



**BUKU**  
sea you on the water

# TERMS & CONDITIONS

## Please review the Terms of Use.

EFFECTIVE August 20 2020

### \*\*\*COVID-19 Update

The charter party must be certain they have followed safe practices of social distancing for at least the last 4 weeks, and are in good health. If for any reason the chartering party is uncertain they are in good health, they must notify the captain. A temperature scan may be required prior to boarding the vessel.

### Your Relationship with BUKU

Your use of BUKU's products, services, software, and Website(s) (collectively as "Services") is subject to the terms of this Terms of Use Agreement (this "Agreement"). BUKU means BUKU, Inc d/b/a BUKU and BUKU (herein referred to as "BUKU," "us," "we," "our," and the "Website"). If you are using the Services of BUKU on behalf of a corporation or other legal entity, "you" means the entity, and therefore the user is warranting that he or she has the rights to bind the entity in this agreement. By using the Services of BUKU, you are agreeing to and are subject to the following terms and conditions, as well as our company's Privacy Policy, herein incorporated by reference (collectively, the "Terms"). If you do not agree to all of the Terms in this agreement, then you are NOT authorized to use BUKU's Services.

You will accept the Terms by: (i) clicking to accept or agree to the Terms, where this option is made available to you by BUKU in the user interface for any Service; or, (ii) by actually using the Services of BUKU. In the case of (ii), you understand and agree that BUKU treats your use of the Services as acceptance of the Terms from that point and onward.

BUKU also reserves the right, at its discretion, to modify, to change, add or remove any of the Terms, in part, or in whole, at any time. Please check this Website and the Terms periodically for changes and

updates. Your use of the Services after such modified Terms are posted will mean that you accept such Terms in this agreement.

BUKU IS A VENUE AND IS NOT A PARTY NOR A PARTNER TO ANY RENTAL AGREEMENT OR OTHER TRANSACTIONS BETWEEN ANY USERS OF THE WEBSITE.

BUKU is Only a Venue. BUKU acts as a venue for users of the Website as renters ("Renters") and boat owners ("Members") (Members and Renters, each a "User" and together, "Users") to view and post available boats to facilitate the rental of such boats. BUKU is not a party to any actual agreement or transaction between Renters and Members even though we may from time to time provide tools that relate to a booking, such as a tool to enable a Renter to enter into a transaction to rent a specific boat directly from a Member and payment services to facilitate the booking. As a result, BUKU has no formal control over the accuracy or correctness of the content or information provided or used by such Renters and Members. Any part of an actual or potential transaction between a Renter and a Member, including the condition, quality, safety or legality of the boats advertised, the truth or accuracy of the listings (including the content thereof or any review related thereto), the ability of Members to rent a boat to a Renter, or the ability of Renters to pay for or operate boat rentals are solely the responsibility of each User. With this agreement, Member acknowledges and agrees that Member is solely responsible for the compliance and safety of the Renter(s) who rent Member's boat(s).

You acknowledge and agree to take all reasonable precautions in ensuring the accuracy and reliability of any User generated content. We are also not responsible for the condition of any boats listed on the Website or the compliance with laws, rules or regulations that may be applicable to boat operation, maintenance, rental or charter in any jurisdiction. As between BUKU and Members, Member acknowledges and agrees that Member is solely responsible for ensuring compliance with laws, rules or regulations that may be applicable to boat operation, maintenance, rental or charter in the jurisdiction in which Member operates or is otherwise located. Renters should satisfy themselves that any boat rented complies with any legal or safety requirements for such rental, and Renters and Members have exclusive responsibility for such compliance. Without limiting the foregoing, Members and Renters are solely responsible for their own compliance with any legal and/or safety requirements in place in your applicable jurisdiction in light of applicable health and/or travel advisories. Members are responsible for determining if renting a boat is permissible and, if so, for providing their boat in sanitary condition for Renters and with appropriate sanitation supplies for Renters to clean the boat after use. Renters are responsible for returning any rented boat in sanitary condition using the sanitation supplies provided by the Member.

Separate Agreements. Users acknowledge and agree that you will be required to enter into a separate agreement and/or waiver, directly between the Renter and Member, prior to making a booking or purchasing a product or service and such agreement and/or waiver may place additional restrictions on your booking, product, or service. Any separate agreements and/or waivers relating to the rental of a boat or related products or services are under the sole control of any Member or provider and Renter.

