

## **Proof of Beauty, LLC Terms of Use**

Last Updated: April 20, 2021

### **1. Your Acceptance**

Welcome to the Terms of Use for the Proof of Beauty, LLC website, hash.pob.studio. This is an agreement ("Agreement") between Proof of Beauty, LLC ("POB"), the owner and operator of the hash.pob.studio website (the "Site") and you ("you", "your" or "user(s)"), a user of the Site.

Throughout this Agreement, the words "POB," "us," "we," and "our," refer to our company, POB, as is appropriate in the context of the use of the words.

By clicking "I agree" or accessing the Site you agree to be bound by this Agreement and the Privacy Policy. We may amend this Agreement at any time and may notify you if we do so. Please be aware that there are ARBITRATION AND CLASS ACTION PROVISIONS contained in this Agreement.

### **2. Definitions**

In these Terms;

**"Applicable Law"** means any law, rule, statute, subordinate legislation, regulation, by-law order, ordinance, protocol, code, guideline, treaty, policy, notice, direction or judicial, arbitral, administrative, ministerial or departmental judgment, award, decree, treaty, directive, or other requirement or guideline published or in force at any time which applies to or is otherwise intended to govern or regulate any person (including all parties to this Terms), property, transaction, activity, event or other matter, including any rule, order,

judgment, directive or other requirement or guideline issued by any governmental or regulatory authority;

**"ETH"** means the cryptocurrency Ethereum;

**"Mint/Minting"** means causing a piece of digital art to become of the public ledge that is unchangeable and tamper-proof;

**"NFT"** means Non-fungible Token;

**"(The) Protocol"** means the process that facilitates the Minting of NFTs; and

**"Undesired Transactions"** means the failed Minting by a user of our Site.

### **3. Information Submission**

Portions of the Site may allow you to submit information to us. You must fully complete the information submission process by providing us with your current, complete, truthful, and accurate information as prompted by the applicable form. We do not have "User Accounts" as the Site's users are connected via wallets.

### **4. Content Disclaimer**

POB Content (defined below) is offered only for informational and educational purposes. You assume the monetary risk of loss associated with Minting NFTs and that Minting may not be successful, either due Undesired Transactions or otherwise. POB does not provide financial, investing, tax, or legal advice. Please consult your attorneys and accountants with respect to the impact on Minting NFTs through our Site. You agree that any POB Content or any other information found on the Site may be inaccurate, unsubstantiated or possibly even incorrect. You

agree to release us from any liability that we may incur for making available any POB Content.

## **5. Ownership**

The Site and any related services provided are owned and operated by POB including all text, data, graphics, photographs, images, audio, video, trademarks, service marks, trade names and other information, visual or other digital material, software (including source and object codes) and all other content or any description available on the Site or available via a link from Site to a page created by POB on another website (collectively, the "POB Content"). The POB Content is the sole property of POB and/or its licensors. All POB Content is protected by US and international copyright, trade-mark, service marks, patents, trade secrets and other proprietary rights and laws. Use of the POB Content for any purpose not expressly permitted in this Agreement or otherwise consented to by POB is prohibited. You may not otherwise copy, reproduce, perform, distribute, display or create derivative works of the POB Content.

## **6. NFT Minting Process**

You can Mint NFTs in accordance with the Terms herein. The Protocol that facilitates Minting of NFTs through our Site is open-sourced and viewable on github and etherscan. We own and operate the Protocol. To Mint an NFT, follow the instructions on our Site through the completion of the checkout process (applicable fees discussed below). Generally, users will pay to mint via the sending and Minting of the transaction via the blockchain. We do not have user accounts; rather, our users are inter-connected via wallets such as Metamask, Coinbase wallet,

etc. We use the APO given to us by the wallet to send transactions to the blockchain.

## **7. Fees**

By buying and selling NFTs, you agree to pay all applicable fees as stipulated on the checkout screen at the time of your purchase. The fees will be paid to us via ETH. You understand that once the fees are paid, there are **absolutely no refunds**.

## **8. Resales & Reuse**

Reselling is conducted on the digital platform, OpenSea. You agree to abide by OpenSea's Terms of Service, Privacy Policy, and any other terms and conditions it may have should you abide yourself of its platform. For reuse, we adhere to [www.nftlicense.org](http://www.nftlicense.org). Please visit that page for further information on reuse of NFTs.

