

# SHERPA

## TERMS OF SERVICE

By using the SHERPA mobile application and associated services (the "**App**" or the "**App**"), you are agreeing with Travel Sherpa, Inc. (the "**Company**", "we" or "us") to be bound by the following terms and conditions (these "**Terms of Service**"). If you do not agree with these Terms of Service, please delete and do not use the App.

The App is an online platform for your mobile device that lets you discover places around the world through others' photos and where those photos were taken. The App connects to your Instagram® account and/or your device's camera and photos to pull the photos of App users' ("**Users**") photos and any location data attached to them. Travel Sherpa, Inc. is in no way affiliated with Instagram, LLC, Facebook, Inc. or any of their parents, subsidiaries or affiliated companies.

### BASIC TERMS

1. You must be at least 13 years old to use the App.
2. You must comply with all applicable terms of service for applications that are connected to the App, including, but not limited to, the Instagram® application.
3. You are responsible for any activity that occurs through your account, and you agree you will not sell, transfer, license or assign your account, followers, username, or any account rights. You agree that you will not create an account for anyone other than yourself.
4. You agree that you will not solicit, collect or use the login credentials of other Users.
5. You are responsible for keeping your password secret and secure.
6. You must not defame, stalk, bully, abuse, harass, threaten, impersonate or intimidate people or entities and you must not post private or confidential information via the App.
7. You may not use the App for any illegal or unauthorized purpose. You agree to comply with all laws, rules and regulations (for example, federal, state, local and provincial) applicable to your use of the App and your Content (defined below), including but not limited to, copyright laws.
8. You are solely responsible for your conduct and any data, text, files, information, usernames, images, graphics, photos, profiles, audio and video clips, sounds, musical works, works of authorship, applications, links and other content or materials (collectively, "**Content**") that you submit, post or display on or via the App.
9. You must not change, modify, adapt or alter the App or change, modify or alter another website or mobile application so as to falsely imply that it is associated with the App or the Company.
10. You must not create or submit unwanted email, comments, likes or other forms of commercial or harassing communications (a/k/a "spam") to the Users.

11. You must not interfere or disrupt the App or servers or networks connected to the App.
12. You must not create accounts with the App through unauthorized means, including but not limited to, by using an automated device, script, bot, spider, crawler or scraper.
13. You must not attempt to restrict another user from using or enjoying the App nor facilitate violations of these Terms of Service.

## GENERAL CONDITIONS

1. We reserve the right to modify or terminate the App or your access to the App and your App username for any reason, without notice, at any time, and without liability to you. You can deactivate your App account by logging into the App, going to your profile and choosing 'delete account'. If we terminate your access to the App or you deactivate your account, your photos, comments, likes, friendships, and all other data will no longer be accessible through your account, but those materials and data may temporarily persist and appear within the App.
2. Upon termination, all licenses and other rights granted to you in these Terms of Service will immediately cease.
3. We reserve the right, in our sole discretion, to change these Terms of Service ("**Updated Terms**") from time to time by posting new Terms of Service to this URL and using reasonable efforts to notify you via the email attached to your Instagram® account, or any other email you have directly provided to the Company. You agree that we may notify you of the Updated Terms by posting them on the App, and that your use of the App after the effective date of the Updated Terms (or engaging in such other conduct as we may reasonably specify) constitutes your agreement to the Updated Terms. Therefore, you should review these Terms of Service and any Updated Terms before using the App. The Updated Terms will be effective as of the time of posting, or such later date as may be specified in the Updated Terms, and will apply to your use of the App from that point forward. These Terms of Service will govern any disputes arising before the effective date of the Updated Terms.
4. We may, but have no obligation to, remove, edit, block, and/or monitor Content or accounts containing Content that we determine in our sole discretion violates these Terms of Service.
5. You are solely responsible for your interaction with other Users, whether online or offline. You agree that the Company is not responsible or liable for the conduct of any User. The Company reserves the right, but has no obligation, to monitor or become involved in disputes between you and other users. Exercise common sense and your best judgment when interacting with others, including when you submit or post Content or any personal or other information.
6. There may be links from the App, or from communications you receive from the App, to third-party web sites or features. There may also be links to third-party websites or features in images or comments within the App. The App also includes third-party content that we do not control, maintain or endorse. Functionality on the App may also permit interactions between the App and a third-party website or feature, including applications that connect

the App or your profile on the App with a third-party web site or feature. You expressly acknowledge and agree that the Company is in no way responsible or liable for any such third-party services or features or any interactions you may have with Users via the App.

7. We prohibit crawling, scraping, caching or otherwise accessing any content on the App via automated means, including but not limited to, user profiles and photos (except as may be the result of standard search engine protocols or technologies used by a search engine with the Company's express consent).

