

# NFT.COM TERMS OF SERVICE

*Last Revised on May 9, 2022*

Welcome to the Terms of Service (these “**Terms**”) for the website, <https://www.nft.com/> (the “**Website**”), operated by The NFT Company Inc. (“**Company**”, “**we**”, “**us**”, “**our**”), a subsidiary of Immutable Holdings Inc. The Website and any content, tools, features and functionality offered on or through our Website are collectively referred to as the “**Services**”.

These Terms govern your access to and use of the Services. Please read these Terms carefully, as they include important information about your legal rights. By accessing and/or using the Services, you are agreeing to these Terms. If you do not understand or agree to these Terms, please do not use the Services.

For purposes of these Terms, “**you**” and “**your**” means you as the user of the Services. If you use the Services on behalf of a company or other entity then “**you**” includes you and that entity, and you represent and warrant that (a) you are an authorized representative of the entity with the authority to bind the entity to these Terms, and (b) you agree to these Terms on the entity’s behalf.

**Section 9 contains an arbitration clause and class action waiver. By agreeing to these Terms, you agree (a) to resolve all disputes with us related to the Services through binding individual arbitration, which means that you waive any right to have those disputes decided by a judge or jury, and (b) to waive your right to participate in class actions, class arbitrations, or representative actions in connection with your use of the Services. You have the right to opt-out of arbitration as explained in Section 9.**

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## 1. WHO MAY USE THE SERVICES

You must be thirteen (13) years of age or older and reside in the United States, Canada, or any of their respective territories to use the Services. If you access the Website from outside the United States or Canada, we make no assurances that you will be able to use the Services as intended and your use of the Services is at your own risk. Minors under the age of majority in their jurisdiction but that are at least thirteen (13) years of age are only permitted to use the Services if the minor's parent or guardian accepts these Terms on the minor's behalf prior to use of the Services. Children under the age of thirteen (13) are not permitted to use the Services. By using the Services, you represent and warrant that you meet these requirements.

## 2. THE SERVICES

- 2.1 Genesis Keys. The Services allow you to purchase a “**Genesis Key NFT**”, which is a non-fungible token (“**NFT**”) that enables the owner to create four (4) profiles on the Services (“**Profile**”). Genesis Key NFT owners may also have access to certain other features that we make available from time to time, in our sole discretion. We may choose to offer pre-sales or “whitelist” sales in which certain users and/or community members will be eligible to purchase the Genesis Key NFTs before they are made publicly available. However, we make no guarantees about if and when such whitelist sales will occur, nor can we guarantee that all whitelist sale participants will be able to purchase a Genesis Key NFT, as supplies may be limited. We also reserve the right to modify the terms of our pre-sales or sales or eligibility for our pre-sales or sales in our sole discretion. We grant users and/or community members access to the pre-sales in our sole discretion. In addition, we may reserve or offer Genesis Key NFTs to certain employees, consultants, and/or advisors to the Company in our sole discretion.
- 2.2 Profiles and Profile NFTs. When a Genesis Key NFT owner mints a Profile on the Services, access and control of the resulting Profile will be recorded as an NFT (“**Profile NFT**”) and such Profile NFT will be transferred to the Genesis Key NFT owner who minted the Profile. A Profile NFT enables its holder to access and control the corresponding Profile on the Services and use functions available only to Profile NFT holders, such as being able to display NFTs on their Profile, subject in all cases to the Profile NFT holder complying with these Terms. Once a name for a Profile has been chosen, it cannot be changed. Users are prohibited from selecting a Profile name that violates the rights of any third party (including any trademark rights), that impersonates a third party, or that is otherwise misleading, vulgar, obscene or a breach of these Terms. We reserve the right to (a) invalidate a Profile NFT or reassign the Profile name associated with a Profile NFT if we deem, in our sole discretion, that the Profile name violates these Terms, and (b) reserve certain Profile names. You understand and acknowledge that certain Profile names may be unavailable to be claimed.
- 2.3 Profile Information. You may be able to provide certain information to be associated with your Profile, such as email address, name, Profile image, etc. You agree to provide us with accurate, complete, and updated information for your Profile. You are solely responsible for any activity on your Profile and for maintaining the security of your Profile. We are not liable for any acts or omissions by you in connection with your Profile.
- 2.4 Transfer of Profile NFTs. If you sell your Profile NFT, you also transfer to the new Profile NFT owner all the functionalities on the Services associated therewith, including the right to control and access the Profile associated with such Profile NFT. As our Services will continue to evolve, we reserve the right to change the specifications, content, descriptions, functionalities, and features of the Profiles or Profile NFTs at any time, and we make no guarantees regarding any such aspects of the Profiles or Profile NFTs. Further, you agree and acknowledge that the inclusion of any features

