

OPENSpend (SALON ULTIMATE AND BOOKEDBY) – TERMS OF USE
Revised: August 19, 2020

1. ACCEPTANCE OF TERMS

OpenSpend, Inc. (“OpenSpend”) provides business management solutions under the names Salon Ultimate and BookedBy through its proprietary platform (the “OpenSpend System”). Any access to or use of the OpenSpend System is subject to the terms and conditions in this Terms of Use (“TOU”). OpenSpend may, at its discretion, update this TOU at any time. You may access and review the most current version of this TOU at www.salonultimate.com.

BY EXECUTING AN ORDER FORM THAT REFERS TO THIS TOU OR OTHERWISE ACCESSING OR USING THE OPENSpend SYSTEM, YOU AGREE TO BE BOUND BY THIS TOU, INCLUDING ANY UPDATES OR REVISIONS POSTED HERE OR OTHERWISE COMMUNICATED TO YOU. IF YOU ARE ENTERING INTO THIS TOU ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED AND LAWFULLY ABLE TO BIND SUCH ENTITY TO THIS TOU, IN WHICH CASE THE TERM “YOU” SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS TOU, YOU MAY NOT ACCESS OR USE THE OPENSpend SYSTEM.

2. OTHER AGREEMENTS

Your access to and use of the OpenSpend System is also subject to the applicable order form (“Order Form”) between you and OpenSpend referencing this TOU, the OpenSpend Privacy Policy, available at www.salonultimate.com and any usage or other policies relating to the OpenSpend System posted or otherwise made available to you by OpenSpend (if any) (collectively, “Additional Terms”). The Additional Terms are part of this TOU and are hereby incorporated by reference, and you agree to be bound by the Additional Terms.

3. GRANT OF RIGHTS

(a) During the Term (defined below), OpenSpend grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable right (i) to access and use the portions of the OpenSpend System designated in the applicable Order Form only in the form made available by OpenSpend; and (ii) to install, run and use the downloadable portions of the OpenSpend System designated in the applicable Order Form on computing devices that you own and control, in executable, machine-readable, object code form only.

(b) All rights granted to you under this TOU are subject to and conditioned upon your compliance with this TOU, including all Additional Terms, and may only be exercised by you for your internal business purposes.

(c) The rights granted to you under this TOU may be exercised by your employees, consultants, contractors, franchisees or agents for whom you have paid the applicable Fees and who have been supplied user identifications and passwords by OpenSpend at your request (“Authorized Users”); provided, that you remain responsible for your Authorized Users’ compliance with this TOU.

4. SUPPORT

OpenSpend shall: (i) use commercially reasonable efforts to maintain the security and integrity of the OpenSpend System; (ii) use commercially reasonable efforts to make OpenSpend System generally available 24 hours a day, 7 days a week, except for (a) planned downtime (of which OpenSpend shall give you at least eight (8) hours’ notice through the OpenSpend System, and which OpenSpend shall schedule to the extent reasonably practicable from Midnight to 7:00 a.m. Eastern Time), or (b) any unavailability caused by circumstances beyond OpenSpend's reasonable control, such as events of force majeure, computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within OpenSpend’s possession or reasonable control, and network intrusions or denial of service attacks; and (iii) provide you with general support in accordance with industry standards. OpenSpend will also use commercially reasonable efforts to assist you in installing the applicable portions of the OpenSpend System and in converting your data from the service being replaced by the OpenSpend System.

5. ACCOUNT; YOUR DEVICES

(a) You may not share your account or password with anyone. You are fully responsible for all activities that occur under your account, whether or not you authorized the particular use or user, and regardless of your knowledge of such use. You agree to notify OpenSpend immediately of any unauthorized use of your account or password or any other similar breach of security.

(b) You shall be solely responsible for obtaining, configuring and maintaining any hardware, network connectivity and third-party software required to access the OpenSpend System, including computers, operating systems, web browsers and storage devices. Additionally, you are solely responsible for any data, usage and other charges assessed by mobile, cable, internet or other communications services providers for your access to and use of the OpenSpend System.

