

## MOTLEY DAO / NIGHT MARKET TERMS OF SERVICE

Last Revised on [27/02/2023]

These Terms of Service (“**Terms**”) constitute a legally binding agreement between Motley Foundation, a Panama foundation (“**Company**”, “**we**”, “**us**”, or “**our**”) and each registered or unregistered end user (each, a “**User**”, “**you**” or “**your**”) of the Night Market platform located at [https://www.nightmarket.io] or such other URL as may be designated by Company from time to time (the “**Platform**”), as well as any mobile apps or other related services, software, smart contracts, tools, features, functionalities or applications thereto (collectively, 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 8 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.**

Using the Services may require that you pay a fee to other users of the Services (such as merchants) or to the Company. Using the Services may also require that you pay a fee to parties other than users or the Company, such as gas charges on the blockchain to perform a transaction. **You acknowledge and agree that the Company has no control over any such transactions, the method of payment of such transactions or any actual payments of transactions.** Accordingly, you must ensure that you have a sufficient balance of the applicable cryptocurrency tokens stored at your protocol-compatible wallet address to complete any transaction on the blockchain or Services before initiating such transaction.

### 1. THE SERVICES AND ELIGIBILITY TO USE THE SERVICES

#### 1.1. Services Description.

The Platform is a protocol that provides users with the opportunity to post, mint, sell, purchase, bid on, collect, trade and showcase digital collectibles represented as non-fungible tokens (“**NFTs**”) that may be linked with certain digital media and art (“**NFT Media**”). Transactions on the Platform

regarding the transfer and sale of such NFTs are recorded on such blockchains as we may support from time to time.

[Our Services may also provide an aggregator where certain NFTs displayed on the Platform may be from listings of NFTs on other secondary marketplaces (such as NFT, an “**Aggregated NFT**”). If you buy or otherwise transact in an Aggregated NFT through our Services, you may interact with the smart contract used by such other secondary marketplace that such Aggregated NFT is directly listed on. For such transactions of Aggregated NFTs, you may be charged a fee by such other secondary marketplace, but we will not charge an additional fee for such Aggregated NFT as a result of our aggregated-related Services.

The Services facilitates transactions between buyers and sellers of NFTs, but Company is not a party to any agreement between buyers and sellers of an NFT and all transactions are effectuated on a public blockchain. Company is not responsible for any breach or default by a seller user or a buyer user. There may be instances where the Company is the buyer or seller of an NFT on the Platform, in which case it will be party to the agreement as a buyer or seller, as applicable. Company is not a broker, financial institution, or creditor. Company reserves the right to be the final decision maker on any disputes arising from purchases via the Services, including in connection with any purchase methods.]

## **1.2. No Promise of Authenticity.**

In certain cases, Company may help to evaluate or provide you with information about a seller of an NFT or a particular NFT. However, such information is provided for informational purposes only. You bear full responsibility for verifying the authenticity, legitimacy, identity of NFTs and other offerings you purchase on the Services. Company makes no guarantees or promises about the identity, legitimacy, or authenticity of NFTs or other offerings on the platform.

## **1.3. Listing or Selling NFTs.**

By listing or selling NFTs through the Services, you hereby represent and warrant that you own all necessary rights (including all necessary intellectual property rights) to use, display, reproduce, distribute and perform the NFT Media linked or associated with such NFT, or you are legally authorized by the intellectual property owner to do any of the foregoing. You further represent and warrant that you will not mint, provide, display, or sell any NFT that includes or otherwise incorporates into the NFT’s underlying smart contract any virus, bug, malicious code or other code which could be used to commit fraud or otherwise cause harm.

## **1.4. Eligibility.**

You must be at least 13 years of age or older to use the Services. Children under the age of 13 are not permitted to use the Services. Minors under the age of majority in their jurisdiction but that are at least 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. In furtherance of our policy

of not collecting personal information from persons under the age of 13, Users are not allowed to give Company the personal information of any persons under the age of 13 for any reason.