associated with Profile NFTs at a particular time does not imply or warrant that those features will be available at any other time.

- 2.5 NFT Marketplace. The Services may, now or in the future, provide a decentralized peer-to-peer NFT marketplace, which provides you with the opportunity to browse, showcase, purchase, sell, and collect NFTs (“**NFT Marketplace**”). We only facilitate transactions between buyers and sellers of NFTs via the NFT Marketplace, and excluding NFTs that we may mint and sell directly to the public, we are not a party to any agreement between the buyer and seller of an NFT created by a third party on the NFT Marketplace. We reserve the right to be the final decision maker on any disputes arising from purchases via the NFT Marketplace, including in connection with any auctions or other purchase methods. By providing, showcasing, offering for sale, or selling an NFT through the NFT Marketplace, you hereby represent and warrant that you are legally authorized by the intellectual property owner of the digital media or art associated with such NFT (“**NFT Media**”) to display such NFT Media on the Services, and to sell such NFT via the NFT Marketplace. The Company has no obligation or liability to you for keeping, storing, or helping you recover any NFT Media associated with your NFTs.
- 2.6 Secondary Marketplaces and Third-Party Platforms. You may be able to buy, sell, trade and transact in Genesis Key NFTs and Profile NFTs on third-party marketplaces via third-party platforms. We do not control the actions of such secondary marketplaces, and make no promises or guarantees of any kind regarding such marketplaces. It is your responsibility to validate the authenticity and functionality of any NFTs acquired on such third-party marketplaces. You also acknowledge and agree that we may implement a transaction fee on any secondary sale of Genesis Key NFTs and Profile NFTs, and such transaction fees may be incorporated into the smart contracts for such NFTs or in our agreements with such marketplaces.
- 2.7 Wallets. All transactions for NFTs initiated through our Services require you to use third-party self-custodial digital wallets (“**Wallets**”), such as MetaMask. You are solely responsible for keeping your Wallet and any private keys necessary to decrypt your Wallet secure and you should never share your Wallet seed phrase or private keys with anyone else via the Services. We have no ability to help you access or recover your private keys for your Wallet. By using such Wallets to conduct transactions via the Services, you agree that you are governed by the terms of service and privacy policy for the applicable Wallets, and that the Company has no responsibility, liability or responsibility to you in any way arising from your use of such third-party Wallets, including for any security failures or other errors or failures of such Wallets.
- 2.8 Additional Information. We may require you to provide additional information and documents regarding your use of the Services, including at the request of any competent authority or in case of application of any applicable law or regulation, including laws related to anti-money laundering, or for counteracting financing of terrorism. We may also require you to provide additional information and documents in cases where we have reasons to believe that:
- (a) Your Profile or your Wallet is being used for illegal money laundering or for any other illegal activity;
  - (b) You have concealed or reported false identification information and other details; or
  - (c) Transactions effected via your use of the Services were made in breach of these Terms.
- 2.9 Beta Offerings. From time to time, we may, in our sole discretion, include certain test or beta features or products in the Services (“**Beta Offerings**”) as we may designate from time to time. Your use of any Beta Offering is completely voluntary. The Beta Offerings are provided on an “as

is” basis and may contain errors, defects, bugs, or inaccuracies that could cause failures, corruption or loss of data and information from any connected device. You acknowledge and agree that all use of any Beta Offering is at your sole risk. You agree that once you use a Beta Offering, your content or data may be affected such that you may be unable to revert back to a prior non-beta version of the same or similar feature. Additionally, if such reversion is possible, you may not be able to return or restore data created within the Beta Offering back to the prior non-beta version. If we provide you with any Beta Offerings on a closed beta or confidential basis, we will notify you of such as part of your use of the Beta Offerings. For any such confidential Beta Offerings, you agree to not disclose, divulge, display, or otherwise make available any of the Beta Offerings without our prior written consent.