6. RESPONSIBILITY FOR CONTENT

(a) You acknowledge and agree that all information, data, data records, databases, text, software, music, sounds, photographs, images, graphics, videos, messages, scripts, tags and other materials accessible through the OpenSpend System, whether publicly posted or privately transmitted ("Content"), are the sole responsibility of the person from whom such Content originated. This means that you, and not OpenSpend, are entirely responsible for all Content that you upload, post, email, transmit or otherwise make available through the OpenSpend System ("Your Content"), and other users of the OpenSpend System, and not OpenSpend, are similarly responsible for all Content they upload, post, email, transmit or otherwise make available through the OpenSpend System ("User Content").

(b) To the extent that you submit any Content, you represent and warrant that: (i) you have all necessary right and authority to grant the rights set forth in this TOU with respect to Your Content; (ii) Your Content does not violate any duty of confidentiality owed to another party, or the copyright, trademark, right of privacy, right of publicity or any other right of any other party; (iii) Your Content is not illegal, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, or libelous; and (iv) Your Content does not contain software viruses or any other code, files or programs designed to interrupt, destroy or limit the functionality of any software or hardware.

(c) You acknowledge and agree that OpenSpend has no obligation to pre-screen Content, although OpenSpend reserves the right in its sole discretion to pre-screen, refuse or remove any Content. Without limiting the generality of the foregoing sentence, OpenSpend shall have the right to remove any Content that violates this TOU.

(d) You acknowledge and agree that OpenSpend has no obligation to back up Your Content, and that you are solely responsible for backing up Your Content. You acknowledge and agree that you may not have access to Your Content through OpenSpend or the OpenSpend System following the expiration or termination of this TOU.

7. RIGHTS TO CONTENT

(a) OpenSpend does not claim ownership of Your Content. However, you grant OpenSpend and its service providers a worldwide, royalty-free, fully-paid-up, non-exclusive, sublicensable, transferable license to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make and have made Your Content (in any form and any medium, whether now known or later developed) as necessary to (i) provide access to the OpenSpend System to you and other users; and (ii) monitor and improve the OpenSpend System.

(b) Except with respect to Your Content, you acknowledge and agree that, as between you and OpenSpend, OpenSpend owns all rights, title and interest (including all intellectual property rights) in the OpenSpend System, and all improvements, enhancements or modifications thereto, including all Content and other materials therein. The OpenSpend System is protected by U.S. and international copyright, trademark, patent and other intellectual property laws and treaties. OpenSpend reserves all rights not expressly granted to you.

(c) As used herein, "Aggregate Data" means Your Content that has been aggregated in a manner that does not reveal any personal information and cannot reasonably be used to identify you, your organization or its customers or vendors as the source of such data. You acknowledge and agree that OpenSpend may collect or

generate Aggregate Data in connection with providing you with access to or use of the OpenSpend System, and you hereby grant OpenSpend and its service providers a perpetual, irrevocable, worldwide, royalty-free, fully-paid-up, non-exclusive, sublicensable, transferable license to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make and have made Aggregate Data (in any form and any medium, whether now known or later developed) for any lawful purpose.

8. RESTRICTIONS

(a) Except with respect to Your Content and subject to the limited rights expressly granted to you in Section 3, you may not: (i) use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make, have made, assign, pledge, transfer or otherwise grant rights to the OpenSpend System; (ii) reverse engineer, disassemble, decompile or translate, or otherwise attempt to derive the source code, architectural framework or data records of any software within or associated with the OpenSpend System; (iii) frame or utilize any framing technique to enclose any Content; (iv) access the OpenSpend System for the purpose of developing, marketing, selling or distributing any product or service that competes with or includes features substantially similar to the OpenSpend System or any products or services offered by OpenSpend; (v) rent, lease, lend, sell or sublicense any portion of the OpenSpend System or otherwise provide access to the OpenSpend System as part of a service bureau or similar fee-for-service purpose; (vi) remove or obscure any proprietary notice that appears within the OpenSpend System; or (vii) use the OpenSpend System in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

(b) In connection with your access to or use of the OpenSpend System, you shall not: (i) impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with any person or entity; (ii) take any action that imposes an unreasonable or disproportionately heavy load on the OpenSpend System or its infrastructure; (iii) use spiders, crawlers, robots, scrapers, automated tools or any other similar means to access the OpenSpend System, or substantially download, reproduce or archive any portion of the OpenSpend System; (iv) or (v) violate any applicable local, state, provincial, federal or international law or regulation.

