

## Terms of Service

### 1. Introduction

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- 1.1. BaseUp Technologies Pty Ltd ACN 620 547 524 (“BaseUp”, “us”, “we” or “our”) provides an online platform through a Website and Application that connects an enterprise who own or operate car parking spaces (“Enterprise”) to rent (“Parking Spaces”) with drivers seeking to rent such Parking Spaces (“Drivers”), (collectively “Services”).
- 1.2. Services are available through BaseUp’s Website and/or Application.
- 1.3. This agreement and any documents referred to within this agreement (“Terms of Service”) govern the relationship between BaseUp and any individual or body using or accessing the Website and Application (“you”, “your”).

### 2. General

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- 2.1. By using the Website and/or Application you acknowledge that you agree to be bound by the Terms of Service, whether or not you become a registered user through the creation of an account (“Account”). If you do not agree to the Terms of Service you are not authorised to access or otherwise use the Website or Application.
- 2.2. The Terms of Service may be amended from time to time by posting an updated version to the Website and Application. You should visit the Website or Application periodically to visit the most up to date Terms of Service. If you do not agree to amendments to the Terms of Service you may terminate this agreement by ceasing to use the Website, Application and Services. By continuing to use our Website or Application you will be deemed to have accepted the amended terms.
- 2.3. We reserve the right to modify the Website, Application or Services at any time and without prior notice.
- 2.4. You grant us the right to communicate with you in any method provided, including without limitation, email, phone, text message.
- 2.5. You agree that we are not a party to any agreements entered in to between Enterprises and Drivers. Nothing in the Terms of Service shall be construed to constitute that we are your partner, joint venturer, representative or agent, except where we act as limited payment agent to the Enterprise.
- 2.6. You agree that the Terms of Service are fair and reasonable in all circumstances; however if any provision of the Terms of Service is held to be illegal, void, invalid or unenforceable at law, the legality, validity and enforceability of the remainder of the Terms of Service is not affected.
- 2.7. We may assign, subcontract our rights and obligations under the Terms of Service without your consent and without notice to you.

- 2.8. The Terms of Service (and any documents referred to within the Terms of Service) are the whole agreement between us and will, to the extent permitted by law, supersede or extinguish any other agreements, undertakings, representations or warranties relating to its subject matter.
- 2.9. No failure to exercise and no delay in exercising any right, power or remedy under the Terms of Service will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- 2.10. The Terms of Service are governed by and must be construed in accordance with the laws of the State of New South Wales. The parties submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales and of the Commonwealth of Australia in respect of all matters or things arising out of the Terms of Service.

### **3. Creating an Account**

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- 3.1. In order to access the Services, you must register an Account through the Website or Application. Doing so will allow you to act as a Driver (by booking or intending to book a Parking Space).
- 3.2. You must be at least 18 years of age to register an Account.
- 3.3. You acknowledge and agree that:
  - (a) your Account is unique to you and is not transferable;
  - (b) you are fully responsible for all activities that occur in connection with your Account;
  - (c) it is your responsibility to ensure your Account is kept secure at all times;
  - (d) it is your responsibility to ensure that any registration details you provide when registering an Account are accurate;
  - (e) it is your responsibility to ensure you amend any change to your details as originally supplied, through your Account; and
  - (f) you will not create any false Account or use your Account for any immoral or illegal activity or purpose including without limitation malicious or fraudulent Reservations, fraudulent listings or money laundering.
- 3.4. We may refuse your registration of an Account at our sole discretion.
- 3.5. We reserve the right to suspend or cancel your Account at any time if you are in breach of any part of the Terms of Service. If your Account is suspended or cancelled you will no longer be able to access our Services.
- 3.6. In order to register an Account you may be required to provide us with bank account, PayPal, credit or debit card details to enable us to make payments to you or to deduct Fees from you as a Driver, or in any other circumstance pursuant to the Terms of Service.
- 3.7. The details of the bank account, PayPal, credit or debit card will be stored externally (in encrypted format) on the servers of the payment processing agent(s). The details

of the bank account, PayPal, credit or debit card details will be retained and be linked to your Account for future Reservations.

