

# Gallery Bay

## Terms of Service

Last Updated: April 11, 2023

### Welcome to Gallery Bay!

The Gallery Bay website at [www.gallerybay.com](http://www.gallerybay.com) (the "**Site**") and the services provided on the Site (the "**Services**") (collectively, the Site and the Services, the "**Platform**") is owned and operated by Gallery Bay, Inc. ("**Gallery Bay**," "**we**," "**us**," or "**our**"), and connects real estate photographers ("**Creators**") with homeowners and real estate professionals (collectively, "**Customers**") registered to use our Services. The Services provide Customers with the ability to license real estate-related content, including pictures, videos, and/or 3D scans ("**Creator Content**"). The terms and conditions of this agreement (the "**Agreement**" or the "**Terms of Service**") apply to any visitors, Creators, and Customers (collectively, "**Users**," "**you**," or "**your**") who access and use the Platform.

This Agreement controls your legal relationship with us and the rights you grant us when you use the Platform.

THIS AGREEMENT CONTAINS A MANDATORY AND BINDING INDIVIDUAL ARBITRATION CLAUSE, CLASS ACTION WAIVER, WAIVER OF RIGHT TO A JURY TRIAL, AND OTHER IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES, AND OBLIGATIONS.

**Please read the terms of this Agreement carefully before using the Platform.**

### 1. Acceptance

Your right to access and use the Platform is conditioned on your acceptance of this Agreement. By accessing and using the Platform, you agree on your own behalf and on behalf of any organization, entity, or person on whose behalf you may act to accept and abide by this Agreement for each and every use of the Platform. If you do not agree with all terms and conditions of this Agreement, please do not access or use the Platform.

By agreeing to the terms and conditions of this Agreement, you also agree to the terms of our [Privacy Policy](#), which is hereby incorporated by reference.

If you are a Creator, you must also accept the terms and conditions of our [Creator Agreement](#).

The use of Creator Content by Customers is subject to the license terms contained in the [Gallery Bay License](#).

There may be additional terms and conditions specified when a Creator uploads and a Customer purchases Creator Content (collectively, "**Supplemental Terms**"), which are hereby incorporated into and made part of this Agreement.

### 2. Updates

We reserve the right to modify this Agreement anytime by posting an updated Agreement on the Platform. We may also, at our sole discretion, provide registered Users with an email notification of changes. You are responsible for regularly reviewing this Agreement, and your continued use of the Platform after the effective date of such change or amendment constitutes your acceptance of the updated Agreement. If any modification is unacceptable to you, you shall cease using the Platform. If you have any questions about this Agreement, you may contact us at [contact@gallerybay.com](mailto:contact@gallerybay.com).

### 3. Our Platform

**3.1 In General.** Gallery Bay is a Platform that allows Creators to upload and license Creator Content to Customers subject to the terms and conditions of this Agreement and the Gallery Bay License.

**3.2 Updates to the Platform.** We reserve the right, without prior notice, to amend, modify, and stop providing the Platform to you or Users in general. We may also create usage limits for the Platform at any time at our sole discretion. The Platform is provided "as is," and you acknowledge and agree that you will not rely on any existing features of the Platform being available in the future, nor any proposed updates or additional services becoming available.

**3.3 Eligibility.** You may only use the Platform if you are in compliance with this Agreement and all applicable local, state, national, and international laws, rules, and regulations. You must be at least 18 to use or access the Platform. Any use or access to the Platform by anyone under 18 is strictly prohibited and violates this Agreement. The Platform may not be available to Users previously removed from the Platform by us.

**3.4 United States Only.** Our Platform is located within the United States and is not intended to be subject to non-US jurisdiction or law. The Platform may not be appropriate or available for use in some US and/or non-US jurisdictions. Any use of the Platform is at your own risk, and you must comply with all applicable laws and regulations in using the Platform. At our sole discretion, we may limit the Platform's availability at any time, in whole or in part, to any person, geographic area, or jurisdiction we choose.