Release and Indemnity. IN THE EVENT OF A DISPUTE BETWEEN A RENTER AND A MEMBER, MEMBER AND RENTER, JOINTLY AND SEVERALLY, HEREBY AGREE TO INDEMNIFY, RELEASE, DEFEND AND HOLD HARMLESS BUKU AND ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY, THE "BUKU PARTIES") FROM ANY CLAIMS, CAUSES OF ACTION, DEMANDS, RECOVERIES, LOSSES, DAMAGES (ACTUAL AND CONSEQUENTIAL), FINES, PENALTIES AND OTHER COSTS OR EXPENSES, OF ANY KIND OR NATURE, INCLUDING BUT NOT LIMITED TO REASONABLE LEGAL AND ACCOUNTING FEES (COLLECTIVELY, THE "CLAIMS"), KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES, INCLUDING, WITHOUT LIMITATION, DISPUTES ARISING OVER BREACH OF THIS AGREEMENT, BREACH OF ANY SEPARATE AGREEMENT OR TRANSACTION, AND/OR THE SUBSTITUTION OF RENTAL UNITS. FURTHER, MEMBER AND RENTER EACH HEREBY AGREE TO INDEMNIFY, RELEASE, DEFEND AND HOLD HARMLESS THE BUKU PARTIES FROM ANY CLAIMS BROUGHT AS A RESULT OF MEMBER AND/OR RENTER'S (1) BREACH OF THE TERMS, (2) VIOLATION OF ANY LAW OR THE RIGHTS OF A THIRD PARTY, AND (3) USE OF THIS WEBSITE AND THE SERVICES.

Insurance. BUKU is not a party to any contract for insurance facilitated through any link to a third party insurance provider advertising on the Website, and is not acting on behalf of any insurer, any broker or agent in any way, any insured or any claimant in any contract for insurance facilitated through such link. Insurance coverage must be provided through a third-party independent insurance producer not affiliated with BUKU. BUKU does not act as a broker, agent or consultant in the sale of insurance, is not endorsing or recommending any particular insurer, policy or terms of coverage, and is merely providing a quick link for you, if you wish, to transact a contract for insurance with a third-party provider. Any contract for insurance is solely between you, as the insured, and such insurer as you and the third-party insurance provider agree shall act as the insurer per your selection. BUKU has no control over any insurance and makes no representations regarding the coverage of any insurance you may purchase from a third-party insurance provider. You understand, acknowledge and agree that BUKU assumes no responsibility or liability for any claims or disputes arising from, or related to, a contract for insurance facilitated through such link. You also acknowledge and agree that BUKU shall not be included as a party to any such claims or disputes.

## Your Use of Services

Conditions of Use. As a condition of your use of the Services, you expressly represent and warrant that (i) if you will be operating a boat, you are responsible for ensuring that you are sufficiently skilled in the operation of the boat and legally authorized to operate a boat in the state in which you are renting and you will not allow any other occupants of the boat to operate the boat unless they are each of sufficient skill and legally authorized to operate a boat in the state in which you are renting; (ii) you possess the legal authority to create a binding legal obligation; (iii) you will use this Website in accordance with the Terms; (iv) you will only use this Website to post or view, as applicable, available boat rentals or transact legitimate boat rentals for you or for another person for whom you are legally authorized to act with other Users; (v) you will inform such other persons about the terms and conditions that apply to the boat rental you have made on their behalf, including all laws, regulations, rules and restrictions applicable thereto; (vi) if you are booking a rental on behalf of another person, you are individually responsible for ensuring that such other person is a party to the separate agreement for the rental of the boat; (vii) all information supplied by you to BUKU is true, accurate, current and complete, (viii) if you have a BUKU account, you will safeguard your account information, (ix) you are and will remain in compliance with all applicable laws, rules and regulations related to boat operation, maintenance, rental or charter, and (x) if you are listing a boat for rental, you are either (a) the owner of the boat, or (b) a representative authorized to act on behalf of the owner of the boat. You may not authorize others to use your user account, and you may not assign or otherwise transfer your user account to any other person or entity. If you reside in a jurisdiction that restricts the use of the Services because of age, or restricts the ability to enter into agreements such as this one due to age, you must abide by such age limits and you must not use the Services. Without limiting the foregoing, the Services are not available to children (persons under the age of 18). By using the Services, you represent and warrant that you are at least 18 years old. BUKU retains the right at its sole discretion to deny access to the Services to anyone at any time and for any reason, including, but not limited to, for violation of the Terms.

You agree that you will only use the Services for lawful purposes.

Please keep in mind that we will treat anyone who uses your user name and password as "you." We will provide this user with all of the rights and privileges that we provide to you, and we will hold you responsible for the activities of the person using your password. Therefore, we recommend that you maintain your user name and password in confidence, and that you refrain from disclosing this information to anyone who might "pretend" to be you with respect to the Services. We also ask that you notify us immediately if you suspect that someone is using your user name and/or password or otherwise obtaining access to the Services in this or any other inappropriate manner.