- 2.10 In connection with the Services, we may utilize blockchain organization management tools in order to automate and improve transparency around governance of certain aspects of the Services, commonly known as a “decentralized autonomous organization” or a “DAO.” The availability and use of such tools does not represent or constitute equity or other ownership or revenue sharing interest in the Company or its affiliates. We may disable or modify any such tools at any time in our sole discretion, including to preserve the security and functionality of the Services.

### 3. OFFERINGS

- 3.1 Offerings. The Services permit you to receive, sell, and transact in certain digital or physical products or services through the Services, including Genesis Key NFTs, Profile NFTs, and other offerings, and to the extent we provide the NFT Marketplace, third-party NFTs (collectively, “**Offerings**”). The Company may, at any time, revise or change the availability, descriptions or features of any Offerings offered directly by the Company. While we attempt to be as accurate as we can in our descriptions for any Offerings offered directly by the Company, we do not warrant that Offering descriptions are accurate, complete, reliable, current, or error-free. The inclusion of any Offerings for purchase through the Services at a particular time does not imply or warrant that the Offerings will be available at any other time. You acknowledge and agree that all payment information you provide with regards to a purchase of Offerings, is accurate, current, and complete. When you purchase Offerings, you agree to pay the price for such Offerings as set forth in the applicable listing for the Offering, and all processing fees, network fees (including gas fees), handling charges, and all applicable taxes in connection with your purchase (the “**Full Purchase Amount**”). All fees and charges are payable in accordance with payment terms in effect at the time the fee or the charge becomes payable. In certain cases, your transaction may not be successful due to an error with the blockchain that is recording the transaction. We accept no responsibility or liability to you for any such failed transactions, or any transaction or gas fees that may be incurred by you in connection with such failed transactions. To the extent you purchase a third party’s NFT via the Services, you bear full responsibility for verifying the authenticity, legitimacy, and identity of any such NFT. We make no guarantees or promises about the authenticity, legitimacy, or identity of any third party’s NFT on the NFT Marketplace.

- 3.2 No Refunds. There are no refunds available for any Offerings or other NFTs or other items made available on the Services.

### 4. LOCATION OF OUR PRIVACY POLICY

- 4.1 Privacy Policy. Our Privacy Policy describes how we handle the information you provide to us when you use the Services. For an explanation of our privacy practices, please visit our Privacy Policy located at [https://cdn.nft.com/nft\\_com\\_privacy\\_policy.pdf](https://cdn.nft.com/nft_com_privacy_policy.pdf).

## 5. RIGHTS WE GRANT YOU

### 5.1 License Grants.

- (a) Right to Use Services. Subject to your compliance with these Terms, the Company hereby grants to you, a personal, worldwide, royalty-free, non-assignable, non-sublicensable, non-transferrable, and non-exclusive license to use the software provided to you as part of the Services, provided the Company is not responsible for and does not grant any license for any NFT Media for any third-party NFTs made available on the Services. This license has the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by us, in the manner permitted by these Terms and subject to the use restrictions described below. Your access and use of the Services may be interrupted from time to time for any of several reasons, including, without limitation, the malfunction of equipment, periodic updating, maintenance, or repair of the Services, or other actions that the Company, in its sole discretion, may elect to take.
- (b) Rights Acquired via a Purchase or Acquisition of NFTs on the Services.
  - (i) When you purchase or acquire an NFT, you own the NFT that is associated with certain NFT Media, but your right in any intellectual property rights in such NFT Media is solely as may be set forth in any license grants or terms of sale designated by the owner of the NFT Media. Under default copyright law, your purchase of an NFT does not automatically give you the right to publicly display, perform, distribute, sell, or otherwise reproduce the NFT Media associated with such NFT for any commercial purpose, unless the creator of such NFT has expressly granted the NFT holder that right.
  - (ii) If you purchase an NFT created by us, such as a Genesis Key NFT or a Profile NFT (“**Company NFT**”), then subject to your compliance with these Terms, for as long as you Own (as defined below) such Company NFT, the Company hereby grants to you the exclusive right and license to use and display the NFT Media associated with such Company NFT (A) for your personal non-commercial use, and (B) in connection with your sale or offer for sale of your applicable Company NFT on a secondary marketplace. “**Own**” for purposes of the foregoing means an NFT that you have minted or purchased or otherwise rightfully acquired from a legitimate source, where proof of such purchase is recorded on the relevant blockchain. If you sell or transfer your Company NFT, you will no longer be granted the foregoing license that is associated with such Company NFT, and such license will transfer to the new owner of the Company NFT.
  - (iii) If you purchase an NFT created by a third party, we make no representation or warranty about such NFT. In certain cases, we may help to evaluate or provide you with information about a seller of a third-party NFT or the terms of sale made available by the seller or creator of such NFT. However, such information is provided for informational purposes only. Any rights in any underlying NFT Media associated with such NFT are subject to any agreement or terms that such creator may set forth in connection with such NFT.

