

Terms and Conditions

Last updated: **31 January 2022**

1. Background

- 1.1. The Park'nPay iOS and Android app and its associated website at parknpay.nsw.gov.au are owned and operated by the New South Wales Department of Customer Service ABN 81 913 830 179 (**DCS, we, us, our**)
- 1.2. The App is designed to assist you to search and pay for Parking Spaces in paid parking zones and vehicle entry to fee-collecting NSW National Parks as listed on the App from time to time and/or lots, areas and zones that display DCS signage (together, **Parking Spaces**).
- 1.3. These Terms and Conditions govern your use of the App. By clicking "I accept" to indicate you accept these Terms and Conditions, and in consideration of DCS providing you with access to the App, you agree to be bound by these Terms and Conditions. In addition to these Terms and Conditions, you are subject to the terms of our Privacy Notice (as updated from time to time) at <https://parknpay.nsw.gov.au/privacy-policy>, which is incorporated into and forms part of these Terms and Conditions. If you do not agree to these Terms and Conditions, you must not use or access the App.
- 1.4. We may change these Terms and Conditions at any time without prior notice. We will notify you of any material changes by electronic notice to you via your device, Google Play or the App Store. We may require you to confirm your acceptance of changes as a condition of allowing you to continue using the App. If you do not agree to the changes, you must immediately stop using, and uninstall, the App.
- 1.5. The App is not intended for use by minors. By using the App, you represent that you are at least 18 years old and are otherwise authorised to access the App.

2. Your Account

- 2.1. To access and use the App and receive the Services, you must create an Account by registering your name and certain other details when you first download the App. Creating an Account includes setting up a user ID and password. You must not impersonate or misrepresent your identity to us. You must be at least 18 years of age to open an Account with us.
- 2.2. You must keep your Account, user ID and password confidential. You will be responsible for any access to and all activity on the App that occurs under your Account, even if the access is by another person. You must notify us immediately of any unauthorised use of the App using your Account, user ID or password, or if your device or credit card has been lost or stolen, in which case we may close your Account.
- 2.3. You must review and revise your Account information so that it is accurate and current at all times.

3. Use of the App

- 3.1. Once you register an Account, DCS grants you a non-exclusive, non-transferable, limited right to access and use the App and the Services for your own personal use only.
- 3.2. You must enter a valid area code (where applicable), select the correct vehicle (and correct rate for your vehicle type where applicable) and set up your desired length of stay, and/or follow the instructions on the App for the specific Parking Space or fee-collecting NSW National Park (or area within a fee-collecting NSW National Park).
- 3.3. You must ensure that the Parking Transaction has started correctly. To be sure that the Parking Transaction has been started, you should check the status screen of the App. Your transaction is valid until the end time indicated on the App. Your transaction is valid within the specific area code or within the relevant area of the fee-collecting NSW National Park. You must start a Parking

Transaction with the correct vehicle's license plate registration number. You must ensure your Parking Transaction is for the correct Parking Space, fee-collecting NSW National Park or area within a fee-collecting NSW National Park.

- 3.4. If you choose not to enter a preliminary Parking Transaction end time for a Park-Now-Pay-Later transaction (where available), it is your responsibility to remember to manually terminate the Parking Transaction.
- 3.5. You must comply with all relevant laws, rules and regulations, including all conditions and restrictions on the use of a Parking Space and entry to a fee-collecting NSW National Park, including time limits. Your use of the App and the Services, and the payment of Charges, do not relieve you of your obligation to comply with such conditions and restrictions. You must ensure that if you park a vehicle you are parked legally. DCS does not provide any authorisation for the relevant Parking Transaction, and merely provides information on available Parking Spaces and entry to fee-collecting NSW National Parks and facilitates the payment of Charges.
- 3.6. In your use of the App, you must not: (a) breach of any applicable laws or regulations; (b) infringe a third party's rights or privacy; (c) harm, abuse, harass, stalk, threaten or otherwise offend others; (d) link, frame or mirror in any way any part of the App; (e) interfere with, disrupt, or create an undue burden on the App; (f) use any method or process (including data scraping or web-bots) to obtain, process, copy, distribute, reconfigure, alter or repackaging the Content; (g) circumvent, disable or otherwise interfere with security-related features of the App; or (h) reverse engineer, reverse assemble, decompile, or otherwise attempt to discover source code or other arithmetical formulae or processes in respect of the software underlying the infrastructure and processes associated with the App.