**Booking Fee.** BUKU charges a booking fee of 10% of the total rental for every vessel rented on our website. This is a service charge for the use of our site.

**Payment Services.** While BUKU is not a party to any agreement between you and any Member, Renter acknowledges and agrees that BUKU may act as the Member's payment agent for the purposes of collecting payment for bookings made through the BUKU Website. Renter's provision of financial information to us for purposes of payment is governed by our Privacy Policy.

**Establishing a Payment Account.** As a Renter, you are responsible for opening an account, providing payment authorizations for bookings and paying for Services according to these Terms, as well as others which may be included at the time of booking. You agree to provide all requested information, including a credit card to be used for pre-authorization/reserve and payment/capture for Services. Payment for a booking will be made by BUKU directly to the Member who posted the listing.

By providing your credit card information to us, you agree that we are authorized to charge your card with the total cost of the rental and any required deposit, as described below. We will run a pre-authorization for the full amount of the booking on the credit card the Renter supplies at the time of booking. You agree that we can charge a nominal amount to your credit card to verify the validity of the credit card information you provide. If the Member accepts the booking, the Renter's credit card will be charged in full. You expressly authorize BUKU's approved service providers, Paypal or CashApp, to originate credit transfers to your financial institution account. BUKU may also use a service provider to store your credit card information to facilitate payments as described herein and you expressly authorize such storage. BUKU shall ensure that any service provider it uses to process or store your credit card information is bound by obligations to protect such information commensurate with our Privacy Policy.

**Deposits.** Renters are responsible for leaving the rented boat in the same condition it was in before you rented it. Renters acknowledge and agree that you are responsible for all acts and omissions of you and your guests on the boat that affect the condition of the boat. In the event a Member claims and provides evidence of damage to the boat, you agree that BUKU shall be entitled to charge a deposit to your credit card to cover the cost of the damage, as established after reasonable investigation. We will notify you of any damage claim made by a Member related to your rental and you will have an opportunity to respond, as set forth in such notice. We will only charge a deposit to Renter's credit card after the rental is complete if the Member has made a claim and the deposit amount has been deemed appropriate after an investigation of the claim.

**Service Charge.** We charge a service fee of 10% of the total rental (i.e., the booking and any additional expenses) for facilitating the rental and this amount will be reflected in the final amount charged to Renter's credit card. We reserve the right to round up amounts to the nearest whole dollar (for example, \$302.60 will be rounded to \$303). We will process any necessary currency conversion (BUKU charges in US dollars unless otherwise specified) based upon Renter's currency on the day the credit card is charged and we will charge a conversion fee of 3% of the total rental for currency conversions. We reserve the right to adjust the conversion rate based upon when the payout is made to the Member. The service fee and any conversion fee constitute "Transaction Fees." BUKU reserves the right to adjust its Transaction Fees at any time. Any Fee changes will be effective the next time you book a rental after such fee change goes into effect (i.e., rentals already booked will be subject to Fees as established at the time of booking).

Boat prices will vary, depending on the size and type of vessel. Prices are per hour, per couple(2) for sailboats and power boats. There is a cost of \$20 per person for each additional guest. There is a 5 guest maximum. Advance Bookings(2 or more weeks) require a 30% deposit of the total cost to be paid at the time of booking. The remaining balance of the Booking must be paid in full before boarding the vessel. For Bookings made within 7 days or less, a 50% deposit is required at the time of booking. The remaining balance of the Booking must be paid in full before boarding the vessel.

\*The deposit includes the guest portion of the Buku booking fee. \*Rates may vary for Weekend, Holiday, Theme cruises and Special event dates. Additional fees may include: Taxes, fuel expense, docking

charges, fees associated with overnight stays onboard and Liability/damage or theft charges (see Damage/theft liability). Some fees only apply for certain boats, and will be outlined in the boat's profile section. Some boats offer special amenities services, add ons, and themed items, in order to provide customized experiences. If the guest chooses custom services, the additional cost will be added to the balance due. If custom services or expenses are added during the booked period, the services will be added to the final bill at booking completion.

**Payments to Members.** Payment to Members for accepted bookings will be made net 30 days from the date of the completed reservation. Notwithstanding, in limited circumstances, on a case-by-case basis, in its sole discretion, BUKU may elect to pay a Member a portion of the accepted booking after the reservation is made and the remaining portion of the accepted booking net 30 days from the date of the completed (fully paid) reservation. If, after Member has been paid any portion of the accepted booking by BUKU, an accepted booking is canceled or terminated for any reason by either Member or Renter before the reservation is completed, Member shall return to BUKU all sums advanced by BUKU for such reservation immediately (within five (5) days) upon receiving written demand for same. Member further agrees that BUKU is not liable for any damages Member may incur as a result of such cancellation and/or having to return such funds. If a Member fails to timely refund said sums, BUKU shall also be entitled to interest on said sums at the rate of 18% per annum, or the highest rate allowed by law, whichever is lower, and all of BUKU's attorneys' fees and costs of court.