## **9. Privacy**

Please read POB's Privacy Policy for more information regarding our collection and use of your information. The POB Privacy Policy is integrated into this Agreement, by reference and you must agree to all provisions of our Privacy Policy before using our Site. You may not be required to create a user account when you use our Site; however, we may collect information from you when you submit an inquiry or comment through the Site.

## **10. Site Availability and Modification**

Although we attempt to provide continuous Site availability to you, we do not guarantee that the Site will always be available, work, or be accessible at any particular time. We reserve the right to alter, modify, update, or remove our Site at any time. We may conduct such modifications to our Site for security reasons, intellectual property, legal reasons, or various other reasons at our discretion; however, nothing in this section obligates us to take measures to update the Site for security, legal, or other reasons.

## **11. Third Party Links**

The Site may contain links to third party websites that are not owned or controlled by POB. POB has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites. In addition, POB will not and cannot censor or edit the content of any third-party site. By using the Site, you expressly relieve POB from any and all liability arising from your use of any third-party website.

## **12. Your Conduct While Using The Site**

When accessing or using our Site, you are solely responsible for your actions and you agree to abide by the following rules of conduct:

- You will not copy, distribute or disclose any part of the Site in any medium, including without limitation by any automated or non-automated "scraping".
- You will not attempt to interfere with, compromise the system integrity or security, or decipher any transmissions to or from the servers running the Site.

- You will not use any robot, spider, crawler, scraper or other automated means or interface not provided by us to access the Site or to extract or export data collected through the Site.
- You will not take any action that imposes, or may impose at our sole discretion, an unreasonable or disproportionately large load on our infrastructure.
- You agree not to use the Site to stalk, harass, bully or harm another individual.
- You agree that you will not hold POB responsible for your use of the Site.
- You agree not to violate any requirements, procedures, policies or regulations of networks connected to POB.
- You agree not to interfere with or disrupt the Site.
- You agree to not violate any US federal laws, state laws, or local laws while using the Site.
- And you agree not to use the Site in any way that is: misleading, unlawful, defamatory, obscene, invasive, threatening, or harassing.

If you are discovered to be undertaking any of the aforementioned actions your privileges to use our Site may at our discretion be terminated or suspended. Generally, we will provide an explanation for any suspension or termination of your use of any of our Site, but POB reserves the right to suspend or terminate your access at any time without notice or explanation.

### **13. User Content**

A user's ability to submit or transmit any information through the Site, including but not limited to text, information, photos, images or any other information will be referred to as "User Content" throughout this Agreement. All User Content you submit to the Site is owned by you. When you submit any User Content to us, you grant POB, its partners, affiliates, users, representatives and assigns a non-exclusive, limited, fully-

paid, royalty-free, irrevocable, world-wide, universal, transferable, assignable license to display, distribute, store, broadcast, transmit, reproduce, modify, prepare derivative works, or use and reuse, all or any part of your User Content. Please be aware that we are not required to host, display, migrate, or distribute any of your User Content and we may refuse to accept or transmit any User Content. You agree that you are solely responsible for any User Content submitted and you release us from any liability associated with any User Content submitted. You understand that we cannot guarantee the absolute safety and security of any such User Content. Any User Content found to be in violation of this Agreement or that we determine to be harmful to the Site may be modified, edited, or removed at our discretion. POB does not endorse and may not verify, monitor, or restrict any of its users or any User Content submitted. You agree that any User Content or any other information may be inaccurate, unsubstantiated or possibly even incorrect.

#### **14. Limitation of Liability; Representations and Warranties**

USE OF THIS SITE INCLUDING ANY POB CONTENT, IS AT YOUR EXCLUSIVE RISK, AND THE RISK OF INJURY FROM THE FOREGOING RESTS EXCLUSIVELY WITH YOU. THE SITE INCLUDING ANY POB CONTENT ARE PROVIDED "AS IS", "AS AVAILABLE", "WITH ALL FAULTS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

SPECIFICALLY, POB DOES NOT MAKE ANY WARRANTY AS TO THE RELIABILITY, ACCURACY, TIMELINESS, USEFULNESS, ADEQUACY OR SUITABILITY OF ANY POB CONTENT. POB DOES NOT WARRANT THAT THE SITE AND ANY POB CONTENT WILL BE: (1) UNINTERRUPTED OR ERROR FREE; (2) FREE FROM DEFECTS OR ERRORS; OR (3) FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS. TO THE EXTENT PERMITTED BY