4. Intellectual Property

- 4.1. DCS owns or is the licensee of all text, information, graphics, trademarks, service marks, logos, user interfaces, visual interfaces, photographs, sounds, downloads, services and computer code on or in the App, including the design, structure, selection, coordination, expression, "look and feel" and arrangement of such materials (together, **Content**). The Content may be protected by copyright, patent, trademark and other intellectual property laws.
- 4.2. You must not use, copy, supply, modify, publish, store or transmit any Content in any form, other than in the ordinary use of the App. Ordinary use excludes any commercial use. All rights of DCS and its licensors in the App, the Content and the Services are reserved.

5. Linking and Third Party Content

- 5.1. The App may contain links to or display the content of third parties (**Third Party Content**), including links to websites operated by other organisations and individuals (**Third Party Websites**).
- 5.2. Third Party Content and Third Party Websites are not under the control of DCS. DCS does not endorse, approve, guarantee or make any warranty or claim regarding Third Party Content, Third Party Websites or the products, services or information available on any Third Party Website, or in respect of the owner or operator of a Third Party Website or their conduct.
- 5.3. Links to Third Party Websites are provided for your convenience. DCS is not responsible for the privacy or security practices of Third Party Websites. Third Party Websites should have their own privacy and security policies, which we encourage you to read before supplying any personal information to them. If you use or rely on Third Party Content or Third Party Websites, you do so solely at your own risk.

6. Material you Submit

- 6.1. If you submit, post, transmit or otherwise make any material available via the App (**your material**), you grant to us a non-exclusive, royalty-free, transferable licence to use, reproduce, modify, adapt, publish or communicate your material for the purpose of operating the App and providing it to Users, including the right to sub-license Users and our service providers.
- 6.2. You warrant that you have the right to grant the licence of your material, that our exercise of the licence rights will not infringe the rights of any person, and that your material is not defamatory and does not breach any law.

7. Payment for Parking

- 7.1. You must pay all parking fees and other charges that apply to your use of a Parking Space or entry to a fee-collecting NSW National Park (**Charges**), and any penalties that you incur, including for overstaying the time for which your transaction is valid.
- 7.2. The App includes functionality that facilitates the payment of Charges via PayPal's® Braintree® payment service or another a third payment service. This payment functionality is provided by Reino International Pty Ltd ACN 079 147 201 trading as Duncan Solutions (**Duncan**) and its supply and use are subject to [Duncan's terms and conditions](#). You acknowledge and agree DCS is not responsible for the supply or operation of the payment functionality, and that clause 5 of these Terms and Conditions applies to the payment functionality provided by Duncan.
- 7.3. If the payment functionality is unavailable (partially or completely), you must pay the Charges on or at the premises via alternative means (such as by buying a ticket from the appropriate dispensing machine or at the NPWS office) or you must not park at the relevant Parking Space or enter the relevant fee-collecting NSW National Park.
- 7.4. If the payment functionality is available, the App will permit you to pay the Charges

upfront or, if you have saved a credit card to the App and Park-Now-Pay-Later is available (see cl 7.5), at the end of your parking session. If you do not end the session for any reason, you will incur Charges for the maximum duration of the session. If you choose Park-Now-Pay-Later, you may authorise payment of the Charges within 10 minutes after your session ends, otherwise the Charges will be charged to your saved credit card. You must ensure that your saved credit card is valid, not blocked and that the associated account, if any, has sufficient coverage.

- 7.5. Park-Now-Pay-Later is not available for transactions for entry to fee-collecting NSW National Parks.
- 7.6. Charges may be changed by the parking operators or NPWS from time to time. Changes to the Charges are beyond the control of DCS and DCS is not responsible for any increases in Charges.

