

## Winkpass End-User License Agreement (EULA)

**THIS IS A LEGAL AGREEMENT BETWEEN YOU AND WINKPASS CREATIONS, INC. ("WINKPASS") STATING THE TERMS THAT GOVERN YOUR USE OF THE APPLICATION OFFERED BY WINKPASS AND PURCHASED BY YOU VIA APPLE'S APP STORE ("LICENSED APPLICATION"). WHEN YOU INSTALL THE LICENSED APPLICATION, YOU INDICATE YOUR AGREEMENT TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, THEN DO NOT INSTALL OR USE THE APPLICATION.**

The Licensed Application is licensed, not sold, to You for use only under the terms of this license. Winkpass reserves all rights not expressly granted to You.

1. Scope of License. This license is non-exclusive and non-transferable, and allows You to use the Licensed Application on any iPhone, iPod Touch and/or iPad that You own or control and as permitted by the Usage Rules set forth in the App Store Terms and Conditions (the "Usage Rules"). This license does not allow You to use the Licensed Application on any iPod Touch or iPhone that You do not own or control, and You may not distribute or make the Licensed Application available over a network where it could be used by multiple devices at the same time. You may not rent, lease, lend, sell, redistribute or sublicense the Licensed Application. You may not copy (except as expressly permitted by this license and the Usage Rules), decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Licensed Application, any updates, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of any open sourced components included with the Licensed Application). Any attempt to do so is a violation of the rights of Winkpass and its licensors. If You breach this restriction, You may be subject to prosecution and damages. The terms of the license will govern any upgrades provided by Winkpass that replace and/or supplement the original Licensed Application, unless such upgrade is accompanied by a separate license, and then that license will govern.
2. Consent to Use of Data. You agree that Winkpass may use the following information to develop and improve its products, or to provide services or technologies to You and others. Winkpass may collect and use 1) personal information that you provide during registration and use of the Licensed Product; and 2) technical data and related information, including but not limited to technical information about

Your device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services.

3. Termination. The license is effective until terminated by You or Winkpass. Your rights under this license will terminate automatically without notice from the Winkpass if You fail to comply with any term(s) of this license. Upon termination of the license, You shall cease all use of the Licensed Application, and destroy all copies, full or partial, of the Licensed Application.
  
4. Services; Third Party Materials. Services provided or performed by the Licensed Application may enable or require access to Winkpass' and third party services and web sites (collectively and individually, "Services"). Use of the Services may require Internet access and that You accept additional terms of service. In particular, you are bound by all applicable rules of Apple Inc., as set forth at <http://www.apple.com/legal/itunes/us/terms.html#SERVICE> or elsewhere.
  - A. You understand that by using any of the Services, You may encounter content that may be deemed offensive, indecent, or objectionable, which content may or may not be identified as having explicit language, and that the results of any search or entering of a particular URL may automatically and unintentionally generate links or references to objectionable material. Nevertheless, You agree to use the Services at Your sole risk and that Winkpass shall not have any liability to You for content that may be found to be offensive, indecent, or objectionable.
  
  - B. Certain Services may display, include or make available content, data, information, applications or materials from third parties ("Third Party Materials") or provide links to certain third party web sites. By using the Services, You acknowledge and agree that Winkpass is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Third Party Materials or web sites. Winkpass does not warrant or endorse and does not assume and will not have any liability or

responsibility to You or any other person for any Services, Third Party Materials or web sites, or for any other materials, products, or services of third parties. Third Party Materials and links to other web sites are provided solely as a convenience to You. Location data provided by any Services is for basic navigational purposes only and is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate or incomplete location data may lead to death, personal injury, property or environmental damage. Alerts and/or notification data provided by any Services is for convenience only and you understand that multiple factors including network availability may affect notification data delivery, which is not guaranteed. Neither Winkpass, nor any of its content providers, guarantees the availability, accuracy, completeness, reliability, or timeliness of any information, location data or notification data.

- C. You agree that any Services contain proprietary content, information and material that is protected by applicable intellectual property and other laws, including but not limited to copyright, and that You will not use such proprietary content, information or materials in any way whatsoever except for permitted use of the Services. No portion of the Services may be reproduced in any form or by any means. You agree not to modify, rent, lease, loan, sell, distribute, or create derivative works based on the Services, in any manner, and You shall not exploit the Services in any unauthorized way whatsoever, including but not limited to, by trespass or burdening network capacity. You further agree not to use the Services in any manner to harass, abuse, stalk, threaten, defame or otherwise infringe or violate the rights of any other party, and that Winkpass is not in any way responsible for any such use by You, nor for any harassing, threatening, defamatory, offensive or illegal messages or transmissions that You may send or receive as a result of using any of the Services.
- D. Winkpass makes no representation that any Services or Third Party Materials are appropriate or available for use in any particular location. To the extent You choose to access such Services or Materials, You do so at Your own initiative and are responsible for compliance with any applicable laws, including but not limited to applicable local laws. Winkpass reserves the right to change,

suspend, remove, or disable access to any Services at any time without notice. In no event will Winkpass be liable for the removal of or disabling of access to any such Services. Winkpass may also impose limits on the use of or access to certain Services, in any case and without notice or liability.

