

# Terms of Use

*Last Modified: March 10, 2018*

*cPass Terms of Use and Cardholder Agreement*

## Welcome to cPass!

Thanks for using our products and services ("Services"). The Services are provided by cPass.io ("cPass"). Very important to understand is that we are still in beta test, therefore the terms of use, and subscriptions plans might change. When this happen we will notify all the users by email.

By using our Services, you are agreeing to these terms. Please read them carefully.

## Disclosure:

cPass® attempts to provide access to films in cinemas in UK and EU. However cinemas, as well the time and locations for films may vary depending on cinema inventory, usage, and showtime availability. YOU SHOULD CHECK OUR cPass APP FREQUENTLY FOR CHANGES IN OUR SERVICES AND ALL OFFERINGS INCLUDING UPDATES ON cinema. It is not until the User purchases a ticket at the cinema, that the seat will be reserved and confirmed for the title and showtime selected. If the title and showtime the User wants to see is not available, cPass® will not be held responsible.

You are expected to read these Terms of Use because your use of our Site and Service constitutes your agreement to the Arbitration Agreement and Class Action waiver described in Sections 17 and 18 below to resolve any disputes with us. You should also read these Terms of Use, in particular Section 2.17, as it describes certain restrictions on your use of the cPass Site and Service and your cPass Card, all of which are intended for the sole benefit and use of only you as the approved account holder. Your violation of restrictions set forth in these Terms of Use may trigger our right to terminate your account for such violation.

### **1. Ownership of Site; Agreement to Terms of Use and Cardholder Agreement of cPass**

1.1. "Site" as used in these Terms of Use refers to the cPass Mobile App and the cPass web site located at <https://cpass.io>.

1.2. "Service" as used in these Terms of Use refers to the cPass Service, which may be changed from time-to-time, the cPass Card and the Site.

1.3. The Service and the Site are the property of cPass Inc. ("cPass", "we", "us", or "our") with an address of 1188 Mission St, 94103 San Francisco, USA and its licensors.

1.4 "Terms of Use" refers to these Terms of Use and Cardholder Agreement which govern your access to and use of the Service and Site. BY USING THE SERVICE AND THE SITE, YOU AGREE TO THESE TERMS OF USE. IF YOU DO NOT AGREE, DO NOT USE THE SERVICE OR SITE.

1.5. cPass reserves the right, in its sole discretion, to change, modify, add or remove portions of these Terms of Use, at any time, without prior notice. IT IS YOUR RESPONSIBILITY TO CHECK THESE

TERMS OF USE, AND THE cPass APP PERIODICALLY FOR CHANGES. YOUR CONTINUED USE OF THE SERVICE AND THE SITE FOLLOWING THE POSTING OF CHANGES WILL MEAN THAT YOU ACCEPT AND AGREE TO THE CHANGES. As long as you comply with these Terms of Use, cPass grants you a personal, non-transferable, limited privilege to enter and use the Site and Service. cPass is for your personal use, and not for resale or commercial use under any circumstances.

## **2. Service Subscription Information**

2.1. By opening a cPass account ("Account") and using the Service, you represent and warrant that: (1) you are legally capable of entering into a binding contract; (2) you are at least 18 years of age; and (3) you are a Resident of the United Kingdom or EU countries. You may only sign up for the Service from within the United Kingdom or EU countries.

2.2. cPass will deduct the Service subscription dues from the form of payment that you provide to us when you create an Account, unless we otherwise communicate a different time period or either party seeks to terminate this agreement. You acknowledge and agree that cPass is in a direct agreement with you, the individual, and not with the cinemas listed on the Site.

2.3. A valid cPass subscription to the Service entitles you to: (1) see one (1) 2D film per calendar day through cPass; and (2) a single seat, depending on availability, for a 2D film showing open to the general public. The Service excludes premium showings such as: 3D films, IMAX, 4D, XD and specialty cinemas. The Service is available every day of the week, subject to the cinema being open, inventory, and usage. Alternative or future cPass Service subscription plans may include (1) premium plans that provide access to 3D, IMAX, and specialty formats and (2) capped plans (limited amount of films per month).

