

Cyberpunk Ape Executives Terms of Use

The Cyberpunk Ape Executives website (cyberpunkapes.com) (the “**Site**”) allows users the opportunity to purchase unique Ethereum blockchain-tracked, non-fungible tokens (NFTs) (“**Cyberpunk Ape Executive NFTs**”) that serve as digital collectibles and in a contract created by Beyond Seth Horus LLC and its owners, employees, contractors, partners, stockholders, promoters, and affiliates: paid and unpaid (“**BSH**”, “**we**”, or “**us**”). These Terms of Use (“**Terms**”) are a legally binding agreement between you and BSH and set forth the terms for your use of the Site (however accessed, whether via web, mobile, or otherwise) and the limited services made available through the Site as described herein (the Site and services, collectively, the “**Services**”).

ARBITRATION NOTICE AND CLASS ACTION WAIVER: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN SECTIONS HEADED WITH THE WORDS “ARBITRATION” BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND BSH WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

BY USING THE SITE OR SERVICES, YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE WITH THESE TERMS, YOU MAY NOT USE THE SITE OR SERVICES.

For clarity, these Terms may govern your use of BSH’s other websites and associated mobile applications besides the Cyberpunk Ape Executive NFT minting Site. This is the version that exists as of

January 6, 2022

Modification.

BSH reserves the right, in its sole discretion, to modify or add to this Agreement at any time, for any reason (“**Updated Terms**”). The Updated Terms shall be included in a revised version of this Agreement accessible through the Site. BSH may provide notice of significant changes to this Agreement as required by law. Your use of the Services following the posting of any Updated Terms constitutes your unconditional acceptance and agreement to be bound those changes. You must cease using the Services immediately if you do not agree to be bound by the Updated Terms. The Updated Terms will be effective as of the time of posting, or such later date as may be specified in the Updated Terms, and will apply to your use of the Services from that point forward.

Purchasing Cyberpunk Ape Executive NFTs.

Third Party Vendors. All transactions made through the Services are managed and confirmed on the Ethereum blockchain, and are processed by third-party vendors (collectively, “**Third Party Vendors**”), rather than by BSH. For example, in order to initiate the minting and purchase of a Cyberpunk Ape Executive NFT, and to display, store, trade and sell your Cyberpunk Ape Executive NFT, you may need to set up, respectively, an electronic wallet with Metamask (provided by ConsenSys Software Inc.) and an account with the OpenSea marketplace (Ozone Networks, Inc.). By using the Services to do any of the foregoing, you agree to the terms of service, and, where applicable, the privacy policies of such Third Party Vendors, including without limitation the Metamask [terms of service](#) [

<https://consensys.net/terms-of-use/>] and [privacy policy](https://consensys.net/privacy-policy/) [<https://consensys.net/privacy-policy/>], and the OpenSea [terms of service](https://opensea.io/tos) [<https://opensea.io/tos>] and [privacy policy](https://opensea.io/privacy) [<https://opensea.io/privacy>]. Except as expressly set forth herein, those Third Party Vendor terms govern the transaction that is effectuated on the Ethereum blockchain when you request BSH to mint any Cyberpunk Ape Executive NFT, including any related decentralized technologies (e.g., Ethereum), websites, services, tools, applications, smart contracts, and APIs which are provided by such Third Party Vendors. For clarity, the Services do not include services provided by Third Party Vendors.

You hereby expressly grant BSH the right, power, and authority to transmit your information to such Third Party Vendors as reasonably necessary for BSH to provide the Services to you. BSH has no affiliation with any Third Party Vendors, and BSH may not collect or receive any of the information, including any personal information, that you provide to such Third Party Vendors, except for any information that may be publicly available on the Ethereum blockchain. Because BSH has no control over Third Party Vendors, or their websites or mobile applications, you acknowledge and agree BSH is not responsible for the availability of such external websites, mobile applications or resources accessible from those Third Party Vendors, and does not endorse and is not responsible or liable for any content, advertising, products, services, or other materials available from such websites or mobile applications, nor does BSH endorse any such websites, mobile applications or resources, or the products or services assessable on such websites or mobile applications.