- 5.2 Restrictions On Your Use of the Services. You may not do any of the following, unless applicable laws or regulations prohibit these restrictions or you have our written permission to do so:

- (a) download, modify, copy, distribute, transmit, display, perform, reproduce, duplicate, publish, license, create derivative works from, or offer for sale any information contained on, or obtained from or through, the Services;
- (b) duplicate, decompile, reverse engineer, disassemble, or decode the Services (including any underlying idea or algorithm), or attempt to do any of the same;
- (c) use, reproduce or remove any copyright, trademark, service mark, trade name, slogan, logo, image, or other proprietary notation displayed on or through the Services;
- (d) use automation software (bots), hacks, modifications (mods) or any other unauthorized third-party software designed to modify the Services or impersonate a real-person or to engage in multiple transactions via the Services;
- (e) exploit the Services for any commercial purpose, including without limitation communicating or facilitating any commercial advertisement or solicitation;
- (f) access or use the Services in any manner that could disable, overburden, damage, disrupt, or impair the Services or interfere with any other party's access to or use of the Services or use any device, software, or routine that causes the same;
- (g) attempt to gain unauthorized access to, interfere with, damage, or disrupt the Services, accounts registered to other users, or the computer systems or networks connected to the Services;
- (h) circumvent, remove, alter, deactivate, degrade, or thwart any technological measure or content protections of the Services;
- (i) use any robot, spider, crawlers or other automatic device, process, software, or queries that intercepts, "mines," scrapes, or otherwise accesses the Services to monitor, extract, copy, or collect information or data from or through the Services, or engage in any manual process to do the same;
- (j) introduce any viruses, trojan horses, worms, logic bombs, or other materials that are malicious or technologically harmful into our systems;
- (k) use the Services for illegal, harassing, unethical, or disruptive purposes;
- (l) violate any applicable law or regulation in connection with your access to or use of the Services; or
- (m) access or use the Services in any way not expressly permitted by these Terms.

## **6. OWNERSHIP AND CONTENT**

6.1 Ownership of the Services. The Services, including their "look and feel" (e.g., text, graphics, images, logos), proprietary content, information and other materials, are protected under copyright, trademark and other intellectual property laws. You agree that the Company and/or its licensors own all right, title, and interest in and to the Services (including any and all intellectual property rights therein) and you agree not to take any action(s) inconsistent with such ownership interests. We and our licensors reserve all rights in connection with the Services and its content (other than Your Content (as defined below)), including, without limitation, the exclusive right to create derivative works.