## RIGHTS

1. The Company does not claim ownership of any Content that you post on or through the App. By posting Content to the App, however, you hereby grant to the Company a nonexclusive, fully paid and royalty-free, transferable, sub-licensable, worldwide license to use the Content that you post on or through the App, subject to the App's Privacy Policy, available here [www.trysherpa.com/privacy.pdf](http://www.trysherpa.com/privacy.pdf) . You can choose who can view your Content and activities, including your photos, as described in the Privacy Policy.
2. The Company may place ads on the App.
3. You acknowledge that we may not always identify paid services, sponsored content, or commercial communications as such.
4. You represent and warrant that: (i) you own the Content posted by you on or through the App or otherwise have the right to grant the rights and licenses set forth in these Terms of Service; (ii) the posting and use of your Content on or through the App does not violate, misappropriate or infringe on the rights of any third party, including, without limitation, privacy rights, publicity rights, copyrights, trademark and/or other intellectual property rights; (iii) you agree to pay for all royalties, fees, and any other monies owed by reason of Content you post on or through the App; and (iv) you have the legal right and capacity to enter into these Terms of Service in your jurisdiction.
5. The App contains content owned or licensed by the Company (the "**Company Content**"). The Company Content, including but not limited to the App's source code, design, trade name and logo, is protected by copyright, trademark, patent, trade secret and other laws, and, as between you and the Company, the Company owns and retains all rights in the Company Content and the App. You will not remove, alter or conceal any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Company Content, and you will not reproduce, modify, adapt, prepare derivative works based on, perform, display, publish, distribute, transmit, broadcast, sell, license or otherwise exploit the Company Content.
6. The Company may suspend its service through the App for any reason, including, without limitation, for scheduled maintenance or upgrades, for emergency repairs, or due to failure of telecommunications links and/or equipment. Also, the Company reserves the right to remove any Content from the App for any reason, without prior notice. You acknowledge that no Internet communication is 100% secure and that you communicate over the Internet at your own risk.

7. You agree that the Company is not responsible for, and does not endorse, Content posted within the App. The Company does not have any obligation to prescreen, monitor, edit, or remove any Content. If your Content violates these Terms of Service, you may bear legal responsibility for that Content.
8. Except as otherwise described in the App's Privacy Policy, available at <http://trysherpa.com/privacy.pdf>, as between you and the Company, any Content will be non-confidential and non-proprietary. You acknowledge and agree that your relationship with the Company is not a confidential, fiduciary, or other type of special relationship.
9. If you choose to send us content, information, ideas, suggestions, or other material feedback for our software, you agree that the Company is free to use any such content, information, ideas, suggestions or other materials, for any purposes whatsoever, including, without limitation, developing and marketing products and services, without any liability or payment of any kind to you.
10. Company hereby reserves all rights not expressly granted to you here.

#### REPORTING COPYRIGHT AND OTHER IP VIOLATIONS

If content you own or have rights to has been posted to the App without your permission and you want it removed, please contact our designated agent listed below, preferably by email. Your notice must include the following information:

- Physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed (or if multiple copyrighted works located on the App are covered by a single notification, a representative list of such works);
- Identification of the material that is claimed to be infringing or the subject of the infringing activity and information reasonably sufficient to allow us to locate the material on the App;
- The name, address, telephone number, and email address of the complaining party;
- A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner of the law; and
- A statement that the information in the notification is accurate and is given under penalty of perjury, and that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

**Designated Agent:**

Travel Sherpa Inc.  
110 Wall Street, #3020  
New York, NY 10005  
Attn: DMCA Agent  
Email: [support@trysherpa.com](mailto:support@trysherpa.com)

If your content infringes another person's US copyright, we will remove it if we receive proper notice under the Digital Millennium Copyright Act, or "DMCA" (see 17 USC s.512(c)(3)). If you believe in good

faith that a notice of copyright infringement has been wrongly filed against you, the DMCA permits you to send us a counter-notice. Please see <http://www.copyright.gov> for details.

You may also undergo the process above for complaints in connection with alleged trademark infringement or infringement with respect to your rights of privacy or publicity.

#### DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY

THE APP, INCLUDING, WITHOUT LIMITATION, THE COMPANY CONTENT, IS PROVIDED ON AN "AS IS", "AS AVAILABLE" AND "WITH ALL FAULTS" BASIS. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, AND UNLESS OTHERWISE STATED IN THESE TERMS OF SERVICE, NEITHER THE COMPANY NOR ITS PARENT OR AFFILIATED COMPANIES, NOR ANY OF THEIR EMPLOYEES, MANAGERS, OFFICERS OR AGENTS (COLLECTIVELY, THE "**COMPANY PARTIES**") MAKE ANY REPRESENTATIONS OR WARRANTIES OR ENDORSEMENTS OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AS TO: (A) THE APP; (B) THE COMPANY CONTENT; (C) USER CONTENT; OR (D) SECURITY ASSOCIATED WITH THE TRANSMISSION OF INFORMATION TO THE COMPANY OR VIA THE APP. IN ADDITION, THE COMPANY PARTIES HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION AND FREEDOM FROM COMPUTER VIRUS.

