

# GIGTOWN TERMS OF SERVICE

*EFFECTIVE JULY 25, 2016.*

Welcome to GigTown (“GigTown”, “we”, “us”, or “our”), a service provided by GigTown LLC. GigTown is responsible for the development of GigTown.com (the “Website” or “Site), our mobile applications (the “Apps”), and all related data, software, APIs, and services (together with Site and App, “our Services”.) We have created these Terms & Conditions (the “Terms”) to ensure a clear understanding between GigTown and any person using our Services (“User”, “you”, “your”). These Terms, along with our Privacy Policy, apply to your use of our Services.

Upon registering for our Services, you submit that you have read and agreed to these Terms and Privacy Policy. If you do not agree to these Terms, do not use our Services. By accepting these Terms, you have also acknowledged that you are (i) 18 years of age or more, or (ii) 13 years of age or more with your parent(s)’ or legal guardian(s)’ permission. **As set forth in the section entitled Arbitration Exclusive Remedy, below, you agree to submit any dispute with GigTown to binding arbitration.** GigTown reserves the right to amend our Terms at any time. Any recently amended terms will be highlighted and shall be effective immediately when they are posted on the Site.

## **Description of our Services**

For registered performers (“Artists”), our Services facilitate your connection and interaction with music fans and venues in your area. We do this by aiding the ability of all users of the App (hereinafter, “Users”) to listen to and search for (together, “Discover”) your uploaded songs, videos, media and other information, as well as schedule and pay for (together, “Book”) you to perform live. GigTown is not an agent, employer, or partner of Artists and is not engaging in the services of a “Talent Agency” as defined in California Labor Code section 1700.4. GigTown simply acts as a platform allowing Artists to connect and interact with Users and the fee charged by GigTown is for the use of

that platform. Each transaction will be subject to GigTown's applicable service charge and processing fee.

## **Your Account**

*For Artists:*

### 1. Registration

Artists must register an account to be granted access to certain Services, such as the ability to be Discovered and Booked through the App. To register an Artist Profile, you must provide us with:

I. A valid email address and password. The email address and password that you provide will act as your sign in credentials to access your account.

II. Artist name. This name will be displayed to Users who try to Discover and Book you.

III. Profile Picture. This will act as a visual representation of you to Users.

IV. At least one YouTube video of you and/or your music. This video gives Users a preview of what to expect when they Book you and gives you an opportunity to show off your skills. This video will also be displayed on your Artist Profile. The video must be linked from YouTube. You will enter the URL of your YouTube video into the registration field provided.

V. At least one original song. This song will be added to playlists for when a User tries to Discover or Book artists in your area. These songs will also be displayed on your Artist Profile. You must be the individual performing in the song. Each song must be given 1 or 2 categorization tags, as well as up to 5 "similar artist tags; these will aid Users in Discovering your music.

VI. Home zip code or city. This allows us to connect you with Users near your home location.

VII. Whether you are a band, soloist or DJ. This allows us to help Users quickly search and Discover what they are looking for when Booking.

VIII. Information. This information is where Artists input their biography or pertinent details about their typical performance. It helps Users learn more about Artists, i.e., if they play weddings or prefer small intimate venues. This information will be quite valuable for Users when deciding to Book or not.

## 2. Financial Information

Artists must register a bank account information with GigTown to be compensated for certain Services, such as performing for a User that has hired an Artist for a live performance (hereinafter “Gig”) through the App. To add Financial Information to an Artist Profile, you must provide us with:

I. Bank account number. GigTown will need Artist’s bank account number for the account Artist directs payment for gig from the User.

II. Bank routing number. In order to facilitate payment from User to Artist after the gig, GigTown needs Artist’s routing number.

III. Bank address. GigTown cannot complete Artist profile or transaction without Artist’s bank’s address.

IV. Bate of birth (“DOB”). In order to complete Artist profile with GigTown, Artist must provide DOB.

V. Type of account. Artist must choose whether the account where funds are deposited is either an individual or company account.

Please consult our Privacy Policy if you have any questions about how we will use information you submit.

## 3. Account approval or rejection

Upon receiving registration of Artist Profile information from an Artist, GigTown may review the account to ensure account information is complete and satisfactory. Upon review, an email will be sent to the Artist to notify the Artist regarding whether their account has been approved or rejected. Reasoning will be supplied when an account has

been rejected and an artist may resubmit the registration information if desired. This email notification will be sent typically within 48 hours following the receipt of the account registration.