If a Member does not respond to a booking inquiry, BUKU reserves the right to transfer the booking and associated payment to another Member on Renter's behalf. BUKU reserves the right to hold payment to Members if BUKU suspects there has been fraud or other suspicious activity in connection with the rental or payment. Unacceptable payment methods that may be posted on the Website may result in the immediate removal of the non-conforming listing from the Website without notice to the Member and without refund. Unacceptable payment methods are those methods that may pose a risk of fraud, identify theft, or breach of privacy.

**Substitution of Rental Units.** Renter understands and acknowledges that boats/other watercraft reserved may, from time to time, be subsequently damaged or otherwise become in need of repair before the reservation is commenced. If a Member is unable to provide the reserved unit to Renter due to it being unavailable, Member may provide Renter with a substitute unit that is similar in age, size, model, and value as the reserved boat/other watercraft. Member shall provide Renter with notice of the need for a substitution of unit(s) as soon as reasonably possible, as well as provide Renter with pictures and a description of the substitute unit upon request. If Member is unable to provide Renter with a similar substitute unit (as described herein), Renter may elect to cancel the reservation any time before it is commenced and, as its sole remedy, obtain a refund in accordance with the Refund Policy as if the Member had cancelled the reservation. Renter shall not be entitled to any refund, and shall be obligated to pay all sums owed, if Member offers Renter a similar unit (as described herein) and Renter nevertheless refuses to complete and/or terminates the reservation. If there is a dispute between Renter and Member as to whether the substitute unit offered by Member is sufficiently similar to the unit reserved by Renter, BUKU shall make the final determination, in its sole discretion, and Renter and Member agree to abide by BUKU's determination.

**ANY DIRECT OR INDIRECT EXCHANGE OF MONEY BETWEEN RENTERS AND MEMBERS OTHER THAN PAYMENT THROUGH BUKU IS A VIOLATION OF THESE TERMS.**

**Taxes.** The rental/booking fee and any additional expenses may be subject to applicable local, federal and state taxes. The Member accepting the booking is solely responsible for the collection, reporting, and payment of applicable taxes. BUKU may charge applicable taxes to Renter's credit card solely at the direction of the Member. Members are solely responsible for determining applicable taxes and should consult with your own legal/tax adviser about any tax questions in this regard.

## Cancellation and Refund Policy

If a Member cancels an accepted rental before the rental is commenced, Renter shall be refunded all sums paid to BUKU for the rental, other than the Transaction Fee.

If Renter cancels an accepted rental before the rental is commenced, BUKU shall return to Renter a "Cancellation Refund," as specified below. The Transaction Fee will not be refunded to Renter under any circumstances. The amount of the Cancellation Refund is determined by the Member's cancellation policy set-forth in the Renter's separate rental agreement with the Member, which shall be one of the following three policies, as chosen by the Member:

### Flexible

- 100% of the rental price if cancelled more than 24 hours prior to commencement of the rental; and
- 50% of the rental price if cancelled within 24 hours of commencement of the rental.

### Moderate

- 100% of the rental price if cancelled more than 7 days prior to commencement of the rental;
- 75% of the rental price if cancelled less than 7 days but more than 48 hours prior to commencement of the rental; and
- 50% of the rental price if cancelled less than 48 hours but more 24 hours prior to commencement of the rental.

### Strict

- 75% of the rental price if cancelled more than 7 days prior to commencement of the rental;
- 50% of the rental price if cancelled less than 7 days but more than 48 hours prior to commencement of the rental; and
- 25% of the rental price if cancelled less than 48 hours but more 24 hours prior to commencement of the rental.

If, for any reason, the Renter's separate rental agreement with the Member (a) does not contain a cancellation policy or (b) the cancellation policy therein differs from the foregoing cancellation policy options, then the amount of the Cancellation Refund will be determined in accordance with the "Strict" cancellation policy set-forth above. Renters are further subject to any additional cancellation terms set forth in the terms of each listing. To the extent the cancellation terms of a particular listing conflicts with the cancellation terms set forth herein, the cancellation terms set forth herein control.

If BUKU issues a Cancellation Refund to Renter that is less than 100% of the rental price, Members will be credited with the non-refunded portion of such rental price on the Member's next rental that is successfully completed through BUKU.

