

## **PARKIFI TERMS OF SERVICE**

**This Terms of Service** (the “**Agreement**”) applies to your use of the ParkiFi software App (“**App**”) for mobile devices that was created by ParkiFi, Inc. (“**ParkiFi**”). **By registering with ParkiFi, installing the App and/or using the App, you indicate your acceptance of all of the terms and conditions contained in this Agreement. We may amend this Agreement as described in the “Amendments” section below.** Many terms used in this Agreement are defined at the end of the Agreement.

THE TERMS OF SERVICE INCLUDE A CLASS ACTION WAIVER AND A WAIVER OF JURY TRIALS, AND REQUIRE BINDING ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES.

THE TERMS OF SERVICE LIMIT THE REMEDIES THAT MAY BE AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

### **1. Service and Accounts.**

**1.1 About ParkiFi App.** The App is a mobile parking solution application that helps the user find a parking spot at participating parking facilities, and may also provide parking payment functionality and authorization for entry to and exit from certain parking facilities. You must comply with the instructions and requirements contained in all ParkiFi documentation and in the App. You hereby consent to any processing of your Personal Data as described in the ParkiFi Privacy Policy.

**1.2 Eligibility.** To be eligible to use the App (and to be a User), you must be of the legal age to hold a driver’s license and capable of entering into binding contracts. You may use the App on behalf of a legal entity (such as a corporation) on the condition that you have the power to bind the legal entity to this Agreement. Children under the age of thirteen (13) are not eligible to use the App and must not submit any personal information to us.

**1.3 Authorized Users.** You are the sole authorized user of your Account. **You hereby acknowledge and agree that you (as the registering person) will be responsible for and liable for all activities of your Account.**

**1.4 Identity Authentication.** You must provide accurate, complete, and up-to-date information when registering for your Account, and you agree to maintain the accuracy, completeness, and currency of your account information. From time to time, ParkiFi may need to validate your identity. This may include asking you for further information, requiring you to take steps to confirm ownership of your email address, and verifying your Information against third party databases or through other sources.

**1.5 Fees.** ParkiFi does not charge a fee for use of the App (but reserves the right (subject to the “Amendments” section below) to charge for use of all or certain parts of the App). You are responsible for any fees charged by your mobile phone service provider, including those for text messaging (e.g., SMS) and data usage. If you choose to make payments for parking via the App, you hereby authorize ParkiFi to charge the credit card you provide and agree to pay the fees described in the App. We may require that you provide us with a valid credit card (Visa,

MasterCard, or any other issuer accepted by us) as a condition to signing up for the App and ParkiFi services. Your card issuer agreement governs your use of the designated credit card or PayPal account, and you must refer to that agreement and not the Terms to determine your rights and liabilities. By providing ParkiFi with your credit card number and associated payment information, you agree that ParkiFi is authorized to immediately charge you for all fees and charges due and payable to ParkiFi hereunder and that no additional notice or consent is required. You agree to immediately notify ParkiFi of any change in your billing address or the credit card used for payment hereunder. ParkiFi reserves the right at any time to change its prices and billing methods, either immediately upon posting on the App or by e-mail delivery to you.

**1.6 How to Close Your Account.** You may close your Account at any time by deleting or un-installing the App. You will remain liable for all outstanding payments related to your Account even after the Account is closed.

**2. Downloadable Software.** When you download the App or any ParkiFi software onto your mobile device, this section applies.

**2.1 License.** Subject to the terms and conditions of this Agreement, ParkiFi grants you a non-transferable, revocable, non-exclusive, non-sublicensable, royalty-free license to reproduce (solely to install and execute) the App on one (1) mobile device (such as a smartphone), in executable object code format only, solely to access the App. We may notify you that we have released an updated version of the App. Promptly upon your receipt of such notification, you agree to download the updated version of the App and to use such version instead of the prior version.

**2.2 Restrictions.** You will not license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose or otherwise commercially exploit or make the App available to any third party. You will not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the App. Except as expressly stated herein, no part of the App may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording or other means. The App is licensed, not sold. You acknowledge that, except for the limited license rights expressly provided in this Agreement, no right, title, or interest to the intellectual property in any ParkiFi software is provided to you.

