

CLUBPASS APP TERMS & CONDITIONS OF USE – Apple iOS Devices

Version: 3.0 – Last Updated 10 August 2022

Your agreement to these Terms and Conditions is required to install or use the ClubPASS App.

You must read these Terms and Conditions carefully BEFORE installing the ClubPASS App or using the ClubPASS System.

You must not install or use the App on any device which You do not own or are not authorised by the owner to control.

The ClubPASS App is the only official app which may be used with the ClubPASS System in Participating Venues.

The ClubPASS System currently only operates in Participating Venues located in New South Wales and the ClubPASS App cannot be used for access to other licensed venues within New South Wales or any other State or Territory.

1. Agreement to Terms and Conditions

- 1.1 ClubsNSW provides You with a license to use the ClubPASS App (“App”), available for free download from the App Store, in accordance with these Terms and Conditions. You acknowledge that this license is between ClubsNSW and You only, and not with Apple or any other person. You may incur charges from Your mobile service provider for downloading and using the App.
- 1.2 You agree that by downloading and operating the App on the Device (including creating a Profile and using the App at a Participating Venue), You have read, understood, and agree to be bound by these Terms and Conditions.
- 1.3 You acknowledge that in addition to these Terms and Conditions, Your entry into a Participating Venue using the App is also subject to the conditions of entry for that Participating Venue. ClubsNSW does not warrant that by successfully obtaining entry to the Participating Venue through use of the App You have met the conditions of entry set by law or the Participating Venue. The Participating Venue will at all times have discretion whether to allow You entry to the Participating Venue, in accordance with its registration, liquor licence, constitution, rules, by-laws, relevant legislation and conditions of entry.
- 1.4 You must be at least 18 years of age to use the App. You agree that You are over the age of 18 years and acknowledge that if You appear to look under 25 years old You may need to provide alternative proof of age when entering the Participating Venue and/or buying or consuming alcohol from that Participating Venue, regardless of whether you have been permitted entry using the App.
- 1.5 You acknowledge that if You live within a five (5) kilometre radius of the Participating Venue (or such greater area as specified by the Participating Club), You may be required to become a member of the Participating Club or be accompanied by a member of the Participating Club to be permitted access to the Participating Venue using the App.
- 1.6 You agree that by agreeing to and accepting these Terms and Conditions You have not relied on:
 - (a) any warranty or representation made by ClubsNSW or any person on behalf of ClubsNSW or a Participating Club; or
 - (b) any conduct of ClubsNSW or any person acting on behalf of ClubsNSW or a Participating Club.
- 1.7 ClubsNSW reserves all rights not expressly granted to You by these Terms and Conditions.

2. Scope of license

- 2.1 ClubsNSW grants to You a non-exclusive, non-transferable license to use the App on the Device, in accordance with these Terms and Conditions and the usage rules contained in the Apple Media Services Terms and Conditions.
- 2.2 You may only use the App for Your personal, non-commercial purposes and You may not use or copy the App for any other purpose, unless You obtain prior written consent from ClubsNSW.

2.3 Restrictions on license:

You may not:

- (a) install or use the App on any device that You do not own or are not duly authorised by the owner to control;
- (b) distribute or make the App available over a network where it could be used by multiple devices at the same time;
- (c) sell, redistribute, or sublicense the App;
- (d) copy (except as permitted by these Terms and Conditions and the Usage Rules), decompile, reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the App, any updates, or any part thereof (except as and only to the extent that any foregoing restriction is prohibited by applicable law);
- (e) violate any applicable laws or access or use the App for any unlawful purpose, including to facilitate identity fraud or entry of a minor into a Registered Club;
- (f) distribute viruses, spyware, corrupted files or any other similar software or programs that may damage the operation of any computer hardware or software; or
- (g) capture, collect or store personal data about other users of the App.

