

## TERMS OF USE FOR GISMART MOBILE APPLICATIONS

### 1. ABOUT US

- 1.1. Gismart's mobile applications ("**Apps**") are owned, operated and managed by Gismart Limited (**we / us / our**), a private company limited by shares, incorporated and registered in England and Wales with company number 10152488 whose registered office is at 22 Great Marlborough Street, London, England, W1F 7HU.
- 1.2. We can be contacted by writing to Gismart Limited, Blythe Farm, Mill Street, Sandy, Bedfordshire, SG19 3JW, United Kingdom, by e-mail at [info@gismart.com](mailto:info@gismart.com).

### 2. INTRODUCTION

- 2.1. These terms of use ("**Terms**") constitute an agreement between you and us regarding your use of our Apps and the images, logos, music, photographs and video content that are incorporated into and form part of our Apps ("**App Content**").
- 2.2. Please read these Terms and our privacy policy, available [here](#) ("**Privacy Policy**") very carefully. You acknowledge and agree that by ticking the "I Accept" box at the bottom of this screen, you signify that you have read, understood, and agree to be bound by these Terms and our Privacy Policy. If you do not accept these Terms or our Privacy Policy, you are not permitted to install or use any of our Apps.
- 2.3. We recommend that you save or print a copy of these Terms for future reference. Click here to generate a PDF version of these Terms that can be saved or emailed to you for printing.
- 2.4. Any terms you have with your respective mobile network provider ("**Mobile Provider**") continue to apply and you may be charged by the Mobile Provider for access to network connection services for the duration of the connection while accessing our Apps and any third party charges as may arise from time to time. You will be solely responsible for any costs and other charges or expenses charged by your Mobile Provider, internet service provider, network operator and/or any other third party provider in relation to your internet service, your mobile service and any use of our Apps including the downloading of any available App Content. In the event that you are not the bill payer for the device being used to access our Apps, you will be assumed to have obtained permission from the relevant bill payer for downloading and using our Apps.
- 2.5. If you download our Apps onto any device not owned by you, you must have the owner's permission to do so. You will be responsible for complying with these Terms, whether or not you own the device.
- 2.6. Any words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.7. ***While all of these Terms are important, you should pay particular attention to:***
  - (a) ***your rights in relation to content that you upload or create as set out in paragraph 6;***
  - (b) ***the conditions of use of our Apps as set out in paragraph 8;***
  - (c) ***the acceptable use of our Apps as set out in paragraph 10;***
  - (d) ***our liability to each other as set out in paragraph 14; and***
  - (e) ***when we may bring these Terms to an end as set out in paragraph 22;***

### 3. REGISTRATION

- 3.1. In order to make full use of our Apps, you may be required to register for an account.

- 3.2. You acknowledge and agree that the information provided by you is true, accurate and correct. You agree to promptly notify us in writing in the event of any changes to any of your information.
- 3.3. Your login details are for your own personal use only and you must keep your login details confidential and secure. Sharing your login details with any other person is strictly prohibited.
- 3.4. You must notify us immediately if you suspect or become aware of any unauthorised use of your login details or any breach of our security by emailing info@gismart.com and giving details of the unauthorised use or breach.
- 3.5. Without prejudice to our rights and remedies, we reserve the right to promptly disable your login details and suspend your access to any of our Apps, if in our reasonable opinion, we believe that you have breached any of the provisions of these Terms.

#### **4. OUR APPS**

- 4.1. Our Apps include the "Karaoke" app and the "Beat Maker Go" app which offer you the ability to play a variety of musical instruments and make your own music.

#### **5. USER CONTENT**

- 5.1. Any content you upload or create on our Apps will be considered non-confidential and non-proprietary. You retain all of your ownership rights in your content, but by uploading or creating content on our Apps, you grant us a perpetual, worldwide, non-exclusive, royalty-free, transferable licence for us to use, reproduce, distribute, prepare derivative works of, display, and perform such content in connection with the services that we provide and across different media and to promote our Apps and/or our services; and to third parties including other users of our Apps, our partners and/or our sponsors to use such content for their purposes or in accordance with the functionality of our Apps.
- 5.2. In relation to any content you upload or create on our Apps you warrant that:
  - (a) you have the requisite rights, licences and consents to upload or create such content;
  - (b) such content does not infringe the rights (including intellectual property rights) of any third party; and
  - (c) such content is not defamatory or offensive and will not result in any civil or criminal claim being brought against us by a third party in any jurisdiction.
- 5.3. We reserve the right to:
  - (a) disclose your identity to any third party who is claiming that any content uploaded or created by you on our Apps constitutes a violation of their rights (including intellectual property rights);
  - (b) remove any content you upload or create on our Apps, if in our opinion such content does not comply with these Terms.