2.4. cPass reserves the right to change or modify the Service or subscriptions at any time and in its sole discretion, including but not limited to applicable prices, at any time, without prior notice. cPass reserves the right to change the rules of film-going attendance and ticket availability to members in connection with the Service at any time. cPass reserves the right to change from time to time the number of eligible films a member can see per month. cPass reserves the right to offer members a new price option if they exceed watching a certain amount of films per month. \*\*

2.5. cPass makes no guarantee on the availability to any particular cinema, showtime, or title that is presented in our app. cPass ticket inventory may vary from specific cinema ticket inventory.

2.6 You agree to choose the film title, cinema, and showtime on the day of the performance, but prior to the session's commencement time, through the cPass App. You also agree to only activate your cPass Card for a single ticket purchase by cinema Check-in through the Site, and use your cPass at a ticket kiosk at your selected cinema. If you do not purchase a ticket for the film and showtime selected, the authorization or value on your cPass card will be removed by us. Your cPass Card is only available for use during the film ticket transaction, after cinema check-in. The cinema Check-in does not serve as a confirmation; it is only once you have purchased a ticket with your cPass that a seat has been reserved. If cPass does not influence what showtime or cinema you select, and cPass is not responsible if you select the incorrect film title, showing, or cinema.

2.7 cPass is currently available for use only in the UK.

2.8. Once you receive your cPass Card or use cPass at a supported e-ticketing cinema, you may begin using the Service.

2.9. If and when cPass offers a promotion or free trial, you will be billed when you sign up, but your subscription and billing cycle will not begin until the end of the trial period. Your cPass subscription will

enter into a new period once the promotional or free trial period is over unless terminated by you or cPass. Your cPass account must be in good standing in order for the cPass to be valid.

2.10. If and when cPass offers a free trial period, such period will begin when you receive your card and is valid for 14 days. If you are on an alternative free trial offer, your trial will begin when you receive your card and is valid for 7 days or for the 1 film (that must be seen within 14 days of card arrival). If you try to see a second film using your cPass Card on the one film free trial, you will automatically opt into an annual plan. You will not be charged when signing up, but will be charged when your trial period has expired. You must cancel your account before the expiration of your trial period to avoid these charges. All free trial offers are available exclusively to new members only and are valid once per household.

2.11.

(i) cPass offers three types of subscriptions, month-to-month, three months and annual. cPass will bill upon subscription to the service and then will bill based on the date you receive your card pursuant to the terms of your subscription, unless either party seeks to terminate the agreement. You must cancel your membership before it renews in order to avoid billing of the next month's membership fees to the payment method you provided to us. If you do not contact us prior to the billing date, your card will be charged and termination will occur at the end of the next billing cycle.

(ii) To cancel, you must notify cPass by sending an email to [info@cpass.io](mailto:info@cpass.io) at least one business day prior to the next billing date stating your intent to cancel and providing the full name and email address on the account. You may also cancel your membership by using the cPass app. Cancellations are not effective until confirmation is sent to you via email, and you are responsible for all charges until cancellation is confirmed. Subscription fees may be increased by cPass to reflect changes in standard ticket prices, inflation, cPass's costs, and additional taxes and costs not imposed by cPass. Again, if you wish to terminate your agreement, you must notify cPass at least one business day prior to your next billing date. Any changes will take place at the end of the period for which fees have been paid, and will be introduced in the next billing cycle. **ONCE YOU CANCEL YOUR cPass SUBSCRIPTION, YOU MAY NOT SUBSCRIBE TO THE SERVICE AGAIN FOR A PERIOD OF TWELVE (12) MONTHS.**

(iii) We are still in beta test, we reserve the right to change the subscription plan in any moment, we will notify the users when this will happen by email.

2.12. To make a payment, you must provide the cardholder's name and address, the card number, the card security code, and the card expiration date. If you wish to change your payment method, you must visit the Site at least one day prior to the conclusion of the billing cycle. Transactions will occur on the cardholder's bank or card statement as a payment to "cPass". Payments will occur on the same date every month, unless either party seeks to terminate the agreement. I

2.13. cPass makes reasonable attempts to provide access to 2D films in cinemas nationwide, however the time and locations for 2D films may vary based on cinema inventory which also may change, usage, and showtime availability. If the 2D title and showtime you want to see is not available, cPass will not be held responsible. cPass is not responsible if the selected showing is sold out, and we recommend that you frequently check cinema availability in the cPass App, and if available, arrive to the cinema early and purchase your ticket ahead of time. cPass ticket inventory may vary from cinema inventory. cPass will not be held responsible, if ticket availability has run out for cPass members, but the specific cinema still has tickets available.