## **4. Disclaimers**

**4.1 As Available.** We do not make any warranty, guarantee, or representation that the Platform or the services used to provide the Platform will be available at all times or that it will be error or interruption-free.

**4.2 No Pre-Screening.** We do not screen or otherwise verify that Creators or Customers are who they say they are or that the information contained in their Profiles is accurate, updated, or complete. Users are solely responsible for any interaction they have with other Users on the Platform, and at no point can we be held liable for any conduct, action, or omission of Users, whether online or offline.

**4.3 No Monitoring.** You acknowledge that we do not monitor Creator Content made available on the Platform, but we or our designees shall have the right (but not the obligation) in our sole discretion to reject or remove Creator Content that is available via the Platform if we determine that it violates this Agreement, applicable law, or is otherwise objectionable to us and that we may do so without any remuneration to you.

**4.4 No Endorsement.** We do not select, recommend, or endorse any Creator featured on the Platform. Creators are free to choose Creator Content they make available to Customers on the Platform and may add or remove Creator Content from the Platform at any time at their sole discretion. Customers are solely responsible for determining whether Creator Content they purchase meets their intended purposes. Any dispute between a Customer and a Creator is strictly between the applicable Customer and Creator.

**4.5 No Advice.** We do not act in any way except as a provider of technology to Platform Users. We do not offer any advice, opinions, recommendations, or referrals. Unless expressly stated otherwise, we are not partners, joint venturers, employers, or affiliated with any User. We encourage and recommend that Users conduct all in-person meetings in a safe public location. All in-person meetings between Platform Users are done so entirely at their own risk. We have no liability for any claims, injuries, loss, harm, and/or damages, including personal injury, arising from and/or in any way related to interactions or dealings between Users, whether online or offline.

## **5. Access to the Platform**

**5.1 Right to Access.** We grant you, and you alone, a non-exclusive and non-transferable right to access and use the Platform subject to the terms and conditions of this Agreement.

**5.2 General.** You may access and use the Platform for its intended purpose and in accordance with the terms and conditions set forth in this Agreement. You may need to create an account to use portions of the Platform and the Services ("**Gallery Bay Account**"). Your Gallery Bay Account gives you access to the Platform and functionality that we may establish and maintain from time to time at our sole discretion. We may maintain different types of accounts for different Users. You are solely responsible for all information you upload or enter through your Gallery Bay Account.

**5.3 Representations and Warranties.** By creating a Gallery Bay Account, you represent and warrant that: (i) your Personal Information (defined below) is accurate and updated; (ii) you have and will continue to comply with all applicable federal, state, and local laws, regulations, and ordinances, including, without limitation, that Your Content (defined below) does not infringe upon the property rights, intellectual property rights (copyrights and trademarks), or other rights of others; and (iii) you agree to be bound by the terms of this Agreement. "**Personal Information**" means your account information, including your username, password, name, picture, mailing address, email address, and telephone number. "**Your Content**" means all User-Generated Content (as defined herein), messages, posts, and other information you provide through or in connection with the Platform and that is made public on the Platform. We shall not, in any way, be responsible for your intentional or unintentional alteration, deletion, or misuse of your Personal Information or Your Content.

**5.4 Your Responsibility.** You are responsible for your compliance with this Agreement and your own acts and omissions. In using the Platform, you shall: (i) be solely responsible for the accuracy, quality, integrity, and legality of your Personal Information and Your Content; (ii) use reasonable efforts to prevent unauthorized access or use of your Gallery Bay Account; and (iii) use the Platform only in accordance with applicable laws, government regulations, and the terms of this Agreement.

**5.5 Account Security.** When you create your Gallery Bay Account, you will create a user identification and a password upon completing the registration process ("**Credentials**"). When creating your account, you must provide accurate, current, and complete Personal Information. You may not transfer to, sell, or share your account with other Users or third parties. You are responsible for maintaining the confidentiality of your Credentials and account and for all activities that occur under your account. You agree to immediately notify us of any unauthorized use of your Credentials or account or any other security breach and ensure that you exit your account at the end of each session. We cannot and will not be liable for any loss or damage arising from your failure to comply with this section. You may edit your Personal Information and how you interact with the Platform by logging into your account and changing the settings in the "My Profile" section.

