

Bergenoff Black Car Club

Terms of Service

LAST REVISION: 06/15/2023

These Terms of Service ("Terms of Service") constitute a legally binding agreement between you ("Member") and Bergenoff, Inc. and its subsidiaries, representatives, affiliates, officers and directors (collectively, "Bergenoff") governing your use of the Bergenoff Black Car Club ("Club") services and any related content or services, including mobile and/or web-based applications ("Applications" or the "Bergenoff Member App"). These Terms of Service set forth the terms and conditions under which Bergenoff grants the privileges and rights of the Club to the Member.

All Members agree to and are subject to the Club's published Terms of Service as they may be amended from time to time by the Club in its sole discretion. The Terms of Service constitute the Membership Agreement. Member will be notified of any changes or revisions to the Club's Terms of Service. Any member who, in the sole determination of the Club, violates these Terms of Service may be suspended or terminated by the Club.

1. **MEMBERSHIP.** Membership is a contractual privilege to use the Club services as outlined within these Terms of Service. The membership plans, the amount of fees, dues, and other charges payable by the members, the suspension and termination of members, and all other matters affecting or relating to this membership shall be at the Club's sole discretion.
 - a. **Membership Eligibility:** Members must be at least 21 years of age. The Club, in its sole discretion, reserves the right to accept or reject applicants for membership and to terminate the membership of any member based on any membership eligibility criteria it deems relevant.
 - b. **Membership Term:** The Club is a month-to-month membership that can be cancelled at any time based on the terms defined in section 8. *CANCELLATION* within these Terms of Service.
 - c. **Membership Provisions:** Member acknowledges and agrees that by agreement with these Terms of Service and by initiating the Payment Authorization, Member is bound by this agreement which may be modified from time to time by the Club.
 - d. **Membership Rights and Privileges:** Membership grants access to Club services and other offerings as may be developed for this membership. Membership does not convey any financial interest in Bergenoff. Bergenoff is a fee-based membership club, not an equity membership club. Memberships are not transferrable.
 - e. **Membership Reactivation:** To reactivate a cancelled membership, Member will be required to undergo the application process, including payment of the then-current initiation fee, to be considered for membership. Any previous due amounts must be brought current prior to acceptance.
 - f. **Representations:** Member represents and warrants their application for membership is made in good faith. Member represents and warrants they shall not disclose information obtained through Club services regarding other members including their identities, likenesses, addresses, or any other identifying information. Member warrants that they are relying on their own judgment, plus the judgment of their advisors, in entering into this agreement. The Club does not provide advice, legal or otherwise, to prospective members related to this agreement.

2. **MEMBERSHIP SERVICES.** Member is authorized to use the Club services as defined by their Membership Plan and subject to the member's Payment Authorization and these Terms of Service agreement.
 - a. **Membership Service Area:** The Club's services for this agreement are available within the Omaha Metro Area which includes Omaha, Bellevue, Papillion, Ralston, LaVista, Elkhorn, Gretna, Waterloo, Bennington, Council Bluffs, Iowa and Carter Lake, Iowa. Members will be advised of any changes or additions to the covered area.
 - b. **Membership Plan:** Member can select from the available Membership Plans which define the number of trips included within the plan and the cost associated with that plan. Members may elect to change their plan type only once every six months. A thirty (30) calendar day notice via an email to Membership Services at Member@Begenoff.com is required to implement requested plan change. Start date for any plan change will be on the first day of the month and confirmation will be sent to member's email on file.
 - c. **Booking Limitations:** Members are entitled to reserve and use the Club's services as specified in their Membership Plan.
 - d. **Booking Scheduling:** Schedule trips 24 hours in advance. Please schedule trips as early as possible to smooth Chauffeur scheduling. Airport trips are tracked by flight number. If your flight is cancelled or changed, contact membership Services at Member@Begenoff.com or (402) 281-3414 to update.
 - e. **Pickup Wait Limitation.** Your Chauffeur provides services to several members and must maintain a schedule. The wait limit is 15 minutes past your scheduled pick-up time. If you anticipate a delay, contact your chauffeur via the mobile number provided in the acceptance email to allow for possible accommodation.
 - f. **No Show Policy:** If, after 15 minutes beyond your scheduled pickup time, you have not contacted your Chauffeur or arrived at the vehicle, your Chauffeur will depart and it will count against your total monthly trip allotment.