2.14. You may use cPass Card to purchase a 2D film ticket at a cinema kiosk. You may not use cPass Card for any other purpose, including but not limited to, unauthorized purchases or purchases exceeding

the value of a single film ticket. cPass allows for a single valid transaction for a film cinema ticket. You acknowledge and agree that all funds on your cPass Card are the property of cPass. You do not have the right to stop payment on any transactions made with cPass. Your cPass Card is valid through the Valid Thru date printed on the cPass Card, except in states where prohibited by law. No reproduction will be accepted. cPass is non-refundable and non-transferable. IF YOUR cPass CARD IS LOST OR STOLEN, PLEASE CONTACT cPass CUSTOMER SUPPORT IMMEDIATELY. THERE WILL BE A \$10 REPLACEMENT FEE CHARGED TO THE PAYMENT METHOD THAT YOU PROVIDED TO US.

2.15. cPass is not directly affiliated or associated with any cinema chains. All references to cinemas and showtimes do not imply direct or indirect affiliation. All listed cinemas do not necessarily have the ability to accept cPass, and their listing on this site does not imply such. cPass makes all efforts to accurately list cinemas and showtimes available to the general public, and listed cinemas and showtimes may be subject to change.

2.16. You agree to respect and abide by the cinema regulations set forth by the venue you have selected tickets for. cPass will not be held responsible for the cinema's actions if the venue agreements are violated. Lost, stolen, or damaged tickets will not be replaced. If you do not hold a valid ticket, you may be required to leave the premises. You should keep your ticket stub with you at all times in order to re-enter the relevant auditorium. cPass is not responsible if you are excluded from viewing the film under any condition. All film showings are subject to normal restrictions. You have no preferential right of access for any showings except for special events organized for cPass. You are not entitled to use cPass in conjunction with any other promotions offered by cPass unless stated otherwise. cPass is not responsible for cinema programming, cancellations, or rescheduled performances.

2.17. You agree that cPass may, at its sole discretion and without prior notice, suspend your subscription or terminate your Account and cPass Card on a temporary or permanent basis, and block your access to the Site at their sole discretion if:

(i) You miss a payment. cPass will contact you by email and if payment is made within 10 days after we send our email, cPass will reactivate the account within 48 hours of payment. You will not be permitted to use the account until it has been reactivated. If you miss more than one payment, we reserve the right to permanently bar you from subscribing to or using the Service. The cPass system records the necessary information to turn over to collection agencies. When required, cPass reserves the right to use a collection agency to retrieve any outstanding balances. cPass reserves the right to seek appropriate punitive damages.

(ii) cPass suspects that you provided incorrect or false information to cPass when creating an Account or signing up for a subscription.

(iii) A breach of these Terms of Use by you.

(iv) You permit another person to use your cPass Card to purchase a film ticket or you use another subscriber's cPass Card other than your own to purchase a ticket. Your cPass Card is intended only for your own use and benefit as an approved account holder and your use thereof is subject to these Terms of Use.

(v) You attempt to purchase a ticket to a film that is different from the film you reserved in the cPass App, or you attempt to purchase a ticket in violation of Section 2.3 such as purchasing more than one ticket within any one calendar day.

(vi) You purchase tickets on any other third-party source using your cPass Card.

(vii) You give (including as a gift), sell, or attempt to give or sell purchased cPass tickets to other patrons.

(viii) You purchase tickets for a purpose other than viewing a film, such as to earn cinema loyalty program points.

(ix) On more than one occasion during any thirty (30) day period you do not view the film for which you purchased a ticket with your cPass Card in its entirety.

(x) cPass determines or suspects that you have opened or attempted to open multiple cPass accounts

(xi) If you use your cPass Card for any purpose other than to purchase a 2D film ticket at a cinema kiosk for the film you check into, or we have reason to believe that you have done so.

(xii) You acknowledge and agree that we have the right to charge a fee of £25. (twenty-five Pounds UK) ("Misuse Fee") per occurrence for misuse of your cPass Card on the form of payment you provided to us for your cPass subscription. You further agree that the amount of this fee is a reasonable measurement of the probable loss to us for each misuse of your cPass Card. If you believe that you have been charged a Misuse Fee in error, you may contact customer service to dispute the charge within 60 days of incurring such charge.

