

# Q CLAPS Terms of Service

Last revised 10 May 2010

The following describes the terms by which Albuquerque Community Live Art and Performance Services, owner and creator of Q CLAPS products, offers you access to our website, platform and services:

- 1. Acceptance of Terms** Albuquerque Community Live Art and Performance Services ("Q CLAPS ") provides a collection of online resources, including search, browse, user profile pages, community pages, event detail pages, venue detail pages, performer detail pages, the Demand service, comments, link sharing, tags, calendar tools, data input tools, and Web Services application programming interfaces (APIs), (collectively referred to hereafter as "the Service") subject to the following Terms of Service ("Terms"), which may be updated by Q CLAPS from time to time. Q CLAPS will provide notice of materially significant changes to the Term by posting notice on the Q CLAPS site. You can review the most current version of the Terms at: <http://qclaps.info/terms>. By using the Service in any way, you are agreeing to comply with these Terms. In addition, when using particular Q CLAPS products, you agree to abide by any applicable posted guidelines for all Q CLAPS products, which may change from time to time. Should you object to any term or condition of these Terms, any guidelines, or any subsequent modifications thereto or become dissatisfied with the Service in any way, your only recourse is to immediately discontinue use of the Service.
- 2. Content** You understand that all postings, messages, text, files, images, photos, video, sounds, or other materials ("Content") posted on, transmitted through, or linked from the Service, are the sole responsibility of the person from whom such Content originated. More specifically, you are entirely responsible for all Content that you post, email or otherwise make available via the Service. You understand that Q CLAPS does not control, and is not responsible for Content made available through the Service, and that by using the Service, you may be exposed to Content that is offensive, indecent, inaccurate, misleading, or otherwise objectionable. Furthermore, the Service and Content available through the Service may contain links to other websites, which are completely independent of Q CLAPS. Q CLAPS makes no representation or warranty as to the accuracy, completeness or authenticity of the information contained in any such site. Your linking to any other websites is at your own risk. You agree that you must evaluate, and bear all risks associated with, the use of any Content, that you may not rely on said Content, and that under no circumstances will Q CLAPS be liable in any way for any Content or for any loss or damage of any kind incurred as a result of the use of any Content posted, emailed or otherwise made available via the Service. You acknowledge that Q CLAPS does not pre-screen or approve Content, but that Q CLAPS shall have the right (but not the obligation) in its sole discretion to refuse, delete or move any Content that is available via the Service, for violating the letter or spirit of the Terms or for any other reason.
- 3. Q CLAPS Communications** In the course of providing you services, Q CLAPS will communicate with you via email. You agree to receive emails, which are specific to your account and necessary for the normal functioning of Q CLAPS products, including but not limited to notifications about performers and events you've expressed interest in.

Q CLAPS will use the email address you provide to register you to use our Services, to verify your authority to use certain features of our Site and Services, to deliver certain services and notices based on the email settings you have selected, or to improve and tailor the content and general administration of our Site and Services.

#### **4. Conduct and Responsibilities.**

- You are solely responsible for your conduct and any Content that you submit, post, and display on the Service.
- You are responsible for any activity or Content associated with your screen name.
- You are responsible for keeping your password secure.
- You must be 13 years of age or older to use the Service.
- You must not submit Content that is unlawful, harmful, threatening, abusive, harassing, defamatory, pornographic, libelous, invasive of another's privacy, or harms minors in any way.
- You must not submit Content that harasses, degrades, intimidates or is hateful toward an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability
- You must not submit Content that impersonates any person or entity, including, but not limited to, an Q CLAPS employee, or falsely states or otherwise misrepresents your affiliation with a person or entity.
- You must not submit Content that includes non-public personal or identifying information about another person without that person's explicit consent.
- You must not submit Content that is false, deceptive, misleading, deceitful, misinformative, or constitutes "bait and switch".
- You may not use the Service for any illegal or unauthorized purpose.
- International users agree to comply with all local laws regarding online conduct and acceptable content.
- You must not modify, adapt or hack the Service or modify another website so as to falsely imply that it is associated with Q CLAPS.
- You must not create or submit unwanted email to any Q CLAPS users ("SPAM").
- You must not create or submit intentionally false or misleading information.
- You must not transmit any worms or viruses or any code of a destructive nature.
- You must not, in the use of the Service, violate any laws in your jurisdiction (including but not limited to copyright laws).
- You must get express authorization from Q CLAPS before you can use any portion of the Service, including any Content or use of Q CLAPS's API, for any commercial purpose.
- Violation of any of these terms will result in the termination of your Q CLAPS account. While Q CLAPS prohibits such conduct and content on its site, you understand and agree that Q CLAPS cannot be responsible for the Content posted on its web site and you nonetheless may be exposed to such materials and that you use the Service at your own risk.

