

## CLUBPASS SYSTEM TERMS & CONDITIONS OF USE – Card Holders

Version: 1.0 – Last Updated 13 July 2022

**These Terms and Conditions only apply to people who have been supplied with a Card to use the ClubPASS System because they do not have access to a Device to use the ClubPASS System via the App.**

**Your agreement to these Terms and Conditions is required to use the Card and the ClubPASS System.**

**You must read these Terms and Conditions carefully and sign these Terms and Conditions BEFORE creating a Profile with a Participating Club and using the Card and the ClubPASS System.**

**The ClubPASS System currently only operates in Participating Venues located in New South Wales and the Card 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 System via the Card, in accordance with these Terms and Conditions. You acknowledge that this license is between ClubsNSW and You only.
- 1.2 You agree that by signing these Terms and Conditions, 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 Card 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 Card 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 Card and the ClubPASS System. 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 Card.
- 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 Card.
- 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 ClubPASS System via the Card, in accordance with these Terms and Conditions.
- 2.2 You may only use the Card for Your personal, non-commercial purposes and You may not use or copy the Card 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 ClubPASS System on any device that You do not own or are not duly authorised by the owner to control;
- (b) distribute or make the ClubPASS System available over a network where it could be used by multiple devices at the same time;
- (c) sell, redistribute, or sublicense the Card;
- (d) copy (except as permitted by these Terms and Conditions), decompile, reverse-engineer, disassemble, attempt to

derive the source code of, modify, or create derivative works of the ClubPASS System, 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 ClubPASS System or Card 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 ClubPASS System.

### **3. Your Use of the System**

3.1 If You do not have access to a Device to use the App, You must create a Profile with a Participating Club in order to use the ClubPASS System. You are solely responsible for the security of the Card and must take all reasonable steps to prevent unauthorised access to the Card, including but not limited to keeping the Card, and any personal identification numbers, usernames and passwords associated with the Card, confidential and safe.

3.2 You are entirely responsible for any and all use of the Card and the ClubPASS System, and for ensuring that all use of Your Profile and Card complies fully with these Terms and Conditions. You must notify ClubsNSW immediately of any unauthorised use of the Card to falsify Your or another person's Profile, access to 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 Card, 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 to the Participating Club creating your Profile.

#### **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 Card containing a doctored or falsified Profile, or with a Profile containing inaccurate, outdated, or incomplete information.

#### **It is Your responsibility to:**

- (a) review and verify the accuracy of the information which has been added to Your Profile;  
and
- (b) 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 Card 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 Card by third parties.

3.6 ClubsNSW may, in its absolute discretion and without notice to You, deactivate and/or suspend Your Card, delete Your Profile or any Profile created on Your behalf by a Participating Club, 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 Card poses an actual or potential threat to the security of the ClubPASS System, any other user of the ClubPASS System, 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 ClubPASS System or 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 ClubPASS System, 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 You give ClubsNSW Your consent to use any Personal Information or data contained in Your Profile or relating to Your use of the Card and the ClubPASS System for any purpose determined by ClubsNSW, including without limitation:

- (a) to provide the ClubPASS System and the Card;
- (b) to a record being made in the ClubPASS System that your COVID-19 vaccination status has been sighted by a Participating Club 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 Card and the ClubPASS System, 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 Card and the ClubPASS System to that or any other Member Club for verification and matching purposes;
- (f) where you have signed into a Participating Club with the Card, to disclose any Personal Information contained in Your Profile or relating to Your use of the Card and the ClubPASS System 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 send messages to You via SMS, email and/or post that are relevant to the services provided by that Participating Club (including marketing and promotional messages);
  - (iv) analytical and insights purposes; and
  - (v) 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 improve the ClubPASS System (including the functionality of the App);
- (j) to send messages to You via SMS, email and/or post that are relevant to the use of the Card and the ClubPASS System and to promote current and upcoming features and capabilities of the ClubPASS System; and/or
- (k) 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.

5.2 You give ClubsNSW permission to disclose any data contained in Your Profile or relating to Your use of the Card and the ClubPASS System, 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; and
- (c) as otherwise required by law.

#### 6. Intellectual Property

6.1 All intellectual property rights in the Card and ClubPASS System are owned by ClubsNSW or licensed to ClubsNSW 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 ClubPASS System 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 Card and the ClubPASS System available when required by You. However, ClubsNSW does not guarantee the availability of the Card or the ClubPASS System at all times and You acknowledge that in the event that ClubsNSW upgrades the ClubPASS System, the Card supplied to You may no longer be supported or compatible.
- 7.2 ClubsNSW does not guarantee continuous, uninterrupted, or secure access to the Card and the ClubPASS System, 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 Card and the ClubPASS System. You may report issues with the operation of the Card or the ClubPASS System to ClubsNSW.
- 7.3 ClubsNSW and its licensors reserve the right to change, suspend, remove, or disable access to the Card 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 Card and the ClubPASS System is at Your sole risk and, to the maximum extent permitted by applicable law but subject always to clause 8.2:
- (a) the Card and the ClubPASS System are 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 Card 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 Card 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.
- 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 Card or ClubPASS System again; or (b) the payment of the cost of having the Card 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).
9. **Termination:** Your license to use the Card and the ClubPASS System 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 ClubPASS System, including use of the Card. You may terminate this license at any time by returning the Card to a Participating Club.
10. **Third Party Terms of Agreement:** You must comply with any applicable third-party terms of agreement when using the ClubPASS System.
11. **Amendments:** ClubsNSW may at any time makes changes to these Terms and Conditions. The most recent version of the Terms and Conditions may be displayed on the Website and will be notified to You by Your Participating Club when you

next sign into the Participating Club using Your Card. The Participating Club may require you to sign the most recent version of the Terms and Conditions. You must regularly check the Terms and Conditions. By using the Card after any changes are published and/or notified to You by Your Participating Club, You agree to be bound by the changes.

**12. Contacting ClubsNSW:** You may direct any questions, complaints or claims with respect to the ClubPASS System to

ClubsNSW: By post: Level 8, 51 Druitt Street  
SYDNEY NSW 2000

By phone: 02 9268 3000

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

**13. 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.

**14. 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 Card and the ClubPASS System 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 Google Play store or Apple App Store to access and use the ClubPASS System.

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

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

**Card** means a card supplied by Participating Clubs to allow people who cannot access the App to enter into a Participating Club using the ClubPASS System.

**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, Card and ClubPASS System, 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, and non-App Users via the Card, by which You may use to attempt to obtain entry to a Participating Venue.

**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.

**Google** means Google LLC, 1600 Amphitheatre Parkway, Mountain View, California 94043, U.S.A.

**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.

**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” 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 You, created on Your behalf by a Participating Club.

**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 a Card and who has accepted these Terms and Conditions.

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

**SIGNATURE**

By signing these Terms and Conditions, You acknowledge that You have read and understood these Terms and Conditions, and that you agree to these Terms and Conditions:

**Signature:** \_\_\_\_\_

**Full Name (please print):** \_\_\_\_\_

**Date:** \_\_\_\_\_