9. FEES

(a) In consideration of the rights granted to you by OpenSpend and OpenSpend's provision of the OpenSpend System, you shall pay the fees specified in the applicable Order Form ("Fees"). All Fees are quoted in United States dollars, and do not include any local, state, federal or foreign taxes, levies or duties of any nature ("Taxes"). You are responsible for paying and reporting all applicable Taxes including sales and use taxes. Fees may be increased anytime at Company's sole discretion. Fees are non-refundable and the number of physical locations designated in the applicable Order Form cannot be decreased during the relevant subscription Term stated on the Order Form.

(b) Late payments will result in late charges that accrue at the rate of one and one half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date it is fully paid. Your access to the OpenSpend System may be suspended or terminated if you do not make payment on time or in full or if you exceed your entitlements (as set forth in the applicable Order Form).

(c) Other than: (i) SMS Fees which will be invoiced one month in arrears; (ii) Installation Fees which must be paid on or before the date that an installation is scheduled to occur; and (c) as otherwise provided in an Order Form, Fees will be invoiced and will be due in advance of the subscription Term.

10. SUGGESTIONS

If you elect to provide or make available to OpenSpend any suggestions, comments, ideas, improvements or other feedback relating to the OpenSpend System ("Suggestions"), you hereby grant OpenSpend and its service providers a perpetual, irrevocable, worldwide, royalty-free, fully-paid-up, non-exclusive, sublicensable, transferable license, to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make, have made, assign, pledge, transfer or otherwise grant rights in your Suggestions in any form and any medium (whether now known or later developed), without credit or compensation to you.

11. LINKS AND EXTERNAL MATERIALS

The OpenSpend System or users of the OpenSpend System may provide links or other connections to other websites or resources. You acknowledge and agree that OpenSpend does not endorse and is not responsible for any content, advertising, products, services or other materials on or available through such sites or resources (“External Materials”). External Materials are subject to different terms of use and privacy policies. You are responsible for reviewing and complying with such terms of use and privacy policies. You further acknowledge and agree that OpenSpend shall not be liable for any damage or loss resulting from or arising out of use of or reliance on any External Materials.

12. MODIFICATIONS TO THE OPENSPEND SYSTEM

Subject to any Additional Terms, OpenSpend reserves the right to modify, suspend or discontinue the OpenSpend System or any product or service to which it connects, with or without notice, and OpenSpend shall not be liable to you or to any third party for any such modification, suspension or discontinuance. OpenSpend may at its sole discretion from time to time develop patches, bug fixes, updates, upgrades and other modifications to improve the performance of the OpenSpend System or related services (“Updates”). OpenSpend may develop Updates that require installation by you before you continue to access or use the OpenSpend System or related services. Updates may also be automatically installed without providing any additional notice to you or receiving any additional consent from you. The manner in which Updates may be automatically downloaded and installed is determined by settings on your device and its operating system.

13. INDEMNIFICATION

(a) OpenSpend shall indemnify, defend and hold you harmless against any loss, damage, cost, liability and expense (including reasonable attorneys’ fees) finally awarded by a court of competent jurisdiction or paid in settlement to the extent arising from any action or claim of a third party (collectively, “Losses”) asserting that your use of the OpenSpend System infringes the intellectual property of such third party; provided, however, that OpenSpend shall have no obligation to indemnify you from any Losses to the extent they arise from: (i) your use of the OpenSpend System in any manner that does not comply in all material respects with the terms and conditions of this TOU or applicable laws or regulations; (ii) use of the OpenSpend System in combination with any hardware or software not provided or approved by OpenSpend; (iii) modifications to the OpenSpend System made by any party other than OpenSpend; or (iv) Your Content. In the event that any part of the OpenSpend System becomes the subject of a Loss or OpenSpend reasonably determines that any part of the OpenSpend System is likely to become the subject of a Loss, OpenSpend may, at its sole discretion: (1) procure a license for you as necessary for you to exercise the rights granted by OpenSpend under this TOU; (2) modify or replace the OpenSpend System to avoid infringement, provided, however, that the OpenSpend System as modified or replaced retains materially the same or better features and functionality; or (3) terminate this TOU and provide a pro rata refund of the fees you have paid to OpenSpend for the unused portion of the Term. This Section states your sole and exclusive remedy for claims of intellectual property infringement.