#### 4. One Account, Multiple Artist Profiles

Each Artist is only entitled to one account corresponding to his or her email address. However, the Artist may register multiple Artist Profiles in order to offer additional configurations for the same Artist or to aid in the management of different Artists. GigTown reserves the right to limit the number of Artist Profiles an Artist may register if the additional Artist Profiles result in too much duplicative content in the App experience.

#### 5. Bands

In the event you are registering an account on behalf of a band, you agree that your representations, warranties and agreements under these Terms are being made on behalf of yourself individually and all members of the band. In furtherance of the foregoing, you represent and warrant that all members of the band have read and agree to these Terms.

#### 6. Account Responsibilities

You, not GigTown, are solely responsible for maintaining the security of your account. Likewise, you are solely liable for any and all text, audio, videos, photos, or data (together, your "Content") on your account, whether or not you authorized such activity. You are also solely responsible for making sure your account information is truthful, accurate, and updated.

#### 7. Financial Responsibilities

You, not GigTown, are solely responsible for reporting all income you make through the use of our Services. Upon request, you must furnish GigTown an Internal Revenue Service form W-9 Request for Taxpayer Identification Number and Certification.

*For Users:*

## 1. Registration

Although most functionality of the App is available for use without Registration, Registration is required to access certain functionalities. To register a user profile, you must provide us with:

I. A valid email address and password. The email address and password that you provide will act as your sign in credentials to access your account.

Optionally, you may provide us with:

II. Profile Picture. This will act as a visual representation of you to Artists and Users.

III. Credit Card Information. This will be used to pay for Bookings or tips to Artists. In typical cases, GigTown will receive a service charge and/or posting fee.

## 2. Account Responsibilities

You, not GigTown, are solely responsible for maintaining the security of your account. Photos, or data (together, your “Content”) on your account, whether or not you authorized such activity. You are also solely responsible for making sure your account information is truthful, accurate, and updated.

*For Both Users and Artists:*

### 1. Closing or suspending your account

GigTown reserves the right to suspend or close your account at any point in time for any reason, without notice or liability. If your account has been compromised or you would like to close your account, please notify GigTown at [help@gigtown.com](mailto:help@gigtown.com). You maintain the right to close your account at any time.

### 2. Subject to Terms and Conditions

Any and all activity on your account remains subject to these Terms and Conditions.

## **Your Use of Our Services**

*For Both Users and Artists:*

### 1. License granted by us

Through your registration and compliance with our Terms, GigTown grants you and only you a limited license to access our Services. This license only applies to personal use of our Services; the license does not include reproducing, copying, duplicating, selling, or any commercial use of our Services whatsoever unless express written consent is given by GigTown. This license is rendered null upon any unauthorized use of our Services.

### 2. Code of conduct

You are solely liable for any and all activity on your account, whether or not you authorized such activity. You agree that:

I. Any form of communication that is deemed abusive, culturally or ethnically offensive, defamatory, indecent, obscene, profane, racist, or sexually explicit content is strictly prohibited.

II. Your use of our Services is consistent with any and all applicable laws and regulations.

III. Your activity does not promote violence, terrorism, illegal acts, or hatred on the basis of sexual orientation, gender, ethnicity, culture, or religion.

IV. You will not transmit in any fashion any material that contains software viruses, Trojan horses, malware, or any other computer code or files which will disrupt the functionality of any of GigTown's Services.

V. You will not post, copy, reproduce, or distribute in any fashion copyrighted content or other proprietary information without the prior consent of the Content's owner.

VI. You will not represent yourself in GigTown as anyone other than yourself or falsify your identity in any way.

VII. You will maintain current and accurate contact information on your profile. GigTown may edit or remove any information at any time.

VIII. You will not use another User's account or personal information without her or his express permission.

IX. You will not threaten, stalk, or otherwise harass any person in any way.

X. You will not use our Services to advertise or solicit to others or harvest personal information from other Users for commercial use of any kind.

XI. You will not use our Services to spam, "troll", or otherwise disrupt the experience for other Users or the functionality of our Services in any way.

XII. You will not use robots, spiders, or data mining applications of any sort to reproduce or bypass our Services in any way.