8. NSW National Parks vehicle entry fees

- 8.1. Motor vehicle entry fees are charged at NSW National Parks for which a determination under Division 2A of Part 2 of the *National Parks and Wildlife Regulation 2019* has been made. Different fees may apply in relation to different fee-collecting NSW National Parks (or areas within a fee-collecting NSW National Park). Further information is available on the NPWS website.
- 8.2. Motor vehicle entry fees at fee-collecting NSW National Parks are payable upon entry or as advised through signage. They apply regardless of whether you stop or park your motor vehicle in the relevant fee-collecting NSW National Park.
- 8.3. Motor vehicle entry fees at fee-collecting NSW National Parks may vary depending on vehicle category. You must enter the correct vehicle type via the App when starting a transaction. Transactions via the App for motor vehicle entry fees to fee-collecting

NSW National Parks are only valid for vehicles with up to eight (8) seats being used for private recreational uses. They are not valid for buses or mini-buses, nor motor vehicles being used for commercial purposes, including hire cars and on-duty taxis .

9. Other App Features

- 9.1. The App is designed to give you updates on the status of your Parking Transactions in real-time or near-real-time. DCS may from time to time send such updates by SMS, App notifications or other methods. You may opt out of such updates through your App settings.
- 9.2. You acknowledge and agree that the reception of SMS messages, App notifications, and emails (together **Reminders**) is not guaranteed and that you are responsible for the activation and deactivation of a Parking Transaction on time. You further acknowledge and agree that the reception of Reminders is dependent on the operation of your mobile phone, your mobile phone service provider and/or your internet service provider and your App settings.
- 9.3. DCS shall have no responsibility or liability for any damages and costs incurred by you as a result of you not receiving a Reminder on time or at all.
- 9.4. Based on the Parking Space selected by you, DCS will provide you with parking receipts via email when your allocated parking time has ended.
- 9.5. You may use the App account to view your Account information and parking history. In addition, your parking tax invoice is emailed to your nominated email address.

10. Suspension or Cancellation of your account

- 10.1. You may cancel your Account at any time by using contacting our customer service at Support@parknpay.nsw.gov.au
- 10.2. DCS may immediately suspend your Account or terminate these Terms and Conditions and

cancel your Account at any time and for any reason, including if you breach these Terms and Conditions or engage in fraudulent activity in connection with the App.

- 10.3. It is your responsibility to cancel your Account if the Services are not supposed to be used; if the vehicle registered in your Account is not in use by you (temporarily or permanently), if the vehicle is no longer owned by you or any reason that may cause the use of the Account or Service by others. DCS has no responsibility to check if registered vehicle(s) or phone number(s) are used by permitted persons with regard to your Account.

11. Your Acknowledgments

- 11.1. You acknowledge that DCS does not supply Parking Spaces and DCS does not guarantee the availability of Parking Spaces.
- 11.2. You acknowledge that entry to NSW National Parks is not guaranteed. NPWS may need to close or restrict entry to a NSW National Park due to safety, conservation or operational reasons from time to time. You should always check the NPWS website for local alerts before visiting a NSW National Park. No refunds or extensions, or refunds or extension on a pro-rata basis will be granted.
- 11.3. You acknowledge that operating a mobile phone or any other device while driving can be dangerous and we advise you not to use the App or the Services while operating a vehicle.
- 11.4. DCS has made reasonable efforts to ensure the accuracy of the information provided by the App. However, much of that information is derived from third party sources, and DCS is unable to promise that it will be completely (or substantially) accurate, current or complete. In addition, DCS does not promise that your access to the App will be uninterrupted or error free.
- 11.5. DCS may restrict, interrupt or withdraw your access to the App for any reason, including for upgrades and maintenance of the App.

11.6. The App is designed to be accessed on a mobile device. Your telecommunications service provider's charges, data rates and other fees may apply. Downloading, installing or using certain services or content may be prohibited or restricted by your service provider. Not all features of the App may work with all service providers or devices.

11.7. You acknowledge and agree that Internet transmissions are never completely private or secure. You understand that any message or information you send to the App may be read or intercepted by others, even if there is a special notice that a particular transmission (for example, credit card information) is encrypted.

11.8. All notices and signs or directions made by the relevant parking authority or operator (in the case of a Parking Space) or NPWS (in the case of park entry fees for fee-collecting NSW National Parks) shall take precedence over any information that you receive from us. Parking regulations and regulations relating to visiting a NSW National Park apply to you and your use of the Services does not exempt you from following those rules. You must comply with all applicable signage, parking restrictions and conditions of entry. You must not exceed the maximum time for the allocated Parking Space or overstay the period for which your paid entry to a fee-collecting NSW National Park is valid.