- 6.2 Ownership of Trademarks. The Company’s name, trademarks, the Company’s logo, and all related names, logos, product and service names, designs, and slogans are trademarks of the Company or its affiliates or licensors. Other names, logos, product and service names, designs, and slogans that appear on the Services are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by us.
- 6.3 Ownership of Feedback. We welcome feedback, comments, and suggestions for improvements to the Services (“**Feedback**”). You acknowledge and expressly agree that any contribution of Feedback does not and will not give or grant you any right, title, or interest in the Services or in any such Feedback. All Feedback becomes the sole and exclusive property of the Company, and the Company may use and disclose Feedback in any manner and for any purpose whatsoever without further notice or compensation to you and without retention by you of any proprietary or other right or claim. You hereby assign to the Company any and all right, title, and interest (including, but not limited to, any patent, copyright, trade secret, trademark, know-how, moral rights, and any and all other intellectual property rights) that you may have in and to any and all Feedback.
- 6.4 Your Content License Grant. In connection with your use of the Services, you may be able to post, upload, or submit content to be made available through the Services (“**Your Content**”), such as profile pictures, comments, reviews, blog posts, user biographies, NFT descriptions, etc. In order to operate the Service, we must obtain from you certain license rights in Your Content so that actions we take in operating the Service are not considered legal violations. Accordingly, by using the Services and uploading Your Content, you grant us a license to access, use, host, cache, store, reproduce, transmit, display, publish, distribute, and modify (for technical purposes, e.g., making sure content is viewable on smartphones as well as computers and other devices) Your Content, but solely as required to be able to operate, provide, and promote the Services. You agree that these rights and licenses are royalty free, transferable, sub-licensable, worldwide, and irrevocable (for so long as Your Content is stored with us), and include a right for us to make Your Content available to, and pass these rights along to, others with whom we have contractual relationships related to the provision of the Services, solely for the purpose of providing such Services, and to otherwise permit access to or disclose Your Content to third parties if we determine such access is necessary to comply with our legal obligations. As part of the foregoing license grant you agree that the other users of the Services shall have the right to comment on and/or tag Your Content and/or to use, publish, display, modify, or include a copy of Your Content as part of their own use of the Services; except that the foregoing shall not apply to any of Your Content that you post privately for non-public display on the Services. By posting or submitting Your Content through the Services, you represent and warrant that you have, or have obtained, all rights, licenses, consents, permissions, power, and/or authority necessary to grant the rights granted herein for Your Content. You agree that Your Content will not contain material subject to copyright or other proprietary rights, unless you have the necessary permission or are otherwise legally entitled to post the material and to grant us the license described above.

6.5 Notice of Infringement – DMCA Policy

If you believe that any text, graphics, photos, audio, videos, or other materials or works uploaded, downloaded, or appearing on the Services have been copied in a way that constitutes copyright infringement, you may submit a notification to our copyright agent in accordance with 17 USC 512(c) of the Digital Millennium Copyright Act (the “**DMCA**”), by providing the following information in writing:

- (a) identification of the copyrighted work that is claimed to be infringed;

- (b) identification of the allegedly infringing material that is requested to be removed, including a description of where it is located on the Services;
- (c) information for our copyright agent to contact you, such as an address, telephone number, and e-mail address;
- (d) a statement that you have a good faith belief that the identified, allegedly infringing use is not authorized by the copyright owners, its agent, or the law;
- (e) a statement that the information above is accurate, and under penalty of perjury, that you are the copyright owner or the authorized person to act on behalf of the copyright owner; and
- (f) the physical or electronic signature of a person authorized to act on behalf of the owner of the copyright or of an exclusive right that is allegedly infringed.

Notices of copyright infringement claims should be sent by mail to The NFT Company Inc., Attn: Legal – 53 Calle Las Palmeras, Suite 1200, San Juan, Puerto Rico 00901, or by e-mail to [legal@nft.com](mailto:legal@nft.com). It is our policy, in appropriate circumstances and at our discretion, to disable or terminate the accounts of users who repeatedly infringe copyrights or intellectual property rights of others.

A user of the Services who has uploaded or posted materials identified as infringing as described above may supply a counter-notification pursuant to sections 512(g)(2) and (3) of the DMCA. When we receive a counter-notification, we may reinstate the posts or material in question, in our sole discretion. To file a counter-notification with us, you must provide a written communication (by fax or regular mail or by email) that sets forth all of the items required by sections 512(g)(2) and (3) of the DMCA. Please note that you will be liable for damages if you materially misrepresent that content or an activity is not infringing the copyrights of others.