XIII. You will not knowingly disrupt or interfere with our servers or anything related to the functionality of our Services in any way.

XIV. You will not offer to or in actuality sell, transfer, rent, or lease your account to any other person or third party without prior written consent of GigTown.

XV. If you receive a gig request through GigTown, you will not attempt to "go outside the app" by confirming the booking outside of the platform in order to avoid GigTown receiving a booking fee.

XVI. GigTown has the right, but not the obligation, to supervise and settle disputes between Artists and Users.

XVII. You will not attempt to "game" GigTown by falsely inflating "likes", ratings, or other positive measures for Artists. Conversely, you may not actively hinder the ability of other Artists to participate within our Services.

In the event of that you witness breaches of this code of conduct, please notify GigTown immediately at [help@gigtown.com](mailto:help@gigtown.com). GigTown reserves the right to suspend or close User or Artist accounts, as well

as edit or take down any content or information made available through our Services.

## **Content and Property Rights**

*For Artists:*

### 1. Proprietary rights of Artist

As between you and GigTown, any and all text, audio, sound recordings, compositions, pictures, photos, videos, graphics, messages, comments, reviews, data, or information (together, “Content”) that you submit, upload, publish, or display through our Services is solely owned, controlled and/or operated by you. By accepting these Terms, you acknowledge that GigTown does not claim any ownership in and has no liability with regards to your Content.

### 2. Our rights to your Content

By accepting these Terms, you hereby give GigTown the right to use, duplicate, reproduce, distribute, digitally transmit, display, perform, share, stream, modify, edit, and/or remove your Content, including all sound recordings and compositions (collectively, “Music”) therein, as is reasonable and appropriate in connection with the Services. This includes, without limitation, the right to (i) publicly perform your Music through our Services, (ii) stream your Music (both interactive and non-interactive), (iii) include your Music in playlists, and (iv) make copies of your Music in connection with any of the foregoing. If you believe we have misused your Content, please contact us immediately at [help@gigtown.com](mailto:help@gigtown.com). The only remedy is that we will remove the pertinent Content from our Services. We are not liable for any misuse otherwise.

You represent that you either own or control any and all rights in and to all Content as necessary to grant GigTown the rights described above, including all necessary rights with respect to all Music. You also represent that all Content and Music submitted to or posted on GigTown was not produced pursuant to any guild or union collective bargaining agreement (e.g., SAG-AFTRA, AFM), and that GigTown will not owe any residuals, royalties, monies, or other obligations to any guild, union, or artist. GigTown does not and will not assume any guild

or union obligations. Just to be safe, we thought it would help to give you two examples:

- If you wrote a song with other people (including members of your band) or if a piece of your Music is based on an existing third party song, you are agreeing that you have either acquired all of the rights of the other songwriters, received the other songwriters' express permission to post the Music to our Services, or have received express permission to post the Music to our Services from the owners of the song's publishing rights.
- If you are signed to a record label and that label owns your sound recordings or publishing rights, you are agreeing that you have your record company's express permission to post its sound recordings to our Services. You are also agreeing that the sound recording, including all samples or other portions of that sound recording, were not produced under any guild or union contract, including but not limited to any SAG-AFTRA or AFM contract.

If you do not have these rights or are unclear, please contact us immediately prior to posting the Content at [help@gigtown.com](mailto:help@gigtown.com).

### 3. Copyright infringement.

Without limiting anything in Section 3 above, you may not post any unauthorized copyrighted material that constitutes an infringement of third party rights. Offenders of third party copyright laws are subject to having their accounts terminated, as well as being prosecuted in court by the owner of such copyrighted Content.

If you are a third party content owner who believes that any piece of Content uploaded by a User infringes upon your copyrights, we will respond promptly to any properly submitted notice containing the information detailed below. Pursuant to Title 17, United States Code, Section 512(c)(2), written notifications of claimed copyright infringement should be sent to our Designated Agent at the following contact information: [copyright@gigtown.com](mailto:copyright@gigtown.com)

To be effective, the notification must be a written communication that includes the following:

- A physical or electronic signature of person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;
- Information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and if available, an electronic mail address at which the complaining party may be contacted;
- A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;
- A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

#### 4. Liability and risk of Content.

By accepting these Terms and Conditions, you acknowledge that full liability and risk of posted Content lie with the Artist.

