

## **Terms and Conditions of Use**

### **PopUpGigs website, PopUpGigs mobile site, PopUpGigs iOS & Android Application Terms and Conditions of Use**

PopUpGigs.com (and all of its subdomains) is a site operated by Harros Initiative Pty Ltd ACN 159 857 379 ("We" or "Us").

This page comprises the terms of a legal agreement between you and Harros Initiative Pty Ltd on its behalf. Please read these terms of use carefully before you start to use the PopUpGigs website, mobile site and/or iOS and Android application (collectively referred to hereafter as "the site"). By using, browsing or accessing this site or our services, you indicate that you have read, understood and accept these Terms of Use, together with our Privacy Policy and that you agree to abide by them. If you do not agree to these terms of use you should immediately refrain from using this site or our services.

We reserve the right, at our sole discretion, to change, modify, add or remove portions of these Terms of Use, at any time. Provisions contained in these terms of use may be superseded by provisions or notices published elsewhere on this site. We are not required to give you notice as to when these terms of use are revised, updated or amended at any time.

It is your responsibility to periodically check these Terms of Use for changes made. Your continued use of 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, we grant you a personal, non-exclusive, non-transferable, limited privilege to enter and use the site.

Only individuals over the age of 18 years and who have capacity to enter legally binding contracts under the law of NSW, Australia are permitted to download and use the site.

#### **Access to this site and services**

Access to this site or our services is permitted on a temporary basis, and we reserve the right to withdraw or amend the service we provide on this site without notice (see below). We will not be liable if for any reason this site or our services are unavailable at any time or for any period. We reserve the right to restrict access to some parts of this site, or to the entire site.

You are responsible for making all arrangements necessary for you to have access to this site.

You are also responsible for ensuring that all persons who access the same through your internet connection are aware of these terms, and that they comply with them.

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 us or others.

You agree that we may, in our sole discretion and without prior notice, terminate your access to the site, for cause, 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.

#### **Intellectual Property Rights**

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You may use information on our products and services (such as data sheets, knowledge base articles, and similar materials) purposely made available by us for downloading from the site, provided that you (1) not remove any proprietary notice language in all copies of such

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### **Reliance on information, materials and commentary**

Commentary, materials, advertisements, promotions, events and messages posted on, or via this site, or the service we provide on or via this site, are not intended to be relied upon (including, but not limited to, content posted on or via this site from the host of an event). We disclaim all liability and responsibility arising from any reliance placed on same, and any services provided therefrom, by any visitor to, or user or customer of this site, or by anyone who may be informed of any of its contents and we make no representations or warranties that use of such commentary, materials, advertisements, promotions and messages will not infringe the rights of any third parties. We are not responsible for the products, services, actions, events or failures to act of any venue, performer, promoter or other third party in connection with or referenced on this site, software or application. We are also not responsible for the false representation or incorrect information regarding products, services, actions, events or failures of any act of any venue, performer, promoter or other third party in connection with or referenced on this site, software or application.

### **Links to other sites and services**

Where this site contains links, references, or transmissions to other sites, services, promotions, software, applications or events provided by third parties or to third parties themselves, they are provided for your information and convenience only. We obtain no control over, do not endorse, verify or approve, the contents of the other sites, services, promotions, software, applications or events and accept no responsibility for them or any loss or damage that may arise from your use of, and/or attendance at, them. You are linking to or from, or use of, these sites, services, software or applications is at your own risk. You should review all links to other sites and services prior to using this site. The terms and conditions and privacy policies of all off-site pages and sites should be reviewed by you. Endorsement of the material contained therein links or connections to these sites, services, software or applications or third parties is not implied.

### **Linking to this site**

You may link to our site, provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it, but you must not establish a link in such a way as to suggest any form of associate, approval or endorsement on our part where none exists. You must not establish a link from any website that is not owned by you.

This site must not be framed on any other site, unless express agreement is made by us. If you wish to make any use of any of the material on this site other than set out above or would like to include a frame of our site on another site, please address your request to support@popupgigs.com.

## **Maintenance of equipment and services**

You shall be responsible for obtaining and maintaining any equipment or ancillary services needed to connect to, access the site, or otherwise use the services, software or applications, including, without limitation, hardware devices, software, and other internet, wireless, broadband, phone or other communication device connection services. You shall be responsible for all charges incurred in connection with use of the services, software applications, and all such equipment and ancillary services, including any fees charged for airtime usage.