3. Your Use of the App

- 3.1 In order to use the App, You must create a Profile. You are solely responsible for the security of the Device and must take all reasonable steps to prevent unauthorised access to the App, including but not limited to locking the Device and keeping all access usernames, passwords, personal identification numbers and answers to security questions confidential.
- 3.2 You are entirely responsible for any and all use of the App on the Device and for ensuring that all use of Your Profile and App complies fully with these Terms and Conditions. You must notify ClubsNSW immediately of any unauthorised use of the App on the Device to falsify Your or another person's Profile, access a Participating Venue using Your Profile or any other breach of security. ClubsNSW will not be liable for any loss that You incur as a result of someone using the App on the Device, either with or without Your knowledge.
- 3.3 You are entirely responsible for the accuracy of the information contained in Your Profile. You must provide true, accurate and complete information.

You must not:

- (a) modify or manipulate any details contained in Your Profile to falsify your identity; or
- (b) attempt to gain access to a Participating Venue using the App containing a doctored or falsified Profile, or with a Profile containing inaccurate, outdated, or incomplete information.

It is Your responsibility to:

- (c) review and verify the accuracy of the information which has been added to Your Profile;
and
- (d) maintain the accuracy of the information in Your Profile at all times. You must edit Your Profile upon there being any change in Your identification details (e.g. change of name or residential address).

3.4 **You must not permit, allow, or assist a minor (person under the age of 18) to:**

- (a) create a Profile using Your identification or to falsify an identity; or
- (b) use the App containing Your Profile to attempt to gain entry to a Participating Venue.

- 3.5 You agree to fully compensate and hold harmless ClubsNSW, its related companies, officers, employees, and agents from and against reasonable liability, loss, damage, costs, and expense (including, without limitation, reasonable legal expenses) and penalties incurred or suffered by any of them arising out of a breach by You of clause 3.3 or 3.4 of these Terms and Conditions. For the avoidance of doubt, this indemnity will extend without limitation to any loss

ClubsNSW may suffer as a result of the use of the App on the Device by third parties.

- 3.6 ClubsNSW may, in its absolute discretion and without notice to You, suspend Your access to the App, delete Your Profile or any Profile created using the App on the Device, and/or deactivate, suspend or terminate Your Profile if:
- (a) You breach Your obligations, or ClubsNSW reasonably believes that You have breached Your obligations under these Terms and Conditions or any applicable laws (including but not limited to any breach of clause 3.3 or 3.4 above);
 - (b) ClubsNSW, in its absolute discretion, considers that You or Your use of the App pose an actual or potential threat to the security of the App, the ClubPASS System, any other App User, the welfare of a minor, the Participating Venue and/or ClubsNSW and/or any Participating Club's business and/or interests; or
 - (c) otherwise in its absolute discretion, after providing You with reasonable prior notice.
- 3.7 To the extent permitted by law, ClubsNSW shall have no liability to You as a result of deactivating, suspending, or terminating Your access to the App, Your Profile in accordance with clause 3.6.

4. Privacy

- 4.1 You agree that ClubsNSW may collect and use Your Personal Information in providing the ClubPASS System in accordance with these Terms and Conditions, including but not limited to clause 5. Without limiting any rights ClubsNSW has under these Terms and Conditions to collect and use Your Personal Information, any Personal Information collected by ClubsNSW through Your use of the App, or otherwise collected by or on behalf of ClubsNSW, will be handled in accordance with Our Privacy Policy at <https://www.clubsnsw.com.au/privacy-policy>.