UNDER NO CIRCUMSTANCES WILL THE COMPANY PARTIES BE LIABLE TO YOU FOR ANY LOSS OR DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, FOR ANY DIRECT, INDIRECT, ECONOMIC, EXEMPLARY, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES) THAT ARE DIRECTLY OR INDIRECTLY RELATED TO: (A) THE APP; (B) THE COMPANY CONTENT; (C) USER CONTENT; (D) YOUR USE OF, INABILITY TO USE, OR THE PERFORMANCE OF THE SERVICE, OR ANY OTHER APP MALFUNCTION, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, LOSS OF DATA, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, EVEN IF FORESEEABLE OR EVEN IF THE COMPANY PARTIES HAVE BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR TORT (INCLUDING, WITHOUT LIMITATION, WHETHER CAUSED IN WHOLE OR IN PART BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS FAILURE, OR THEFT OR DESTRUCTION OF THE SERVICE). IN NO EVENT WILL THE COMPANY PARTIES TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OR ACTION EXCEED ONE HUNDRED UNITED STATES DOLLARS (\$100.00).

YOU EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND ANY SIMILAR LAW OF ANY STATE OR TERRITORY, WHICH PROVIDES AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

#### INDEMNIFICATION

You (and also any third party for whom you operate an account or activity on the App) agree to defend (at the Company's request), indemnify and hold the Company Parties harmless from and against any claims, liabilities, damages, losses, and expenses, including without limitation, reasonable attorney's fees and costs, arising out of or in any way connected with any of the following (including as a result of your direct activities on the App or those conducted on your behalf): (i) your Content or your access to or use of the App; (ii) your breach or alleged breach of these Terms of Service; (iii) your violation of any third-party right, including without limitation, any intellectual property right, publicity, confidentiality, property or privacy right; or (iv) your violation of any laws, rules, regulations, codes, statutes, ordinances or orders of any governmental and quasi-governmental authorities, including, without limitation, all regulatory, administrative and legislative authorities. You will cooperate as fully required by the Company in the defense of any claim. The Company reserves the right to assume the exclusive defense and control of any matter subject to indemnification by you, and you will not in any event settle any claim without the prior written consent of the Company.

#### GOVERNING LAW & VENUE

These Terms of Service are governed by and construed in accordance with the laws of the State of New York, without giving effect to any principles of conflicts of law AND WILL SPECIFICALLY NOT BE GOVERNED BY THE UNITED NATIONS CONVENTIONS ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, IF OTHERWISE APPLICABLE. You agree to resolve any dispute you have with The Company exclusively in a state or federal court located in New York County, New York, and to submit to the personal jurisdiction of the courts located in New York County for the purpose of litigating all such disputes.

If any provision of these Terms of Service is held to be unlawful, void, or for any reason unenforceable during arbitration or by a court of competent jurisdiction, then that provision will be deemed severable from these Terms of Service and will not affect the validity and enforceability of any remaining provisions. The Company's failure to insist upon or enforce strict performance of any provision of these Terms will not be construed as a waiver of any provision or right. No waiver of any of these Terms will be deemed a further or continuing waiver of such term or condition or any other term or condition. The Company reserves the right to change this dispute resolution provision, but any such changes will not apply to disputes arising before the effective date of the amendment. This dispute resolution provision will survive the termination of any or all of your transactions with the Company.

#### ENTIRE AGREEMENT

These Terms of Service, together with the Travel Sherpa, Inc. Privacy Policy, constitute the entire agreement between you and the Company (the "Agreement") and governs your use of the App, superseding any prior or contemporaneous agreements between you and the Company. You will not assign the Agreement or assign any rights or delegate any obligations hereunder, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of the Company. Any purported assignment or delegation by you without the appropriate prior written consent of the Company will be null and void. The Company may assign the Agreement or any rights hereunder without your consent. If any provision of the Agreement is found by a court of competent jurisdiction to be

invalid or otherwise unenforceable, the parties nevertheless agree that such portion will be deemed severable from the Agreement and will not affect the validity and enforceability of the remaining provisions, and the remaining provisions of the Agreement remain in full force and effect. Neither the course of conduct between the parties nor trade practice will act to modify the Agreement. The Agreement does not confer any third-party beneficiary rights.

The effective date of these Terms of Service is May 23, 2017.