## 7. **THIRD-PARTY SERVICES AND MATERIALS**

- 7.1 Use of Third-Party Materials in the Services. Certain Services may display, include or make available content, data, information, applications, or materials from third parties (“**Third-Party Materials**”) or provide links to certain third-party websites (such as Twitter, Discord, and secondary NFT marketplaces). By using the Services, you acknowledge and agree that the Company is not responsible for examining or evaluating the content, accuracy, completeness, availability, timeliness, validity, copyright compliance, legality, decency, quality, or any other aspect of such Third-Party Materials or websites. We do not warrant or endorse and do not assume and will not have any liability or responsibility to you or any other person for any third-party services, Third-Party Materials, or third-party websites, or for any other materials, products, or services of third parties. Third-Party Materials and links to other websites are provided solely as a convenience to you.

## 8. **DISCLAIMERS, LIMITATIONS OF LIABILITY, AND INDEMNIFICATION**

- 8.1 Disclaimers. Your access to and use of the Services are at your own risk. You understand and agree that the Services are provided to you on an “AS IS” and “AS AVAILABLE” basis. Without limiting the foregoing, to the maximum extent permitted under applicable law, the Company, its parents, affiliates, related companies, officers, directors, employees, agents, representatives, partners, and licensors (the “**the Company Entities**”) DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE, OR NON-INFRINGEMENT. The Company Entities make no warranty or representation and disclaim all responsibility and liability for: (a) the completeness, accuracy, availability, timeliness, security, or reliability of the Services, (b) any harm to your computer system, corrupted Wallet files, loss of data, or other harm that results from your access to or use of the Services, (c) the operation or compatibility with any other application or any particular system or device, (d) whether the Services will meet your requirements or be available on an uninterrupted, secure, or error-free basis, and (e) the deletion of, or the failure to store or transmit, Your Content and other communications maintained by the Services. No advice or information, whether oral or written, obtained from the Company Entities or through the Services, will create any warranty or representation not expressly made herein.

8.2 Limitations of Liability. TO THE EXTENT NOT PROHIBITED BY LAW, YOU AGREE THAT IN NO EVENT WILL THE COMPANY ENTITIES BE LIABLE (A) FOR DAMAGES OF ANY KIND, INCLUDING DIRECT, INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE, DATA OR PROFITS, BUSINESS INTERRUPTION, OR ANY OTHER DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE SERVICES), HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER UNDER THESE TERMS OR OTHERWISE ARISING IN ANY WAY IN CONNECTION WITH THE SERVICES OR THESE TERMS AND WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) EVEN IF THE COMPANY ENTITIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR (B) FOR ANY OTHER CLAIM, DEMAND, OR DAMAGES WHATSOEVER RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR THE DELIVERY, USE OR PERFORMANCE OF THE SERVICES. SOME JURISDICTIONS (SUCH AS THE STATE OF NEW JERSEY) DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU. THE COMPANY IS NOT LIABLE FOR (I) YOUR CONTENT POSTED ON THE SERVICES OR (II) ANY DISPUTE ARISING BETWEEN A BUYER AND SELLER ON THE NFT MARKETPLACE. THE COMPANY ENTITIES' TOTAL LIABILITY TO YOU FOR ANY DAMAGES FINALLY AWARDED SHALL NOT EXCEED THE AMOUNT OF ONE HUNDRED DOLLARS (\$100.00), OR THE AMOUNT YOU PAID THE COMPANY ENTITIES, IF ANY, IN THE PAST SIX (6) MONTHS FOR THE SERVICES (OR OFFERINGS PURCHASED ON THE SERVICES) GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

8.3 Assumption of Risks.

- (a) You acknowledge and agree that there are risks associated with purchasing and holding NFTs and using blockchain technology. These include, but are not limited to, risk of losing access to NFTs due to loss of private key(s), custodial error or purchaser error, risk of mining or blockchain attacks, risk of hacking and security weaknesses, risk of unfavorable regulatory intervention in one or more jurisdictions, risk related to token taxation, risk of personal information disclosure, risk of uninsured losses, volatility risks, and unanticipated risks.
- (b) You acknowledge that you are collecting, trading, or purchasing NFTs for purposes of acquiring digital collectibles for your personal use and enjoyment, and not for any investment, commercial, or speculative purposes. Any economic benefit that may be

derived from appreciation in the value of a NFT is incidental to obtaining it for its collectible purpose. You agree that NFTs are not to be used as a substitute for currency or medium of exchange, resale, or redistribution and that you are not acquiring any equity or other ownership or revenue sharing interest in the Company, its affiliates, or any brand as a result of your acquisition of NFTs. You warrant and covenant that you will not portray NFTs as an opportunity to gain an economic benefit or profit, or as an investment or equity interest.