- g. **Guest Requirements.** Member may bring as many guests as allowed by the vehicle's capacity. All guests must adhere to the same membership rules and guidelines as you. Please specify the total number of passengers when booking your trip. Member is responsible for their guests.
- h. **Availability:** Club services are available to members subject to the limitations specified herein and to any changes to the availability of the Club services that the Club may make from time to time in its sole discretion. The Club makes every effort to provide the Club services on a 24/7 basis but does not guarantee that the services will be available at all times. Member understands and accepts that Acts of God, unforeseen traffic, vehicle breakdowns, severe weather conditions, and other unforeseen events beyond the control of the Club may cause delay in travel, for which the Club shall not be liable to the Member. There shall be no recourse for any of the same. The Club does not represent nor warrant the availability of any Club services. In the event of the situation above, all efforts will be made to supply a replacement vehicle.

The Club is only responsible for the pick-up time selected by Member and does not guarantee drop-off time. The Club is not responsible for fulfilling itineraries developed by the Member, which indicate a time that the customer expects to arrive at certain locations after the initial pick-up time. Allow time for unforeseen delays when booking your trip.

- i. **Black Out Dates:** The Club values our members by providing trained chauffeurs for Black Car Club offering. We value those Chauffeurs and their families by providing blackout dates to ensure they have scheduled family time. During these black-out dates, Club services will be unavailable. These dates include the six major holidays (New Years, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas) as well as the second week of January for company development and retreats. The Bergenoff Member App and the Online Booking Portal will not allow booking trips on those dates. The Club will make its best effort to inform members of upcoming blackout dates in a timely manner.

3. PAYMENTS. Member agrees to pay all amounts set forth in their Payment Authorization and within these Terms of Service. Except as stated within these Terms of Service, all membership fees, dues, and other payments are nonrefundable. Member shall not be relieved of obligations to make any such payments and no deduction or refund of dues shall be made for Member's failure to attend or use the Club services due to vacation, travel, or personal commitments.

- a. **Payment Authorization:** The Club utilizes three methods for completing the Member's Payment Authorization – the "Join the Club" payment process on the Bergenoff website, a separate Payment Authorization emailed to the member for an electronic signature and, on rare occasions, the completion of a paper Payment Authorization. All are considered a valid Payment Authorization and subject to the Terms of Service.
- b. **Payment Method:** The Club accepts payment for all membership services only through authorized Credit Card transactions as defined in the Payment Authorization and these Terms of Service. The Club does not issue invoices prior to authorized debit transactions. The Club will send a payment receipt to the email address on file after payment processing is completed.
- c. **Initiation Fee:** The Club reserves the right to charge a one-time initiation fee to all new members. If, however, Member cancels their membership for any reason and chooses to apply for a new membership, member will be charged an initiation fee for the subsequent membership.
- d. **Monthly Membership Dues:** Member must remit membership dues on a monthly basis. The Club reserves the right to charge monthly dues based on the amount defined in the Payment Authorization. Authorized debits shall be on the first day of the month and begin on the date specified in the Payment Authorization and continue until revoked. Dues shall be debited from Member's account through electronic funds transfer system as defined and will reflect the current month's dues.
- e. **Additional Service Fees:** In addition to the monthly allotment of trips defined within the Membership Plan, members have extended and premium services available dependent upon their location and current offering. These may include, but are not limited to, additional trip bookings beyond the Membership Plan allocation, extended coverage area services, hourly booking services and other premium services. Additional services available in your area will be communicated to you via the member's email on file or on our website. The cost of these services will be posted and debited from member's authorized payment account on the 10th of the following month. An itemized statement will be sent to the member's email on file.
- f. **Payment Authorization Date Policy:** If the recurring dues payment date falls on a weekend or holiday, Member understands the payments may be executed the next business day. For additional services, if the 10th of the month falls on a weekend or holiday, Member understands the payments may be executed the next business day.
- g. **Adjustment to Dues and Fees:** Monthly dues rates, charges, and fees for services are subject to change, as deemed necessary by the Club. The Club may increase monthly dues rates by providing Member with a minimum of thirty (30) day notice via Member's email address on file.
- h. **Payment Authorization Term:** Member understands this authorization is to remain in full force and effect until Member notifies the Club as defined under section 8. *CANCELLATION* of these Terms of Service.