5. Consent to Use of Data

- 5.1 The App may use geolocation recognition to enhance the functionality of the App and Your user experience. You can turn off this functionality at any time by turning off the location services settings for the App on the Device, however this will disable certain App features. If You use the App, You consent to us collecting, processing, and using Your location data to:
- (a) provide and improve location-based App features;
 - (b) provide real-time data to the relevant Participating Club regarding the number of App Users in a Participating Venue; and/or
 - (c) provide and improve App features which enhance Your visitor experience at a specific Participating Venue.
- You may withdraw this consent at any time by turning off the location services settings for the App on the Device.
- 5.2 You give ClubsNSW Your consent to use any Personal Information or data contained in Your Profile or relating to Your use of the App for any purpose determined by ClubsNSW, including without limitation:
- (a) to provide the ClubPASS System and the App;
 - (b) where you have provided Your consent in the App to a record being made in the ClubPASS System that your COVID-19 vaccination status has been sighted by a Participating Club, to such a record being made, for the purposes of allowing that or any other Participating Clubs to be alerted to such a record so that your subsequent entrances can be streamlined (subject to a Participating Club's conditions of entry and risk profile with respect to its use of the ClubPASS System)
 - (c) a record being made in the ClubPASS System that your membership of a Member Club and/or your proof of age identification has been sighted, for the purposes of allowing that or any other Participating Clubs to be alerted to such a record so that your subsequent entrances can be streamlined (subject to a Participating Club's conditions of entry and risk profile with respect to its use of the ClubPASS System);
 - (d) to disclose, to a Participating Club, any Personal Information or data contained in Your Profile or relating to Your use of the App, including to assist the Participating Club to comply with its obligations under the *Registered Clubs Act 1976* (NSW);
 - (e) where you have indicated that you are member of a Member Club, to disclose any Personal Information contained in Your Profile or relating to Your use of the App to that or any other Member Club for verification and matching purposes;
 - (f) where you have signed into a Participating Club with the App, to disclose any Personal Information contained in Your Profile or relating to Your use of the App to that Participating Club for the following purposes:
 - (i) to carry out gambling self-exclusion checks;
 - (ii) to improve the services it provides to You and other patrons;
 - (iii) to push direct messages to You via the App, SMS and email that are relevant to the services provided by

- that Participating Club (including marketing and promotional messages);
- (iv) to prove that Your identity has been verified;
- (v) analytical and insights purposes; and
- (vi) for any other purposes outlined in its privacy policy.

- (g) analytical and insights purposes for the benefit of ClubsNSW business or that of its Member Clubs;
- (h) to improve the services provided to You;
- (i) to meet its contractual obligations to Apple;
- (j) to improve the ClubPASS System (including the functionality of the App);
- (k) to push direct messages to You via the App, SMS and email that are relevant to the use of the App and the ClubPASS System and to promote current and upcoming features and capabilities of the App and ClubPASS System; and/or
- (l) where You have provided Your consent in the App to receive marketing and promotional materials (**Marketing Materials**) from ClubsNSW and/or third-party service providers, to use any Personal Information or data contained in Your Profile to send You such Marketing Materials.

5.3 You give ClubsNSW permission to disclose any data contained in Your Profile or relating to Your use of the App, to any party, provided that ClubsNSW has ensured that reasonable security measures for the data are in place prior to any data transfer, including but not limited to:

- (a) any Australian State or Federal Government Department of Health and/or a Participating Club for the purposes of contacting You to advise You of any potential or identified COVID-19 risk to which You may have been exposed during any relevant period when You attended a Participating Venue;
- (b) a Participating Club;
- (c) the Identification Verification Provider;
- (d) Apple; and
- (e) as otherwise required by law.

5.4 Where you have provided Your consent in the App, You give the Identification Verification Provider consent to collect, use, store and disclose Your Personal Information to undertake the Identification Verification on behalf of ClubsNSW in accordance with the Identification Verification Provider's privacy policy, and to disclose that Personal Information to ClubsNSW. A copy of the current Identification Verification Provider's privacy policy can be located here: [privacy policy](#).

6. Intellectual Property

6.1 All intellectual property rights in the App are owned by ClubsNSW or licensed to Clubs NSW by its third-party licensors. Nothing in these Terms and Conditions constitutes a transfer to You of any of those intellectual property rights. You agree that You will not do anything which breaches or otherwise interferes with ClubsNSW intellectual property rights or the intellectual property rights of any of ClubsNSW third party licensors and that You will not distribute, reproduce, publish, alter, modify, or create derivative works from any ClubsNSW Content or Third-Party Content without the prior written permission of ClubsNSW or the relevant third-party licensor. You agree that You will not use or exploit any ClubsNSW Content in any way whatsoever for commercial benefit.

7. Technology

7.1 ClubsNSW is constantly striving to improve the App and the ClubPASS System. This means that the App may need to be suspended or updated from time to time because of periodic maintenance, repairs, or upgrades. ClubsNSW uses reasonable endeavours to make the App when required by You. However, ClubsNSW does not guarantee the availability of the App at all times and You acknowledge that in the event the ClubsNSW upgrades the App, earlier versions of the App may no longer be supported or compatible.