#### **4. Booking and Reservation**

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- 4.1. The listing for a Parking Space will indicate the availability, price and location of the Parking Space.
- 4.2. You can request the reservation of a Parking Space through the Website or Application. The reservation becomes binding on the Enterprise and Driver ("Reservation"):
  - (a) once the Enterprise confirms the Reservation (which must be within 7 days of the reservation request) and the Driver's payment has been processed; or
  - (b) if at the time of listing the Enterprise has agreed to automatic accepting of Reservations, then once the Driver's request has been made and the Driver's payment has been processed.
- 4.3. Once your Reservation is confirmed, you will receive a booking reference through the Website or Application.
- 4.4. It is your responsibility to check, confirm and manage your proposed times and dates for any listings and requests for a Reservation.
- 4.5. A Reservation is only valid for the particular times, date, price and Parking Space as specified in that Reservation and cannot be amended unless in accordance with the Terms of Service.
- 4.6. When attending the Parking Space, you must bring with you a copy of the Reservation.

#### **5. Payment and additional fees**

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- 5.1. All prices shown when making a Reservation are in Australian dollars and include GST.
- 5.2. Provided that you comply with the Terms of Service, the price you are shown prior to finalising your Reservation is inclusive of all applicable fees, including parking fees, booking fees and credit card fees ("Fees").
- 5.3. The Fees will be deducted from the Driver by us once the Reservation is confirmed.
- 5.4. On payment of the Fees by the Driver, the Driver will receive a receipt through the Website, Application or email.
- 5.5. If any monies are owed by the Driver under the Terms of Service and the Driver's payment is not received or fails we may collect monies owed using other collection mechanisms and we reserve the right to charge you for all additional fees and expenses we may incur (including legal fees and costs) in attempting to collect fees through commencing collection efforts, using the services of an external debt collection agency or issuing legal proceedings.

## **6. Parking Spaces**

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- 6.1. You agree that the Website and Application is a platform for managing Parking Spaces owned or controlled by the Enterprise and we have no responsibility for the Parking Space other than to provide the Services under the Terms of Service which includes collecting payment on behalf of the Enterprise.
- 6.2. You acknowledge that we rely on the Enterprise for details about a Parking Space listed on the Website or Application and we offer no warranty in relation to these details. We cannot and do not control the content contained in any listings and the condition, legality or suitability of any Parking Space. We are not responsible for and disclaim any and all liability related to any and all listings, Parking Space and Reservations.

## **7. Driver obligations**

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- 7.1. The Driver must use the licence plate number which has been notified as part of the Reservation. If the Driver uses a different vehicle they may be unable to park. The Driver may amend the vehicle details in accordance with the Terms of Service.
- 7.2. At the start of the Reservation, the Driver must inspect the Parking Space and ensure the Parking Space meets the description on the Website and Application. If the Driver believes that the Parking Space does not reasonably match the description on the Website and Application, the Driver must contact the Enterprise immediately, in which case the Driver and Enterprise will use best endeavours in order to resolve the concern or query.
- 7.3. During the Reservation, if the Driver has any concerns or queries about the Parking Space the Driver must contact the Enterprise immediately, in which case the Driver and Enterprise will use best endeavours in order to resolve the concern or query.
- 7.4. The Driver acknowledges that the Parking Space is someone else's property and agrees not to access any other part of the property to which they are not authorized to access, other than as reasonably required to directly access the Parking Space.
- 7.5. It is the Driver's responsibility to accurately calculate and input the required entry and exit times. The Driver must vacate the Parking Space and cease using the Parking Space by the end of the Reservation.
- 7.6. The Driver must only use the Parking Space at the times specified in the Reservation. In the event that the Driver's actual entry and exit time is longer than the time specified on the Reservation, regardless of any reason, the Driver will be liable for additional fees. Such additional fees will be calculated by reference to the Enterprise's hourly rate as specified on the Reservation, or at the pro rata rate if not specified, and the Driver's vehicle may be towed at the Driver's expense.