#### **6. AVAILABILITY**

- 6.1. We will use reasonable endeavours to ensure that our Apps and App Content are available for download and use at all times. However, our App and App Content are provided over the internet and mobile networks and so their operation and availability may be affected by factors outside of our control at any time for any reason. We do not guarantee that use of or access to our Apps or App Content will always be available and/or uninterrupted.

#### **7. CONDITIONS OF USE**

- 7.1. In return for your agreeing to comply with these Terms you may:

- (a) download our Apps onto a device and view, use and display our Apps on the device for your personal purposes only;
  - (b) use any related documentation to support use of our Apps as permitted by these Terms; and
  - (c) receive updates to the software code of our Apps via our Apps store that you downloaded our Apps from - these may incorporate patches and corrections of errors as we may provide to you.
- 7.2. Your right to use our Apps is personal to you, you may not otherwise transfer our Apps to anyone else for any reason. If you sell or give away any device on which our Apps is installed, you must remove our Apps from it first.
- 7.3. The ways in which you can use our Apps may also be governed the terms of the app store that you downloaded our Apps from. In the event of a conflict between these Terms and the terms of the app store that you downloaded our Apps from, the terms of our Apps store from which you downloaded our Apps shall take priority.

## **8. RESTRICTIONS**

- 8.1. Unless you have requested and received our prior written consent or unless expressly permitted in these Terms, you must not:
- (a) copy our Apps except as part of the normal use of our Apps or where it is necessary for the purpose of creating a back-up or operational security;
  - (b) modify or translate our Apps in whole or in part, or combine or merge our Apps with any other object code or program;
  - (c) reverse engineer, decompile, disassemble, reduce the object code of our Apps to source code form or create (or attempt to create) derivative works based on the whole or any part of our Apps, except to the extent permitted by applicable law, and provided that the information obtained by you during such activities:
    - (i) is not disclosed or communicated without our prior written consent to any third party to whom it is not necessary to disclose or communicate it to in accordance with applicable law; and
    - (ii) is not used to create any software that is substantially similar in its expression to our Apps;
    - (iii) is kept secure; and
    - (iv) is used only in accordance with applicable law;
  - (d) distribute, sub-license, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for service bureau purposes, or otherwise transfer our Apps or your right to use our Apps;
  - (e) remove, modify, block, disable, obscure or impair any copyright, trademark, or other proprietary notices, material or advertising belonging to us, our licensors or other third parties contained within our Apps;
  - (f) incorporate our Apps into another service or website or make it available via framing or mirrors;
  - (g) extract any data or metadata from our Apps nor create any index or database incorporating any part of it;
  - (h) circumvent, disable or otherwise interfere with security-related features of our Apps or features that:

- (i) prevent or restrict use or copying of any part of our Apps; or
  - (ii) enforce limitations on use of our Apps,
- in each case other than to exercise your rights under paragraphs 9.1(a) or 9.1(c);
- (i) do anything that may cause damage to our Apps;
  - (j) carry out any harmful or illegal activities using our Apps; or
  - (k) use our Apps in any manner not expressly authorised by these Terms.

## **9. ACCEPTABLE USE**

9.1. You must:

- (a) not use our Apps in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these Terms, or act fraudulently or maliciously (for example, by hacking into or inserting malicious code, such as viruses, or harmful data, into our Apps or into any operating system);
- (b) not infringe any rights (including intellectual property rights) belonging to us or any third party in relation to your use of our Apps;
- (c) not transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of our Apps;
- (d) not use our Apps in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users;
- (e) comply with any applicable third party terms and conditions in respect of your use of our Apps; and
- (f) not collect or harvest any information or data from any service or our systems or attempt to decipher any transmissions to or from our servers.

## **10. FEES**

10.1. Once you have installed our Apps, you can select the subscription that you would like in order to use each App. Subscriptions are available on a weekly, monthly, annual and lifetime basis and further details of each type of subscription and its cost are detailed on the App.

10.2. App Content may be made available via in-app purchasing.

10.3. All transactions between you and us are handled via the app store that you downloaded the App from.

## **11. APP CONTENT**

11.1. The App Content may include trademarks or copyright material owned by us or third parties. The App Content includes the images, logos, music, photographs and video content that are incorporated into and form part of our Apps. The term App Content also includes any part of any of the App Content, or any assemblage, deviation, manipulation, modification, screen print or copy of, or derivative work based on or including any of the App Content.