You may not use the Services if (1) the Office of Foreign Assets Control of the United States Treasury Department lists you as a specially designated national and/or blocked person; (2) the Bureau of Industry and Security of the United States Department of Commerce lists you on its denied persons list or lists of parties of concern; or (3) you're on any similar list promulgated by an official agency or department of the United States government. You may not use the Services if you are a resident, national, or agent of the Crimea region, Cuba, Iran, North Korea, Syria, or any other country to which the United States, the United Kingdom, or the European Union embargoes goods or imposes similar sanctions.

You may not use the Services if the Company has informed you that you may not. Further, if you use the Services, you may not transfer or provide to us any currency, digital assets or other items that have been derived from any illegal or unlawful activity.

By using the Services, you represent and warrant that you meet all these requirements.

### **1.5. Wallets.**

All transactions for NFTs initiated through our Services require you to use third party non-custodial digital wallets (“**Wallets**”). By using our Services you agree that you are governed by the terms or service and privacy policies of those Wallets that you choose to use. 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, so please keep them in a safe place. By using such Wallets to conduct such transactions via the Services, you agree that you are governed by the terms of service and privacy policy for the applicable Wallets, and that Company has no 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.

### **1.6. [Creator Services.**

As part of the Services and the Platform, Company offers a service which allows certain creators that are invited or otherwise approved by Company ( “**Creators**”) to mint and sell NFTs associated with their original NFT Media on the Platform, and Company may provide certain other services in connection thereto. Company may enter into an addendum with any such Creator setting forth terms for using the Platform as a Creator.]

### **1.7. Secondary Marketplaces via Third Party Platforms.**

While you may be able to buy, sell, trade, and transact in NFTs on other secondary 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 third party marketplaces.

### **1.8. 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.

### **1.9. Modifications to Services.**

The Company has the right, at any time and without liability, to modify, alter, update, or eliminate the features, navigation, appearance, functionality and other elements of the Services, and any aspect, portion or feature thereof.

## **2. PURCHASES VIA THE SERVICES**

### **2.1. Purchases of Offerings.**

The Services may permit you to purchase and sell NFTs and certain other products or services through the Services such as physical merchandise related to NFTs (collectively, the “**Offerings**”). All purchases of Offerings via the Services are non-refundable unless specified by the applicable seller of the Offering. 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 transaction fees, processing fees, network fees (including gas fees) and 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. You must pay for your purchase via the cryptocurrency or other payment currency designated by the Services. In certain cases, your transaction may not be successful due to an error with the blockchain or the Wallet. 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.

## **2.2. Fees.**

With respect to transactions of Offerings through the Services, we may collect revenue on the Platform for such transactions via transaction or marketplace fees and other applicable fees which we will endeavor to display when you conduct such transactions on the Platform.

## **3. LOCATION OF OUR PRIVACY POLICY**

### **3.1. Privacy Policy.**

Our Privacy Policy, located accessible in the footer of Night Market, describes how we handle the information you provide to us when you use the Services. Our Privacy Policy is a part of and is incorporated into these Terms.

## **4. RIGHTS WE GRANT YOU**

### **4.1. Right to Use Services.**

We hereby permit you to use the Services for your personal non-commercial use only, provided that you comply with these Terms in connection with all such use. If any software, content or other materials owned or controlled by us are distributed to you as part of your use of the Services, we hereby grant you, a personal, non-assignable, non-sublicensable, non-transferrable, and non-exclusive right and license to download, execute and display such software, content and materials provided to you as part of the Services, in each case for the sole purpose of enabling you to use the Services as permitted by these Terms. 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 Service or other actions that Company, in its sole discretion, may elect to take.