- (c) We will use commercially reasonable efforts to deploy secure and functional smart contracts underlying Company NFTs minted directly by us. However, we will not be liable or responsible to you for any failure in the intended function of any smart contracts for any NFTs offered via the Services, or any bugs, viruses, exploits, logic gaps, or malicious code which may be incorporated into any such smart contracts, or which could be used to commit fraud or otherwise cause harm. You acknowledge that you have obtained sufficient information to make an informed decision to purchase an NFT, including carefully reviewing the code of the smart contract and the NFT, and fully understand and accept the functions of the same.
- (d) Any purchase or sale you make, accept, or facilitate outside of the Website for any NFT(s) will be entirely at your risk. We do not authorize, control, or endorse purchases or sales of Genesis Key NFTs or Profile NFTs outside of the Services. We expressly deny and disclaim any liability to you and deny any obligation to indemnify you or hold you harmless for any losses you may incur by transacting or facilitating transactions in any NFTs outside of the Services.

8.4 Indemnification. By entering into these Terms and accessing or using the Services, you agree that you shall defend, indemnify and hold the Company Entities harmless from and against any and all claims, costs, damages, losses, liabilities, and expenses (including attorneys' fees and costs) incurred by the Company Entities arising out of or in connection with: (a) your violation or breach of any term of these Terms or any applicable law or regulation, (b) your violation of any rights of any third party, (c) your access to or use of the Services, (d) Your Content, or (e) your negligence or wilful misconduct.

## 9. ARBITRATION AND CLASS ACTION WAIVER

9.1 Informal Process First. You agree that in the event of any dispute between you and the Company Entities, you will first contact the Company and make a good faith sustained effort to resolve the dispute before resorting to more formal means of resolution, including without limitation, any court action.

9.2 Arbitration Agreement and Class Action Waiver. After the informal dispute resolution process, any remaining dispute, controversy, or claim (collectively, "**Claim**") relating in any way to your use of the Company's services and/or products, including the Services, will be resolved by arbitration, including threshold questions of arbitrability of the Claim. You and the Company agree that any Claim will be settled by final and binding arbitration, using the English language, administered by JAMS under its Comprehensive Arbitration Rules and Procedures (the "**JAMS Rules**") then in effect (those rules are deemed to be incorporated by reference into this section, and as of the date of these Terms). **Arbitration will be handled by a sole arbitrator in accordance with the JAMS Rules. Judgment on the arbitration award may be entered in any court that has jurisdiction. Any arbitration under these Terms will take place on an individual basis – class arbitrations and class actions are not permitted. You understand that by agreeing to these Terms, you and the Company are each waiving the right to trial by jury or to participate in a class action or**

**class arbitration.** Notwithstanding the foregoing, you and the Company will have the right to bring an action in a court of proper jurisdiction for injunctive or other equitable or conservatory relief, pending a final decision by the arbitrator. You may instead assert your claim in “small claims” court, but only if your claim qualifies, your claim remains in such court and your claim remains on an individual, non-representative and non-class basis.

**9.3** Costs of Arbitration. Payment for any and all reasonable JAMS filing, administrative, and arbitrator fees will be in accordance with the JAMS Rules. If the value of your claim does not exceed \$10,000, the Company will pay for the reasonable filing, administrative, and arbitrator fees associated with the arbitration, unless the arbitrator finds that either the substance of your claim or the relief sought was frivolous or brought for an improper purpose.