- E. You understand that Winkpass may offer integration with its own and/or third party Services. Further, you understand that Winkpass is not affiliated with or otherwise sponsored by these third party services. Winkpass shall not be responsible for the contents of, updates to, or privacy practices of these third parties, which may differ from those of Winkpass. The personal data you may choose to give to such third party Services are not covered by Winkpass's privacy policies. Some third party companies may choose to share their personal data with Winkpass, in which case such data sharing shall be governed by that third party's privacy policy. The personal data you may choose to give to Winkpass by means of registering and using the Licensed Application shall be governed by Winkpass' Privacy Policy (found below, and at [www.winkpass.com](http://www.winkpass.com)).

- 5. **NO WARRANTY.** YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE LICENSED APPLICATION IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LICENSED APPLICATION AND ALL SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. WINKPASS HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE LICENSED APPLICATION AND ANY SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. WINKPASS DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE LICENSED APPLICATION, THAT THE LICENSED APPLICATION AND/OR SERVICES WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE LICENSED APPLICATION OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ANY DEFECTS IN THE LICENSED APPLICATION OR SERVICES WILL BE CORRECTED. NO ORAL OR WRITTEN

INFORMATION OR ADVICE GIVEN BY WINKPASS OR ITS AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE LICENSED APPLICATION OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

6. LIMITATION OF LIABILITY. TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL WINKPASS BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE LICENSED APPLICATION, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF WINKPASS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. IN NO EVENT SHALL WINKPASS'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW IN CASES INVOLVING PERSONAL INJURY) EXCEED THE AMOUNT YOU PAID FOR THE LICENSED APPLICATION, OR FIFTY DOLLARS (\$50), WHICHEVER IS GREATER. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
  
7. Export Control. You may not use or otherwise export or re-export the Licensed Application except as authorized by United States law and the laws of the jurisdiction in which the Licensed Application was obtained. In particular, but without limitation, the Licensed Application may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Licensed Application, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use these products for any purposes prohibited by United States law.

8. Choice of Law; Venue. The laws of the State of California, excluding its conflicts of law rules, govern this Agreement and your use of the Licensed Application and/or any Services. Your use of the Licensed Application may also be subject to other local, state, national, or international laws. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts that include Santa Cruz County, California.
  
9. Notice. Winkpass may give notice by electronic mail to Customer's e-mail address on record in Winkpass's account information, or by written communication sent by first class mail or pre-paid post to Customer's address on record in Winkpass's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email).
  
10. Modification to Terms. Winkpass may change the terms from time to time at its sole discretion. When these changes are made, Winkpass will make a new copy of the terms available within or through the affected Licensed Application Service, or via amendment to our EULA. Winkpass may require you to provide consent to the updated terms in a specified manner before further use of the Licensed Application or any Services is permitted. Otherwise, your continued use of them constitutes your acceptance of the changes. Your use of the Services is subject to the most current version of the terms, at the time of such use.
  
11. Force Majeure. Winkpass will not be liable for inadequate performance to the extent caused by a circumstance beyond its reasonable control, including, without limitation, failure of the internet, labor strikes or shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes, material shortages and other acts not caused by Winkpass.

12. Assignment; Change of Control. Either party may assign this Agreement without the prior written approval of the other party to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger.

13. Copyrights and Trademarks. Except where otherwise specified, the contents of the Licensed Application are copyright (c) 2010 Winkpass Creations, Inc. All rights reserved.

The contents of the Licensed Application are subject to protection under U.S. and foreign copyright laws. You are not permitted to use the copyrighted content outside of the normal functions of the Licensed Application without the prior written consent of Winkpass.

Winkpass Creations, iPeriod and its logo, eyeD and its logo, and names and logos of our other Licensed Applications, are trademarks of Winkpass.

Please direct any questions or comments to Winkpass via the “Contact” page of our website.

### **Privacy Policy**

We value your privacy and are dedicated to protecting your information and providing you with notice about our information collection and use practices, and how you have a choice to opt-in/out of any marketing or promotional contact from us. By voluntarily sharing personally identifiable information by means of registering and using the Licensed Application and/or any Services, you agree to the following privacy policy.

Personally Identifiable Information. When you register the Licensed Application, you must complete a registration form that requires you to provide Personal Information (including, without limitation, your name and email address, and with respect to our eyeD applications, biometric scan of your iris).

Announcement Email Information. From time to time we provide information about our products to our customers in the form of email. When you register the Licensed Application, you will have the option to opt-in/out of Announcement Emails. After successfully registering the Licensed Application, you have the option to set your opt-in/out preference using the Licensed Application's Alert Settings. Announcement Emails will be emailed directly to the address that you provide when you register.