### **3. Content**

3.1. All text, graphics, user interfaces, visual interfaces, photographs, trademarks, logos, sounds, music, artwork and computer code contained on the Site (collectively, "Content"), including but not limited to the design, structure, selection, coordination, expression, "look and feel" and arrangement of such Content, is owned, controlled or licensed by or to cPass, and may not be used without prior written consent from cPass.

3.2. Except as expressly provided in these Terms of Use, no part of the Site and no Content may be copied, reproduced, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted or distributed in any way (including "mirroring") to any other computer, server, web site or other medium for publication or distribution or for any commercial enterprise, without cPass's express prior written consent.

### **4. Your Use of the Site**

4.1. You may not use any "deep-link", "page-scrape", "robot", "spider" or other automatic device, program, algorithm or methodology, or any similar or equivalent manual process, to access, acquire, copy or monitor any portion of the Site or any Content, or in any way reproduce or circumvent the navigational structure or presentation of the Site or any Content, to obtain or attempt to obtain any materials, documents or information through any means not purposely made available through the Site. cPass reserves the right to bar any such activity.

4.2. You may not attempt to gain unauthorized access to any portion or feature of the Site, or any other systems or networks connected to the Site or to any cPass server, or to any of the services offered on or through the Site, by hacking, password "mining" or any other illegitimate means.

4.3. You may not probe, scan or test the vulnerability of the Site or any network connected to the Site, nor breach the security or authentication measures on the Site or any network connected to the Site. You may not reverse look-up, trace or seek to trace any information on any other user of or visitor to the Site, or any other customer of cPass, including any cPass account not owned by you, to its source, or exploit the Site or any service or information made available or offered by or through the Site, in any way where the purpose is to reveal any information, including but not limited to personal identification or information, other than your own information, as provided for by the Site.

4.4. You agree that you will not take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Site or cPass's systems or networks, or any systems or networks

connected to the Site or to cPass. You agree not to use any device, software or routine to interfere or attempt to interfere with the proper working of the Service or Site or any transaction being conducted on the Site, or with any other person's use of the Site.

4.5. You may not forge headers or otherwise manipulate identifiers in order to disguise the origin of any message or transmittal you send to cPass on or through the Site or any service offered on or through the Site. You may not pretend that you are, or that you represent, someone else, or impersonate any other individual or entity.

4.6. You may not use the Site or any Content for any purpose that is unlawful or prohibited by these Terms of Use, or to solicit the performance of any illegal activity or other activity which infringes the rights of cPass or others.

## **5. Purchases; Other Terms and Conditions**

5.1. Additional terms and conditions may apply to purchases of goods or services and to specific portions or features of the Site, including contests, promotions or other similar features, all of which terms are made a part of these Terms of Use by this reference. You agree to abide by such other terms and conditions, including where applicable representing that you are of sufficient legal age to use or participate in such service or feature. If there is a conflict between these Terms of Use and the terms posted for or applicable to a specific portion of the Site or for any service offered on or through the Site, the latter terms shall control with respect to your use of that portion of the Site or the specific service. cPass is not for resale or commercial use under any circumstances.

5.2. cPass's obligations, if any, with regard to its products and services are governed solely by the agreements pursuant to which they are provided, and nothing on this Site should be construed to alter such agreements.

5.3. cPass may make changes to any products or services offered on the Site, or to the applicable prices for any such products or services, at any time, without prior notice. cPass reserves the right to change the rules of film-going attendance and ticket availability to members at any time. The materials on the Site with respect to products and services may be out of date, and cPass makes no commitment to update the materials on the Site with respect to such products and services.

## **6. Accounts, Passwords and Security**

6.1. Certain features or services offered on or through the Site may require you to open an account (including setting up a password). You are entirely responsible for maintaining the confidentiality of the information you hold for your account, including your password and card, and for any and all activity that occurs under your account as a result of your failing to keep this information secure and confidential. You agree to notify cPass immediately of any unauthorized use of your account, password, card, or any other breach of security. You may be held liable for losses incurred by cPass or any other user of or visitor to the Site due to someone else using your cPass password, account, or card as a result of your failing to keep your account information secure and confidential.

6.2. You may not use anyone else's cPass password, account, or cPass Card at any time. cPass cannot and will not be liable for any loss or damage arising from your failure to comply with these obligations.