**9.4** Opt-Out. **You have the right to opt-out and not be bound by the arbitration provisions set forth in these Terms by sending written notice of your decision to opt-out to [legal@nft.com](mailto:legal@nft.com) or to the U.S. mailing address listed in the “How to Contact Us” section of these Terms. The notice must be sent to the Company within thirty (30) days of your registering to use the Services or agreeing to these Terms, otherwise you shall be bound to arbitrate disputes in accordance with these Terms. If you opt-out of these arbitration provisions, the Company also will not be bound by them.**

## **10. ADDITIONAL PROVISIONS**

**10.1** Updating These Terms. We may modify these Terms from time to time in which case we will update the “Last Revised” date at the top of these Terms. If we make changes that are material, we will use reasonable efforts to attempt to notify you, such as by e-mail and/or by placing a prominent notice on the first page of the Website. However, it is your sole responsibility to review these Terms from time to time to view any such changes. The updated Terms will be effective as of the time of posting, or such later date as may be specified in the updated Terms. Your continued access or use of the Services after the modifications have become effective will be deemed your acceptance of the modified Terms.

**10.2** Termination of License and Your Profile. If you breach any of the provisions of these Terms, all licenses granted by the Company will terminate automatically. We reserve the right to remove a Profile on the Services, or to disassociate a Profile from any Profile NFT, if the holder of such Profile or the owner of such Profile NFT breaches these Terms in connection with their use of the Services, or acquires the Profile NFT by any illegal or fraudulent means. If the Company deletes your Profile or disassociates your Profile from any Profile NFT for any suspected breach of these Terms by you, you are prohibited from purchasing another Genesis Key NFT or Profile NFT to create a new Profile. In the event of Profile deletion, the Company may, but is not obligated to, delete any of Your Content associated with such Profile and the Company shall not be responsible for the failure to delete or deletion of Your Content. All sections which by their nature should survive the termination of these Terms shall continue in full force and effect subsequent to and notwithstanding any termination of this Agreement by the Company or you. Termination will not limit any of the Company’s other rights or remedies at law or in equity.

**10.3** Injunctive Relief. You agree that a breach of these Terms will cause irreparable injury to the Company for which monetary damages would not be an adequate remedy and the Company shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law without a bond, other security or proof of damages.

**10.4** California Residents. If you are a California resident, in accordance with Cal. Civ. Code § 1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services

of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210.

- 10.5 Export Laws. You agree that you will not export or re-export, directly or indirectly, the Services and/or other information or materials provided by the Company hereunder, to any country for which the United States or any other relevant jurisdiction requires any export license or other governmental approval at the time of export without first obtaining such license or approval. In particular, but without limitation, the Services may not be exported or re-exported (a) into any U.S. embargoed countries or any country that has been designated by the U.S. Government as a “terrorist supporting” country, or (b) to anyone listed on any U.S. Government list of prohibited or restricted parties, including the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person’s List or Entity List. By using the Services, you represent and warrant that you are not located in any such country or on any such list. You are responsible for and hereby agree to comply at your sole expense with all applicable United States export laws and regulations.
- 10.6 Force Majeure. We will not be liable or responsible to you, nor be deemed to have defaulted under or breached these Terms, for any failure or delay in fulfilling or performing any of our obligations under these Terms or in providing the Services, when and to the extent such failure or delay is caused by or results from any events beyond our ability to control, including acts of God; flood, fire, earthquake, epidemics, pandemics, tsunami, explosion, war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, government order, law, or action, embargoes or blockades, strikes, labor stoppages or slowdowns or other industrial disturbances, shortage of adequate or suitable Internet connectivity, telecommunication breakdown or shortage of adequate power or electricity, and other similar events beyond our control.
- 10.7 Miscellaneous. If any provision of these Terms shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions. These Terms and the licenses granted hereunder may be assigned by the Company but may not be assigned by you without the prior express written consent of the Company. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used herein are for reference only and shall not be read to have any legal effect. The Services are operated by us in the United States. Those who choose to access the Services from locations outside the United States do so at their own initiative and are responsible for compliance with applicable local laws. These Terms are governed by the laws of the State of New York, without regard to conflict of laws rules, and the proper venue for any disputes arising out of or relating to any of the same will be the arbitration venue set forth in Section 9, or if arbitration does not apply, then the state and federal courts located in New York. You and the Company agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the interpretation or construction of these Terms.
- 10.8 How to Contact Us. You may contact us regarding the Services or these Terms at: The NFT Company Inc. – 53 Calle Las Palmeras, Suite 1200, San Juan, Puerto Rico 00901, or by e-mail at [legal@nft.com](mailto:legal@nft.com).