### **4.2. Rights Acquired via a Purchase of NFTs.**

Under baseline intellectual property laws, a purchase of an NFT does not give the buyer the right to publicly display, perform, distribute, sell or otherwise reproduce the NFT or its related NFT Media for any commercial purpose unless a license has been granted by the owner (or their authorized representative) specifically granting such rights in the NFT Media to buyers of the applicable NFTs. Any commercial exploitation of the NFT or its related NFT Media without authorization could subject you to claims of copyright infringement. If you sell an NFT, you agree that you will not have any claims against Company for any breach of these Terms by a purchaser. A seller of an NFT may choose to provide certain rights to buyers of the NFT, which may include, but are not limited to, physical items, special access, or other exclusive content (collectively, “**Additional Features**”). Any Additional Features will be provided directly to you from the seller of an NFT; Company has no involvement in such transactions and is not a party to such transactions.

Notwithstanding the above, Company may publish a description of the Additional Features on the Platform on behalf of the seller.

#### **4.3. Restrictions on Your Use of the Services.**

You may not do any of the following in connection with your use of the Services, unless applicable laws or regulations prohibit these restrictions or you have our express 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, except for temporary files that are automatically cached by your web browser for display purposes, or as otherwise expressly permitted in these Terms;
- (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 facilitated automated transactions on the Services;
- (e) 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;
- (f) attempt to gain unauthorized access to, interfere with, damage or disrupt the Services, profiles registered to other users, or the computer systems or networks connected to the Services;
- (g) circumvent, remove, alter, deactivate, degrade or thwart any technological measure or content protections of the Services;
- (h) circumvent or otherwise defeat or bypass any region-blocking or "geoblock" placed on 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) engage in any manipulative activity that violates the integrity of the prices of assets on the Platform;

- (l) use the Services for illegal, harassing, unethical, or disruptive purposes;
- (m) use the Services in such a way as to infringe the privacy, intellectual property rights or other rights of third parties;
- (n) buy, sell, or otherwise trade user names or other unique user or account identifiers on the Services.
- (o) send advertisements, chain letters, or other solicitations through the Services, or use the Services to gather addresses for distribution lists;
- (p) use the Services to send e-mail to distribution lists, newsgroups, or group mail aliases;
- (q) falsely imply that you're affiliated with or endorsed by the Company;
- (r) impersonate others through the Services;
- (s) encourage or help anyone in violation of these Terms;
- (t) violate any applicable law or regulation in connection with your access to or use of the Services; or
- (u) access or use the Services in any way not expressly permitted by these Terms.

## **5. OWNERSHIP AND CONTENT**

### **5.1. 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 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), including, without limitation, the exclusive right to create derivative works. We do not own or claim any ownership interest in any NFTs or NFT Media minted, sold or listed by other users of the Services.

### **5.2. Ownership of Trademarks.**

Company's name, trademarks, the Company's logo, and all related names, logos, product and service names, designs and slogans are trademarks of 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.

### **5.3. 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 Company, and 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 Company any and all right, title and interest (including, but not limited to, any patent, copyright, trade secret, trademark, show-how, know-how, moral rights and any and all other intellectual property right) that you may have in and to any and all Feedback.

### **5.4. 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, including NFT Media that is tied to NFTs you wish to sell on the Services as a seller, and any content associated with your NFTs (“**Your Content**”).

You retain all rights to Your Content you post, upload, submit, or otherwise made available through the Services, except for rights expressly granted herein. 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 Service and uploading Your Content or otherwise making Your Content available, you grant us a license to access, use, host, cache, store, copy, reproduce, transmit, display, publish, distribute, adapt and modify (for technical purposes, e.g., making sure content is viewable on smartphones as well as computers and other devices) Your Content in any and all media or distribution methods (now known or later developed) but solely as required to be able to operate and provide the Services.

You agree that this license includes the right for us to provide, promote, and improve the Services and to make Your Content available to other companies, organizations or individuals for the distribution, promotion or publication of Your Content on other media and services. You agree that these rights and licenses are royalty free, transferable, sub-licensable, worldwide and irrevocable (for so long as you make Your Content available via the Services), 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. 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.