## **7. Privacy**

Please refer to the privacy document.

## **8. Links to Other Sites and to the cPass Site**

Please refer to the privacy document.

## **9. Disclaimers**

9.1. cPass Does Not Promise That The Site Or Any Content, Service Or Feature Of The Site Or Service Will Be Error-Free Or Uninterrupted, Or That Your Use Of The Service Or Site Will Provide Specific Results. The Service, Site And Its Content Are Delivered On An "As-Is" And "As-Available" Basis. All Information Provided On The Site Is Subject To Change Without Notice. cPass Cannot Ensure That Any Files Or Other Data You Download From The Site Will Be Free Of Viruses Or Contamination Or Destructive Features. cPass Disclaims All Warranties, Express Or Implied, Including Any Warranties Of Accuracy, Non-Infringement, Merchantability And Fitness For A Particular Purpose. cPass Disclaims Any And All Liability For The Acts, Omissions And Conduct Of Any Third Parties In Connection With Or Related To Your Use Of The Service And Site. You Assume Total Responsibility For Your Use Of The Service, Site And Any Linked Sites. Your Sole Remedy Against cPass For Dissatisfaction With The Service, Site Or Any Content Is To Stop Using The Service, Site Or Any Such Content.

9.2. The above disclaimer applies to any damages, liability or injuries caused by any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft or destruction of or unauthorized access to, alteration of, or use, whether for breach of contract, tort, negligence or any other cause of action.

9.3. cPass reserves the right to do any of the following, at any time, without notice: (1) to modify, suspend or terminate operation of or access to the Site, or any portion of the Site, for any reason; (2) to modify or change the Site, or any portion of the Site, and any applicable policies or terms; and (3) to interrupt the operation of the Site, or any portion of the Site, as necessary to perform routine or non-routine maintenance, error correction, or other changes.

#### **10. Limitation of Liability**

In No Event Will We, Our Affiliates Or Their Licensors, Service Providers, Employees, Agents, Officers Or Directors Be Liable For Damages Of Any Kind, Under Any Legal Theory, Arising Out Of Or In Connection With Your Use, Or Inability To Use, Our Service, The Site, Any Websites Linked To It, Any Content On The Site Or Such Other Sites Or Any Services Or Items Obtained Through The Site Or Such Other Sites, Including Any Direct, Indirect, Special, Incidental, Consequential Or Punitive Damages, Including But Not Limited To, Personal Injury, Pain And Suffering, Emotional Distress, Loss Of Revenue, Loss Of Profits, Loss Of Business Or Anticipated Savings, Loss Of Use, Loss Of Goodwill, Loss Of Data, And Whether Caused By Tort (Including Negligence), Breach Of Contract Or Otherwise, Even If Foreseeable. The Foregoing Does Not Affect Any Liability Which Cannot Be Excluded Or Limited Under Applicable Law.

To The Fullest Extent Permitted By Law, And Not Withstanding Any Other Provision Of These Terms Of Use, The Total Liability, In The Aggregate, Of cPass, Its Officers, Directors, Partners, Employees And Subcontractors, And Any Of Them, To You And Anyone Claiming By Or Through You, For Any And All Claims, Losses, Costs Or Damages, Including Attorneys' Fees And Costs And Expert-Witness Fees And Costs Of Any Nature Whatsoever Or Claims Expenses Resulting From Or In Any Way Related To Your Use Of Our Service Or Site From Any Cause Or Causes Shall Not Exceed \$500. It Is Intended That This Limitation Apply To Any And All Liability Or Cause Of Action However Alleged Or Arising, Unless Otherwise Prohibited By Law.\*\*

#### **11. Indemnity**

You agree to indemnify and hold cPass, its officers, directors, shareholders, predecessors, successors in interest, employees, agents, subsidiaries and affiliates, harmless from any demands, loss, liability, claims

or expenses (including attorneys' fees), made against cPass by any third party due to or arising out of or in connection with your use of the cPass Service or Site.