## **8. Cancellations**

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- 8.1. The Driver may only cancel a Reservation:
  - (a) through the Website or Application; and

- (b) prior to the start of the Reservation.
- 8.2. The Driver will only be entitled to a refund of the Fees for that Reservation where:
- (a) a Reservation is cancelled in accordance with the Terms of Service;
  - (b) the Parking Space is unavailable on the date and time specified in the Reservation;
  - (c) the Parking Space address is incorrect;
  - (d) the Parking Space description or listing details are substantially misleading; or
  - (e) the Enterprise cancels the Reservation.
- 8.3. For the avoidance of doubt, and without limiting the foregoing, the Driver is not entitled to a refund where the Driver:
- (a) cancels a Reservation after the start of the Reservation;
  - (b) is unable to enter the Parking Space, because the Driver's vehicle does not comply with the restrictions and/or specifications as specified by the Enterprise;
  - (c) parks in a different Parking Space from that specified on the Reservation;
  - (d) does not attend the Parking Space on the time and day specified on the Reservation (for whatever reason), or fails to make suitable attempts to find the Parking Space and contact the Enterprise;
  - (e) fails to cancel the Reservation in accordance with the Terms of Service; or
  - (f) subject to clause 8.4 stays for a shorter time than the Reservation period.
- 8.4. In the event that the Driver parks its vehicle at the Parking Space for a shorter time than the Reservation Period, a partial refund may be provided in extenuating circumstances. The decision to grant a refund in these circumstances will be at our sole discretion.
- 8.5. In some circumstances we may cancel the Reservation, elect not to provide the Services requested in a Reservation, or be unable to provide the Services requested in a Reservation. In this event we will refund the Fee to the Driver, unless the event was caused by the Driver's failure to comply with the Terms of Service. You agree that we will not have any liability beyond a refund of the Fee.
- 8.6. The decision to grant or not grant a refund, whether in full or part, is at our sole discretion.

## **9. Variations**

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- 9.1. The Driver may amend the time and date specified in a Reservation at any time up to the start of the Reservation. After this time, no further changes are possible. All amendments are subject to Enterprise confirmation.
- 9.2. The Driver may request to extend the Reservation. All requests are subject to Enterprise confirmation and at the Enterprise's rates as specified on the Reservation.

- 9.3. All Reservations are personal to the Driver and are non-transferable. However if you will be using a different vehicle to the one provided at the time of confirmation of the Reservation, you must notify us and the Enterprise of the amended vehicle details and license plate number.

## **10. Insurance**

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- 10.1. The Driver (including any Authorised Driver) acknowledges and agrees that it is the Driver's responsibility to take out insurance cover against (without limitation) damage to your vehicle, damage to the Parking Space, damage to the Enterprise's property, damage to any third party property, personal injury or any other damage caused by the Driver in connection with the use of the Website and Application. We will not be liable for the Driver failing to take out insurance of the kind contemplated by this clause.

## **11. Disclaimer**

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- 11.1. You agree that we have no control over the actions of Enterprises, Drivers or other users of the Website, Application and Services.
- 11.2. If you choose to use the Website, Application or Services, you do so at your own risk.
- 11.3. If you choose to park your vehicle at a Parking Space, you do so at your own risk.
- 11.4. You do not rely on any representation, warranty or other provision made by us or on our behalf which is not expressly stated in the Terms of Service.
- 11.5. To the maximum extent permitted by law we disclaim all liability to you under or in respect of the subject matter of these Terms of Service whether arising under contract, statute, tort (including negligence), or otherwise. We exclude to the extent permitted by law all other terms, conditions, warranties and guarantees which might be implied into the Terms of Service.
- 11.6. We make no warranty that the Website, Application or Services, including, but not limited to, the listings or any Parking Space will meet your requirements or be available on an uninterrupted, secure, or error-free basis.
- 11.7. We make no warranty or guarantee regarding the quality of any listings, Parking Spaces, Drivers, Enterprises, the Services or the accuracy, timeliness, truthfulness, completeness or reliability of any content on the Website, Application or Services.
- 11.8. You are solely responsible for all of your communications and interactions with other users of the Website, Application or Services and with other persons with whom you communicate or interact as a result of your use of the Website, Application or Services.