### Owner Cancellation

Transaction Fees will never be refunded. BUKU will charge a fee for any reservation that is cancelled after both parties have agreed on a booking. The following is a breakdown of cancellation fees based on the total price of rental:

Under \$100: Fee is \$5

Over \$100 but below \$250: Fee is \$20

Over \$250: Fee is \$50

The Member will be debited the cancellation fees on the next rental that is successfully completed through BUKU. Renters are subject to the cancellation terms set forth in the terms of each listing. Additionally, if a Member cancels a rental for any reason other than weather or another circumstance affecting the safety of the Renter, such Member (rather than the Renter) will be charged the Transaction Fee for the rental, as set forth above.

Chargeback Policy. If Renter disagrees with any charges, before any dispute is lodged with Renter's credit card company, Renter shall provide BUKU with a detailed written explanation of such disputed sum within fourteen (14) days of the charge, and the parties shall engage in a discussion related to same. FAILURE TO PROVIDE TIMELY NOTICE OF SAID DISPUTE VOIDS ANY CLAIM OR DISPUTE. At BUKU's request, Renter shall provide any additional written explanation or details and/or supporting documentation, in the format desired by BUKU. RENTER SHALL NOT DISPUTE VALID CHARGES ASSESSED IN ACCORDANCE WITH THESE TERMS OF USE.

Member understands and acknowledges that BUKU acts merely as a conduit for reservations and payments between Renters and Members, and Member assumes all rental payment risk. IF A RENTER OBTAINS A CREDIT CARD CHARGEBACK AGAINST BUKU, FOR ANY REASON, AND BUKU HAS ALREADY PAID ALL OR A PORTION OF SUCH AMOUNT TO MEMBER, THEN MEMBER SHALL IMMEDIATELY (WITHIN FIVE (5) DAYS UPON RECEIVING WRITTEN DEMAND FOR SAME) RETURN TO BUKU ALL SUCH AMOUNTS.

Use of Website. The content and information on BUKU's Website (this "Website") (including, but not limited to, price and availability of boats listed in any inventory database), as well as the infrastructure used to provide such content and information, is proprietary to BUKU, its licensors, its suppliers and providers. While you may make limited copies of your booking documents (and related documents) for boat rentals booked through this Website, you agree not to and you have no right to otherwise modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell or re-sell any information, software, content, products, or services obtained from or through this Website. Additionally, you agree not to:

- use this Website or its contents for any commercial purpose without our express written permission;
- send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights;
- send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;
- interfere with or disrupt the integrity or performance of the Services or the data contained therein;
- attempt to gain unauthorized access to the Services or its related systems or networks;
- make any speculative, false, or fraudulent reservation or any reservation in anticipation of demand;
- access, monitor or copy any content or information of this Website using any robot, spider, scraper or other automated means or any manual process for any purpose without our express written permission;
- violate the restrictions in any robot exclusion headers on this Website or bypass or circumvent other measures employed to prevent or limit access to this Website;
- take any action that imposes, or may impose, in BUKU's discretion, an unreasonable or disproportionately large load on BUKU's infrastructure;

- deep-link to any portion of this Website (including, without limitation, the purchase path for any boat rental reservation) for any purpose without our express written permission; or
- "frame", "mirror" or otherwise incorporate any part of this Website into any other Website without our prior written authorization.

IMPORTANT: PLEASE REVIEW THE ARBITRATION AGREEMENT SET FORTH BELOW CAREFULLY, AS IT WILL REQUIRE YOU TO RESOLVE DISPUTES WITH BUKU AND OTHER PARTIES ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION. BY ENTERING THIS AGREEMENT, YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND ALL OF THE TERMS OF THIS AGREEMENT AND HAVE TAKEN TIME TO CONSIDER THE CONSEQUENCES OF THIS IMPORTANT DECISION.

By agreeing to the Terms, you agree that you are required to resolve any claim that you may have against BUKU and any other related party on an individual basis in arbitration, as set forth below. This will preclude you from bringing any class, collective, or representative action against BUKU, and also preclude you from participating in or recovering relief under any current or future class, collective, consolidated, or representative action brought against BUKU by someone else.

Opt-out of Agreement to Arbitrate. You can decline this agreement to arbitrate by emailing support@BUKU.com and saying "I opt out of arbitration" in the email within 30 days of first registering your account.

You and BUKU agree that any dispute, claim or controversy arising out of or relating to this agreement whether between you and BUKU or between you and other Users, or the existence, breach, termination, enforcement, interpretation or validity thereof, (including the validity of this arbitration clause) shall be settled by binding arbitration administered by FairClaims (www.FairClaims.com) and not in a court of law, in accordance with its Arbitration Rules & Procedures effective at the time a claim is made. You further agree that judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

You consent to electronic service of process, with service to be made to the email address we have on record for your account.