**5.6 User Privacy.** Our [Privacy Policy](#) sets out the categories of Personal Information and other data we collect and how we collect, store, and use it. By accepting this Agreement, you expressly consent to our disclosure and use of your Personal Information as described in our Privacy Policy, which is incorporated herein by reference. We encourage you to read our Privacy Policy before you submit any Personal Information to the Platform. Without limiting the terms and conditions of our Privacy Policy, you acknowledge and agree that we may disclose your Personal Information, including your name, email address, and account activity, when we believe that such disclosure is necessary or appropriate to: (i) comply with legal processes; (ii) enforce this Agreement; (iii) respond to claims that your User-Generated Content (defined below) violates the rights of third-parties; (iv) to investigate the use of or respond to alleged violations or infringement of Third-Party Content (defined below); or (v) to protect our rights, property, or personal safety or that of Users or the public.

## **6. User-Generated Content**

**6.1 In General.** We may allow you to post content, comments, and suggestions on the Platform (collectively, "**User-Generated Content**"). User-Generated Content will be treated as non-confidential and may be viewable by other Users and third-party websites and services upon which the Platform is provided.

**6.2 Prohibited Content.** You shall not upload, download, post, email, or otherwise transmit any User-Generated Content that, without limitation:

**6.2.1** May infringe any patent, trademark, trade secret, copyright, or other intellectual or proprietary right of any third-party;

**6.2.2** May be considered false or misleading information;

**6.2.3** Violates another's rights of celebrity or privacy, which includes, without limitation, uploading a picture of another person without such person's consent;

**6.2.4** Is unlawful, harmful, threatening, abusive, vulgar, harassing, defamatory, obscene, pornographic, profane, indecent, inflammatory, libelous, tortious, or hateful, or which may be racially, ethnically, socially, politically, legally, morally, or religiously objectionable or which is otherwise objectionable to us;

**6.2.5** May be considered unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, or any other form of solicitation;

**6.2.6** Would constitute or encourage a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, or national law; or

**6.2.7** Would be likely to incite, promote, or support discrimination, hostility, or violence.

## **7. User Conduct**

**7.1 Your Obligations.** You agree that you will use the Platform only for its lawful and intended purposes and will comply at all times with all applicable laws, including, without limitation, all intellectual property, non-discrimination, privacy, and data security laws, and will not take any action that harms or violates the rights of any person or entity.

**7.2 Prohibited Uses.** Without limitation, in using the Platform, you agree to not:

- 7.2.1** Reproduce, duplicate, copy, sell, resell, rent, or exploit for commercial purposes any portion of the Platform, use of the Platform, or access to the Platform without our express written consent;
- 7.2.2** Share features or functions of the Platform or Creator Content with any third party except Users;
- 7.2.3** Use the Platform in any way to discriminate against any individual or class of individuals protected under federal, state or local laws, or which may have a discriminatory impact against any individual or class of individuals, or which otherwise promotes illegal, racist, or discriminatory activities or outcomes;
- 7.2.4** Use the Platform in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property rights or other rights of any person, or that violates any applicable law;
- 7.2.5** Modify or create derivative works based upon the Platform or any Creator Content made publicly available on the Platform;
- 7.2.6** Impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;
- 7.2.7** Remove or alter any copyright, watermark, attribution marks, or other proprietary notices contained on the Platform, Creator Content, or in the software used to provide the Platform;
- 7.2.8** Use or access the Platform to provide service bureau, time-sharing, or other computer hosting services to third-parties;
- 7.2.9** Upload, download, post, email or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;
- 7.2.10** Disrupt or interfere with the security of, or otherwise abuse, the Platform, system resources, accounts, servers, or networks connected to or accessible through the Platform;
- 7.2.11** Reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the software used to provide the Platform;
- 7.2.12** Access, tamper with, or use non-public areas of the Platform. Unauthorized individuals attempting to access these areas of the Platform may be subject to prosecution;
- 7.2.13** Disrupt or interfere with any other Users' enjoyment of the Platform;
- 7.2.14** Use any robot, spider, scraper, or other automated means to access the Platform for any purpose without our express written permission;
- 7.2.15** Access the Platform in order to build, or assist others in the building of, a similar or competitive product;
- 7.2.16** Frame or link to the Platform except as permitted in writing by us; or
- 7.2.17** Use or share your account with other Users or third parties.