11.2. The App Content may only be used as part of our Apps and may not be used independently.

## **12. INTELLECTUAL PROPERTY RIGHTS**

12.1. All intellectual property rights in our Apps, App Content and related documentation throughout the world belong to us and our licensors and the rights in our Apps are licensed (not sold) to

you. You have no intellectual property rights in, or to, our Apps or related documentation other than the right to use them in accordance with these Terms.

### 13. LIABILITY

- 13.1. If we fail to comply with these Terms we are responsible for loss or damage you suffer that is a foreseeable result of our breaking these Terms or our failing to use reasonable care and skill, but subject to paragraph 14.4, we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time you accepted these Terms, both we and you knew it might happen ("**Foreseeable Losses**"); and
- 13.2. Subject to paragraph 14.4, we limit our aggregate liability for Foreseeable Losses, arising out of or in connection with these Terms, to you in respect of all events occurring in any calendar year, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, to the greater of:
  - (a) 100% of the fees paid and payable by you to us in respect of the App in such calendar year; and
  - (b) £50.
- 13.3. Subject to paragraph 14.4, circumstances giving rise to a loss or damage which is not foreseeable includes but shall not be limited to:
  - (a) any use of our Apps in a manner that we do not authorise;
  - (b) ending, suspending or restricting use of our Apps in accordance with these Terms;
  - (c) any loss or damage caused by us in circumstances where there is no breach of contractual obligation or legal duty owed to you by us;
  - (d) any loss or damage (including to any device or content belonging to you) caused by us to the extent that such loss or damage results from your negligence, your failure to follow our reasonable instructions or any other breach of these Terms (or any other contract you have in place with us), unless we were in breach of a legal obligation or duty of care owed to you by us and that breach is the substantial cause of the loss or damage;
  - (e) any loss or damage caused by any error, bugs or viruses arising in your use of our Apps that are not directly caused by or attributable to our Apps, or any incompatibility of our Apps with any other software, hardware or material on your device; and
  - (f) any breach of paragraphs 6 or 10 by you.
- 13.4. Nothing in these Terms excludes or limits our liability for death or personal injury arising from our negligence, or our fraud or fraudulent misrepresentation, or any other liability that cannot be excluded or limited under English law.
- 13.5. If defective digital content that we have supplied damages a device or digital content belonging to you, we will either repair the damage or pay you compensation. However, we will not be liable for damage that you could have avoided by following our advice to apply an update offered to you free of charge or for damage that was caused by you failing to correctly follow installation instructions or to have in place the technical requirements advised by us.
- 13.6. Our Apps are for domestic and private use only. If you use our Apps for any commercial, business or resale purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 13.7. Please note that in some jurisdictions consumer protection laws may not allow certain disclaimers or exclusions or limitations of liability and consequently some of the disclaimers, exclusions and limitations of liability in these Terms may not apply.

- 13.8. We recommend that you back up any content and data used in connection with our Apps, to protect yourself in case of problems with our Apps.
- 13.9. Our Apps have not been developed to meet your individual requirements. Please check that the facilities and functions of our Apps (as described on the app stores where our Apps are available and in the related documentation) meet your requirements.
- 13.10. If our provision of support for our Apps is delayed by an event outside our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event but you may terminate these Terms by ceasing to use our Apps and deleting or removing it from your device.
- 13.11. Our Apps, which are available on various app stores, are controlled and offered by us from our facilities in United Kingdom. The distribution of our Apps via app stores is governed by their rules with which we must comply. There are some locations where Apps with paid for in-app purchasing products are not permitted and therefore in those locations our Apps will not be visible to app store users registered in those locations.
- 13.12. You agree that you will compensate us for any losses (including reasonable legal fees) that we incur as a result of any breach of paragraph 6 or 10 by you.

#### **14. YOUR PRIVACY**

- 14.1. We only use any personal data we collect through your use of our Apps in the ways set out in our Privacy Policy which can be found [here](#).
- 14.2. Please be aware that internet transmissions are never completely private or secure and that any message or information you send using our Apps may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.
- 14.3. By using our Apps, you agree to us collecting and using technical information about the devices you use our Apps on and related software, hardware and peripherals to improve our products.

#### **15. THIRD PARTY WEBSITES**

- 15.1. You acknowledge that our Apps may contain links to third party websites (whether by way of advertisements or otherwise) that are not owned or controlled by us. Such links are provided for your reference only. We do not control such websites and are not responsible for the contents or your use of them, and as a result we do not accept responsibility for the availability, suitability, reliability or content of such third party websites.
- 15.2. Our inclusion of such hyperlinks in our Apps does not imply any endorsement of the material or the views expressed within them.