## **12. Liability**

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- 12.1. We will not be liable to you or any other party for any damages (including but not limited to consequential, special, direct, indirect, punitive or exemplary damages), obligations,

losses, costs and expenses (“Loss”) whatsoever and however caused. This includes but is not limited to the foregoing:

- (a) damage to or destruction of your vehicle or Parking Space;
- (b) any valuables left unattended in your vehicle;
- (c) any suspension or termination of your Account;
- (d) any variation of the Terms of Service;
- (e) errors, mistakes, or inaccuracies on the Website or Application;
- (f) violation of any third-party right, including without limitation any copyright, property, publicity or privacy right;
- (g) personal injury of any nature whatsoever resulting from your access to and use of the, Services or Parking Space; or
- (h) the conduct of Drivers, Enterprises, guests and other users of the Website, Application or Services.

12.2. We will not be liable for any claim brought more than 3 months following completion of the Reservation to which the claim relates. Any liability we may have is limited to:

- (a) the extent that liability arises under the Australian Consumer Law or the Competition and Consumer Act 2010 (Cth), then our liability is limited to the maximum extent permitted to the resupplying of the relevant goods and services;
- (b) in all other cases, our liability (whether under contract, statute, tort (including negligence) or otherwise) is limited to the maximum extent permitted to the Fees actually paid by you to us in connection with the circumstances in which such liability arose (ie. the specific Reservation in question).

### **13. Indemnification**

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13.1. You agree to release, defend, indemnify, and hold BaseUp and its affiliates and subsidiaries, and their officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, obligations, losses, costs and expenses, including, without limitation, reasonable legal and accounting costs (“Claims”), arising out of or in any way connected with the Terms of Service, Website, Application, Services, a Reservation or Parking Space, including, without limitation, any Claims made by third parties.

13.2. The indemnity and release in clause 13.1 continues notwithstanding your completion of the use of the Website, Application or Services.

### **14. Indemnification**

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14.1. The Driver agrees to release, defend, indemnify, and hold the Enterprise harmless from and against any claims, liabilities, damages, obligations, losses, costs and expenses, including, without limitation, reasonable legal and accounting fees, arising out of or in any way connected with the Driver’s use of the Parking Space.

## **15. Privacy and confidentiality**

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- 15.1. We take your privacy seriously; however we will not be liable to you or any other party for any Loss whatsoever and howsoever caused as a result of any unauthorised access to or use of our secure servers, interruption or cessation of transmission to or from the Website or the Application, any bugs, viruses, Trojan horses, or the like, which may be transmitted to or through the Website or Application by any third party and/or any and all personal, institutional, technical or other information stored therein.
- 15.2. In order to administer the Services, we will collect personal information about you directly from you, but may also collect personal information about you from an Enterprise.
- 15.3. Your personal information may be disclosed to our related entities, service providers and contractors, auditors, and we may be required, as a result of contractual obligations, to disclose personal information we collect to an Enterprises.
- 15.4. We will at all times collect, store, use and disclose your personal information in accordance our Privacy Policy, which is available at <https://www.baseup.com.au/legal/privacy.pdf>.
- 15.5. As is now common in many areas, some Parking Spaces and associated areas are monitored by CCTV. Your attendance at the Parking Spaces constitutes your agreement to this.
- 15.6. The Driver and Enterprise agree not to disclose any confidential information of each other. For the purposes of the Terms of Service, confidential information includes information of a confidential nature which is obtained during the course of their contractual relationship or as a result of the use of the Website or Application and which is not publicly available information.