We may place email links and or forms on our Website to allow you to contact us directly. The Personal Information you provide in these links and forms is

used to respond directly to your questions or comments. We may also use your comments to develop or improve our website, products, or process, or review. All information, other than the Personal Information that you send to Winkpass using these email links or forms, will not be considered or treated as confidential information. Do not send us any information, ideas, suggestions, proposals, or comments that you consider confidential or that you want to be treated as confidential.

Use of Your Personally Identifiable Information. We use Personal Information to respond to your inquiries, improve our marketing and promotional efforts, to analyze Licensed Application and service offers, and to develop, improve and customize our services and Licensed Application(s). We may use Personal Information to deliver information to you and to contact you regarding administrative notices. We may also use Personal Information to resolve disputes and troubleshoot problems.

We may use information in a manner such that it is not personally identifiable, to analyze and improve troubleshooting techniques and responses, and to develop products or improve the value of Licensed Application(s) and Services provided by Winkpass or third parties.

Reminder Alerts. You may choose to allow the Licensed Application to provide reminder alerts. Should you allow the Licensed Application to provide reminder alerts, you understand and agree that this service may be provided using services operated outside of the Licensed Application, including, but not limited to, systems such as Apple's Push Notification. You understand and agree that pertinent data needed for such alerts, including, but not limited to, the task name and due time, will be transmitted and temporarily be stored on services operated by Winkpass or a third party, and that at the appropriate time, this alert data will be transmitted via corresponding services, e.g., Apple's Push Notification Service, for delivery to your device or chosen delivery endpoints. At no time is the Personal Information you provide transmitted via the third-party delivery service unless as required by the nature of the delivery mechanism (electronic mail, for example, requires your name and email address for delivery). Should you disagree with the mechanism of this service, you agree to disable and not use reminder alerts as provided in the Licensed Application.

Disclosure of Personal Information. Winkpass may disclose Personally Identifiable Information and/or any other information if required to do so by law or in the good-faith belief that such action is necessary to prevent injury or property damage.

Information Sharing and Third Party Service Partners. Winkpass does not rent, sell, or share personal information about you with other people or non-affiliated companies without your consent, other than as set forth in this Privacy

Policy or any Agreement with you, or unless we have a good faith belief that access, use, preservation, or disclosure is reasonably necessary to (a) provide you any Service you may request via the Licensed Application; (b) satisfy any law, regulation, legal process or governmental request, (c) enforce any applicable Terms of Service (including investigation of potential violations thereof), or (d) detect, prevent or otherwise address fraud, security, or technical issues.

Winkpass may provide services for the Licensed Application through contractual arrangements with affiliates, service providers, partners and other third parties ("Service Partners"). Winkpass and its Service Partners use your Personal Information to operate and deliver their products and services. Unless otherwise agreed by you in a separate agreement, Winkpass's Service Partners may not use your Personal Information to inform you of other products or services available from those Service Providers.

If Winkpass becomes involved in a merger, acquisition, or any form of sale of some or all of its assets, we will ensure the confidentiality of any personal information involved in such transactions and provide reasonable notice before personal information is transferred and becomes subject to a different privacy policy. Such notice may be given by a clear and concise statement on Winkpass's website or in a subsequent update to the Licensed Application that there has been an update to this Privacy Policy.

Opt-Out Policy. Winkpass allows you to opt out of our use of your Personal Information for marketing and promotional mailings relating to Winkpass products and services. You may opt out when registering, or via the Contact page on our website.

Access and Integrity of Stored Personal Information. The Personal Information you provide to Winkpass during registration of the Licensed Application is shown directly in the Licensed Application's settings. You can help Winkpass maintain the accuracy of your information by updating your Licensed Application settings any time your Personal Information changes. Should you wish to actively delete the Personal Information that you have provided, subject to your understanding that certain deletions may affect our ability to provide the Winkpass services you have requested, please inquire via the Contact page on our website.

Links. The Licensed Application may include links to other applications or sites. This Privacy Policy applies to the Licensed Application only. Any information you submit to linked sites or other applications will be subject to the privacy policies of those sites or applications, if any. You should review those policies carefully before providing any information to these linked sites or applications.

Security. Winkpass undertakes practical and reasonable steps to protect Personal Information from unauthorized or accidental access, disclosure, misuse or processing, or from alteration, destruction, or loss. Personal Information that we collect resides on servers operated by Winkpass and is accessible only to personnel who, by virtue of their duties, are required to have access and have been trained in, and tasked with, the observance of the principles embodied in this Privacy Policy.

Enforcement. If you have any questions or complaints regarding how your Personal Information is treated under this Policy or generally about the implementation of the principles of this Policy, then we encourage you to contact us via the Contact page of our website.

Changes to Privacy Policy. Should we decide to change this Privacy Policy, we will update it with the release or update of the Licensed Application on Apple's App Store so that you will always know what Personal Information we gather, how we might use it, and whether we will disclose it to anyone. Unless you opt out of receiving Announcement Emails from us, as you may do so in the manner described herein, we may also notify you by email of changes to this Privacy Policy.

Last date of modification: 26 August 2010