**5. General Conditions** We reserve the right to modify or terminate all or any portion of the Service for any reason, without notice at any time. We reserve the right to alter these Terms at any time. If the alterations constitute a material change to the Terms, we will notify you via email (if you've provided us with your email address) as well as on the Terms page itself. What constitutes a "material change" will be determined at our sole

discretion, in good faith and using common sense and reasonable judgment. We reserve the right to refuse service to anyone for any reason at any time. We may, but have no obligation to, remove Content and accounts containing Content that we determine in our sole discretion are unlawful, offensive, threatening, libelous, defamatory, obscene or otherwise objectionable or violates any party's intellectual property or these Terms. Q CLAPS' Demand service enables users, performers and others to gather data wherein users indicate their interest in having specific events occur in their city. Q CLAPS does not represent or warrant that its services are free of inaccuracies, errors, bugs, or interruptions, or are reliable, accurate, complete or otherwise valid. Q CLAPS' products are provided "as is" with no warranty, express or implied, of any kind and Q CLAPS expressly disclaims any and all warranties and conditions, including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, availability, security, title and or non-infringement. In addition, Q CLAPS expressly disclaims any and all representations and warranties that any events will occur or that any performers will perform or fulfill any stated or implied promises or commitments relating to Q CLAPS and Q CLAPS Demand. Q CLAPS shall not, under any circumstances, be liable to users for any indirect, incidental, consequential special or exemplary damages arising out of or in connection with the use of Q CLAPS. To the maximum extent permitted by applicable law, users hereby release and waive all claims against Q CLAPS, and its affiliates, officers, agents, licensors, shareholders and employees from any and all liability for claims, damages (actual and/or consequential), costs and expenses (including litigation costs and attorneys' fees) of every kind and nature, arising from or in any way related to use of Q CLAPS.

**6. Copyright** Although Q CLAPS does not claim ownership of Content that its users post, by posting Content to any public area of the Service, you automatically grant, and you represent and warrant that you have the right to grant to Q CLAPS an irrevocable, perpetual, non-exclusive, fully paid, worldwide license to use, copy, perform, display, and distribute said Content and to prepare derivative works of, or incorporate into other works, said Content, and to grant and authorize sub-licenses (through multiple tiers) of the foregoing. If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please notify Q CLAPS' agent for notice of claims of copyright or other intellectual property infringement ("Agent"), at copyright at qclaps.info, or: Copyright Agent Q CLAPS, □ 12312 Collier Ct. NE, Albuquerque, NM 87112 USA □ Please provide our Agent with the following Notice:

- Identify the copyrighted work or other intellectual property that you claim has been infringed.
- Identify the material on the Service that you claim is infringing, with enough detail so that we may locate it on the website.
- A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law.
- A statement by you declaring under penalty of perjury that (a) the above information in your Notice is accurate, and (b) that you are the owner of the copyright interest involved or that you are authorized to act on behalf of that owner.
- Your address, telephone number, and email address and
- Your physical or electronic signature.

- Q CLAPS' Agent will forward this information to the alleged infringer.

**7. Privacy and Information Disclosure** Q CLAPS has established a Privacy Policy to explain to users how their information is collected and used, located at <http://qclaps.info/privacy>. Your use of Q CLAPS' website(s) or the Service signifies acknowledgment of and agreement to our Privacy Policy. You further acknowledge and agree that Q CLAPS may, in its sole discretion, preserve or disclose your Content, as well as your information, such as email addresses, IP addresses, time-stamps, and other user information, if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: comply with legal process, enforce these Terms, respond to claims that any Content violates the rights of third-parties, or protect the rights, property, or personal safety of Q CLAPS, its users, or the general public.