**3. Restricted Activities.** In connection with your use of our website, your Account, or the App, or in the course of your interactions with ParkiFi, you will not:

(a) Violate any law, statute, ordinance, or regulation (for example, those governing financial services, consumer protections, unfair competition, anti-discrimination or false advertising);

(b) Infringe ParkiFi's or any third party's copyright, patent, trademark, trade secret or other intellectual property rights, or rights of publicity or privacy;

(c) Provide false, inaccurate or misleading Information;

(d) Use any robot, spider, other automatic device, or manual process to monitor or copy our website or App without our prior written permission;

(e) Take any action that may cause us to lose any of the services from our internet service providers, payment processors, or other suppliers; or

(f) Reverse engineer the ParkiFi software or App, or access any ParkiFi software for purposes of creating a competitive product or service.

**4. Responsibility for Access.** You will be responsible for maintaining the confidentiality of your Account information. You will be solely responsible and liable for any and all access to and use of the App by you or any other person via your Account. Notwithstanding the foregoing, you will not be responsible for losses resulting from improper Account access to the extent such losses are directly attributable to the gross negligence or willful misconduct of ParkiFi.

## **5. Termination.**

**5.1 Term.** The Agreement commences on the date when you accept them (as described in the preamble above) and remain in full force and effect while you use the App, unless terminated earlier in accordance with the Agreement.

**5.2 Termination of Services by ParkiFi.** If you have materially breached any provision of the Agreement, ParkiFi has the right to, immediately and without notice, suspend or terminate any Services provided to you. You agree that all terminations for cause shall be made in ParkiFi's sole discretion and that ParkiFi shall not be liable to you or any third party for any termination of your Account.

**5.3 Termination of Services by You.** If you want to terminate the Services provided by ParkiFi, you may do so by (a) notifying ParkiFi at any time and (b) closing your Account for all of the Services that you use. Your notice should be sent, in writing, to ParkiFi's address set forth below.

**5.4 Effect of Termination.** Termination of any Service includes removal of access to such Service and barring of further use of the Service. Termination of all Services also includes deletion of your password and all related information, files and content associated with or inside your Account (or any part thereof), including your content. Upon termination of any Service, your right to use such Service will automatically terminate immediately. ParkiFi will not have any liability whatsoever to you for any suspension or termination, including for deletion of your content. All provisions of the Agreement which by their nature should survive, shall survive termination of Services, including without limitation, ownership provisions, warranty disclaimers, and limitation of liability.

## **6. Disputes.**

**6.1 Dispute Resolution.** Please read this Arbitration Agreement carefully. It is part of your contract with ParkiFi and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.

**6.2 Applicability of Arbitration Agreement.** All claims and disputes (excluding claims for injunctive or other equitable relief as set forth below) in connection with the Agreement or the use of any product or service provided by ParkiFi that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis under the terms of this Arbitration Agreement. Unless otherwise agreed, all arbitration proceedings shall be held in English. This Arbitration Agreement applies to you and ParkiFi, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or goods provided under the Agreement.

**6.3 Notice Requirement and Informal Dispute Resolution.** Before either party may seek arbitration, the party must first send to the other party a written Notice of Dispute (“**Notice**”) describing the nature and basis of the claim or dispute, and the requested relief. A Notice to ParkiFi should be sent to: ParkiFi, Inc., 1451 Larimer Street, Denver, CO 80202. After the Notice is received, you and ParkiFi may attempt to resolve the claim or dispute informally. If you and ParkiFi do not resolve the claim or dispute within thirty (30) days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.

**6.4 Arbitration Rules.** Arbitration shall be initiated through JAMS, an established alternative dispute resolution provider (“**ADR Provider**”) that offers arbitration as set forth in this section. If JAMS is not available to arbitrate, the parties shall agree to select an alternative ADR Provider. The rules of the ADR Provider shall govern all aspects of the arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with the Agreement. The arbitration shall be conducted by a single, neutral arbitrator. Any claims or disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US \$10,000.00) may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US \$10,000.00) or more, the right to a hearing will be determined by the Arbitration Rules. Any hearing will be held in a location within 100 miles of your residence, unless you reside outside of the United States, and unless the parties agree otherwise. If you reside outside of the U.S., the arbitrator shall give the parties reasonable notice of the date, time and place of any oral hearing. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Each party shall bear its own costs (including attorneys’ fees) and disbursements arising out of the arbitration and shall pay an equal share of the fees and costs of the ADR Provider.