## **8. Suspension and Termination**

**8.1 Termination by the User.** You may terminate this Agreement anytime by deleting your account and/or ceasing use of the Platform and/or the Services. To delete your account, you should log in, go to "My Profile," and then "Delete My Account." You may also email us at [contact@gallerybay.com](mailto:contact@gallerybay.com).

**8.2 Suspension or Termination by Gallery Bay.** We, without prior notice, may suspend or terminate your use of the Platform at any time if, in our sole discretion, your use of the Platform violates this Agreement or applicable law, or if we reasonably believe that your use of the Platform could cause damage to the Platform, the rights of other Users, or for any other reason, even if not expressly set forth in this Agreement. Our right to suspend and/or terminate your account does not limit our right to seek any other remedy available to us through this Agreement or at law.

**8.3 Effect of Termination.** Suspension or termination of your Gallery Bay Account may result in the deletion of your Personal Information and Your Content, including Creator Content that is saved in or associated with your account.

Upon suspension or termination of your Gallery Bay Account, you agree to immediately stop accessing or using the portions of the Platform which require a registered account. Your rights and responsibilities regarding the use of Creator Content purchased and licensed through the Platform shall survive termination of this Agreement for any reason and shall remain subject to the terms and conditions in any applicable Supplemental Terms or the Gallery Bay License.

**8.4 Preservation of Your Account Information.** We reserve the right, but not the obligation, to maintain the information contained in your Gallery Bay Account even after you terminate your account with us. You acknowledge and agree that we may preserve your account information for as long as necessary to comply with our legal obligation, to enforce our legal agreements, or for any other legitimate business purpose.

## **9. Paid Services**

**9.1 Creator Content.** Platform Users can search and find relevant Creator Content through the search filters provided on the Platform. Registered Customers may purchase Creator Content through the Platform for the applicable fees ("**Content Fees**") specified at the time of purchase. The purchase of Creator Content is subject to the terms of the [Gallery Bay License](#) and any Supplemental Terms provided at the time of purchase.

**9.2 Access to Content.** You will have access to the Creator Content you have purchased via the Platform for thirty (30) days from the date of purchase or longer at our sole discretion. You acknowledge and agree that we do not make any promise or guarantee that Creator Content purchased through the Platform will be available to you beyond the limited thirty (30) day period provided in this Subsection.

**9.3 Payment.** Users must provide payment information through our Payment Processor (defined below) to purchase Creator Content on the Platform. Content Fees will be processed through the Payment Processor when Creator Content is downloaded from the Platform. All payments are non-cancellable and non-refundable once paid. If you choose to store your payment information with our Payment Processor, you are granting us permission to charge the payment method you have on file for any subsequent purchases of Creator Content you make on the Platform.

**9.4 Non-Circumvention.** You acknowledge that we use substantial labor and effort to connect Creators with Customers through the Platform. As such, you agree that you will not circumvent or attempt to circumvent the Platform or this Agreement. If you are a Creator, this means that you will not provide Creator Content to Users, and if you are a Customer, you will not solicit Creator Content from a Creator, other than through the Platform.