You acknowledge and agree that you and BUKU are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding. Unless both you and BUKU otherwise agree in writing, any arbitration will be conducted only on an individual basis and not in a class, collective, consolidated, or representative proceeding. However, you and BUKU each retain 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 copyrights, trademarks, trade secrets, patents or other intellectual property rights.

You agree that any and all communications and evidence related to any dispute ultimately resolved by arbitration or mediation with FairClaims arising out of or relating to this agreement shall be held and will remain confidential, and that you will not take any action that will harm the reputation of any of the other parties to the arbitration or mediation or BUKU or which would reasonably be expected to lead to unwanted or unfavorable publicity to and of the parties, BUKU or other entities involved in or incidental to the arbitration or mediation. You understand that those parties and entities include but are not limited to the claimant, respondent, witnesses, and BUKU.

You agree that, in the event of confirmation and enforcement, the delinquent party to the arbitration will be responsible for any attorney, court or other fees associated with such action.



Notwithstanding any choice of law or other provision in this agreement, parties agree and acknowledge that this arbitration clause evidences a transaction involving interstate commerce and that the Federal Arbitration Act, 9 U.S.C. § 1 et seq. ("FAA"), will govern its interpretation and enforcement and proceedings pursuant thereto. It is the intent of the parties that the FAA and FairClaims Rules shall preempt all state laws to the fullest extent permitted by law. If the FAA and FairClaims Rules are found to not apply to any issue that arises under this arbitration clause or the enforcement thereof, then that issue shall be resolved under the laws of the state of California.

## Identity Verification

User verification on the Internet is difficult and we cannot, and do not, assume any responsibility for the confirmation of each Renter or Member's purported identity. Notwithstanding the foregoing, you agree that you will provide us or the Member with whom you book a rental whatever proof of identity we may reasonably request.

You agree to (i) keep your password and online ID for both your BUKU account and your email account secure and strictly confidential, (ii) notify us immediately and select a new online ID and password if you believe your password for either your BUKU account or your email account may have become known to an unauthorized person, and (iii) notify us immediately if you are contacted by anyone requesting your online ID and password. We discourage you from giving anyone access to your online ID and password for your BUKU account and your email account. However, if you do give someone your online ID and online password, or if you fail to adequately safeguard such information, you are responsible for any and all transactions that the person performs while using your BUKU account or your email account, even those transactions that are fraudulent or that you did not intend or want performed.

## Exclusion of Warranties

YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND WITHOUT WARRANTY OF ANY KIND AND BUKU ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBSIDIARIES, AFFILIATES, LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER BUKU NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBSIDIARIES, AFFILIATES, LICENSORS NOR SUPPLIERS WARRANT THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT BREACHES OF SECURITY.

BUKU, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBSIDIARIES, AFFILIATES, AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO RENTERS OR MEMBERS THAT:

- THE INFORMATION PROVIDED BY RENTERS OR MEMBERS IS TRUE OR CORRECT,
- BOAT RENTALS WILL BE AVAILABLE AT ADVERTISED DATES, TIMES, LOCATIONS, AND/OR PRICES, INCLUDING PURSUANT TO A CONFIRMED OR PURCHASED RESERVATION,
- BOATS WILL BE COMPLIANT WITH ANY LEGAL OR SAFETY REQUIREMENTS,
- YOUR USE OF THE SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS,

- YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR,
- ANY INFORMATION OBTAINED BY YOU AS A RESULT OF YOUR USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE, OR
- THAT DEFECTS IN THE OPERATION OR FUNCTIONALITY OF ANY SOFTWARE PROVIDED TO YOU AS PART OF THE SERVICES WILL BE CORRECTED.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, SO IN THESE JURISDICTIONS THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY.

## Limitation of Liability

IN NO EVENT WILL BUKU ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBSIDIARIES OR AFFILIATES BE LIABLE TO RENTERS, MEMBERS, OR ANY PARTY FOR:

- ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE, DAMAGES ARISING OUT OF THE USE, AVAILABILITY OR UNAVAILABILITY OF THE SERVICES (INCLUDING BUT NOT LIMITED TO THE UNAVAILABILITY OR CHANGE IN ADVERTISED AND/OR PURCHASED BOAT RENTALS) OR ANY OTHER SERVICES OR GOODS OBTAINED THROUGH USE OF ANY OF THE FOREGOING, OR ANY DATA TRANSMITTED THROUGH THE SERVICE, EVEN IF BUKU HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND
  - ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY YOU, INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE AS A RESULT OF:
  - ANY RELIANCE PLACED BY YOU ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ANY ADVERTISING, OR AS A RESULT OF ANY RELATIONSHIP OR TRANSACTION BETWEEN YOU AND ANY ADVERTISER OR SPONSOR WHOSE ADVERTISING APPEARS ON THE SERVICES;
  - ANY CHANGES WHICH BUKU MAY MAKE TO THE SERVICES, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE SERVICES (OR ANY FEATURES WITHIN THE SERVICES);
  - YOUR FAILURE TO PROVIDE BUKU WITH ACCURATE ACCOUNT INFORMATION;
  - YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL.
- ANY BODILY INJURY, DEATH, OR PROPERTY DAMAGE THAT MAY OCCUR AS THE RESULT OF A BOATING RELATED ACCIDENT, THE RESERVATION FOR WHICH WAS FACILITATED USING BUKU'S SERVICES. YOU AGREE THAT BUKU IS NOT A PARTY TO ANY CONTRACT OR AGREEMENT FOR BOAT RENTALS AND IS IN NO WAY RESPONSIBLE FOR INJURIES TO PERSONS OR DAMAGE TO PROPERTY WHICH MAY OCCUR DURING OR RELATED TO A BOAT RENTAL WHETHER AS A RESULT OF THE NEGLIGENCE OF ANY RENTER, BOAT OPERATOR, OR MEMBER, OR THE SAFETY OF ANY BOAT OR FOR ANY OTHER REASON. YOU ACKNOWLEDGE AND AGREE THAT BUKU SHALL HAVE NO LIABILITY RELATED TO YOUR BOOKING AND RENTAL OF A BOAT, AND ANY SUCH BOOKING AND/OR RENTAL IS MADE AT THE RENTER'S AND MEMBER'S SOLE RISK.

Notwithstanding the Terms, if BUKU is held liable, BUKU's entire aggregate liability under or arising out of these Terms or the Services shall be limited to the greater of (a) the service fees you paid to BUKU in connection with your use of this Website (if any), or (b) One-Hundred Dollars (US\$100.00). Some jurisdictions do not allow the exclusion or limitation of certain damages, so in these jurisdictions the above limitations or exclusions may not apply.

## **Release and Indemnification**

IN THE EVENT OF A DISPUTE BETWEEN A RENTER AND A MEMBER, MEMBER AND RENTER, JOINTLY AND SEVERALLY, HEREBY AGREE TO INDEMNIFY, RELEASE, DEFEND AND HOLD HARMLESS BUKU AND ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY, THE "BUKU PARTIES") FROM ANY CLAIMS, CAUSES OF ACTION, DEMANDS, RECOVERIES, LOSSES, DAMAGES (ACTUAL AND CONSEQUENTIAL), FINES, PENALTIES AND OTHER COSTS OR EXPENSES, OF ANY KIND OR NATURE, INCLUDING BUT NOT LIMITED TO REASONABLE LEGAL AND ACCOUNTING FEES (COLLECTIVELY, THE "CLAIMS"), KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES, INCLUDING, WITHOUT LIMITATION, DISPUTES ARISING OVER BREACH OF THIS AGREEMENT, BREACH OF ANY SEPARATE AGREEMENT OR TRANSACTION, AND/OR THE SUBSTITUTION OF RENTAL UNITS. FURTHER, MEMBER AND RENTER EACH HEREBY AGREE TO INDEMNIFY, RELEASE, DEFEND AND HOLD HARMLESS THE BUKU PARTIES FROM ANY CLAIMS BROUGHT AS A RESULT OF MEMBER AND/OR RENTER'S (1) BREACH OF THE TERMS, (2) VIOLATION OF ANY LAW OR THE RIGHTS OF A THIRD PARTY, AND (3) USE OF THIS WEBSITE AND THE SERVICES.

## **Proprietary Materials**

The Services contain proprietary materials such as logos, text, software, photos, video, graphics, music and sound. BUKU is the owner or licensee of all such proprietary material and all intellectual property rights therein, including without limitation, copyrights and trademarks. In using the Services, you agree not to upload, download, distribute, or reproduce in any way any such proprietary materials without obtaining BUKU's prior consent, except you may make limited copies of your booking documents (and related documents) for boat rentals booked through this Website.

## **Unsolicited Ideas and Feedback**

From time to time, users submit to us ideas or suggestions pertaining to our business, such as ideas for new or improved products or technologies, website or tool enhancements, processes, materials, marketing plans or new product names. We do not solicit such ideas or suggestions and are under no obligation to review or consider them. If you choose to submit any ideas, original creative artwork, suggestions or other works ("submissions") in any form to us, then regardless of what you say, write or provide to us in connection with your submissions, the following terms shall apply. The sole purpose of this policy is to avoid potential misunderstandings or disputes in the event that any part of our business, such as our products, websites, technologies or marketing strategies, seem similar to any of your submissions.

