

## **General Terms and Conditions for the ParkMagic service.**

### **1. General**

1.1. As used throughout these General Terms and Conditions, a “User” is defined as a private parking user or a company that uses the ParkMagic parking system or other services offered by ParkMagic Mobile Technology Inc.

1.2. "Account" means the account established by the User with ParkMagic.

1.3. ParkMagic is the operator of a parking system for on-street parking by means of an in car display (“in-car meter”) used for the purpose of displaying a parking receipt and a cell phone. The User acknowledges that ParkMagic is operating an authorized parking system on behalf of the actual owner of the parking space and that ParkMagic is not the owner of parking spaces. As such, ParkMagic disclaims all liability for any event or occurrence taking place at the parking space site.

1.4. These General Terms and Conditions are displayed on the website of ParkMagic at [www.ParkMagicChicago.com](http://www.ParkMagicChicago.com). ParkMagic may alter these General Terms and Conditions as necessary in its sole discretion. In the event any of these General Terms and Conditions are declared null and void by a court of competent jurisdiction, then such provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining General Terms and Conditions shall continue to apply with full force and effect, and the impacted provision shall be deemed automatically modified so as to be enforced to the fullest extent. Users are prohibited from assigning rights and/or obligations associated with the service and in-car meter provided by ParkMagic without first obtaining the prior written consent of ParkMagic.

### **2. Using the ParkMagicChicago Parking Services**

2.1. The Service involves the use of a pre-paid account established with ParkMagic, an in-car meter purchased from ParkMagic and a cell phone linked to both the account and the in-car meter, which will allow Users to request and make payment wirelessly for parking privileges in an identified location for a specified period of time. (“Parking Privilege”). At all times the Parking Privilege remains subject to the applicable rules and regulations issued by the City, as in force at that given time or place.

2.2. The in-car meter is suitable only for normal and expected use, which includes placement of the in-car meter on the passenger side of the dashboard in the front window of the vehicle. Any loss, theft or damage caused to the in-car meter is completely at the User's own risk. In the case of loss or theft, the User is responsible for reporting the incident to ParkMagic by phone at 888-317-5690 or by email at Info@ParkMagicChicago.com so that the in-car meter may be deactivated and removed from the associated account. Additionally the User is responsible for proper handling of any password and PIN necessary for accessing their personal account on the website. If a password or PIN is disclosed to an unauthorized third party, the User is responsible for notifying ParkMagic by email or phone so that the in-car meter can be deactivated and reassigned to a new account with a new secure PIN and password.

2.3. The User should place the in-car meter in a clearly visible position inside the front window of the vehicle on the passenger side of the dashboard. The unit comes with a rear window decal (sticker). This decal should be placed in the upper-middle portion of the rear window of the vehicle.

2.4. To utilize the ParkMagicChicago service, the User must call the ParkMagic parking phone number applicable to the location in which the User wishes to park. In Chicago that number is 1-888-4TO-PARK (1-888-486-7275) The User should have Caller ID service enabled on their cell phone so the ParkMagic system can quickly link the User with the appropriate account and in-car meter via the cell phone used for the transaction. All customary cell phone service and/or usage charges apply based on the User's selected provider's service plan(s), and are in addition to any fee charged by ParkMagic for use of the ParkMagic service.

2.5. Use of the ParkMagic service does not entitle the User to any parking privileges and should not be mistaken for a parking lease or other long-term parking arrangement. Rather, ParkMagic's service is simply a tool to allow the User to park in traditional first-come first-served commercial parking locations without the need for cash.

2.6. The User should note that not all parking areas use ParkMagic. The User acknowledges that it is their responsibility to become familiar with those areas which utilize the ParkMagic system, and further hereby agrees to use the ParkMagic service only in a proper manner in areas permitted by the actual parking space owner. The

User shall be solely responsible for any damages or liabilities incurred as a result of User's failure to abide by their responsibilities.

2.7. A User should not presume that a parking transaction is valid until after receiving confirmation from the ParkMagic system. A machine generated verbal confirmation will be issued to the User at the end of a call to ParkMagic requesting a Parking Privilege.