**6.5 Additional Rules for Non-Appearance Based Arbitration.** If non-appearance based arbitration is elected, the arbitration shall be conducted by telephone, online and/or based solely on written submissions; the specific manner shall be chosen by the party initiating the arbitration. The arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise agreed by the parties.

**6.6 Time Limits.** If you or ParkiFi pursues arbitration, the arbitration action must be initiated and/or demanded within the statute of limitations (i.e., the legal deadline for filing a

claim) and within any deadline imposed under the AAA Rules for the pertinent claim.

**6.7 Authority of Arbitrator.** If arbitration is initiated, the arbitrator will decide the rights and liabilities, if any, of you and ParkiFi, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages, and to grant any non-monetary remedy or relief available to an individual under applicable law, the AAA Rules, and the Agreement. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and ParkiFi.

**6.8 Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court. In the event any litigation should arise between you and ParkiFi in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND PARKIFI WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.

**6.9 Waiver of Class or Consolidated Actions.** ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER.

**6.10 Confidentiality.** All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. The parties agree to maintain confidentiality unless otherwise required by law. This paragraph shall not prevent a party from submitting to a court of law any information necessary to enforce this Agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.

**6.11 Severability.** If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Agreement shall continue in full force and effect.

**6.12 Right to Waive.** Any or all of the rights and limitations set forth in this Arbitration Agreement may be waived by the party against whom the claim is asserted. Such waiver shall not waive or affect any other portion of this Arbitration Agreement.

**6.13 Survival of Agreement.** This Arbitration Agreement will survive the termination of your relationship with ParkiFi.

**6.14 Small Claims Court.** Notwithstanding the foregoing, either you or ParkiFi may bring an individual action in small claims court.

**6.15 Emergency Equitable Relief.** Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.

**6.16 Claims Not Subject to Arbitration.** Notwithstanding the foregoing, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark or trade secrets shall not be subject to this Arbitration Agreement.

**6.17 Courts.** In any circumstances where the foregoing Arbitration Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within Denver County, Colorado, for such purpose.

**6.18 Governing Law.** This Agreement and any claim or dispute one party has against the other arising under or relating to this Agreement, including claims in contract, tort, strict liability, statutory liability, or other claims, is governed in all respects by the laws of the State of Colorado, without giving effect to any principles that may provide for the App of the law of another jurisdiction.

**7. Limitations of Liability.** IN NO EVENT SHALL PARKIFI BE LIABLE: (A) FOR LOST PROFITS OR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH OUR WEBSITE, OUR APP, OUR SOFTWARE, OR THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE); OR (B) ANY AMOUNTS IN EXCESS OF THE AMOUNTS EARNED BY PARKIFI DUE TO YOUR USE OF THE APP IN THE SIX (6) MONTHS PRIOR TO THE EVENTS FIRST GIVING RISE TO THE LIABILITY. Some states do not allow the exclusion or limitation of incidental or consequential damages so the above limitation or exclusion may not apply to you.

**8. No Warranty.** PARKIFI PROVIDES THE APP AND SOFTWARE "AS IS" AND WITHOUT ANY REPRESENTATION, WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY. PARKIFI SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, AND CONDITIONS OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SYSTEM INTEGRATION, QUIET ENJOYMENT, AND ACCURACY. ParkiFi does not have any control over the parking facilities accessed through use of the App. ParkiFi does not guarantee continuous, uninterrupted or secure access to our App, and operation of our site may be interfered with by numerous factors outside of our control. Some states do not allow the disclaimer of implied warranties, so the foregoing disclaimers may not apply to you. This paragraph gives you specific legal rights and you may also have other legal rights that vary from state to state.

**9. Indemnification.** You agree to defend, indemnify and hold ParkiFi harmless from any

claim or demand (including attorneys' fees) made or incurred by any third party arising out of or relating to your breach of this Agreement and/or your use of the App.