## **Viruses, Hacking and other offences**

You must not misuse this site, services, software or applications by knowingly introducing viruses, Trojans, worms, logic bombs or other material which is malicious or technologically harmful. You must not attempt to gain unauthorised access to any portion or feature of this site or services, the server on which this site is stored, any of the services offered on or through the site, or any server, computer or database connected to this site, software or applications, by hacking, password "mining" or any other illegitimate means.

You must 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 us, 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.

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

You may not forge headers or otherwise manipulate identifiers in order to disguise the origin of any message or transmittal you send to us 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.

We will not be liable for any loss or damage caused by a virus, system failures or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of this site, services, software or applications, or as a result of you downloading of any material posted on it, or on any website linked to it. We recommend all users of internet ensure they have current virus checking software installed.

## **Our liability**

The material, commentary, and content displayed on or via this site, and any services, software, events and applications provided therefrom, are provided without any guarantees, conditions or warranties as to their accuracy, veracity, truthfulness, completeness or currency. To the extent permitted by law, we, our directors and employees, other members of our group of companies and third parties connected to us hereby expressly exclude:

1. All conditions, warranties, and other terms which might otherwise be implied by statute, common law or the law of equity.
2. Any liability for any direct, indirect or consequential loss or damage incurred by any user in connection with this site, services, software, applications or events or in connection with the use, inability to use or results of the use of or attendance at same, including, without limitation, any liability for: loss of income or revenue; loss of data; loss of goodwill; wasted management or office time; and any other loss or damage of any kind, however arising and whether caused by tort (including negligence), breach of contract or otherwise, even if foreseeable.

Without limitation to the foregoing, we acknowledge that the laws in certain jurisdictions including Australia may imply warranties and conditions or impose obligations on the supply of goods and services through or by means of this site which cannot be excluded, restricted

or modified except to a limited extent. If any such laws apply, then to the fullest extent permitted by the law of the relevant jurisdiction and in the case of Australia to the extent permitted by the *Competition and Consumer Act 2010 (Cth)*, our liability is limited and if any liability remains it will be limited to any one or more of the following in its sole discretion:

1. In the case of any goods, the replacement or repair of the goods, or the supply of equivalent goods, or the payment of the cost of repairing or replacing the goods or supplying equivalent goods; and
2. In the case of any services (such as messages or alerts), the supply of the services again or the payment of the cost of having the services supplied again.

Without limitation to the foregoing, you agree that in no event shall our maximum aggregate liability exceed the greater amount either paid by you for the service or one thousand dollars (AUD\$1,000.00).

### **Submissions made to the Site by you**

By submitting content, materials, comments, messages (whether in, audio, video, text, voice form or otherwise) ("Content") to, on, or via, our site, services, software, applications, chat rooms, communications services, message boards or other interactive service ("Submissions"), you grant us a royalty-free, perpetual, transferable right to (a) use, communicate, deliver, host, reproduce, modify, adapt, translate, distribute, publish, create derivative works from and publicly display such Submissions throughout the world in any media, now known or hereafter devised; and (b) use the name that you submit in connection with such submission, where applicable.

You are solely responsible for the posting, transmission, delivery, accuracy and use of the Submissions and you do so at your own risk and we take no responsibility and assume no liability for same. By submitting a Submission, you expressly agree not to post, upload to, transmit, distribute or facilitate distribution, store, create or otherwise publish any of the following:-

1. Any material, content or information that breaches any applicable local, national or international law or regulation;
2. Any material, content or information that is unlawful, deceptive or fraudulent;
3. Any material, content of information that is intended to harm someone in any way or that is libellous, defamatory, obscene, pornographic, indecent, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory, uses vulgar language or otherwise objectionable;
4. Any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation, junk or bulk email or otherwise (spam);
5. Any material, content or information that contains viruses, Trojan horses, worms, timebombs, keystroke loggers, spyware, adware, or any other harmful programs or similar computer code designed to adversely affect or limit the operation of any computer software, hardware or telecommunications equipment;
6. Any material, content or information that may infringe the intellectual property rights of any third party.