**8. No Spam Policy** You understand and agree that sending unsolicited email advertisements to Q CLAPS email addresses or through Q CLAPS computer systems, which is expressly prohibited by these Terms, will use or cause to be used servers located in New Mexico. Any unauthorized use of Q CLAPS computer systems is a violation of these Terms and certain federal and state laws, including without limitation the Computer Fraud and Abuse Act of the New Mexico Penal Code and of the New Mexico Business and Professions Code. Such violations may subject the sender and his or her agents to civil and criminal penalties.

**9. Termination of service** You agree that Q CLAPS, in its sole discretion, has the right (but not the obligation) to delete or deactivate your account, block your email or IP address, or otherwise terminate your access to or use of the Service (or any part thereof), immediately and without notice, and remove and discard any Content within the Service, for any reason, including, without limitation, if Q CLAPS believes that you have acted inconsistently with the letter or spirit of the Terms. Further, you agree that Q CLAPS shall not be liable to you or any third-party for any termination of your access to the Service. Further, you agree not to attempt to use the Service after said termination. Sections 2, 4, 6 and 9-13 shall survive termination of these Terms.

**10. Disclaimers of Warranties** YOU AGREE THAT USE OF THE SERVICE IS ENTIRELY AT YOUR OWN RISK. THE SERVICE ARE PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND. ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. TO THE FULLEST EXTENT PERMITTED BY LAW, Q CLAPS DISCLAIMS ANY WARRANTIES FOR THE SECURITY, RELIABILITY, TIMELINESS, ACCURACY, AND PERFORMANCE OF THE SERVICE. TO THE FULLEST EXTENT PERMITTED BY LAW, Q CLAPS DISCLAIMS ANY WARRANTIES FOR OTHER SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE SERVICE, OR ACCESSED THROUGH ANY LINKS ON THE SERVICE. TO THE FULLEST EXTENT PERMITTED BY LAW, Q CLAPS DISCLAIMS ANY WARRANTIES FOR VIRUSES OR OTHER HARMFUL COMPONENTS IN CONNECTION WITH THE SERVICE. Some jurisdictions do not allow the disclaimer of implied warranties. In such jurisdictions, some of the foregoing

disclaimers may not apply to you insofar as they relate to implied warranties.

- 11. Limitations of Liability** UNDER NO CIRCUMSTANCES SHALL Q CLAPS BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (EVEN IF Q CLAPS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM ANY ASPECT OF YOUR USE OF THE SERVICE, WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF THE SERVICE, FROM INABILITY TO USE THE SERVICE, OR THE INTERRUPTION, SUSPENSION, MODIFICATION, ALTERATION, OR TERMINATION OF THE SERVICE. SUCH LIMITATION SHALL ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY REASON OF OTHER SERVICES OR PRODUCTS RECEIVED THROUGH OR ADVERTISED IN CONNECTION WITH THE SERVICE OR ANY LINKS ON THE SERVICE, AS WELL AS BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH OR ADVERTISED IN CONNECTION WITH THE SERVICE OR ANY LINKS ON THE SERVICE. THESE LIMITATIONS SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. In some jurisdiction, limitations of liability are not permitted. In such jurisdictions, some of the foregoing limitation may not apply to you.
- 12. Indemnity** You agree to indemnify and hold Q CLAPS, its officers, subsidiaries, affiliates, successors, assigns, directors, officers, agents, service providers, suppliers and employees, harmless from any claim or demand, including reasonable attorney fees and court costs, made by any third party due to or arising out of Content you submit, post or make available through the Service, your use of the Service, your violation of the Terms, your breach of any of the representations and warranties herein, or your violation of any rights of another.
- 13. General information** The Terms constitute the entire agreement between you and Q CLAPS and govern your use of the Service, superseding any prior agreements between you and Q CLAPS. The Terms and the relationship between you and Q CLAPS shall be governed by the laws of the State of New Mexico without regard to its conflict of law provisions. You and Q CLAPS agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Bernalillo, New Mexico. The failure of Q CLAPS to exercise or enforce any right or provision of the Terms shall not constitute a waiver of such right or provision. If any provision of the Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred.
- 14.  Violations of Terms and Liquidated Damages** Please report any violations of the Terms, by flagging the posting(s) for review, or by emailing to abuse at [qclaps.info](mailto:qclaps.info). Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches.