and the Services will amount to acceptance of the updated Terms.

1. Description of NBS Software and Services

- 1.1 NBS has developed and provides the use of software which enables a member of a ski club (the “**Club**”) to book and pay for accommodation and interact with the Club in relation to that booking, including the web application, related documentation, websites (including source code and databases), a help desk system, other connectivity applications (APIs) and interfaces (collectively, the “**NBS Software**”). NBS also provides hosting services and other accommodation booking services required to integrate systems, including any conversion or reporting of data and information on the Club’s or any other end user’s systems or the related support services provided to the User, or any other services as provided by NBS from time to time (collectively the “**Services**”).
- 1.2 Any new features, updates or upgrades, improvements or augmentation of the NBS Software and related services are considered NBS Software or Services and shall be subject to these Terms.
- 1.3 We may change, suspend, or discontinue all or any part of the NBS Software and the Services at any time without prior notice or liability to you, and your continued use of the NBS Software and the Services after any such changes will constitute your consent to those changes.

2. Site Security

- 2.1 In order to use or access the NBS Software and/or the Services, you will need to register your details with us. As part of the registration process, NBS will create a user account which is personal to you (“**User Account**”) and provide you with a username and password for your User Account to allow you to access the NBS Software.
- 2.2 All Users (including Authorised Users as defined below) who access the NBS Software must do so with their own User Account. You are responsible for maintaining the confidentiality of your User Account information including your password and for preventing any unauthorised access, and you should promptly inform us of any security issues. You agree to accept responsibility for all activities and changes to data that occur under your User Account or password, including any changes made by any other activities or changes carried out by any



Authorised Users such as to their User Account(s) or passwords(s). NBS will not be held accountable for changes made by you or any Authorised User.

For the purposes of these Terms an “**Authorised User**” shall mean any other individual who has been authorised to use the NBS Software including to set up and access a User Account such as a User’s friends, family members and/or guests who have a specific need to access and use the NBS Software and agree to comply with the terms and conditions of these Terms.

2.3 Should you become concerned that unauthorised access has been made to your User Account, you must notify NBS immediately and take all appropriate steps to mitigate any harm unauthorised access may cause (such as change passwords and usernames).

3. Identity Authentication

3.1 In order to provide the NBS Software and the Services to you, we may collect and receive information from you including Personal Information (as defined herein).

3.2 Under these Terms, you agree that NBS may, directly or through third parties, make any inquiries we consider necessary to validate your registration.

3.3 By using the Site and the NBS Software, registering your interest or contacting NBS, you consent to NBS regarding the collection, use, disclosure and storage of your Personal Information as described in our Privacy Policy (located at <https://clubman.app/privacy>).

4. Grant of Licence

4.1 Subject to your compliance with the terms and conditions set out in these Terms, NBS grants you a non-exclusive, limited, non-transferrable, non-sublicensable, revocable licence to use the NBS Software for the period you subscribe to the NBS Software, and for the sole purpose of enabling you to use the NBS Software in accordance with these Terms. All rights not expressly granted by NBS to you are reserved by NBS and its licensors.

4.2 You must not access the NBS Software or the Services if you provide or intend to provide any service or functionality which competes with the NBS Software or the Services, except with NBS’s prior written permission (which we may withhold in our sole discretion).

4.3 You shall not monitor the NBS Software or access it for any benchmarking or competitive purposes or for the purposes of developing a similar or competitive product.

4.4 You must not, and you warrant that you will not, encourage, aide, abet, incite or otherwise permit any Authorised Users or any third party or entity to:

- (a) decompile, disassemble, reverse-engineer or otherwise attempt to discover, derive or interfere with any part of the source code, algorithms, methods or processes embodied in or used, in connection with the NBS Software or the Services, or any underlying data, infrastructure or other software;
- (b) use any robot, crawler, spider, screen scraper, data aggregation tool or use any process or processes that send automated queries to data mine, scrape, crawl, email, harvest, aggregate, copy or extract any processes, information, content or data in, or accessible through the NBS Software or the Services;
- (c) use or reproduce, copy, publish, distribute, disclose or otherwise publicly communicate the NBS Software or the Services in any way other than in accordance with these Terms;
- (d) modify, alter, adapt or incorporate any part of the NBS Software or the Services into any other material, product, service or database or create any derivative works based upon the NBS Software or the Services in any way other than in accordance with these Terms;
- (e) resell, rent, distribute, market, lease, licence, sublicense, assign, display, time share, transfer or otherwise commercially exploit for profit or gain any part of the NBS