### **5.5. Removal of Your Content.**

We have the right to remove or refuse to post any of Your Content, including removing, delisting or refusing to post, list, mint or allow to be sold any NFTs from the Services, (a) for any or no reason in our sole discretion and (b) take any action with respect to Your Content that we deem necessary or appropriate in our sole discretion, including if we believe that Your Content violates these Terms, infringes any intellectual property right of any person or entity, threatens the personal safety of users of the Services or the public, or could create liability for Company or its users.

### **5.6. Content Standards.**

- (a) You may not engage in conduct or submit content to the Services that is illegal, offensive, or otherwise harmful to others. This includes conduct or content that is harassing, inappropriate, or abusive.
- (b) You may not engage in conduct or submit content to the Services that violates the law, infringes anyone's intellectual property rights, violates anyone's privacy, or breaches agreements you have with others.
- (c) You may not submit content to the Services containing malicious computer code, such as computer viruses or spyware.
- (d) You may not submit content to the Services as a mere placeholder to hold a particular address, user name, or other unique identifier.
- (e) You may not use the Services to disclose information from or about others that you don't have the right to disclose.

### **5.7. Notice of Infringement – DMCA Policy.**

Company may, but is not obligated to, monitor the NFTs, NFT Media and Your Content uploaded to the Services for any infringement of a third party's intellectual property rights. However, Company cannot undertake to review all such content before it is posted on the Services, and cannot ensure prompt removal of objectionable content after it has been posted. Accordingly, Company assumes no liability for any action regarding transmissions, communications, or content provided by any user or third party. 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,
- (c) including a description of where it is located on the Service;
- (d) information for our copyright agent to contact you, such as an address, telephone

- (e) number and e-mail address;
- (f) a statement that you have a good faith belief that the identified, allegedly infringing
- (g) use is not authorized by the copyright owners, its agent or the law;
- (h) 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
- (i) 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 by e-mail to [legal@motleylabs.com](mailto:legal@motleylabs.com). It is our policy, in appropriate circumstances and at our discretion, to disable the use of Services via the Wallets 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.

## **6. THIRD PARTY SERVICES AND MATERIALS**

### **6.1. 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. By using the Services, you acknowledge and agree that 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.

## 7. DISCLAIMERS, LIMITATIONS OF LIABILITY, AND INDEMNIFICATION

### 7.1. Disclaimers.

- (a) 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, Company, its parents, affiliates, related companies, officers, directors, employees, agents, representatives, partners, and licensors (the “**Company Entities**”) **disclaim all warranties and conditions, whether express or implied, of merchantability, fitness for a particular purpose or non-infringement.**
- (b) 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) the authenticity, legitimacy, accuracy, or safety of any NFTs or NFT Media, (c) any harm to your computer system, loss of data, or other harm that results from your access to or use of the Services; (d) the operation or compatibility with any other application or any particular system or device; (e) whether the Services will meet your requirements or be available on an uninterrupted, secure or error-free basis; and (f) 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.
- (c) You accept all risk associated with your usage of the Services, including all risk associated with your personal financial and cryptocurrency holdings and transfers. You agree and acknowledge that the Company is not responsible or liable for any loss, harm, or damage, of any kind, related to or arising from your use of the Services, including any associated apps, or arising from disclosure of your personal wallet “key,” even if such loss may be attributed to an error or “bug” in the Services.
- (d) You accept all risks associated with the use of the Services to conduct cryptocurrency transactions, including, but not limited to, in connection with the failure of hardware, software, internet connections, and failures related to any supported network.
- (e) You agree that you understand the inherent risks associated with cryptographic systems, including hacking risks and future technological development.
- (f) You agree that you have an understanding of the usage and intricacies of native cryptographic tokens. You acknowledge and understand that with regard to any cryptographic tokens “stored” in a wallet to which you have custody, you alone are responsible for securing your private key(s). We do not have access to your private key(s). Losing control of your private key(s) will permanently and irreversibly deny you access to blockchain resources and your blockchain wallet.