(b) You shall indemnify, defend and hold OpenSpend and its affiliates, and each of their officers, directors, employees, agents, partners and licensors (collectively, “OpenSpend Parties”) harmless from and against any Losses resulting from or arising out of: (a) Your Content; (b) your violation of this TOU, any law or regulation, or any rights (including intellectual property rights) of another party; or (c) your use of the OpenSpend System.

14. DISCLAIMER OF WARRANTIES

(a) THE OPENSPEND SYSTEM IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, AND “WITH ALL FAULTS.” TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE OPENSPEND PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED OR ARISING FROM STATUTE, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. OPENSPEND PARTIES MAKE NO WARRANTY OR REPRESENTATION THAT: (i) THE OPENSPEND SYSTEM WILL MEET YOUR REQUIREMENTS; OR (ii) ACCESS TO THE OPENSPEND SYSTEM WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE.

15. LIMITATION OF LIABILITY

EXCEPT TO THE EXTENT OF OPENSPEND'S INDEMNIFICATION OBLIGATIONS UNDER THIS TOU, THE OPENSPEND PARTIES SHALL NOT BE LIABLE FOR ANY LOST PROFITS OR COST OF COVER, OR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES ARISING FROM ANY TYPE OR MANNER OF COMMERCIAL, BUSINESS OR FINANCIAL LOSS, EVEN IF THE OPENSPEND PARTIES HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE. IN NO EVENT SHALL THE OPENSPEND PARTIES' TOTAL LIABILITY TO YOU FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS TOU OR YOUR ACCESS TO OR USE OF (OR INABILITY TO ACCESS OR USE) THE OPENSPEND SYSTEM EXCEED THE AMOUNT PAID BY YOU TO OPENSPEND FOR ACCESS TO THE OPENSPEND SYSTEM WITHIN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE APPLICABLE CLAIM AROSE.

16. TERM; TERMINATION

(a) The term of this Agreement shall begin upon the earlier of your access to the OpenSpend System or the effective date specified in the applicable Order Form, and continue in effect until the conclusion of the term specified in the applicable Order Form, unless earlier terminated in accordance with this TOU (the "Term"). Unless otherwise specified in the applicable Order Form, each Order Form shall automatically renew for successive terms equal in duration to the initial Term, subject to your payment of all applicable fees, unless you give written notice of non-renewal to OpenSpend within thirty (30) days before the conclusion of the then current Term.

(b) Notwithstanding anything to the contrary, this TOU or any applicable Order Form may be terminated as follows: (i) by the non-breaching party upon a material breach of this TOU by the other party, which breach is not cured within thirty (30) days after receipt of written notice from the non-breaching party; (ii) by either party in the event the other party becomes insolvent or bankrupt; becomes the subject of any proceedings under bankruptcy, insolvency or debtor's relief law; has a receiver or manager appointed; makes an assignment for the benefit of creditors; or takes the benefit of any applicable law or statute in force for the winding up or liquidation of such party's business; or (iii) by OpenSpend for any or no reason upon sixty (60) days' written notice (in which case OpenSpend shall refund any of your prepaid but unused fees).

(c) Upon termination of this TOU or the applicable Order Form for any reason: (i) you must immediately uninstall and cease using the OpenSpend System; (ii) OpenSpend may remove and discard Your Content and delete your user account; (iii) any provision that, by its terms, is intended to survive the expiration or termination of this TOU shall survive such expiration or termination; and (iv) all rights granted to you under this TOU shall immediately terminate, but all other provisions shall survive termination.

17. GOVERNING LAW AND JURISTITION

This TOU shall be governed by and construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this TOU. You and OpenSpend agree any dispute or claim arising out of or relating in any way to this TOU or your access to or use of the OpenSpend System, including the validity, applicability, or interpretation of this TOU (collectively, an "Action") shall be brought only in a court of competent jurisdiction in Austin, Texas. Each Party hereby submits to the personal jurisdiction and venue of such courts and waives any objection on the grounds of venue, forum non-conveniens or any similar grounds with respect to any Action.