7.2 ClubsNSW does not guarantee continuous, uninterrupted, or secure access to the App, or that it is free of computer viruses, bugs, or other harmful components or that defects will be corrected. As a result, You may at times experience disruption or other difficulties when using the App. You may report issues with the operation of the App to ClubsNSW. ClubsNSW and You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App.

7.3 ClubsNSW and its licensors reserve the right to change, suspend, remove, or disable access to the App or any element of the ClubPASS System at any time without notice or liability.

8. Liability

- 8.1 You acknowledge and agree that use of the App is at Your sole risk and, to the maximum extent permitted by applicable law but subject always to clause 8.2:
- (a) the App is provided to You “as is” and on an “as available” basis, with all faults and without warranty or guarantee of any kind;
 - (b) ClubsNSW disclaims all representations, warranties, guarantees, and conditions with respect to the App or the ClubPASS System, whether express or implied or statutory (including, but not limited to quality, fitness for purpose, accuracy, or right to quiet enjoyment) except as expressly set out in these Terms and Conditions.
- 8.2 Certain legislation, including the *Competition and Consumer Act 2010* (Cth), may imply warranties, conditions or guarantees or impose obligations or remedies which cannot be lawfully excluded, restricted, or modified except to a limited extent. To the extent that such legislation applies, these Terms and Conditions must be read subject to those statutory provisions and nothing in these Terms and Conditions is intended to alter or restrict the operation of such provisions.
- 8.3 ClubsNSW is not liable to You for any damages or loss (including, without limitation, direct, incidental, indirect, consequential, special, punitive or exemplary damages or any loss of business, interest, goodwill, revenue, profit, or loss or corruption of data), arising out of or related to Your use, access to, or inability to access or use, or reliance on the App or the ClubPASS System, however caused and regardless of whether the claim or liability arises in contract, tort (including negligence), equity, under statute or otherwise. This includes, but is not limited to, any claim for damage to the Device arising as a result of or in connection with Your use of the App, including by reason of harmful code or virus transfer.
- 8.4 If ClubsNSW is liable to You under the *Competition and Consumer Act 2010* (Cth) or similar legislation then, to the extent we are entitled to do so, ClubsNSW limits its liability in respect of any claim under those provisions to, at Our option: (a) supplying the App or ClubPASS System again; or (b) the payment of the cost of having the App or the ClubPASS System supplied again.
- 8.5 ClubsNSW maximum aggregate liability to You for all claims under this license shall not exceed the amount of \$50.00 (AUD).
- 8.6 ClubsNSW and You acknowledge that:
- (a) ClubsNSW not Apple, are responsible for addressing any claims of You or any third party relating to the App or Your possession and/or use of the App, including:
 - (i) product liability claims;
 - (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and
 - (iii) any claims arising under consumer protection, privacy, or similar legislation; and
 - (b) in the event of any third-party claim that the App or Your possession and use of it infringes a third party’s intellectual property rights, ClubsNSW, not Apple, will be solely responsible for the investigation, defence, settlement, and discharge of any such intellectual property infringement claim.
9. **Termination:** Your license to use the App is effective until terminated by You or ClubsNSW. Your rights under this license will terminate automatically without notice from ClubsNSW if You fail to comply with any of these Terms and Conditions. Upon termination of the license, You must cease all use of the App. You may terminate this license at any time by deleting the App from the Device.
10. **Third party beneficiary:** ClubsNSW and You acknowledge and agree that Apple, and Apple’s subsidiaries, are third party beneficiaries of this license, and that, upon Your acceptance of these Terms and Conditions, Apple will have the right (and will be deemed to have accepted the right) to enforce this license against You as a third-party beneficiary thereof.
11. **Third Party Terms of Agreement:** You must comply with any applicable third-party terms of agreement when using the App, such as those set by Your mobile or internet service provider.
12. **Amendments:** ClubsNSW may at any time makes changes to these Terms and Conditions. The most recent version of the Terms and Conditions will always be displayed on the Website. You must regularly check the Terms and Conditions. By using the App after any changes are published, You agree to be bound by the changes.
13. **Contacting ClubsNSW:** You may direct any questions, complaints or claims with respect to the App to ClubsNSW: By post:
Level 8, 51 Druitt Street
SYDNEY NSW 2000