- (g) You agree that with regard to any cryptographic tokens or other assets stored on resources hosted by the Company, the Company is not liable to you for any loss, failure, or unavailability of any kind, of such tokens or assets, for any reason.
- (h) You understand that no information contained in the publicly available portions of the Services is a recommendation, solicitation or offer to buy or sell any securities, options or other financial instruments or other assets or provide any investment advice or service. No statement herein made constitutes an offer to sell or a solicitation of an offer to buy a note or other security. The Company and its affiliates are not liable nor responsible for any information provided by third parties. The information contained in the Services has been prepared without reference to anyone's investment requirements or financial situation.
- (i) The information and services provided on the Services are not provided to, and may not be used by, any person or entity in any jurisdiction where the provision or use thereof would be contrary to applicable laws, rules or regulations of any governmental authority or where the operator is not authorized to provide such information or services. Some products and services described on the Services may not be available in all jurisdictions or to all clients.
- (j) You acknowledge that you are not relying on the Company or any of its affiliates, officers, directors, partners, agents or employees in making any investment decision. Always consider seeking the advice of a qualified professional before making decisions regarding your business and/or investments. The Company does not endorse any investments and shall not be responsible in any way for any transactions you enter into with other users. You agree that the Company and its affiliates, officers, directors, partners, agents or employees will not be liable for any loss or damages of any sort incurred as a result of any interactions between you and other users.
- (k) It is your responsibility to determine what, if any taxes may apply to the transactions you complete under the Services and it is your responsibility to report and remit the appropriate tax to the relevant taxing authorities. You agree that the Company is not responsible for determining whether taxes apply to any exchanges made under the Services.

## **7.2. Limitations of Liability.**

**To the extent not prohibited by law, you agree that in no event will the Company Entities be liable (a) for any 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 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 Entities' total liability to you for any damages finally awarded shall not exceed the amount of \$100.00 USD, or the amount you paid the Company Entities, if any, in the past 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.

### **7.3. Assumption of Risks.**

- (a) You acknowledge and agree that there are risks associated with purchasing and holding NFTs and using blockchain technology. These including, but are not limited to, risk of losing access to NFT 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, risks related to token taxation, risk of personal information disclosure, risk of uninsured losses, unanticipated risks, and volatility risks.
- (b) The prices of collectible blockchain assets are extremely volatile and subjective and collectible blockchain assets have no inherent or intrinsic value outside of their intended use. You acknowledge and affirm that you are collecting, trading, or purchasing NFTs for purposes of acquiring digital collectibles for your personal use
- (c) and enjoyment, and not for any investment 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, or redistribution and that you are not acquiring any equity or other ownership or revenue sharing interest in Company, its affiliates, or any brand as a result of your acquisition of NFTs.
- (d) We will not be liable or responsible to you for any failure in the intended function of any smart contracts underlying any NFTs, 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. Further, we will not be liable for any failure or removal of the storage system used to store any NFT Media that is linked to or associated with NFTs, or for any failures in the underlying blockchain on which the NFTs ownership may be recorded.
- (e) The regulatory regime governing blockchain technologies, cryptocurrencies, and tokens is uncertain, and new regulations or policies may materially adversely affect the potential utility or value of your NFT(s). Upgrades to any blockchain network or hard forks in such networks, or a change in how transactions are confirmed on such blockchain networks may

have unintended, adverse effects on all blockchains, including any that are related to your NFT(s).

- (f) Any purchase or sale you make, accept, or facilitate outside of the Platform of any NFT(s), including Aggregated NFTs, will be entirely at your risk. We do not authorize, control, or endorse purchases or sales of NFTs outside of the Platform. 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 Platform, including Aggregated NFTs.

#### **7.4. 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 misuse of the Services; (d) Your Content, or (e) your negligence or willful misconduct.

### **8. ARBITRATION, CLASS ACTION WAIVER, AND ENFORCEMENT**

#### **8.1. Informal Process First.**

You agree that in the event of any dispute between you and the Company Entities, you will first contact 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.