#### 5. Reposting of Content.

You may not repost another User's or Artist's Content without that said User's or Artist's permission.

*For Both Users and Artists:*

#### 1. Proprietary rights of GigTown

While GigTown grants you a limited license to access our Services upon registration, GigTown maintains ownership and all proprietary rights to all facets of our Services, including but not limited to our logo,

name, features, interfaces, code, APIs, and web domains. You are not permitted to use, reproduce, duplicate, publish, distribute, or display GigTown's proprietary Services without GigTown's express written consent.

## 2. Privacy Policy.

By accepting these Terms and Conditions, you also accept our Privacy Policy. Please review our Privacy Policy for relevant information [here](#).

## **Tipping**

### 1. Who Can Tip

All Users that have completed the registration process and have a valid payment method have the ability to tip Artists with approved GigTown Artist Accounts.

### 2. Valid Payment Methods for Tipping

Users may use Apple Pay, Google Wallet, PayPal or a Credit Card in order to tip Artists.

### 3. How Users Can Tip

Users can tip Artists from Artist Profile pages or from Show Profile pages. The Users can select an amount to tip and then submit. Tips will be subject to GigTown's applicable service fee.

### 4. Refunds

GigTown does not grant refunds on tips and is not liable for a User tipping too much money or tipping accidentally. However, GigTown will work in good faith to reasonably ensure the User and Artist can resolve any issues between each other.

## **Booking**

### 1. Who Can Book

All Users that have completed the registration process and have provided valid credit card information have the ability to book Artists with approved GigTown Artist accounts.

## 2. How Users Can Book

Users can book live music for their events in two ways using GigTown:

### A. Post a Gig

Through this manner of Booking, Users provide the a number of event details before “Posting” the gig. When a gig is posted, relevant Artists will be notified, and any Artists with a completed GigTown Artist Account may begin to submit. A User may chat with any submitted Artists, select an Artist to hire for the event, and confirm the booking.

### B. One-to-One

Through this manner of Booking, and artist may specify an Artist to make an offer to and submit a request. The Artist may chat with the User and confirm or decline the gig.

## 2. Binding contract

Once a User or Artist confirm a Booking, the User and Artist enter a binding contract. A User may confirm a Booking through Post a Gig by selecting an Artist who has submitted. An Artist may confirm a booking through One-to-One booking by accepting a Gig Request within the app. Once confirmed, the User and Artist are contractually bound with the following mutually agreed upon conditions:

I. Event location. The event location is set upon confirmation of the gig request.

II. Event date and time. The event date and time are set upon confirmation of the gig request.

III. Gig duration. The Artist will play for the amount of time agreed upon during the gig request process and set upon confirmation of the said gig request.

IV. Booking Fee. The booking fee (hereinafter, “Fee”) to be paid by the User.

V. Modification of location, date, time, duration, or Fee. The event location, event date and time, duration of the gig, and Fee paid to the Artist may be modified following a confirmed gig request if both parties have agreed to the change. The change will not be reflected in GigTown until both parties have agreed to modify the confirmed gig details through our User/Artist dialogue interface, and emailed us at [help@GigTown.com](mailto:help@GigTown.com).

VI. Additional performance time for Artist. Should the User desire that the Artist plays for longer than the agreed upon duration, the User must submit the extra payment and duration request via email at [help@GigTown.com](mailto:help@GigTown.com) or through the App interface. Any transactions occurring outside of the GigTown platform between the User and Artist for gigs set up through our Services are not permitted and subject to termination of the license granted by GigTown for our Users and Artists.

VII. Additional Consideration for Artist. Should the User desire to compensate artist with additional or alternative consideration, including a bar tab or a percentage of admission fees charged by the venue, the User and Artist may agree to this consideration within the chat functionality of the App. Such agreements will be considered incorporated into this User-Artist contract.