## **12. Violation of These Terms of Use**

12.1. cPass may disclose any information we have about you (including your identity) if we determine that such disclosure is necessary in connection with any investigation or complaint regarding your use of the Service or Site, or to identify, contact or bring legal action against someone who may be causing injury to or interference with (either intentionally or unintentionally) cPass's rights or property, or the rights or property of visitors to or users of the Service or Site, including cPass's members. cPass reserves the right at all times to disclose any information that cPass deems necessary to comply with any applicable law, regulation, legal process or governmental request. cPass may also disclose your information when cPass determines that applicable law requires or permits such disclosure, including exchanging information with other companies and organizations for fraud protection purposes.

12.2. You acknowledge and agree that cPass may preserve any transmittal or communication by you with cPass through the Site or any service offered on or through the Site, and may also disclose such data if required to do so by law or cPass determines that such preservation or disclosure is reasonably necessary to (1) comply with legal process, (2) enforce these Terms of Use, (3) respond to claims that any such data violates the rights of others, or (4) protect the rights, property or personal safety of cPass, its employees, members of or visitors to the Site, and the public.

12.3. You agree that violation by you of these Terms of Use constitute your forfeiture of paid subscription dues, and that cPass possesses the right to collect payment for usage of the Service, in addition to an early termination or misuse fee. You also agree that any violation by you of these Terms of Use will constitute an unlawful and unfair practice, and will cause irreparable harm to cPass, for which monetary damages would be inadequate. You consent to cPass seeking to obtain any injunctive or equitable relief that cPass deems necessary or appropriate in such circumstances. These remedies are in addition to any other remedies cPass may have at law or in equity, or otherwise provided in the Terms of Use.

12.4. You agree that cPass may, in its sole discretion and without prior notice, terminate your account, and thereby access to the Site, which includes (but is not limited to) (1) requests by law enforcement or other government agencies, (2) a request by you (self-initiated account deletions), (3) discontinuance or material modification of the Site or any service offered on or through the Site, or (4) unexpected technical issues or problems.

12.5. If cPass does take any legal action against you as a result of your violation of these Terms of Use, cPass will be entitled to recover from you, and you agree to pay, all reasonable attorneys' fees and costs of such action as permitted by law, in addition to any other relief granted to cPass. You agree that cPass will not be liable to you or to any third party for termination of your access to the Site as a result of any violation of these Terms of Use.

## **13. Void Where Prohibited**

Although the Site is accessible worldwide, not all features, products or services discussed, referenced, provided or offered through or on the Site are available to all persons or in all geographic locations, or appropriate or available for use outside the United Kingdom and EU. cPass reserves the right to limit, in its sole discretion, the provision and quantity of any feature, product or service to any person or geographic area. Any offer for any feature, product or service made on the Site is void where prohibited. If you choose to access the Site from outside the United Kingdom and EU, you do so on your own initiative and you are solely responsible for complying with applicable local laws.



#### **14. Miscellaneous**

If any of the provisions of these Terms of Use are held by a court or other tribunal of competent jurisdiction to be void or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary and replaced with a valid provision that best embodies the intent of these Terms of Use, so that these Terms of Use shall remain in full force and effect. These Terms of Use constitute the entire agreement between you and cPass with regard to your use of the Site, and any and all other written or oral agreements or understandings previously existing between you and cPass with respect to such use are hereby superseded and cancelled. Other than as provided in a purchase agreement you enter into with cPass, cPass will not accept any counter-offers to these Terms of Use, and all such offers are hereby categorically rejected. cPass's failure to insist on or enforce strict performance of these Terms of Use shall not be construed as a waiver by cPass of any provision or any right it has to enforce these Terms of Use, nor shall any course of conduct between cPass and you or any other party be deemed to modify any provision of these Terms of Use. These Terms of Use shall not be interpreted or construed to confer any rights or remedies on any third parties.

#### **15. Feedback and Information**

Any feedback you provide at this site shall be deemed to be non-confidential. cPass shall be free to use such information on an unrestricted basis.

#### **16. Applicable Law**

Unless otherwise required by a mandatory law of a member state of the European Union or any other jurisdiction, the Agreements (and any non-contractual disputes/claims arising out of or in connection with them) are subject to the laws of California, U.S.A., excluding California's conflict of laws rules, will apply to any disputes arising out of or relating to these terms or the Services.

#### **17. Mandatory arbitration and venue**

##### **CLASS ACTION WAIVER**

WHERE PERMITTED UNDER THE APPLICABLE LAW, YOU AND cpass AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION. Unless both you and cPass agree, no arbitrator or judge may consolidate more than one person's claims or otherwise preside over any form of a representative or class proceeding.