APPLICABLE LAW, WE (INCLUDING OUR OFFICERS, DIRECTORS, AGENTS, AFFILIATES AND EMPLOYEES) ARE NOT LIABLE, AND YOU AGREE NOT TO HOLD US RESPONSIBLE, FOR ANY DAMAGES OR LOSSES (INCLUDING, BUT NOT LIMITED TO, LOSS OF MONEY, GOODWILL OR REPUTATION, OR OTHER INTANGIBLE LOSSES OR ANY SPECIAL, DIRECT, INDIRECT, OR CONSEQUENTIAL DAMAGES) RESULTING DIRECTLY OR INDIRECTLY FROM YOUR USE OF THE SITE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT POB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES, SO SUCH DISCLAIMERS AND EXCLUSIONS MAY NOT APPLY TO YOU. IN THE EVENT THAT YOUR JURISDICTION DOES NOT ALLOW US TO EXCLUDE ALL LIABILITY, YOU AGREE THAT OUR TOTAL LIABILITY TO YOU WILL NOT EXCEED \$100 USD. THIS LIMITATION OF LIABILITY DOES NOT APPLY TO NEW JERSEY USERS, OUR LIABILITY TO NEW JERSEY USERS IS THE MINIMUM AMOUNT REQUIRED UNDER NEW JERSEY STATE LAW. SPECIFICALLY, IN THOSE JURISDICTIONS NOT ALLOWED, WE DO NOT DISCLAIM LIABILITY FOR: (A) DEATH OR PERSONAL INJURY CAUSED BY POB'S NEGLIGENCE OR THAT OF ANY OF ITS OFFICERS, EMPLOYEES OR AGENTS; (B) FRAUDULENT MISREPRESENTATION; OR (C) ANY LIABILITY WHICH IT IS NOT LAWFUL TO EXCLUDE EITHER NOW OR IN THE FUTURE.

## **15. Release**

IF YOU ARE A RESIDENT OF A JURISDICTION THAT REQUIRES A SPECIFIC STATEMENT REGARDING RELEASE THEN THE FOLLOWING APPLIES. FOR EXAMPLE, CALIFORNIA RESIDENTS MUST, AS A CONDITION OF THIS AGREEMENT, WAIVE THE APPLICABILITY OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH STATES, "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." YOU HEREBY WAIVE THIS SECTION OF



THE CALIFORNIA CIVIL CODE. YOU HEREBY WAIVE ANY SIMILAR PROVISION IN LAW, REGULATION, OR CODE THAT HAS THE SAME INTENT OR EFFECT AS THE AFOREMENTIONED RELEASE. YOU RELEASE US FROM ANY LIABILITY RELATING TO OUR SITE OR POB CONTENT, AND YOU RELEASE US, OUR DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AND AGENTS FROM ANY CLAIMS AND DAMAGES, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY CLAIM YOU HAVE AGAINST US. THIS RELEASE DOES NOT APPLY TO NEW JERSEY USERS.

## **16. Indemnity**

You agree to defend, indemnify and hold harmless POB, its officers, directors, employees, affiliates, and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from:

- your use of any POB Content;
- your violation of any term of this Agreement; and
- your use of the POB Site.

This defense and indemnification obligation will survive this Agreement. You also agree that you have a duty to defend us against such claims and we may require you to pay for an attorney(s) of our choice in such cases. You agree that this indemnity extends to requiring you to pay for our reasonable attorneys' fees, court costs, and disbursements. In the event of a claim such as one described in this paragraph, we may elect to settle with the party/parties making the claim and you shall be liable for the damages as though we had proceeded with a trial.

## **17. Taxes**

You agree that you are solely responsible for determining what, if any, taxes apply to your NFT transactions on our Site. We are not responsible for determining the taxes that may apply to your NFT transactions.

## **18. Copyrights**

We take copyright infringement very seriously, if you live within the US or own any copyrighted material within the US and believe that your copyright has been infringed, please send us a message which contains:

- Your name.
- The name of the party whose copyright has been infringed, if different from your name.
- The name and description of the work that is being infringed.
- The location on our website of the infringing copy.
- A statement that you have a good faith belief that use of the copyrighted work described above is not authorized by the copyright owner (or by a third party who is legally entitled to do so on behalf of the copyright owner) and is not otherwise permitted by law.
- A statement that you swear, under penalty of perjury, that the information contained in this notification is accurate and that you are the copyright owner or have an exclusive right in law to bring infringement proceedings with respect to its use.

You must sign this notification and send it to our Copyright Agent: Copyright Agent of POB, [david@pob.studio](mailto:david@pob.studio).