VIII. User's responsibilities. Unless otherwise agreed upon in a separate contract a confirmed GigTown booking imposes the following responsibilities on the booking User:

a. Adequate power supply. The User must provide an adequate power supply for the Artist.

b. Safety from weather. The User must provide an area with dry and safe enough conditions such that the Artist can perform without fear of damage to electrical equipment, being electrocuted, or any threat to personal safety of any kind due to weather.

c. Parking. The User must provide parking for the Artist as nearby to the event as possible.

d. Volume levels. The User is responsible for ensuring that the volume levels during the Artist's performance are compliant with the Event

Location's local noise ordinances. If the event is shut down by local authorities due to noise violations, neither GigTown nor the Artist are liable for noise disturbance or complaints in the surrounding area.

e. Damage to Artist's equipment. The User is liable for all physical damage to the Artist's equipment caused by the User, a guest of the User, or any third parties associated with the User's event.

f. Liability of event guests, third parties. All liability for the actions of any guests of or third parties associated with the event lies with the User.

g. Breaks. User must permit the Artist to take up to a 10 minute break for each hour of performance.

h. Interference with Artist. The User and any event attendees or third parties must not interfere with the Artist's performance. If any guests harass, threaten, berate, physically or verbally harm, or otherwise interfere with the Artist, the Artist has the right to stop playing music and end the gig early, without refund to the User.

IX. Artist's responsibilities. A confirmed GigTown booking imposes the following responsibilities on the Artist:

a. Electronics malfunctions. The Artist is responsible for electronics malfunctions that prohibit the Artist from successfully performing unless caused by damage from the User or any attendees of the event.

b. Mistreatment of event guests and third parties. The Artist may not harass, threaten, berate, or otherwise physically or verbally harm event guests or third parties at the event.

c. Damage to User's property. The Artist will not purposely or recklessly damage personal property of the User.

d. Communication with User. It is the responsibility of the Artist to ensure that the User will receive the desired live music experience. Prior to confirmation of the gig request, the Artist must communicate through GigTown with the User in regards power requirements, sound equipment, setup time, space, number of guests, food and drink, weather considerations, dress code, and any other requirements or information pertinent to the Artist's successful performance.

X. Safety at event. Both the User and the Artist are responsible to maintaining a safe and lawful environment for all guests at the event.

XI. Limitation of liability. For any confirmed booking, the most a User or Artist can claim damages for is the total agreed upon booking amount.

XII. Falsified bookings. Bookings falsified with the intent of inflating ratings, arranging payment outside of GigTown for a booking created through GigTown, or for any reason whatsoever are strictly prohibited.

XIII. GigTown is not liable. If any of the terms listed above and agreed upon in regards to the binding contract between the User and Artist are violated, GigTown assumes no liability or responsibility of any kind whatsoever. GigTown accepts no liability for damages caused by Artist no-shows, late-shows, or cancellations. Furthermore, GigTown assumes no liability in disputes between the User and the Artist of any sort.

XIV. Violation of binding contract. If any of the terms agreed upon in the binding contract between the User and Artist are violated or inappropriate behavior has been displayed in the reasonable view and discretion of GigTown, we reserve the right to suspend or close the account of the party involved without warning, with or without refund. GigTown also reserves the right to disallow Artist payment for the performance.

XV. Dispute resolution. Please contact us at [help@gigtown.com](mailto:help@gigtown.com) if you have any questions, issues, or concerns in regards to the User and Artist agreement and binding contract as outlined in the section above. **As set forth in the section entitled Arbitration Exclusive Remedy, below, you agree to submit any dispute with GigTown to binding arbitration.**

## **Cancellation Policy**

### *For Artists*

1. No cancellation allowed. The Artist may not cancel a confirmed gig at any point.
2. If an Artist cancels a confirmed gig at any point:

- a. GigTown will recommend replacement Artists for the User.
- b. GigTown reserves the right to make cancellations negatively affect an Artist's visibility in both Discovery and Booking modes.
- c. Monitoring of cancellations, no-shows, late-shows. GigTown will keep track of all cancellations, no-shows (not showing up for confirmed gig that hasn't been cancelled through GigTown), and late-shows (not ready to perform at scheduled gig start time.) Accumulation of these statistics may decrease the likelihood that the Artist will appear in Discovery and Booking. GigTown will strongly consider closing an Artist's account upon the accumulation of more than 2 combined cancellations, no-shows, or late-shows.