## **10. General.**

**10.1 Complete Agreement.** This Agreement, which includes the Privacy Policy, and any other rules or policies provided to you or posted on the website or the App in connection with specific services (including, for example, contests or sweepstakes that may be offered), sets forth the entire understanding between you and ParkiFi with respect to the App. Sections 5 through 11 will survive the termination of this Agreement. If any provision of this Agreement shall be held in any jurisdiction to be unlawful, void, or for any reason unenforceable, then in such jurisdiction that provision shall be deemed severed from these terms and shall not affect the validity and enforceability of the remaining provisions.

**10.2 Electronic Communications.** The communications between you and ParkiFi use electronic and other means, whether you visit parking facilities or send ParkiFi e-mails, or whether ParkiFi posts notices at parking facilities or communicates with you via e-mail. For contractual purposes, you (1) consent to receive communications from ParkiFi in an electronic form; and (2) agree that all terms and conditions, agreements, notices, disclosures, and other communications that ParkiFi provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights.

**10.3 No Waiver.** ParkiFi's failure to act with respect to a breach by you or others does not waive ParkiFi's right to act with respect to that breach or subsequent or similar breaches. No consent or waiver by ParkiFi under this Agreement shall be deemed effective unless delivered in a writing signed by a duly authorized officer of ParkiFi.

**10.4 Amendments.** We may amend this Agreement at any time by posting a revised version on our website or the App. The revised version will be effective at the time we post it. However, if the revised version includes a Substantial Change, we will post the revised version and give you notice at least 30 days prior to the effective date of the revised version. We last modified this Agreement on the date stated below. This revised version will be effective immediately for any User who registers or uses the App on or after that date, and will become effective thirty days after that date for any User who has registered or used the App prior to that date.

**10.5 Intellectual Property.** "ParkiFi.com," "ParkiFi," and all related logos, products and services described in our website and App are either trademarks or registered trademarks of ParkiFi or its licensors. You may not copy, imitate or use them without ParkiFi's prior written consent. In addition, all page headers, custom graphics, button icons, and scripts are service marks, trademarks, and/or trade dress of ParkiFi. You may not copy, imitate, or use them without our prior written consent.

**10.6 Assignment.** You may not transfer or assign any rights or obligations you have under this Agreement without ParkiFi's prior written consent. ParkiFi reserves the right to transfer or assign this Agreement or any right or obligation under this Agreement at any time.

## 10.7 Notices.

(a) **Notices to You.** You agree that ParkiFi may provide notice to you by posting it on our website, emailing it to the email address listed in your Account, or mailing it to the street address listed in your Account. Such notice shall be considered to be received by you within 24 hours of the time it is posted to our website or emailed to you unless we receive notice that the email was not delivered. If the notice is sent by mail, we will consider it to have been received by you three Business Days after it is sent. You may request a paper copy of any legally required disclosures and you may terminate your consent to receive required disclosures through electronic communications by contacting ParkiFi as described in section 11.6(b) below. If you are a California resident, you have a right to receive the information in section 11.6(b) by email, by sending a request to the address noted in that section. ParkiFi may charge you a records request fee to provide a paper copy. ParkiFi reserves the right to close your Account if you withdraw your consent to receive electronic communications.

(b) **Notices to ParkiFi.** Except as otherwise stated in this Agreement, notice to ParkiFi must be sent by postal mail to: ParkiFi, 1451 Larimer Street, Denver, CO 80202

**10.8 Consumer Complaints.** In accordance with California Civil Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

## 11. Definitions.

(a) "Account" or "ParkiFi Account" means your account with ParkiFi used to access the App.

(b) "Agreement" means this agreement including all subsequent amendments.

(c) "App" means the software App for mobile devices that was created by ParkiFi, Inc.

(d) "Business Days" means Monday through Friday, excluding standard U.S. bank holidays.

(e) "Information" means any confidential and/or personally identifiable information or other information related to an Account or User, including but not limited to the following: name, email address, address, phone number and financial information.

(f) "ParkiFi," "we," "us" or "our" means ParkiFi, Inc. and its subsidiaries and affiliates.

(g) "Substantial Change" means a change to the terms of this Agreement that reduces your rights or increases your responsibilities, but does not apply with respect to any rights or responsibilities for new functionality or features added to the App.

(h) "User," "you" or "your" means you and any other person or entity using



the App.

This Agreement was last amended on November 2<sup>nd</sup>, 2016.