- i. **Valid Credit Card Information:** Members are required to have valid credit card account payment information on file. It shall be the Member's responsibility to update their credit card information on file if the account is no longer valid or if the Member wishes to use a different card to pay for Club services.
- I. **Change of Payment Authorization:** Changing payment authorization to a different credit card requires a new Payment Authorization form to be completed and will become part of this agreement. Please email Member@Bergenoff.com, Attention: Membership and a new Payment Authorization form will be forwarded via secure email for revision and signature.
 - II. **Update Payment Authorization:** To update information on a credit card on file (i.e., new expiration date, name change, etc.), please email Member@Bergenoff.com, Attention: Membership. A Club representative will contact you to obtain and update the new information for your card on file. If you prefer or the Club determines it is necessary, a new Payment Authorization form will be forwarded via secure email for revision and signature.
 - III. **Expired / Invalid Credit Card:** If any payment is denied by Member's financial organization, the Club may suspend membership until the account is brought current. Additionally, the Club reserves the right to terminate Member's privileges. Member agrees to pay all costs incurred to enforce collection including, but not limited to, attorney's fees and administrative costs. For each debit transaction for outstanding balances payable to the Club not honored, a \$25 service charge will be assessed.
- j. **Dues and Fees Refund Policy:** In the event of membership cancellation, any membership dues owed for the period before cancellation, plus any unpaid balances, must be paid prior to the cancellation date. The Club has the following refund policy:
- IV. **Membership Initiation Fee:** The initiation fee is a non-refundable one-time charge for enrollment.
 - V. **Monthly Membership Dues:** Payment authorization and, therefore, account debits will terminate as defined under section 8. *CANCELLATION* clause. This policy terminates membership and payment obligation at the end of the monthly renewal period following the required thirty (30) calendar day notice from a member. There will be no refund of dues paid and no pro-rata refund for partial months.
- k. **PCI Compliance Policy:** Bergenoff, Inc. ("Bergenoff") is committed to protecting consumer credit card data in compliance with the Payment Card Industry Data Standard (PCI DSS). Our payment processing policy was created with this regulation at its core. Bergenoff utilizes a reputable third-party credit card processor to provide secure, compliant processing of payments from your authorized account. No credit card information is stored by Bergenoff either in written or electronic form.
- l. **PRIVACY POLICY:** The Bergenoff Privacy Policy defines our handling of your sensitive personal and account information. Please see this document to learn how we value your information and maintain policies and processes that maintain its confidentiality and security.
4. **DAMAGES.** Member agrees to pay for all damage and any cleaning to the vehicle which results or is required due to the conduct of any passenger in the vehicle. Such damage includes, but is not limited to, burns, spillage, vomiting, broken glassware, scratches, stains, broken windows, torn seats, or broken mirrors. Member agrees the charges for such repairs and cleaning will be assessed to the Member's authorized account on file. In the event the authorized account is not able to be charged, Member agrees to remit payment for damages within seven (7) days of the date of the event. No charges will be assessed to your account without timely prior notification.
5. **VEHICLE PRIVACY POLICY.** The Club values our member's privacy while utilizing our Club's services. No photos, videos, or audio of members will be captured via vehicle technology or driver action during the commission of our services. Members are not to disclose or share information about the Club or other members without the Club's or such other member or members' permission. Members are prohibited from disturbing, photographing, or soliciting others in the Club with whom they are not personally acquainted. Doing so may lead to suspension or termination of membership.
6. **STANDARD OF BEHAVIOR.** The Club expects the highest standards of behavior and conduct from our members and our employees and does not tolerate illegal activities or inappropriate behavior of any type within Club vehicles. Illegal activity means activities which are identified as illegal under Applicable Law. Inappropriate behavior includes but is not limited to any form of discrimination, harassment or other actions or language that does not treat others with dignity, courtesy, and respect.
7. **MEMBER SAFETY.** The Club is committed to providing a safe and secure environment for our members, our employees, and the public. The Club is a multi-state and multi-jurisdictional operation and, therefore, is subject to the laws and regulations of those areas. This safety policy is automatically amended to meet those laws and regulations.
- Weapons,** of any type, are not permitted within the passenger compartment of the vehicle at any time. When allowed by law, weapons may be transported in the trunk of the vehicle. All firearms must be unloaded and within a proper case. All explosive devices or materials, except for firearm ammunition, are prohibited. All weapons must be removed from the vehicle at the conclusion of the transport. Your Chauffeur will adhere to all policies and regulations and has the option to refuse transport of any weapon at any time.
- Seat Belts and Child Restraints** are required while being transported. Member must provide car and booster seats for children as required by law. Car seats and booster seats must be removed upon arrival at the destination as both interior and trunk space must be available for other members. Member is responsible for securing their guests.