#### *For Users*

1. Edits and modifications to request. Users may cancel, edit, or modify a gig request that has not been accepted by the Artist at any point.
2. Not within 7 days. Users may not cancel a confirmed gig within 7 days of the event date and time. This means that gigs booked within 7 days of the event date and time may not be cancelled.
3. Not within 30 days if payment exceeds \$999. Users may not cancel a confirmed gig within 30 days of the event date and time if the total fee to be charged to the User is greater than \$999. This means that gigs booked within 30 days of the event date and time with a total fee of \$1,000 or greater may not be cancelled.
4. Cancelling. In order to cancel a gig, Users must email [help@GigTown.com](mailto:help@GigTown.com) requesting the cancellation, or Users may utilize the "Report a Problem" button within the App.
5. If conditions not met. If Users do not follow the conditions of our cancellation policy, they will be charged the full booking fee for the originally agreed-upon event. Violations of our cancellation policy will be tracked and visible to the artist upon receiving a booking request.

#### *For Both Users and Artists*

1. Extenuating circumstances

In the case of extenuating circumstances that cause a User or Artist to violate our Cancellation Policy, please email us at [help@gigtown.com](mailto:help@gigtown.com). GigTown will use our best and most reasonable judgment in these cases to come to fair solution for all parties involved.

## 2. Other Compensation and Modifications

Users and Artists may agree to other compensation or modifications to GigTown's standard User-Artist contract by agreement in writing via the GigTown app and platform. Messages outside the GigTown app and platform will not be considered an addendum or modification to the standard contract.

### **Payment**

#### 1. Credit card information

Users' Credit card information is required to complete a booking request. Credit card information will be collected, but the card will not be charged until the cancellation policy takes effect. This means that an event with a total budget \$1,000 or greater will be charged in full 30 days prior to the event, and an event under \$1,000 in budget will be charged 7 days prior. In the event a credit card cannot be provided as payment information, GigTown may utilize other payment methods that ensure the Artist's compensation within a reasonable timeframe from the successful completion of a gig.

#### 2. Reception of payment

The User's card will be charged and the artist will receive the payment upon the completion of the transfer of funds, which may take up to 3 days.

#### 3. "Free" gigs

Although credit card information is collected, Users will not be charged for "Free" gigs.

#### 4. Violation of Cancellation Policy

If a User violates our Cancellation Policy, the User's card will still be charged and the Artist will be paid at the time of completion of the originally agreed-upon event.

#### 5. Additional performance time for Artists

Please reference the section above procedures regarding payment to Artist for extending performance duration.

#### **Arbitration Exclusive Remedy**

**BY AGREEING TO THESE TERMS OF SERVICE, YOU AGREE THAT, IN THE EVENT OF ANY DISPUTE BETWEEN YOU AND GIGTOWN ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO DISPUTES REGARDING ANY DISCOVERY, BOOKING, FEE, CONTENT OR THOSE ALLEGING NEGLIGENCE, FRAUD OR ANY CLAIM BASED UPON A STATUTE), SUCH DISPUTE SHALL BE RESOLVED BY SUBMISSION TO BINDING ARBITRATION IN EITHER SAN DIEGO COUNTY OR LOS ANGELES COUNTY, CALIFORNIA, UNDER THE AUSPICES OF THE JUDICIAL ARBITRATION AND MEDIATION SERVICES ("JAMS"). IF THE PARTIES ARE UNABLE TO AGREE ON AN ARBITRATOR, THE ARBITRATOR WILL BE DETERMINED PURSUANT TO JAMS' NORMAL PROCEDURES THEN IN EFFECT.**

In any such arbitration, the parties shall be entitled to take discovery in accordance with the provisions of the California Code of Civil Procedure, but either party may request that the arbitrator limit the amount or scope of such discovery, and in determining whether to do so, the arbitrator shall balance the need for the discovery against the parties' mutual desire to resolve disputes expeditiously and inexpensively.

The prevailing party in any action, arbitration, or proceeding arising out of or to enforce any provision of this Agreement will be awarded reasonable attorneys' fees and costs incurred in that action, arbitration, or proceeding, or in the enforcement of any judgment or award rendered.