2.8. In the rare case of service unavailability, it will be necessary for the User to pay for parking by another valid method as defined by the applicable rules and regulations of the city in force at that given time or place.

2.9. ParkMagic retains the right to cancel or refuse to provide the service to a User or to a new applicant at its sole discretion.

2.10. By using your ParkMagic in-car meter you agree to these General Terms and Conditions. If you do not agree, or subsequently change your mind, then you should not use or discontinue all use of the Service and contact ParkMagic in writing or by email whereupon you will be removed from the service.

2.11. Additionally and by using your ParkMagic in-car meter you hereby authorize ParkMagic to communicate with you by SMS text message to the cell phone number(s) you provided at the time you established your account with ParkMagic. Such communications shall be for such purposes as to register the in-car meter, or to advise you of service upgrades, enhancements and other announcements. You may withdraw this consent at any time by logging into your ParkMagic account at [www.ParkMagicChicago.com](http://www.ParkMagicChicago.com).

2.12. By activating your personal account on [www.ParkMagicChicago.com](http://www.ParkMagicChicago.com) you are required to provide an email address for account verification purposes and consent to allow ParkMagic to use this address solely by ParkMagic for the purposes of providing service alerts, notifications of enhancements, discount programs and other service related information. This email will not be sold or disclosed to any third party, except as necessary for the delivery of the service to you and then only after such third party agrees to comparable commitments regarding protection of such data.

### **3. Payment**

3.1. ParkMagic requires that all Users establish an account with a prepaid payment. The User may apply the prepayment credit to their Account by means of any of the

methods made available by ParkMagic from time to time. The amount of the Account credit will be reduced by each Parking Privilege transaction resulting from a call to the ParkMagic system. ParkMagic, or a third party acting on ParkMagic's behalf, shall be authorized to prepare, process and negotiate credit card charge forms for any credit card account designated by User in and for all fees and charges (including, without limitation, all recurring and non-recurring fees and charges) payable by User under the Agreement. All sales, use and other such governmentally imposed or authorized taxes, fees, surcharges and/or assessments relating to this Agreement, the services and/or in-car meters shall be paid by the User.

3.2 No Parking Privileges will be issued to the User's in-car meter once the Account balance reaches a level insufficient to pay for the Parking Privilege in its' entirety. If the User does not use the ParkMagic service for a period of 6 months or such other period as ParkMagic may advise from time to time the account may be placed in a suspended status for security reasons. In addition to any other remedies available to ParkMagic hereunder and at law, ParkMagic shall have the option to immediately suspend service in the event the User fails to timely meet its payment obligations outlined above.

3.3 The fees associated with each Parking Privilege transaction is established by the city or parking facility owner and are not controlled by ParkMagic.

3.4. ParkMagic also provides a "Reload" option which is accessible via the website or by calling into ParkMagic customer support. This will allow the User to add credit to the Account by way of a charge to a credit card.

3.5 Disputes. In order to dispute any fee or charge, User must raise such dispute in writing to ParkMagic by phone or at [Info@ParkMagicChicago.com](mailto:Info@ParkMagicChicago.com) within sixty (60) days of the date of the transaction. the User acknowledges that there will be no paper invoice statement. Users' failure to timely notify ParkMagic of any disputed fee or charge shall result in the charge being deemed valid and binding.

3.6. Refund Policy. Absolutely no refund is available for draws made against an Account's prepayment credit for confirmed Parking Privilege transactions.

3.7. The purchaser of a ParkMagic in-car meter has the right to return the in-car meter to ParkMagic (undamaged and with all original packaging) and to cancel the Account within 7 days of receipt of the in-car meter and provided that the in-car meter has not been used in connection with any Parking Privilege transaction.

#### **4. Limitation of Liability**

4.1. The following provisions set out ParkMagic's entire liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) to Users in respect of any breach of its contractual obligations arising under these General Terms and Conditions.