We do not pre-screen, monitor, vet or edit any Submissions and the views expressed are those of the individual Submission contributors and not necessarily our own. Although we do not pre-screen, monitor, vet or edit Submissions, we reserve the right, at our sole discretion, to remove any Submissions that, in our judgment, do not comply with these terms of use or are otherwise harmful, objectionable, or inaccurate. We are not responsible for any failure or delay in removing such content.

## **Adding an event**

Only public events may be added to the site. If you are adding an event to the site you must ensure it is an event that is a public event open to the public and not at a private property/residence.

### **Pledge Feature**

Where this site contains links, references or transmissions for the pledge of funds to an artist, we reserve the right to distribute the funds as follows: -

1. 80% of Pledge funds per pledge forwarded to Artist
2. 10% of Pledge funds per pledge forwarded to Venue
3. 10% of Pledge funds (minus processing and bank fees) forwarded to PopUpGigs

Further you agree to provide us your payment information at the time you process a pledge. You consent to us and our payments partners authorising or reserving a charge on your payment card or other payment method for any amount up to the full pledge at any time between the pledge and the collection of funds. You agree to have sufficient funds or credit available at the time of the pledge to ensure that the pledge will be collectable. In the event that you do not have sufficient funds or credit available at the time of the pledge you are responsible and liable for the payment of the pledge and any fees incurred and associated therein. We do not offer refunds. We reserve the right to cancel or refund your pledge at any time and for any reason. We reserve the right to reject, cancel, interrupt, remove or suspend a campaign or pledge at any time and for any reason. We will not be liable for any damages as a result of any of those actions. Our policy is not to comment on the reasons for any of those actions. We will not be liable for any damages or loss incurred related to rewards or any other use of the Service. We are under no obligation to become involved in disputes between any users, or between users and any third party, arising in connection with the use of this service or pledge. This includes, but is not limited to, delivery of goods and services, and any other terms, conditions, warranties, or representations associated with campaigns on our Site. You are responsible for all fees and taxes associated with your use of the Site and Pledging of funds.

## **This site changes regularly**

We aim to update this site and our services regularly, and may change content at any time. If the need arises, we may suspend access to this site or our services, or close it indefinitely. Any of the material on this site or our services may be out of date at any given time, and we are under no obligation to update such material.

## **Information about you and your visits to this site**

We process information about you in accordance with our privacy policy. By using the site, you consent to such processing and you warrant that all data provided by you is accurate.

## **Miscellaneous**

This site is created and controlled by us in the State of New South Wales, Australia. As such, the laws of the State of New South Wales will govern these terms of use. By using this site you submit to the jurisdiction of the courts of New South Wales and agree that any legal action will only be commenced in these forums. This site is available only to people who can form legally binding contracts under applicable.

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 maximum extent necessary and replaced with a valid provision that best embodies the intent of these Terms of Use, so that these Terms of Use remain in full force and effect. If any provision in these terms of use is found to be invalid or unenforceable by a court of law, such invalidity or unenforceability will not affect the remainder of these terms of use which will continue in full force and effect. These Terms of Use constitute the entire agreement between you and us with regard

to your use of the site, and any and all other written or oral agreements or understandings previously existing between you and us with respect to such use are hereby superseded and cancelled. Other than as provided in a purchase agreement you enter into with us, we will not accept any counter-offers to these

Terms of Use, and all such offers are hereby categorically rejected. Our failure to insist on or enforce strict provision of these Terms of Use shall not be construed as a waiver by us of any provision or right we have to enforce these Terms of Use, nor shall any course of conduct between us and your 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.

### **Violation of these Terms of Use**

In the event these Terms and Conditions of Use are violated by you, we incur costs, expenses, including but not limited to legal costs as a result of your violation we will be entitled to recover from you, and you agree to pay, all reasonable costs, expenses, legal fees, in addition to any other relief granted to us. You agree that we will not be liable to you or to any third party for the termination of your access to the Site as a result of any violation of these Terms of Use.

Further in the event your violation of these Terms and Conditions of Use results in any loss or damage to a third party you agree to indemnify us in relation to any claim made against us by that third party as a result of the loss and/or damage incurred, including but not limited to any amounts payable, including compensation (either by settlement or award), costs and expenses (including our legal costs and those of the third party).

### **Your concerns**

If you have any concerns about any of the material which appears on the site, please contact [support@popupgigs.com](mailto:support@popupgigs.com).