##### **ARBITRATION**

The following mandatory arbitration provisions apply to you:

##### **Dispute resolution and arbitration**

You and cPass agree that any dispute, claim, or controversy between you and cPass arising in connection with or relating in any way to these Agreements or to your relationship with cPass as a user of the Service (whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and whether the claims arise during or after the termination of the Agreements) will be determined by mandatory binding individual arbitration. Arbitration is more informal than a lawsuit in court. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED. There may be more limited discovery than in court. The arbitrator must follow this agreement

and can award the same damages and relief as a court (including attorney fees), except that the arbitrator may not award declaratory or injunctive relief benefiting anyone but the parties to the arbitration. This arbitration provision will survive termination of the Agreements.

#### Exceptions

Notwithstanding clause above, you and cPass both agree that nothing herein will be deemed to waive, preclude, or otherwise limit either of our rights, at any time, to (1) bring an individual action in small claims court, (2) pursue enforcement actions through applicable federal, state, or local agencies where such actions are available, (3) seek injunctive relief in a court of law, or (4) to file suit in a court of law to address intellectual property infringement claims.

#### Arbitration rules

Either you or we may start arbitration proceedings. Any arbitration between you and cpass will be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "ICC") then in force (the "ICC Rules") by one or more arbitrators appointed in accordance with the ICC Rules, as modified by these Agreements, and will be administered by the International Court of Arbitration of the ICC.

Any arbitration will be conducted in the English language and unless otherwise required by a mandatory law of a member state of the European Union or any other jurisdiction, the law to be applied in any arbitration shall be the law of the State of California, United States, without regard to choice or conflicts of law principles.

#### Time for filing

Any arbitration must be commenced by filing a demand for arbitration within ONE (1) YEAR after the date the party asserting the claim first knows or reasonably should know of the act, omission, or default giving rise to the claim; and there shall be no right to any remedy for any claim not asserted within that time period. If applicable law prohibits a one-year limitation period for asserting claims, any claim must be asserted within the shortest time period permitted by applicable law.

#### Notice; Process

A party who intends to seek arbitration must first send a written notice of the dispute to the other, by certified mail or Federal Express (signature required), or in the event that we do not have a physical address on file for you, by electronic mail ("Notice"). cPass's address for Notice is: cPass, 1188 mission st apt 2422, 94103, USA. The Notice must (1) describe the nature and basis of the claim or dispute; and (2) set forth the specific relief sought ("Demand"). We agree to use good faith efforts to resolve the claim directly, but if we do not reach an agreement to do so within 30 days after the Notice is received, you or cpass may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or cpass shall not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. In the event our dispute is finally resolved through arbitration in your favor, cpass shall pay you (1) the amount awarded by the arbitrator, if any, (2) the last written settlement amount offered by cpass in settlement of the dispute prior to the arbitrator's award; or (3) \$1,000.00, whichever is greater. All documents and information disclosed in the course of the arbitration shall be kept strictly confidential by the recipient and shall not be used by the recipient for any purpose other than for purposes

of the arbitration or the enforcement of arbitrator's decision and award and shall not be disclosed except in confidence to persons who have a need to know for such purposes or as required by applicable law. Except as required to enforce the arbitrator's decision and award, neither you nor cpass shall make any public announcement or public comment or originate any publicity concerning the arbitration, including, but not limited to, the fact that the parties are in dispute, the existence of the arbitration, or any decision or award of the arbitrator.

#### Modifications

In the event that cpass makes any future change to this arbitration provision (other than a change to cpass's address for Notice), you may reject any such change by sending us written notice within 30 days of the change to cpass's address for Notice, in which case your account with cpass shall be immediately terminated and this arbitration provision, as in effect immediately prior to the amendments you reject, shall survive.

YOUR SUBSCRIPTION TO cPass SPECIFICALLY CONSTITUTES CONSENT TO THE PROVISIONS OF SECTION 17.

#### **18. Jurisdiction for Dispute Proceedings**

For purposes of seeking injunctive or equitable relief or in the event the Arbitration provision above is found unenforceable, any legal suit other than a suit in small claims court, action or proceeding arising out of, or related to, these Terms of Use or the Website shall be instituted exclusively in the federal or state courts located in the State of California, United States.

The information contained in these Terms of Use or the Site is subject to change without notice.