11.9. You are responsible for any fine, ticket or penalty charge issued between the time of parking a vehicle and the notification by mobile phone or internet that the vehicle is validly parked. It is your responsibility to stop a Parking Transaction for Park-Now-Pay-Later transactions (where permitted) at the end of the Parking Transaction (i.e. before you leave the parking facility).

11.10. You shall indemnify DCS and hold DCS harmless against all conflicts between you and a parking authority or operator or NPWS, credit card company or mobile phone operator, including disputes in relation to parking fines or notices of breach of contract. The resolution of such disputes is your

responsibility. DCS shall remain neutral in these disputes and may in its discretion provide assistance to both parties.

12. Limitation of Liability

12.1. To the fullest extent permitted by law, DCS does not accept liability for any claims or losses arising directly or indirectly from: (a) a failure to provide the App, or any part of the App; (b) corruption or loss of data, or errors or interruptions occurring in the course of using the App; (c) any suspension or discontinuance of the Services; or (d) any use of the App by other users.

12.2. With the exception of any applicable right or guarantee you may have under the Australian Consumer Law and any equivalent state or territory legislation, or other rights in relation to the supply of goods or services (such as terms implied into a contract) that cannot lawfully be excluded (**Consumer Guarantees**), DCS excludes: (a) any term, condition or warranty that may otherwise be implied into these Terms and Conditions; (b) any liability for special, indirect or consequential loss however caused (including negligence), arising out of or in connection with the App, or the use or performance of the App or the Services.

12.3. To the extent permitted by law, and subject to clause 12.2, the maximum aggregate liability of DCS for any and all claims whether in contract, tort (including negligence), breach of statutory duty, or otherwise, is limited to \$1,000.

12.4. Our liability in respect of any breach of, or failure to comply with, any applicable Consumer Guarantee is limited to the supplying of the Services again or the payment of the cost of having the Services supplied again, unless: (a) the goods or services supplied are goods or services 'of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 64A of the Australian Consumer Law; (b) it is not 'fair or reasonable' for us to rely on such limitation in accordance with section 64A(3) of the

Australian Consumer Law; or (c) the relevant Consumer Guarantee is a guarantee pursuant to sections 51, 52 or 53 of the Australian Consumer Law.

13. Miscellaneous

- 13.1. If any provision of these Terms and Conditions is found to be unlawful, void or for any reason unenforceable, that provision will be considered severable from the remaining Terms and Conditions and will not affect the validity and enforceability of the remaining provisions. These Terms and Conditions are the entire agreement between you and us relating to the subject matter hereof.
- 13.2. The Account and your obligations under these Terms and Conditions may not be assigned. We may transfer our rights under these Terms and Conditions at any time.
- 13.3. We do not give up our rights by delaying or failing to exercise them at any time.
- 13.4. These Terms and Conditions shall be governed and interpreted in accordance with the laws of the State of New South Wales, Australia without regard to its conflicts of laws principles. You submit to the exclusive jurisdiction and venue of the state and federal courts in Sydney, NSW

14. Interpretation

In these Terms and Conditions:

- 14.1. a reference to a party includes the party's heirs, executors, successors and permitted assigns;
- 14.2. clause headings and italicised, highlighted or bold type do not affect the interpretation of these Terms and Conditions;
- 14.3. where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;
- 14.4. the words "includes" and "including" 'for example', 'such as' or any form of those

words or similar expressions in this agreement do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;

- 14.5. **Account** means your registered account on the App;
- 14.6. **"Fee-collecting NSW National Park"** means a NSW National park for which motor vehicle entry fees are charged, as determined under Division 2A of Part 2 of the *National Parks and Wildlife Regulation 2019*. A list of these national parks is available on the NPWS website.
- 14.7. **"NPWS"** means the NSW National Parks and Wildlife Service.
- 14.8. **"Parking Space"** means a lawful parking bay in a paid parking zone as listed on the App from time to time and/or parking bays, lots, areas or zones for which you are required to pay for parking, including where indicated by signage.
- 14.9. **"Parking Transaction"** means payment of Charges made via the App.
- 14.10. **"Services"** means the Parking Space location and vehicle entry to fee-collecting NSW National Parks assistance provided by the App and the payment service accessible through the App; and
- 14.11. **"User" "you" or "your"** means a person, organisation or entity using the App and receiving the Services.