#### **8.2. Arbitration Agreement.**

After the informal dispute resolution process, any remaining dispute, controversy, or claim (collectively, "**Claim**") relating in any way to your use of Company's services and/or products, including the Services, will be resolved by arbitration, including threshold questions of arbitrability of the Claim, except as permitted herein. You and Company agree that any Claim will be settled by final and binding arbitration, administered by JAMS under its Comprehensive Arbitration Rules and Procedures and the JAMS Consumer Minimum Standards (together, 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 will be conducted in the English language. The seat of arbitration will be Panama, but the arbitration proceedings will be conducted remotely to the extent reasonably possible.

Notwithstanding the foregoing, you and 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.

### **8.3. Waiver of Class Actions and Class Arbitrations.**

You and Company agree that each party may bring Claims against the other party only in an individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding, including without limitation federal or state class actions, or class arbitrations. Accordingly, under the arbitration procedures outlined in this section, an arbitrator shall not combine or consolidate more than one party's claims without the written consent of all affected parties to an arbitration proceeding. Without limiting the generality of the foregoing, you and Company agree that no dispute shall proceed by way of class arbitration without the written consent of all affected parties.

### **8.4. 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 \$10,000.00 USD, 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, except that if you have initiated the arbitration claim, you will still be required to pay the lesser of \$250.00 USD or the maximum amount permitted under the JAMS Rules for arbitration claims initiated by you. You are still responsible for all additional costs that you incur in the arbitration, including without limitation, fees for attorneys or expert witnesses.

### **8.5. Enforcement.**

- (a) The Company may investigate and prosecute violations of these terms to the fullest legal extent. The Company may notify and cooperate with law enforcement authorities in prosecuting violations of the law and these terms.
- (b) The Company reserves the right to change, redact, and delete content on the Services for any reason, to the extent it has the capacity to do so. If you believe someone has submitted content to the Services in violation of these terms, contact the Company immediately.
- (c) The Company may, at any time and in its sole discretion, refuse any transaction, including any purchase, sale, or transfer request submitted via the Services, impose limits, or impose any other conditions or restrictions upon your use of the Services, without prior notice, to the extent it has the capacity to do so. The Company may also make the Services unavailable at any time, in its sole discretion.

## **9. ADDITIONAL PROVISIONS**

### **9.1. 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 of the Platform. 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.

### **9.2. Termination of License.**

If you breach any of the provisions of these Terms, all licenses granted by Company will terminate automatically. Additionally, Company may suspend, disable, or delete the Services or suspend or disable your ability to access the Services (or any part of the foregoing) with or without notice, for any or no reason. If Company disables your ability to access the Services for any suspected breach of these Terms by you, you are prohibited from accessing the Services under a different Wallet. In the event of termination or disabling of your access to the Services for any reason, Company may, but is not obligated to, delete any 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 Company or you. Termination will not limit any of Company’s other rights or remedies at law or in equity.

### **9.3. Injunctive Relief.**

You agree that a breach of these Terms will cause irreparable injury to Company for which monetary damages would not be an adequate remedy and 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.

### **9.4. 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.

### **9.5. 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, including operating the Platform, 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, tsunamis, 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.

#### **9.6. Miscellaneous.**

- (a) 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.
- (b) These Terms and the licenses granted hereunder may be assigned by Company but may not be assigned by you without the prior express written consent of Company.
- (c) 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.
- (d) The section headings used herein are for reference only and shall not be read to have any legal effect.
- (e) The Services are operated by us in Panama. Those who choose to access the Services from locations outside Panama do so at their own initiative and are responsible for compliance with applicable local laws.
- (f) These Terms are governed by the laws of Panama, 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 8, or if arbitration does not apply, then courts of competent jurisdiction located in Panama.
- (g) You and 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.

#### **9.7. How to Contact Us.**

You may contact us regarding the Services or these Terms by e-mail at [legal@motleylabs.com](mailto:legal@motleylabs.com).