If you provide any submissions to us, you agree that: (1) we may use or redistribute any such submission and its contents for any purpose and in any way without any compensation to you; (2) there is no

obligation for us to review any submission; and (3) there is no obligation to keep any submission confidential.

## **No Spam, Spyware, or Spoofing**

We and our Users do not tolerate spam. You may not use the Site to send spam or otherwise send content that would violate the Terms.

## **Links to Third-Party Websites**

The Services may contain links to other websites operated by parties other than BUKU ("Third-Party Websites"). BUKU's links to such other Third-Party Websites is for

informational purposes only and does not imply any endorsement of the products, services or material on such Third-Party Websites or any association with their sponsors or operators. You access any Third-Party Websites at your own risk. We are not responsible in any way for such Third-Party Websites or resources. We will not have any liability as a result of your use of such Third-Party Websites and resources, and your use of such sites and resources will not be governed by these Terms.

## **Other Terms**

**General Compliance with Laws.** You shall comply with all applicable laws, statutes, ordinances and regulations regarding your use of the Services.

**Headings.** Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.

**Assignment.** This Agreement, the Terms, the Services and any modifications thereto may not be assigned or in any way transferred by you without the prior written consent of BUKU. BUKU may assign this Agreement, the Terms, and any information you provide without your consent, including, without limitation, in connection with a sale of its business, assets, a merger or other similar transaction.

**Governing Law.** The terms of this Agreement shall be construed in accordance with the substantive laws of the State of Maryland, United States of America, without giving effect to the principles of conflict or choice of law of such state. The original form of this Agreement has been written in English. The parties hereto waive any statute, law, or regulation that might provide an alternative law or forum or might require this Agreement to be written in any language other than English. This Agreement expressly excludes the United Nations Convention on Contracts for the International Sale of Goods.

**Choice of Forum and Venue.** You hereby consent to the exclusive jurisdiction and venue of courts in Baltimore City in the state of Maryland, U.S.A., in all disputes arising out of the Terms or relating to the use of the Service.

**No Responsibility for Acts of God.** BUKU shall not be liable for any delay or failure to perform in connection with any booking, Service or in the performance of any obligation hereunder, if such delay or failure is due to or in any manner caused by acts of God, rebellion, riots, hijacking, insurrection, civil

commotion, strikes or labor disputes, fires, floods, laws, regulations, acts, demands or and orders of any government or agency, seizure of the boat under legal process, adverse weather conditions, inability to obtain fuel, boat damage or loss, lack of essential parts or supplies, mechanical problems,

illness or incapacitation of crew members, denial of operating or docking approvals, clearances or permits by governmental authority, or any other cause which is beyond the control of BUKU. BUKU is hereby released by a User from any claim or demand for any direct or consequential damages arising out of failure to perform as a result of a force majeure event whether or not herein enumerated or other event referenced above.

**Severability.** If any provision of the Terms is found to be invalid, illegal or unenforceable by any court having competent jurisdiction, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby, and the remaining valid, legal, and enforceable provisions will be interpreted, to the extent possible, to achieve the purposes as originally expressed in the invalid, illegal, or unenforceable provision.

**Waiver.** No waiver of any of the Terms shall be deemed a waiver of any other such Terms set forth herein.

**Entire Agreement.** The Terms constitute the entire agreement between you and BUKU with respect to the subject matter covered herein, including use of the Services and any subject matter therein, and supersede all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter.

**Termination.** BUKU may immediately issue a warning, temporarily suspend, indefinitely suspend or terminate User's use of all or any portion of the Services if you breach the Terms, or at any time or for any reason, at the sole discretion of BUKU.

**Non-Endorsement.** BUKU does not recommend one Member over another and does not provide advice to users regarding which Member to select for the rentals. All comments or reviews posted by BUKU users, Renters, or Members on our Website do not represent the views of BUKU in any way and are not endorsed by BUKU absent a specific written statement to the contrary.

**No Relationship.** You agree that no joint venture, partnership, agency or employment relationship exists between you and BUKU as a result of this Agreement or use of this Website.

**Notice of Claim.** You agree that all disputes arising out of the Terms or the use of BUKU's Services shall be communicated to BUKU in writing within thirty (30) days from the date of the incident causally related to the dispute. You hereby waive your right to any claim against BUKU not communicated as provided by this Section.

Any rights not expressly granted herein are reserved by BUKU.