#### **Legal Disclaimers**

## Limitation of Liability

IN NO SITUATION WILL GIGTOWN'S LIABILITY FOR DAMAGES BE IN EXCESS OF 100 USD OR THE TOTAL DOLLAR AMOUNTS PAID BY YOU IN THE PREVIOUS 6 MONTHS LEADING UP TO THE CLAIM. GIGTOWN WILL HAVE NO LIABILITY FOR ANY DAMAGE OR LOSS:

I. DERIVING FROM YOUR INABILITY TO ACCESS ANY OF OUR SERVICES, CONTENT, OR RELATED PARTS.

II. RELATED TO YOUR COMPUTER HARDWARE, SOFTWARE, OR DATA, INCLUDING DAMAGE OR LOSS FROM A SECURITY BREACH

III. FROM ANY LEGAL ACTION WHATSOEVER AGAINST YOU, WHETHER THE INVESTIGATION IS CONDUCTED BY GIGTOWN OR ANY LAW ENFORCEMENT AGENT OR AGENCY.

IV. DERIVING FROM ANY MODIFICATIONS OR CHANGES MADE TO OUR SERVICES.

V. RELATED TO ANY TEMPORARY OR PERMANENT SUSPENSION OF ACCESS TO OUR SERVICES OR CONTENT FOR ANY REASON

VI. FROM ANY ERRORS, "BUGS", OR INACCURACIES FOUND IN OUR SERVICES OR RELATED CONTENT.

VII. OF PROFITS, OPPORTUNITY, OR GOODWILL, DIRECTLY OR INDIRECTLY.

BY ACCEPTING THESE TERMS, YOU ACCEPT THE RISK OF DAMAGE OR LOSS OF ANY KIND. GIGTOWN MUST BE NOTIFIED IMMEDIATELY IN THE EVENT OF ANY CLAIM RELATED TO YOUR USE OF OUR SERVICES. THESE TERMS SHALL BE EXERCISED TO THEIR FULL EFFECT AS IS ACCEPTABLE AND PERMITTED BY LAW. GIGTOWN'S LIMITED LIABILITY PERTAINS TO ALL OUR EMPLOYEES, AFFILIATES, DIRECTORS, OFFICERS, OR SUBSIDIARIES.

VIII. RELATING TO INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES.

## **Applicable Law and Jurisdiction**

In accepting our Terms and using our Services, you acknowledge that these Terms will be governed by and enforced in accordance with the laws of the State of California. You and GigTown both agree to submit to the exclusive jurisdiction of JAMS arbitration with any proceeding to be held in either San Diego County or Los Angeles County, California as set forth in the section entitled Arbitration Exclusive Remedy, above. You also acknowledge that the only remedy for any breach of these Terms by GigTown or third party of any kind is monetary damages as outlined by our Limitation of Liability section in these Terms, and that you waive any and all rights to injunctive or other forms of equitable relief of any kind from or against GigTown.

## **Indemnity**

In accepting these Terms and using our Services, you agree to indemnify, save, defend, and hold harmless GigTown, our employees, affiliates, directors, officers, and subsidiaries from any claims, damages, demands, losses, costs, expenses, and reasonable attorney fees arising from your use of Our Services, any breach of our Terms, any third party copyright infringement, or any activity from your account.

## **Disclaimer of All Warranties and Assumption of Risk**

GIGTOWN'S SERVICES ARE PROVIDED "AS IS", "AS AVAILABLE", AND "WITH ALL FAULTS", WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. THIS PERTAINS TO, BUT IS NOT LIMITED TO, WARRANTIES OF ACCURACY, TRUTH, , RELIABILITY, COMPLETENESS, NON-INFRINGEMENT, TIMELINESS, SECURITY, DAMAGES, LOSSES, OR ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING OUR SERVICES. FOR SITUATIONS IN WHICH STATE LAW PROHIBIT OR HAVE LIMITATIONS ON THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES LISTED IN THESE TERMS, STATE LAW HAS JURISDICTION OVER THESE TERMS AND THESE DISCLAIMERS MAY NOT APPLY TO YOU. YOU ACKNOWLEDGE THAT YOUR USE OF OUR SERVICES IS AT YOUR OWN, SOLE RISK.

## **Insurance Liability**

Users are responsible for obtaining and maintaining public and comprehensive liability insurance from the moment of the confirmed booking until the last transaction related to the booking is completed, similar to the amount used by venues and other hosts for public events or live performances.

## **Severability**

If any provision in these Terms is deemed illegal, unenforceable or invalid, that shall not affect the legality, enforceability, or validity of any remaining provision in these Terms.