## **10. Third-Party Services**

**10.1 Third-Party Content.** The Platform may contain content or links to third-party applications, services, websites, and other content not owned or controlled by us ("**Third-Party Content**"). We do not endorse or assume any responsibility for Third-Party Content. If you access Third-Party Content from the Platform, you do so at your own risk and understand that this Agreement and our Privacy Policy do not apply to your use of Third-Party Content. You expressly relieve us from any and all liability arising from your use of Third-Party Content, and any terms related to Third-Party Content are solely between you and the Third-Party Content provider. You agree that we will not be responsible for any reliance or damages of any sort relating to your use of Third-Party Content.

**10.2 Third-Party Services.** The Platform may provide access to or integrate with third-party applications, services, websites, and other services not owned or controlled by us ("**Third-Party Services**"). All Third-Party Services are provided "As-Is," and we do not endorse or warrant any Third-Party Services, regardless of whether they are required to use our Platform. You expressly relieve us from any and all liability arising from your use of Third-Party Services, and any use by you of Third-Party Services is solely between you and the applicable Third-Party Services provider. If you access Third-Party Services from the Platform, you do so at your own risk and understand that this Agreement does not apply to your use of Third-Party Services. We are not responsible for any disclosure, modification, or deletion of your Personal Information or Your Content resulting from access by Third-Party Services. Additionally, we are not responsible for downtime or unavailability of any Third-Party Services outside our reasonable control. Under no circumstances will we be liable for any indirect, special, incidental, punitive, or consequential damages, including, without limitation, loss of data, business interruption, or loss of profits arising out of the use or the inability to use Third-Party Services.

**10.3 Payment Processor.** All payments made through the Platform are processed through a third-party payment processor, such as Stripe ("**Payment Processor**"). We do not access or store any financial information, including, without limitation, credit card numbers, bank account numbers, or any other information by which a charge can be made. By using our Payment Processor, you agree to their separate Terms of Service and/or Privacy Policy. We reserve the right

to change the Payment Processor at any time. You understand and agree that we will not be held liable for failure to complete a transaction through the Payment Processor. We are not responsible for resolving any dispute, support, penalty, or other issues that may occur between you and the Payment Processor.

**10.4 Google Maps.** The Platform may provide Users with the ability to access and interact with Google Maps. By utilizing Google Maps or any other third-party web-based mapping platform, you are agreeing to their separate [Terms of Service](#) and/or [Privacy Policy](#).

## **11. Proprietary Rights**

**11.1 Our Proprietary Rights.** You acknowledge and agree that the Platform contains proprietary and confidential information that is protected by applicable intellectual property and other laws. We retain all rights, title, and interest in and to the Platform, including, without limitation, the Gallery Bay trademarks (all names and logos) and all other Gallery Bay content provided on the Platform (collectively, "**Gallery Bay IP**"). This Agreement does not grant you any right to reproduce, copy, modify, distribute, license, sell, transfer, publicly display, publicly perform, or otherwise exploit the Gallery Bay IP. No rights are granted to you other than as set forth in this Agreement.

**11.2 Licenses in User-Generated Content.** You grant to us a non-exclusive, royalty-free, assignable, transferable, sublicensable, and irrevocable right and license to use, reproduce, adapt, and distribute User-Generated Content as reasonably necessary: (i) to provide the Platform as required under this Agreement and any Supplemental Terms; (ii) to exercise our other rights, and perform our other obligations, under this Agreement and any Supplemental Terms; (iii) and for any other use not expressly prohibited by this Agreement, any Supplemental Terms, or applicable law.

**11.3 Feedback.** You may provide us or make public on the Platform notes, emails, postings, letters, suggestions, concepts, or other written materials related to the Platform (collectively, "**Feedback**"). By submitting Feedback, you fully assign ownership to all such Feedback to us and further acknowledge and agree that you do not maintain and will not assert any ownership, intellectual property right, or other rights to the Feedback. You further agree that any Feedback provided to us will not be considered confidential information. We can freely share, disclose, modify, create derivative works, or otherwise use the Feedback for any purpose. Should the ownership of the Feedback be found under applicable law not to be our property, you hereby grant us a royalty-free, worldwide, transferable, sublicensable, irrevocable, and perpetual license to use or incorporate into any of our products or services any Feedback provided by you relating to the provision of the Platform.