#### **16. SUPPORT**

- 16.1. If you think our Apps is faulty or misdescribed please contact us using the details provided in paragraph 1.2.
- 16.2. If we have to contact you we will do so by email, using the contact details you have provided to us.

#### **17. ADVERTISING AND MONETISATION**

- 17.1. You acknowledge that our Apps and the App Content may be supported by advertising revenues and we may place advertising, promotions or sponsored content on our Apps or on, about, or in conjunction with the App Content. You acknowledge that we may not always identify advertising, promotions and sponsored content and the manner, mode and extent of such advertising, promotions and sponsored content is subject to change without notice to you. We may at our sole discretion provide the ability to pay to remove advertisements via the settings menu within our Apps.

## **18. CHANGES TO OUR APPS**

- 18.1. From time to time we may automatically update our Apps to improve performance, enhance functionality, reflect changes to the operating system or address security issues.
- 18.2. If you choose not to install such updates or if you opt out of automatic updates you may not be able to continue using our Apps.
- 18.3. Changes to our Apps will not prevent our Apps working with the versions of the operating system shown on the app store that you downloaded the App from.

## **19. CHANGES TO THESE TERMS**

- 19.1. These Terms may only be modified with our prior written consent. We may alter or amend these Terms, including introducing new terms, that are:
  - (a) the result of a change in applicable law or our business;
  - (b) necessary for the provision of our Apps; or
  - (c) the result of any improvements to our Apps.
- 19.2. Subject to paragraph 20.3, if we make any changes (including any changes to our policies), we will give thirty (30) days' prior written notice to you by email. If you notify us in writing within the thirty (30) days that you do not accept the change, these Terms will terminate immediately. However, if you continue to use our Apps after providing such notice or after the thirty (30) day period, you are accepting these Terms as updated.
- 19.3. We are under no obligation to notify you of any changes to these Terms that result in minor adjustments or corrections to these Terms.

## **20. TRANSFER OF RIGHTS**

- 20.1. We may transfer our rights and obligations under these Terms to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under the these Terms.
- 20.2. You may only transfer your rights or your obligations under these Terms to another person if we agree in writing.

## **21. TERMINATION**

- 21.1. These Terms apply from when you click "I Accept" at the bottom of this screen (the "**Effective Date**") and will remain in full force and effect while you use our Apps until terminated in accordance with this paragraph 22.
- 21.2. We may terminate these Terms and your use of our Apps, or suspend your use of our Apps, immediately by written notice to you if:
  - (a) we consider that you have used our Apps in violation of these Terms;
  - (b) we believe there has been unauthorised access to our Apps;
  - (c) we, at our sole discretion, decide to withdraw our Apps (whether in whole or in part);
  - (d) we have a legal or regulatory obligation imposed on us, which impacts our ability to provide our Apps; or
  - (e) for any other reason provided that we have given you thirty (30) days' written notice by email, SMS or via an electronic communication within our Apps.

- 21.3. We may discontinue licensing any of the App Content at any time at our sole discretion. In this instance you will be able to continue to use our Apps with the App Content, but it will no longer be available on app stores and will no longer be supported by us.
- 21.4. You can terminate these Terms by ceasing to use our Apps and deleting or uninstalling it from your device.
- 21.5. Upon termination for any reason:
- (a) all rights granted to you under these Terms cease (however, any liabilities incurred by you under these Terms prior shall survive any such termination);
  - (b) you must cease all activities authorised by these Terms; and
  - (c) you must delete or remove our Apps from your device.

## **22. GENERAL**

- 22.1. This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to allow anyone other than you or us to enforce any term of these Terms or of the Privacy Policy.
- 22.2. Even if we delay in enforcing this contract, we can still enforce it later. If we do not insist immediately that you do anything you are required to do under these Terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.
- 22.3. These Terms are governed by English law (including non-contractual disputes or claims) and legal proceedings in respect of these Terms and our Apps shall be dealt with exclusively by the English courts.
- 22.4. If any provision of these Terms and Conditions is deemed invalid by a court of competent jurisdiction, the relevant provision shall be deemed modified to the minimum extent necessary to make it valid, and the invalidity of such provision will not affect the validity of the remaining provisions of these Terms and Conditions which will remain in full force and effect.
- 22.5. Without prejudice to any other rights or remedies that we may have, you acknowledge and agree that damages alone would not be an adequate remedy for any breach of these Terms by you. Accordingly, we shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of these Terms.