## **19. Choice of Law**

This Agreement shall be governed by the laws in force in the State of Illinois. The offer and acceptance of this contract is deemed to have occurred in the State of Illinois.

## **20. Forum**

By using this Site, you agree that: (1) any claim, dispute, or controversy you may have against us, POB or the Site arising out of, relating to, or connected in any way with this Agreement or any products purchased shall be resolved exclusively by final and binding arbitration administered by the American Arbitration Association ("AAA") and conducted before a single arbitrator pursuant to the applicable Consumer Rules and Procedures established by AAA ("Rules and Procedures"); (2) the claim or dispute must be brought within one (1) year of the first date of the event giving rise to such action (does not apply to New Jersey users) and the arbitration shall be held in Chicago, Illinois or at such other location as may be mutually agreed upon by you and POB; (3) the arbitrator shall apply Illinois law consistent with the Federal Arbitration Act and applicable statutes of limitations, and shall honor claims of privilege recognized at law; (4) there shall be no authority for any claims to be arbitrated on a class or representative basis; arbitration can decide only your and/or POB 's individual claims; and the arbitrator may not consolidate or join the claims of other persons or parties who may be similarly situated (this does not apply to New Jersey users); (5) both parties will bear their own costs of representation and filing for the dispute; (6) where possible and allowed for under the AAA Rules and Procedures both parties shall be entitled to appear electronically or telephonically for all proceedings; and (7) with the exception of subpart (4) above, if any part of this

arbitration provision is deemed to be invalid, unenforceable or illegal, or otherwise conflicts with the Rules and Procedures established by AAA, then the balance of this arbitration provision shall remain in effect and shall be construed in accordance with its terms as if the invalid, unenforceable, illegal or conflicting provision were not contained herein. If, however, subpart (4) is found to be invalid, unenforceable or illegal, then the entirety of this Arbitration Provision shall be null and void, and neither you nor POB shall be entitled to arbitrate their dispute. For more information on AAA and its Rules and Procedures, users may visit the AAA website at <http://www.adr.org>. In the event that any portion of this arbitration provision is found to be unenforceable or void, both parties agree to settle any disputes arising out of this Agreement in a court of competent jurisdiction located in Cook County, Illinois.

## **21. Class Action Waiver**

You and POB agree that any proceedings to resolve or litigate any dispute whether through a court of law or arbitration shall be solely conducted on an individual basis. You agree that you will not seek to have any dispute heard as a class action, representative action, collective action, or private attorney general action.

## **22. Severability**

In the event that a provision of this Agreement is found to be unlawful, conflicting with another provision of the Agreement, or otherwise unenforceable, the Agreement will remain in force as though it had been entered into without that unenforceable provision being included in it.

If two or more provisions of this Agreement or any other agreement you may have with POB are deemed to conflict with each other's operation, you agree that POB shall have the sole right to elect which provision remains in force.

### **23. Non-Waiver**

We reserve all rights permitted to us under this Agreement as well as under the provisions of any Applicable Law. Our non-enforcement of any particular provision or provisions of this Agreement or any Applicable Law should not be construed as our waiver of the right to enforce that same provision under the same or different circumstances at any time in the future.

### **24. Survival**

All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity, and limitations of liability. You agree that we are not required to provide you with access to our Site and may terminate our Site or your access to the Site at any time and for any reason.

### **25. Age**

All users who access the Site must be 18 years of age or older.

### **26. Assignment**

You may not assign your rights and/or obligations under this Agreement to any other party without our prior written consent.

We may assign our rights and/or obligations under this Agreement to any other party at our discretion.

## **27. Amendments**

We may amend this Agreement from time to time. When we amend this Agreement, we will update this page and indicate the date that it was last modified or we may email you. You may refuse to agree to the amendments, but if you do, you must immediately cease using our Site.

## **28. Electronic Communications**

The communications between you and POB use electronic means, whether you visit the Site or send POB e-mails, or whether POB posts notices on the Site or communicates with you via e-mail. For contractual purposes, you (1) consent to receive communications from POB in an electronic form; and (2) agree that all terms, conditions, agreements, notices, disclosures, and other communications that POB provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights.

## **29. California Users**

Pursuant to California Civil Code Section 1789.3, any questions about pricing, complaints, or inquiries about POB must be sent to our agent for notice to: [david@pob.studio](mailto:david@pob.studio).

Lastly, California users are also entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California

Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.