**11.4 Proprietary Rights of Creators.** The Platform may give you access to Creator Content, which is the sole property of the applicable Creator. This Agreement does not grant you the right to reproduce, copy, modify, distribute, license, sell, transfer, publicly display or perform or otherwise exploit any Creator IP or any Third-Party Content unless you have purchased such Creator Content and agree to use it only in accordance with the [Gallery Bay License](#) and any applicable Supplement Terms related to such Creator Content.

## **12. DMCA Notice**

We respect the intellectual property rights of others. We will respond expeditiously to claims of copyright infringement on the Platform if submitted to our Copyright Agent as fully described in our [DMCA Notice](#).

## **13. Mobile Services**

We may make the Platform available via mobile telephones and/or tablets ("**Application**"). The Application may not be compatible with all mobile devices, carriers, and service providers, and we do not make any representations or warranties with respect to such compatibility. If you install or use our Application, including any accompanying documentation, we grant you a limited right and license to install and use the Application on a single authorized device located in the United States or its territories. You may use the Application only in accordance with the terms and conditions of this Agreement and any additional end-user license that may accompany the Application.

## **14. Disclaimer of Warranties**

WE PROVIDE THE PLATFORM ON AN "AS-IS" AND "AS-AVAILABLE" BASIS. YOUR USE OF THE PLATFORM IS AT YOUR OWN RISK, AND WE MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, THAT: (I) THE PLATFORM WILL MEET YOUR REQUIREMENTS; (II) THE OPERATION OF THE PLATFORM WILL BE UNINTERRUPTED, TIMELY, OR ERROR-FREE; OR (III) DEFECTS, IF ANY, WILL BE CORRECTED. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS

OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ACCURACY. THE INFORMATION AND ANY CONTENT PROVIDED ON THE PLATFORM IS FOR INFORMATIONAL PURPOSES ONLY AND DO NOT, AND ARE NOT INTENDED TO, CONSTITUTE SPECIFIC ADVICE. YOU AGREE THAT WE SHALL HAVE NO RESPONSIBILITY FOR ANY DAMAGES SUFFERED BY YOU, YOUR BUSINESS, YOUR COMPUTER, OR LOSS OF DATA THAT RESULTS FROM YOUR ACCESS TO OUR PLATFORM OR ANY CONTENT CONTAINED THEREIN.

Creators are solely responsible for ensuring that Creator Content and any communications they may have with prospective Customers through the Platform or offline fully comply with all applicable laws. Through our Creator Agreement, every Creator on the Platform must represent and warrant that Creator Content is: (i) their original content; (ii) does not infringe the intellectual property rights of any third party; (iii) was acquired legally; and (iv) does not violate the rights of privacy or publicity of any third party.

YOU ACKNOWLEDGE THAT CREATOR CONTENT IS SOLELY THE CONTENT OF THE APPLICABLE CREATOR. GALLERY BAY DOES NOT PRE-SCREEN CREATOR CONTENT OR OTHERWISE VERIFY THAT CREATOR HAS ALL LEGAL RIGHTS TO USE AND LICENSE THE CREATOR CONTENT TO YOU. GALLERY BAY EXPRESSLY DISCLAIMS ALL WARRANTIES RELATED TO CREATOR CONTENT, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT.

#### **15. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, UNDER NO CIRCUMSTANCES INCLUDING, WITHOUT LIMITATION, OUR OWN NEGLIGENCE, WILL WE OR OUR OFFICERS, EMPLOYEES, AFFILIATES, DIRECTORS, AGENTS, OR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, TRANSMITTING, OR DISTRIBUTING THE PLATFORM BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY SERVICES PROVIDED BY US. THIS LIMITATION APPLIES TO, WITHOUT LIMITATION: (I) THE USE OR INABILITY TO USE THE PLATFORM; (II) ANY ACTIONS WE TAKE OR FAIL TO TAKE AS A RESULT OF ANY ELECTRONIC MESSAGES YOU SEND US; (III) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY CREATOR CONTENT PURCHASED THROUGH THE PLATFORM; (IV) STATEMENTS OR CONDUCT OF ANY OTHER USER OR THIRD-PARTY, WHETHER ONLINE OR OFFLINE; OR (V) ANY OTHER MATTER RELATING TO THE PLATFORM.

**TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL OUR TOTAL LIABILITY EXCEED \$100, OR IF GREATER, THE AMOUNT OF ALL FEES PAID BY YOU TO US, IF ANY, IN THE 12 MONTHS PRECEDING THE DATE THE CAUSE OF ACTION ARISES. ANY CLAIM ARISING UNDER THIS AGREEMENT MUST BE BROUGHT BY YOU WITHIN 12 MONTHS AFTER THE EVENTS GIVING RISE TO THE CAUSE OF ACTION ARE DISCOVERED, OTHERWISE YOU RELEASE US OF ANY SUCH CLAIM.**

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE MAY NOT APPLY TO YOU. IN SUCH JURISDICTIONS, LIABILITY IS LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW.

#### **16. Indemnification**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE TO RELEASE, INDEMNIFY, AND HOLD HARMLESS GALLERY BAY AND OUR AFFILIATES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AND AGENTS AND OUR RESPECTIVE SUCCESSORS AND ASSIGNS ("**INDEMNIFIED PARTIES**") FROM ANY THIRD-PARTY CLAIM, SUIT, PROCEEDING, OR GOVERNMENT ENFORCEMENT ACTIONS ARISING OUT OF, RELATED TO, OR ALLEGING AN INJURY OR LOSS CAUSED BY YOUR ACCESS AND USE OF THE PLATFORM THAT, WITHOUT LIMITATION, INCLUDES: (I) YOUR ACCESS TO OR USE OF THE PLATFORM FOR ILLEGAL, FRAUDULENT, OFFENSIVE, OR TORTIOUS PURPOSES; (II) YOUR INTERACTION WITH CREATORS, OTHER USERS; (III) YOUR VIOLATION OF THIS AGREEMENT; OR (IV) YOUR VIOLATION OF ANY RIGHTS OF ANY THIRD PARTY. IN ANY EVENT, WE WILL HAVE THE RIGHT TO PARTICIPATE IN THE DEFENSE OF ANY SUCH SUIT OR PROCEEDING THROUGH COUNSEL OF OUR OWN CHOOSING AT OUR OWN EXPENSE. YOU WILL ALSO INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM ANY COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED IN RESPONDING TO ANY LEGAL ACTION, SUBPOENA, SEARCH



WARRANT, OR COURT ORDER REQUIRING THE PRODUCTION OF INFORMATION OR DOCUMENTS RELATED TO SUBSECTION (I) THROUGH (IV) ABOVE.

## **17. Release**

If you have a dispute with one or more Users or Creators, you release Gallery Bay (and our affiliates, officers, directors, agents, subsidiaries, joint ventures, and employees) from claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes.

**If you are a California resident, you waive California Civil Code §1542, which states: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."**

## **18. Allocation of Risk**

You acknowledge and agree that we provide the Platform in reliance upon the disclaimers of warranty and the limitations of liability contained herein and that the terms of this Agreement reflect an allocation of risk between you and us (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the provisions herein form an essential basis of the bargain between you and us. If you are subject to applicable laws that prohibit you from indemnifying us or prohibit you from entering into the risk allocation arrangement as set forth herein, then the terms will apply to you to the fullest extent permitted by applicable law. The parties agree that each wish to enforce the provisions of this Agreement to the maximum extent permitted by applicable law.