(a) THE USER ASSUMES RESPONSIBILITY FOR THE SELECTION OF THE SERVICE TO ACHIEVE ANY INTENDED RESULTS, AND FOR THE PROPER INSTALLATION, USE, AND RESULTS OBTAINED BY THE SERVICE, IN-CAR METERS AND ACCESSORIES. USER ALSO ASSUMES FULL RESPONSIBILITY FOR THE CONSEQUENCES RESULTING FROM PARKMAGIC'S PERFORMANCE OF FUNCTIONS REQUESTED BY USER OR A USER OF USER'S SERVICE ACCOUNT IN CONNECTION WITH THE PARKMAGIC SERVICE. THE USER HAS THE SOLE RESPONSIBILITY FOR INSPECTING AND TESTING THE SERVICE TO THE USER'S SATISFACTION BEFORE USING THE SERVICE. THE SERVICE IS PROVIDED TO THE USER ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, PARKMAGIC MAKES NO WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE SERVICES, THE IN-CAR METERS, THE ACCESSORIES, THE SOFTWARE OR THE WIRELESS MESSAGING NETWORKS THROUGH WHICH THE SERVICES ARE PROVIDED, AND HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, DURABILITY, PERFORMANCE AND QUALITY, AND ANY WARRANTY OF FITNESS FOR A PARTICULAR USE OR PURPOSE, TITLE OR NONINFRINGEMENT OF THIRD PARTY RIGHTS. Under no circumstances shall ParkMagic be liable to the User or any other person for any loss, injury or damage, of whatever kind or nature, resulting from or arising out of (i) any mistakes, errors, omissions, delays or interruptions in the receipt, transmission or storage of any data, signals or information arising out of or in connection with use of the Services, the Software and/or ParkMagic's wireless messaging networks, or (ii) ParkMagic's actions or inactions in performing the functions requested by User or a user of User's Service account in connection with ParkMagic support service, or for ParkMagic's inability to perform such functions.

(b) PARKMAGIC SHALL NOT BE LIABLE TO THE USER OR ANY OTHER

PERSON FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS, GOODWILL OR ANY OTHER PECUNIARY LOSS, ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SERVICES, THE IN-CAR METERS, THE ACCESSORIES, THE SOFTWARE AND/OR THE INTENDED USE THEREOF, OR THAT RESULT FROM OR ARISE OUT OF ANY MISTAKES, ERRORS, OMISSIONS, INTERRUPTIONS, DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF PARKMAGIC HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

(c) WITHOUT LIMITING SUBSECTION (b) ABOVE, THE TOTAL LIABILITY OF PARKMAGIC TO THE USER IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE LESSER OF (1) DIRECT DAMAGES PROVEN BY THE USER OR (2) THE AGGREGATE AMOUNTS PAID BY THE USER TO PARKMAGIC UNDER THIS AGREEMENT FOR THE ONE (1) MONTH PERIOD PRIOR TO THE ACCRUAL OF SUCH CAUSE OF ACTION FOR THE SPECIFIC PRODUCT OR SERVICE WHICH FORMS THE BASIS FOR SUCH CAUSE OF ACTION. THE FOREGOING LIMITATION SHALL APPLY TO ALL CAUSES OF ACTION AND CLAIMS, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS. THE USER ACKNOWLEDGES THE REASONABLENESS OF THE FOREGOING DISCLAIMERS AND LIMITATIONS OF LIABILITY. NO CAUSE OF ACTION UNDER ANY THEORY WHICH ACCRUED MORE THAN ONE (1) YEAR PRIOR TO THE INSTITUTION OF A LEGAL PROCEEDING ALLEGING SUCH CAUSE OF ACTION MAY BE ASSERTED BY THE USER AGAINST PARKMAGIC.

(d) The User acknowledges that it will be using the Services and Website to pay for parking fees based on wireless communications involving a cell phone, a Website and a remote in-car meter, and that ParkMagic disclaims all warranties and liability regarding the use of the service and the Website and the results of such use, including without limitation such payment success and the information it receives therefrom, in terms of its correctness, accuracy, timeliness, reliability or otherwise.

(e) The User acknowledges that the responsibility for registering transactions via

cell phone or fixed line telephone as well as the possibility of receiving SMS messages with information in regard to the parking transaction depends on sufficient functioning of the network of the Service User's cell and fixed line telephone provider and the service of the telephone company. ParkMagic cannot be held accountable for damage caused by insufficient functioning of a network or telephone company or for not receiving a transaction request or the sending or receiving of SMS messages in time.