## **Third Party Agreements**

Through our Services you may encounter features that grant you access to third party websites, databases, servers, programs, software, information, applications, or other similar services (together, “Third Party Services” or “Their”). When you use these Third Party Services, you may be subject to their own terms and conditions, privacy policy, and other requirements related to their use. GigTown is not responsible or liable for the accuracy, legality, or quality of any of Their content or operation in any way, and does not express any warranty or endorsement of any kind related to Third Party Services. These Third Party Services are used solely to facilitate your access to and use of GigTown. You use these Third Party Services at your own risk.

## **Mobile Application**

The following terms apply specifically to our Apps:

I. Application License. Subject to your compliance with the Terms, GigTown grants you a limited non-exclusive, non-transferable, non-sublicensable, revocable license to download, install and use our App on a single mobile device or computer that you own or control and to run such copy of the App solely for your own personal use. Furthermore, with respect to any App accessed through or downloaded from the Apple App Store (an “App Store Sourced Application”), you will only use the App Store Sourced Application (i) on an Apple-branded product that runs the iOS (Apple’s proprietary operating

system) and (ii) as permitted by the “Usage Rules” set forth in the Apple App Store Terms of Service.

II. App Stores. You acknowledge and agree that the availability of the App and our Services is dependent on the third party from whom you received the App license, e.g., the Apple iPhone or Android app stores (in either case, “App Store”). You acknowledge that these Terms are between you and GigTown and not with the App Store. GigTown, not the App Store, is solely responsible for the our Services, including the App, the content thereof, maintenance, support services, and warranty therefor, and addressing any claims relating thereto (e.g., product liability, legal compliance or intellectual property infringement). In order to use the App, you must have access to a wireless network, and you agree to pay all fees associated with such access. You also agree to pay all fees (if any) charged by the App Store in connection with our Services. You agree to comply with, and your license to use the App is conditioned upon your compliance with, all applicable third-party terms of agreement (e.g., the App Store’s terms and policies) when using our Services. You acknowledge that the App Store (and its subsidiaries) are third-party beneficiaries of these Terms and will have the right to enforce them.

III. Accessing and Download the Application from iTunes. The following applies to any App Store Sourced Application:

a. You acknowledge and agree that (i) the Terms are concluded between you and GigTown only, and not Apple, and (ii) GigTown, not Apple, is solely responsible for the App Store Sourced Application and content thereof. Your use of the App Store Sourced Application must comply with the App Store Terms of Service.

b. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Sourced Application.

c. In the event of any failure of the App Store Sourced Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App Store Sourced Application to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App

Store Sourced Application. As between GigTown and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of GigTown.

d. You and GigTown acknowledge that, as between GigTown and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the App Store Sourced Application or your possession and use of the App Store Sourced Application, including, but not limited to: (i) product liability claims; (ii) any claim that the App Store Sourced Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

e. You and GigTown acknowledge that, in the event of any third-party claim that the App Store Sourced Application or your possession and use of that App Store Sourced Application infringes that third party's intellectual property rights, as between GigTown and Apple, GigTown, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by these Terms.

f. You and GigTown acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of these Terms as related to your license of the App Store Sourced Application, and that, upon your acceptance of the terms and conditions of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms as related to your license of the App Store Sourced Application against you as a third-party beneficiary thereof.

g. Without limiting any other terms of these Terms, you must comply with all applicable third-party terms of agreement when using the App Store Sourced Application.

### **Payment Processor**

GigTown uses Braintree, a division of PayPal, Inc. (Braintree) for payment processing. In order for you to use Braintree's payment processing services, you must read and agree to the Commercial Entity User Agreement (CEA) available at

<https://www.braintreepayments.com/legal/cea-wells> and the Payment Services Agreement available at <https://www.braintreepayments.com/legal/gateway-agreement>. By accepting this Agreement, you agree: (a) that you have downloaded or printed the CEA, and (b) that you have reviewed and agree to the CEA. If you have questions regarding the CEA or the PSA, please contact Braintree at 877.434.2894.

## **Concluding Remarks**

### 1. Changes to our Services

GigTown may modify, edit, update, or make changes of any kind to our Services at any time without prior warning.

### 2. Notices

Notifications regarding important changes, information, or updates related to our Services will be sent via email to the email you provided upon registration or push notification through the App.

### 3. Contacting GigTown

Please contact us at [help@gigtown.com](mailto:help@gigtown.com) if you have any questions, concerns, or suggestions.