18. EXPORT COMPLIANCE

The OpenSpend System is subject to U.S. export laws and applicable laws of other countries. You shall strictly comply with all such laws and assume responsibility to obtain licenses to export, re-export, or import as may be required. You agree not to export or re-export to entities on the most current U.S. export exclusion lists or to any country subject to U.S. embargo or terrorist controls as specified in the U.S. export laws. You represent and warrant that You are not identified on any U.S. Government export exclusions list, including without limitation the Denied Persons List of the U.S. Department of Commerce.

19. MISCELLANEOUS

(a) Third-Party Software. Some components of the OpenSpend System may be provided with or have incorporated into them third-party software ("Third-Party Software"), which may include open source software. OpenSpend is not the author or owner of Third-Party Software. You acknowledge and agree that: (i) OpenSpend has no proprietary interest in any Third-Party Software; (ii) to the extent permitted by applicable law and notwithstanding anything to the contrary in this TOU, any Third Party Software is provided "AS IS" with all faults, and neither the licensor of such Third-Party Software nor OpenSpend shall be liable for any direct, indirect, incidental, or consequential damages related to such Third Party Software or the use thereof; and (iii) such Third-Party Software may be subject to separate license restrictions and obligations set forth in the respective license agreements related to such software.

(b) Entire Agreement. This TOU (together with the Additional Terms) constitutes the entire agreement between you and OpenSpend concerning your access to and use of the OpenSpend System. It supersedes all prior and contemporaneous oral or written negotiations and agreements between you and OpenSpend with respect to such subject matter. In the event of any conflict between or among this TOU and any Additional Terms, the order of precedence shall be the Order Form then this TOU.

(c) No Third-Party Beneficiaries. You agree that, except for OpenSpend Parties and as otherwise expressly provided in this TOU, there shall be no third-party beneficiaries to this TOU.

(d) Notices. All notices under this TOU shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; or (iii) the second business day after sending by confirmed email. Notices to Company shall be addressed to the attention of its President with a copy to legal@salonultimate.com.

(e) Audit. OpenSpend may monitor and perform on-site and remote audits of your use of the OpenSpend System, for the purpose of verifying your compliance with this TOU.

(f) Amendment; Interpretation; Waiver. This TOU may not be amended by you except in a writing executed by you and an authorized representative of OpenSpend. For the purposes of this TOU, the words "such as," "include," "includes" and "including" shall be deemed to be followed by the words "without limitation." If any provision of this TOU is held to be invalid or unenforceable under applicable law, then such provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, without in any way affecting the remaining parts of this TOU. The failure of OpenSpend to exercise or enforce any right or provision of this TOU shall not constitute a waiver of such right or provision.

(g) Assignment. You may not assign or delegate any right or obligation under this TOU without the prior written consent of OpenSpend.

(h) Force Majeure. Any prevention of or delay in performance by OpenSpend hereunder due to labor disputes, acts of god, governmental restrictions, enemy or hostile governmental action, fire or other casualty or other causes beyond its reasonable control shall excuse the performance of its obligations for a period equal to the duration of any such prevention or delay.

(i) Government Use. This section applies to access to or use of the OpenSpend System by a branch or agency of the United States Government. The OpenSpend System includes "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and qualifies as "commercial items" as defined in 48 C.F.R. 2.101. Such items are provided to the United States Government: (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3. The United States Government shall acquire only those rights set forth in this TOU with respect to the such items, and any access to or use of the OpenSpend System by the United States Government constitutes: (a) agreement by the United States Government that that such items are "commercial computer software" and "commercial computer software documentation" as defined in this section; and (b) acceptance of the rights and obligations herein.

(j) Publicity. Notwithstanding anything contained in this TOU (including the Additional Terms), OpenSpend shall have the right to reference you and the nature of the OpenSpend System provided hereunder OpenSpend's business development and marketing efforts, including without limitation adding your logo to the OpenSpend website, creating case studies, presentations, articles and similar materials using non-confidential information, statistics and materials developed and learned by Company during its performance hereunder (the "Case Materials") and, upon your review and approval of such Case Materials, which approval shall not be unreasonably withheld or delayed, to utilize Case Materials in award programs, public speaking engagements, publications and similar uses.