- 8. CANCELLATION.** The Club strives to be a valuable service for our members. We recognize that circumstances occasionally necessitate cancellation of a membership. Member will remain liable for payment of dues and other charges for periods prior to the effective date of cancellation. No refunds shall be made for membership dues and other charges except as specifically provided for in these Terms of Service. The Club also has the right to cancel Member's membership at any time without cause.
- a. **Suspension or Cancellation of Membership for Nonpayment:** If Member fails to pay any obligation owing to the Club within fifteen (15) calendar days after the obligation becomes due, the Club may, at its discretion, suspend or cancel Member's membership by providing an email notice of same to Member. Until the Club suspends or cancels membership or, if applicable, membership is canceled by Member in accordance with these Terms of Service, monthly membership dues and fees will continue to accrue. Member is responsible for full payment of all membership dues and fees along with any bank "returned item" fees, processing fees, and delinquency charges accruing prior to membership cancellation, including while membership is suspended. If membership is suspended, Member may have membership reinstated to active status by paying all past dues and current membership fees and charges in full.
 - b. **Cancellation for Violation of Terms of Service or Misconduct:** All Members agree to and are subject to the Club's published Terms of Service. The Club reserves the right at any time to cancel the membership or membership privileges of any individual on a membership for failure to comply with any of these Terms of Service of the Club, for any violation of the terms of this contract, or for any conduct the Club deems to be improper or harmful to the best interests of the Club, its staff, and its members. The membership, or membership privileges of a particular individual on a membership, may be cancelled in person, by email notification, or written notification mailed to the last address with the Club's records for the membership. Any suspension or cancellation of membership initiated by the Club shall be effective when transmitted by the Club regardless of when received.
 - c. **Voluntary Cancellation:** Member may cancel Club membership at any time by providing the Club at least thirty (30) calendar days' notice prior to the date cancellation is intended to take effect. These Term of Service and the Payment Authorization will terminate at the end of the following renewal period after the date of said cancellation. Notice of cancellation shall be sent to Bergenoff, Inc. via email at: Member@Bergenoff.com, Attention: **Membership**.
 - d. **Dues and Fees Refund Policy:** In the event of membership cancellation, any membership dues owed for the cancellation period, plus any unpaid balances, must be paid prior to cancellation date. The Club has defined this refund policy within this Terms of Service document.
- 9. COMMUNICATION POLICY.** Member understands and consents, that for the Club to provide its services, it is necessary to authorize communication via mobile phone, text messages, e-mail and any kind of online communications, provided these communications comply with the Club's Privacy Policy.
- a. **Contact Information:** Member hereby grants the Club "opt-in" permission to send emails related to membership notifications and SMS (text) updates regarding booking status, driver messages, and pickup updates. No member data will be released to a third-party provider that is not relevant to performing membership services.
 - b. **Text Messages:** Member agrees to receive text messages from the Club regarding updated booking status and communication with Club drivers or dispatch staff.
 - c. **Personal Email Address:** Member understands a valid email address must be provided and maintained to receive Club services. Member also understands booking information will be forwarded via email. Occasional emails from the Club updating Member on new membership benefits or policies may be forwarded as well.
 - d. **Mobile Phone:** Phone communication from the Club or drivers will be very rare but may be necessary to ensure Member's experience meets expectations.
 - e. **Member Services:** Bergenoff provides both email support at Member@Bergenoff.com and phone support at (402) 281-3414. If you have questions or require assistance, please contact us.
 - f. **Electronic Signature and ACH Authorization:** The Club believes in reducing paper processing whenever possible. Bergenoff utilizes DocuSign and/or other electronic signature solutions ("DocuSign") for Club Agreements and Authorizations. DocuSign in the United States complies with the definition of an electronic signature under the Electronic Signatures in Global and National Commerce (ESIGN) Act and the Uniform Electronic Transactions Act (UETA).
- Member agrees and understands DocuSign electronic signatures are the legal equivalent of their handwritten signature, and Member consents to be legally bound to this agreement. Member further agrees the Bergenoff's representative's signature on this Agreement is as valid as if signing the document in writing. This is to be used in conjunction with the use of electronic signatures on all forms regarding any and all future documentation with a signature requirement. Under penalty of perjury, the Member herewith affirms all electronic signatures, and all future electronic signatures, were signed by Member with full knowledge and consent. Thus, the Member is legally bound to these terms and conditions.
- 10. ENTIRE AGREEMENT:** These Terms of Service, together with the Payment Authorization, contains the entire understanding of the Club and Member relating to Club Membership and supersedes all other prior written or oral communications, agreements, understandings, or arrangements between the Club and Member relating to the subject matter hereof.