4.2. The User shall be responsible for establishing and management of its service account on the ParkMagicChicago website (the "Website"). The Website is owned and operated by ParkMagic, and the User's use of the Website shall be governed by the terms of, and limited to only such use authorized by, this Agreement as the same may be modified from time to time in ParkMagic's sole discretion. ParkMagic reserves the right to modify features and functionality of the Website from time to time without notice at ParkMagic's sole discretion.

## **5. Regulations**

5.1. All parking and other relevant regulations in effect in the City shall apply with full force and effect to all Service Users of the ParkMagic system in the areas concerned.

5.2. The City can change parking rates and conditions at its discretion without prior warning. ParkMagic shall have no liability to any User for any changes made by local authorities to parking charges and conditions.

## **6. Privacy & Confidentiality**

6.1 ParkMagic takes great care with personal information that is provided by Users, taking steps to keep such information secure and to ensure that it is used only for legitimate purposes. In summary all personal data held by ParkMagic on behalf of the User will be used for the purpose of administration and notification only and not for any other purpose. It will not be disclosed to any 3rd Party unconnected with the parking system outlined herein.

6.2 By using ParkMagic's ParkMagicChicago website, Service Users accept the practices described in the privacy policy described in 6.1 above. ParkMagic may update its privacy policy from time to time to take account of changing requirements such as changes in technology or legislation and requests that Users refer back to this

privacy policy frequently to become aware of any such revisions. In addition, ParkMagic recommends that Users review the privacy policy of any other website accessed through ParkMagic's ParkMagicChicago website as these sites may be subject to different privacy practices. ParkMagic shall not be responsible for these websites or the information made available thereon.

6.3 Each party will protect the other's confidential or proprietary information from unauthorized dissemination. Neither party will use the other's confidential or proprietary information for purposes other than those necessary to further the purposes of this Agreement. Neither party will disclose to any third party the other's confidential or proprietary information without the prior written consent of the other party. Should either party be required under applicable law, rule or regulation, or pursuant to the order of any court or governmental entity or legal process of any governmental entity or court to disclose such information, such party shall use commercially reasonable efforts to: (a) limit such disclosure to the extent practicable; and (b) make such disclosure only to the extent so required. The parties' obligations under this Section shall survive the termination of this Agreement.

## **7. Applicable Law & Miscellaneous Provisions**

7.1. These General Terms and Conditions are to be governed by and construed in accordance with the laws of Delaware.

7.2 No delay or failure by ParkMagic to enforce any right under this Agreement will be deemed a waiver of that or any other right

7.3 If any action shall be brought on account of any breach of or to enforce or interpret this Agreement, the prevailing party shall be entitled to recover from the other, as part of the prevailing party's costs, a reasonable attorneys' fee.

7.4 This Agreement may be executed in one (1) or more counterparts, each of which will be deemed an original, but which collectively will constitute one and the same instrument.

7.5 Neither party will be liable for any nonperformance under this Agreement due to causes beyond its reasonable control that cannot be reasonably avoided or overcome.

7.6 This Agreement, including all exhibits and documents directly referenced, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous



understandings or agreements, written or oral, regarding such subject matter. No amendment to or modification of this Agreement will be binding unless delivered in writing and signed by a duly authorized representative of both parties. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

7.7 All In-car meters and all third-party services resold by ParkMagic to the Customer under this Agreement are subject to availability and no guarantee is made as to availability. ParkMagic reserves the right to modify, withdraw and/or discontinue any product and/or service offering upon at least thirty (30) days notice to the Customer.

7.8 Any notice or other communication herein required or permitted to be given shall be in writing and may be personally served or sent by a recognized overnight courier or United States mail, and shall be deemed to have been received when (a) delivered in person, (b) one (1) business day after delivery to the office of such overnight courier service, or (c) three (3) business days after depositing the notice in the United States mail with postage prepaid and properly addressed to the other party, at the following respective addresses:

To ParkMagic: To the attention of Vice President of Sales, with a copy to the Legal Dept. at:

ParkMagic Mobile Technology Inc.  
264 South River Road # 264  
Bedford, NH 03110

To Customer: The billing address established by the User or to such other address or addresses as either party may from time to time designate as to itself by like notice.