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- Software or the Services, or permit the use of the NBS Software or the Services, by any third party, other than as expressly permitted under these Terms;
- (f) modify, adapt, alter, disrupt or interfere with the integrity or performance of, the NBS Software or the Services or any software used in connection with them, or attempt the same; or
 - (g) remove or alter any registered or unregistered trademark, logo, copyright notice, confidentiality marker or other proprietary or confidentiality notice appearing on or in the NBS Software or the Services.
- 4.5 You must not use the NBS Software or the Services for any purpose other than the purpose for which it was designed and for which you have subscribed under these Terms and specifically, you must not use the NBS Software or the Services:
- (a) in a way which violates the rights of a third party or infringes any other party's rights, including without limitation, intellectual property rights and moral rights, or for any inappropriate, illegal or unlawful purpose;
 - (b) to send or store material containing viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;
 - (c) to encroach upon or interfere with the privacy of an individual;
 - (d) in a way which constitutes a misuse of any person's confidential information; or
 - (e) in any way that would result in a breach of any law, including the Data Protection Requirements.
- 4.6 You shall ensure any Authorised Users to whom the NBS Software is made available under these Terms, will also comply with the requirements of clauses 4.4 and 4.5 of these Terms.
- 4.7 NBS reserves the right to, at any time and without prior notice, disable or remove your access to the NBS Software or the Services in the event of any breach or suspected breach of this clause 4 of these Terms.
- 5. Site Content**
- 5.1 NBS relies on the information and data you give to NBS in order to provide the NBS Software and the Services, and you are solely responsible for the accuracy and currency of the data entered into the NBS Software and the Site under your User Account (the "**Content**").
- 5.2 You represent and warrant that the Content you provide is, at all times, accurate, true and complete, and is yours or within your right to use, and you will promptly inform NBS of any updates or changes in this information immediately upon you becoming aware. You will indemnify NBS, its related companies, officers, employees and its suppliers and licensors against any claim, liability, loss, costs, action or damages arising from or incurred in connection with any Content provided by you or any data entered into the NBS Software under your User Account including any claim, loss, damages or liability that may be made against NBS alleging that its use of any information, material or data provided to NBS by you in accordance with these Terms infringes the Intellectual Property Rights or moral rights of any third party or any law.
- 6. Scheduled System Interruption**
- 6.1 We may make scheduled outages to the NBS Software from time to time ("**Scheduled Outages**"). Should outages be made to any component of the Site or the NBS Software that is likely to affect your operation of the NBS Software, we will endeavour to notify you at least 10 working days in advance of such outage, where such notification is practicable.
- 6.2 To minimise impact to your usage of the NBS Software, we will endeavour to make any Scheduled Outage as short as possible and at a time of day where system usage is at its minimum.



6.3 For the avoidance of any doubt, clauses 6.1 and 6.2 do not relate to any changes or alterations to the functionality of the NBS Software that we may apply to the NBS Software, and do not require any prior notification to you. Notification may be made available on the Site after such change or alteration has occurred.

7. Services and Support

7.1 NBS provides a support helpdesk where support is available for any enquiries relating to the NBS Software or the Services where NBS support staff can be contacted by e-mail.

7.2 For the avoidance of any doubt, the Club is solely responsible for responding to any User enquiry including any cancellation or change to the User's booking through the NBS Software, and the Club shall be liable to the User for the same.

8. Intellectual Property Rights

8.1 NBS and its licensors own all rights, title and interest in and to all Intellectual Property Rights contained, embodied in or associated with the NBS Software (including but not limited to any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the NBS Software), the accompanying documentation and printed materials, any copies of the NBS Software, and any and all creations and inventions contained within the NBS Software (including all improvements and other changes to them). NBS does not grant you any right, title or interest in or to the NBS Software other than the permission to use the NBS Software and/or the Services under clause 4 of these Terms.

8.2 Any Intellectual Property Rights created or arising under as a result of these Terms shall vest in and remain the property of NBS. NBS grants you a revocable licence to use the created Intellectual Property Rights for the sole purpose (and no purpose other than) of allowing you to obtain the benefit of the NBS Software and/or the Services in accordance with these Terms. Such licence shall terminate upon termination, completion or expiry of these Terms, and may otherwise be terminated by NBS at any time at NBS's absolute discretion.

8.3 The URL representing the Site "Clubman" and any other applicable NBS website(s) from time to time, and all related logos of NBS products and services described in the Site or any other applicable NBS website(s) are either subject to copyright, trademark or existing registered trademark ownership by NBS (or NBS's licensors) and may not be copied, imitated or used, in whole or in part, without the prior written permission of NBS.

For the purposes of these Terms "**Intellectual Property Rights**" includes both in Australia and throughout the world and for the duration of such rights, any rights, title and interest in any:

- (a) business names, patents, utility models, copyrights, eligible layout rights and registered designs registered or unregistered trade marks or service marks, trade names, brand names, domain names, indications of source or appellations of origin, plant variety rights, and commercial names and designations;
- (b) invention, discovery, trade secret, know how, computer software and confidential, scientific, technical and product information;
- (c) other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields whether industrial, commercial, agricultural or extractive and whether dealing with manufactured or natural products; and
- (d) letters patent, deed of grant, certificate or document of title for any thing referred to in paragraphs (a) to (c) of this definition and any medium in which any thing referred to in those paragraphs is stored or embodied.