## **19. Dispute Resolution**

**19.1 Arbitration.** For any dispute with us, you agree to contact us at [contact@gallerybay.com](mailto:contact@gallerybay.com) and attempt to resolve the dispute with us informally for at least thirty (30) days before initiating any arbitration or court proceeding. In the event we are unable to resolve the dispute informally, you and we agree that any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this provision to arbitrate, shall be determined solely and exclusively by binding arbitration before a single arbitrator. You and we also agree that the arbitration shall be conducted by the American Arbitration Association ("AAA") under the Commercial Arbitration Rules and that such arbitration will be conducted in California unless you and we agree otherwise. Each party will be responsible for paying any AAA filing, administrative, and arbitrator fees in accordance with AAA rules. The award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys' fees, and reasonable costs for expert and other witnesses, and any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. This arbitration provision is governed by the Federal Arbitration Act.

**19.2 No Class Action; No Jury Trial.** ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NO CLASS ACTION OR REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL THEORIES OF LIABILITY OR PRAYERS FOR RELIEF MAY BE MAINTAINED IN ANY ARBITRATION OR OTHER PROCEEDING UNDER THIS AGREEMENT. UNLESS WE AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND WE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

**19.3 Governing Law.** The laws of the United States and the State of California shall govern this Agreement without regard to the principles of conflict of laws. Any dispute between the parties that are excluded from the arbitration agreement or that cannot be heard in small claims court shall be resolved in the United States District Court for the Northern District of California, and the parties submit to the personal jurisdiction of that court. If neither subject matter nor diversity jurisdiction exists in the United States District Court for the Northern District of California, then the exclusive forum and venue for any such action shall be the courts of the State of California, located in San Francisco County, and the parties hereby submit to the personal jurisdiction of that court.

## **20. General Provisions**

**20.1 Severability.** In the event that any provision of this Agreement is considered invalid, illegal, or unenforceable by a court of competent jurisdiction having authority to bind the parties under any applicable statute or rule of law, such provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision and the remaining provisions of this Agreement shall in no way be affected or impaired.



**20.2 Entire Agreement.** This Agreement, together with any Supplemental Terms and any other terms and agreements incorporated herein by reference, and any amendments and any additional agreements you may enter with us in connection with the Platform, constitute the entire agreement between you and us concerning the Platform.

**20.3 No Waiver.** Our failure at any time to enforce any of the provisions of this Agreement or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, will not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of this Agreement. A waiver of any default by us will not be deemed a continuing waiver but will apply solely to the instance to which such waiver is directed.

**20.4 Headings; Summaries.** The section headings appearing in this Agreement and any Supplemental Terms are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect such section.

**20.5 No Transfer; No Assignment.** This Agreement and any rights and licenses granted hereunder may not be transferred or assigned by you but may be assigned by us without restriction. Any attempted transfer or assignment by you violating this provision is null and void.

**20.6 No Third-Party Beneficiaries.** Other than as expressly provided in this Agreement, no third-party beneficiaries are intended or will be construed as created by this Agreement.

**20.7 Notices; Electronic Communication.** By providing us with your email address, you consent to receive our related communications and notices electronically, and you agree that all agreements, notices, disclosures, and other communication that we provide to you via the Platform or email satisfy any legal requirement that such communications be in writing. We may also use your email address to send you other messages, such as changes to the features of the Platform and special offers ("**Promotional Messages**"). If you do not want to receive Promotional Messages, you may opt out by clicking the "Unsubscribe" link in an email or by emailing us at [contact@gallerybay.com](mailto:contact@gallerybay.com).

**20.8 Force Majeure.** Neither party shall be liable for any failure or delay in its performance under this Agreement, Supplemental Terms, or any and all addenda due to circumstances beyond its reasonable control (other than the payment of sums due), provided that it notifies the other party as soon as practicable and uses its best efforts to resume performance (such a "**Force Majeure Event**").

## **Contact**

For questions regarding this Agreement, contact us at [contact@gallerybay.com](mailto:contact@gallerybay.com).

If you wish to contact us by mail, please email us at [contact@gallerybay.com](mailto:contact@gallerybay.com) and we will provide you with our physical mailing address.