By phone: 02 9268 3000

Online: <https://www.clubsnsw.com.au/clubpasshelp>

- 14. Unenforceability:** If any provision of these Terms and Conditions is held to be invalid or unenforceable in a jurisdiction it is to be read down or severed to the extent of the invalidity or unenforceability in that jurisdiction only, and all other provisions will remain in full force and effect.
- 15. Governing law:** These Terms and Conditions are governed by the laws of New South Wales, Australia. You irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia in New South Wales, and courts of appeal from them for determining any dispute or claim concerning these Terms and Conditions. Your use of the App may also be subject to other local, state, national or international laws.

DEFINITIONS

In these Terms and Conditions:

App means the software application made available by ClubsNSW for free download from the App Store to access and use the ClubPASS System.

Apple means Apple Inc., a California corporation with its principal place of business at One Apple Park Way, Cupertino, California 95014, U.S.A.

Apple Media Services Terms and Conditions means Apple's terms and conditions published at <https://www.apple.com/au/legal/internet-services/itunes/au/terms.html> and any amended version.

App User means any person who downloads and uses the App **and includes You**.

ClubsNSW, We Us and Our means ClubPASS Holdings Pty Ltd (ACN 604 486 115) as trustee for the ClubPASS Trust, of Level 8, 51 Druitt Street, Sydney, New South Wales, 2000.

ClubsNSW Content means all content on the App, including without limitation all layout, graphic design elements, underlying code and any text, graphics, images, sounds, video, illustrations, icons, advertisements, photographs, databases, files, trademarks, and other information, material, and software, other than Third Party Content.

ClubPASS System means the ClubPASS contactless sign-in system developed and distributed by ClubsNSW, delivered to App Users via the App, by which an App User may attempt to obtain entry to a Participating Venue via a ClubPASS QR Code, using the App.

ClubPASS QR Code means a QR code displayed in a Participating Venue for the purpose of interacting with the App.

Device means an electronic device owned or controlled (with the authority of the owner) by You.

Hosted Venue means any premises, other than the Licensed Venue, owned, leased or otherwise legally occupied, controlled or operated by the Participating Club, whether adjoining or at a location distinct from the Licensed Venue and at which a ClubPASS QR Code is displayed (including but not limited to a restaurant or café, gymnasium, sporting arena, conference or function space, children's playground or child-minding facility) and is made available by the Participating Club for the use of its members and guests.

Identification Verification means the process whereby the Identification Verification Provider uses Your Personal Information obtained through data and/or identification documents supplied by You during the Identification Verification to assess whether that Personal Information either matches or does not match the relevant official identity documents or data available to the Identification Verification Provider.

Identification Verification Provider means OCR Labs IDKit Pty Ltd (ABN 51 640 504 249), or any other provider retained by ClubsNSW to undertake the Identification Verification from time to time.

Licensed Venue means the premises from which the Participating Club is permitted to sell alcohol to its members and guests for consumption (on and off those premises) in accordance with the club licence issued under the *Liquor Act 2007* (NSW).

Member Club means a Registered Club who is also a member of ClubsNSW.

Participating Club means any Member Club which enters into an agreement with ClubsNSW to offer the ClubPASS System at a

Participating Venue.

Participating Venue means a Licensed Venue or Hosted Venue operated by a Participating Club.

Personal Information has the same meaning as “personal information” and “sensitive information” in the *Privacy Act 1988* (Cth).

Privacy Policy means the ClubsNSW privacy policy at <https://www.clubsnsw.com.au/privacy-policy>.

Profile means an account containing identification data about the App User, created using the App.

Registered Club means a venue licensed as a registered club in New South Wales.

Terms and Conditions means these Terms and Conditions of Use, as modified or replaced from time to time, and available on the Website.

Third Party Content means intellectual property rights owned by a party other than ClubsNSW or its related bodies corporate.

You or Your means you personally as the owner or authorised controller of the Device who has downloaded the App and accepted these Terms and Conditions.

Website means the website available at <https://www.clubsnsw.com.au/clubpass>.