9. Disclaimer of Warranties

9.1 NBS, its related companies, officers, employees, our licensors and suppliers provide the NBS Software and the Services "as is" and without any warranty or condition, express, implied or



statutory to the maximum extent permitted by law. NBS, its related companies, officers, employees, our licensors and suppliers specifically disclaim any implied warranties of title, merchantability, fitness for a particular purpose and non-infringement to the maximum extent permitted by law.

- 9.2 We do not guarantee continuous, uninterrupted access to the NBS Software and related services, and the operation of the NBS Software and our Site may be interfered with by numerous factors outside of our control. You are responsible for implementing appropriate security processes, systems and procedures to protect yourself from the download of any virus, worms, trojan horses or other code that has contaminating or destructive qualities. NBS cannot guarantee or warrant that any file that you download from NBS or which NBS delivers to you will be free of such things.
- 9.3 We are not liable for any damages to, or viruses that may infect, your computer equipment or other property on account of your access to or use of the NBS Software.

10. Limitation of Liability

- 10.1 **No Consequential Damages:** Notwithstanding anything to the contrary in these Terms and to the extent permitted by law, under no circumstances and under no legal theory (whether in contract, tort, negligence or otherwise) will either party, or such party's affiliates or their respective officers, directors, employees, agents, suppliers or licensors, be liable to the other party or any third party for any indirect, incidental, special, exemplary, consequential, punitive or other similar damages, including lost profits, loss of use of data, lost sales or business, lost data, business interruption or any other loss incurred by such party in connection with these Terms or the Services, regardless of whether such party has been advised of the possibility of or could have foreseen such damages.
- 10.2 **Force Majeure and Third Parties:** You agree that we are not liable for failure or delay in performing our obligations hereunder if such failure or delay is due to circumstances beyond our reasonable control, including, without limitation, acts of any government authority, war, sabotage, terrorist activity or threat, fire, flood, strike or other labour disturbance, interruption of or delay in transportation, unavailability of or delay in telecommunications or third party services, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the NBS Software or the Services.
- 10.3 **Limits on Monetary Damages:** Subject to clauses 10.1, 10.2 and 10.4 of these Terms and to the extent permitted by law, the aggregate liability of NBS (including any of its affiliates), for damages (monetary or otherwise) arising under these Terms for claims made by you or any third party arising from the NBS Software or the Services, shall be limited to \$500.
- 10.4 **Consumer Guarantees:**
- (a) Nothing in these Terms is intended to exclude, restrict or modify any applicable consumer guarantees under the Australian Consumer Law.
 - (b) The NBS Software comes with guarantees that cannot be excluded under the Australian Consumer Law. If we are liable for a breach of any warranty implied by the Australian Consumer Law, under any other law or implied by a court, our liability under that section is limited to; the replacement of the NBS Software or the supply of equivalent software; the cost of replacing the NBS Software or acquiring equivalent software; or repair of the NBS Software; or the cost of having the NBS Software repaired; whichever we (in our sole discretion) elect.

For the purposes of these Terms, "**Australian Consumer Law**" means the Australian Consumer Laws in the *Competition and Consumer Act 2010* (Cth).



11. Confidentiality

- 11.1 We acknowledge that as a result of providing the NBS Software to you, we may become privy to information of yours that is designated by you at the time we receive it as confidential (excluding information in the public domain). We will use your confidential information solely for the purposes of the provision of the NBS Software and/or the Services to you and will not disclose your confidential information without your prior written consent or unless we are required or permitted to do so by law.

12. Cancellation and Termination

- 12.1 These Terms may be terminated prior to the termination date:
- (a) By us at any time for any reason whatsoever with thirty (30) days notice to you. We will not be liable to you or any third party for any modification, suspension or discontinuation of the NBS Software or the Services.
 - (b) By us if you breach any of these Terms, and we reserve the right to terminate your access to the NBS Software immediately on becoming aware of your breach.
 - (c) By you with thirty (30) days prior written notice, by emailing hello@notbad.software.
 - (d) By either party, if the other party becomes insolvent or has an administrator or liquidator appointed or if the other party assigns or purports to assign its rights otherwise than as permitted by these Terms.
- 12.2 Where any NBS supplier, licensor, vendor or other third party imposes terms and conditions (including an increase in fees) on NBS which causes or gives rise to NBS requesting your agreement to vary these Terms, NBS will request your consent to vary these Terms. Should you not agree to such a variation you:
- (a) may not receive the benefit of an upgrade, enhancement or improvement or additional product(s) within the NBS Software or the Services, in which case NBS will not be liable for any failure to provide an upgrade, enhancement, improvement or use of additional product; or
 - (b) may terminate these Terms by giving us ninety (90) days prior written notice.
- 12.3 If these Terms expire or are terminated for any reason:
- (a) Immediately upon expiry or termination, the licence granted under these Terms ceases and your access will be cancelled to all systems, software and materials, including the NBS Software, and you must return or destroy (and provide evidence of such destruction) any and all copies, User Accounts and access keys or codes of, or to, the NBS Software and any other system, software or material.
 - (b) You shall continue to be liable for any fees due and owing to the Club and agree to indemnify NBS, its related companies, officers, employees and its licensors against any claim that may be made against NBS for any liability, loss, costs, action or damages arising from or incurred in connection with your failure to comply with any obligation to pay the Club. This clause 12.3(b) shall survive expiry or termination of these Terms.