11. ARBITRATION. Any dispute or controversy arising in connection with these Terms of Service that cannot be settled by mutual or amicable agreement shall be finally settled in accordance with the Judicial Arbitration and Mediation Services (“JAMS”) commercial arbitration rules (“Rules”) by one arbitrator with at least seven (7) years of experience as an arbitrator appointed in accordance with the Rules. The place of arbitration shall be Omaha, Nebraska. The parties agree no party shall be entitled to an award of punitive damages and the prevailing party shall be entitled to its attorneys’ fees and expenses. The decision and award resulting from such arbitration shall be final and binding on the parties subject to the approval process under the Rules. Judgment upon the arbitration award may be rendered by any court of competent jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement.

12. JURISDICTION. Member and Bergenoff agree that this agreement is governed in accordance with the laws of the State of Nebraska. Any dispute, controversy, or claim arising from this agreement may only be brought in a court of competent jurisdiction in Douglas County, Nebraska.

13. LIMITATION OF LIABILITY. Except to the extent any loss or damage is ultimately determined to be due SOLELY to Bergenoff’s gross negligence or willful misconduct:

In no event will Bergenoff, including our affiliates, subsidiaries, parents, successors and assigns, and each of our respective officers, directors, employees, agents, or shareholders (collectively “Bergenoff” for purposes of this section), be liable to Member for any incidental, special, exemplary, punitive, consequential, or indirect damages arising out of or in connection with the Bergenoff platform, club services, or this agreement. This includes damages for deletion, corruption, loss of data, loss of programs, service interruptions, failure to store any information or other content maintained or transmitted by the Bergenoff platform, or damages from the cost of procurement of substitute services. Bergenoff will not be liable for these damages no matter how they arose, including negligence, even if Bergenoff or their agents or representatives knew or had been advised of the possibility of such damages. The Bergenoff platform may be used by Member to request and schedule transportation, but Member agrees Bergenoff has no responsibility or liability to Member related to any transportation or other services provided to them other than as expressly set forth in in this agreement.

Certain jurisdictions may not allow the exclusion or limitation of certain damages. If these laws apply to Member, some or all of the above disclaimers, exclusions, or limitations may not apply to them, and Member may have additional rights.