13. Privacy and Data Protection

- 13.1 To the extent that Personal Information and data is collected, used, handled, processed and/or transferred under these Terms, each party will:
- (a) comply with the applicable Data Protection Requirements; and
 - (b) obtain all necessary rights and consents required to comply with the applicable Data Protection Requirements and only use or disclose Personal Information obtained during the course of performing these Terms for the purposes of these Terms.



13.2 You acknowledge that you have read and agree to comply with the provisions of our Privacy Policy (which can be found at <https://clubman.app/privacy>) in relation to your use of the NBS Software and the Services provided under these Terms.

For the purposes of these Terms “**Data Protection Requirements**” means the applicable code, legislation, regulation, statute, order which may apply from time to time, which may include the Privacy Act 1988 (Cth), the Australian Privacy Principles, and/or all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or Privacy Ombudsman, as the case may be.

“**Personal Information**” means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.

14 Survival

14.1 The following clauses shall survive any termination of these Terms: 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 5. Site Content, 8. Intellectual Property Rights, 9. Disclaimer of Warranties, 10. Limitation of Liability, 12. Cancellation and Termination, 13. Privacy and Data Protection, 14. Survival, 15. Dispute Resolution, 16. Governing Law, and 17. Miscellaneous.

15. Dispute Resolution

15.1 Subject to clause 15.4, the parties must attempt to settle by negotiation any dispute in relation to these Terms before resorting to external dispute resolution mechanisms.

15.2 If a dispute is not settled by the parties within fourteen (14) days of one party sending to the other party written notice of the dispute, the dispute must be submitted to mediation. If the dispute is not settled by the parties within thirty (30) days of mediation, either party may commence court proceedings in relation to the dispute.

15.3 Notwithstanding the existence of a dispute each party must continue to perform its obligations under these Terms, except where the performance of an obligation is the subject matter of the dispute.

15.4 A party may commence court proceedings relating to any dispute arising from these Terms at any time where that party seeks urgent interlocutory relief.

16. Governing Law

16.1 These Terms are governed by and interpreted under the laws of the state of New South Wales, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in the state of New South Wales, Australia.

17. Miscellaneous

17.1 We may amend or modify these Terms upon notice to you, which may be provided through a nominated email or on the Site. You agree that any changes to these Terms will be binding on you seven (7) days after the amendment is made by us (or, if a longer period is required by applicable law, such longer period). If you elect to not accept the changes to these Terms, you must; (a) provide notice to us, and (b) immediately cease using the NBS Software and the Services. Where you do not provide such notice prior to the amendments becoming binding, by continuing to use the NBS Software and the Services you agree that you are consenting to any such changes to these Terms.

17.2 You may not assign or transfer, whether in whole or part, the benefit of these Terms or any rights or obligations hereunder, without the prior written consent of us. We may at any time, directly or indirectly, assign, subcontract, or otherwise transfer or delegate or deal in any other



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manner with any or all of our rights under these Terms, provided that we give prior written notice of such dealing to you.

- 17.3 A right created under these Terms may not be waived except in writing signed by the party granting the waiver. The failure of either party to enforce a term of these Terms will not be interpreted as a waiver of that term.
- 17.4 Any failure by us to act with respect to a breach by you or others does not waive any right we may have to act with respect to subsequent or similar breaches.
- 17.5 If any provision in these Terms is held by a court of competent jurisdiction to be unenforceable, such provision shall be modified by the court and interpreted so as to best accomplish the original provision to the fullest extent permitted by law, and the remaining provisions of these Terms shall remain in effect.
- 17.6 Each party bears its own costs and expenses in relation to these Terms.
- 17.7 These Terms state all the express terms of these Terms and details the entire understanding between the parties in respect of its subject matter. These Terms supersede prior versions of these Terms, or any discussions and negotiations between you and NBS (other than written agreements accepted by both parties).
- 17.8 These Terms may be executed in any number of counterparts.
- 17.9 Any variation to these Terms must be in writing.