Purchase Terms. You may initiate a purchase of Cyberpunk Ape Executive NFT(s) by selecting “Mint” on the Site. As this is a blind drop, each buyer will receive a randomized Cyberpunk Ape Executive NFT from the collection that will be revealed after all of the Cyberpunk Ape Executive NFTs have been sold or on a date chosen by BSH.

All purchases effectuated through the Site are final and non-refundable, except as set forth in the prior section. Purchases may be made by using one or more cryptocurrencies that we may elect to accept from time to time. We retain the right in our discretion to limit the dollar (or equivalent in other currencies) amount and number of any transactions on the Site. BSH is under no obligation to accept cryptocurrencies and we retain the right in our sole discretion to determine what currencies or payment option to accept at any time. You acknowledge and agree that all transactions effectuated through the Site are publicly visible on the Ethereum blockchain when made.

You are responsible for all payments, fees and costs when engaging in any transactions involving Cyberpunk Ape Executive NFTs, including, without limitation, the purchase price, transaction fees (e.g., “gas” fees) and all other fees associated with your use of the Services or the services of Third Party Vendors. You also are solely responsible for payment of all national, federal, state, local or other taxes of any jurisdiction, of whatever nature whether now in effect or imposed in the future by any national, federal, state, local, international or any other governmental authority or taxing jurisdiction, including, without limitation, any income, sales, use, value-added (VAT), goods and services and other taxes and duties associated with your use of the Services, the services of Third Party Vendors, and your purchase of Cyberpunk Ape Executive NFTs from any party. You are solely responsible for any tax reporting for transactions in which you may be a seller of Cyberpunk Ape Executive NFTs.

Secondary Sales. We do not monitor or control any marketplace purchases or sales, or any other activity beyond that on the Site.

Limited License. In connection with your purchase of one or more Cyberpunk Ape Executive NFT, and subject to your compliance with the terms of this Agreement, BSH may grant you a limited license to display the Artwork associated with such Cyberpunk Ape Executive NFT(s).

DISCLAIMER OF WARRANTIES

IF YOU CHOOSE TO USE THE SITES OR SERVICES, YOU DO SO VOLUNTARILY AND AT YOUR SOLE RISK. THE SITES AND SERVICES ARE PROVIDED “AS IS” AND TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAWS, WE DISCLAIM ALL WARRANTIES OR OTHER TERMS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR TERMS OF SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT WARRANT: THAT THE SITES OR SERVICES, OR ANY OF THEIR FUNCTIONS, WILL BE UNINTERRUPTED OR ERROR-FREE; THAT DEFECTS WILL BE CORRECTED; THAT ANY PART OF THE SITES OR SERVICES, OR THE SERVERS THAT MAKE THEM AVAILABLE, ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS . WE DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SITES OR SERVICES WITH REGARD TO CORRECTNESS, ACCURACY, TIMELINESS, RELIABILITY, APPROPRIATENESS FOR ANY PURPOSE, OR OTHERWISE. DUE TO THE NATURE OF THE INTERNET, BSH CANNOT GUARANTEE THE CONTINUOUS AND UNINTERRUPTED AVAILABILITY AND ACCESSIBILITY OF THE SITES OR SERVICES. BSH MAY RESTRICT THE AVAILABILITY OF THE SITES OR SERVICES OR CERTAIN AREAS OR FEATURES IF NECESSARY, IN VIEW OF CAPACITY LIMITS, THE SECURITY OR INTEGRITY OF ITS SERVERS, OR TO CARRY OUT MAINTENANCE MEASURES THAT ASSIST IN THE PROPER OR IMPROVED FUNCTIONING OF THE SITES OR SERVICES. IF YOU ARE DISSATISFIED WITH ANY OF THE MATERIALS CONTAINED IN THE SITES OR SERVICES, OR WITH ANY OF THESE TERMS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF OUR SITES OR SERVICES.

You acknowledge and accept any statements made by BSH is provided for informational purposes only and should not be construed as investment advice or an offer or solicitation to buy or sell securities. BSH statements are not intended to be used as a guide to investing or as a source of any specific investment recommendations. You agree that the Cyberpunk Ape Executive NFTs are not and shall not be based upon or redeemable for any tangible or physical item, fractionalized, or capable of use as a coupon, investment, security or other financial instrument or knowingly marketed in any other manner that would cause transactions to be governed by any applicable securities laws, including but not limited to the Securities Act of 1933, and are not convertible virtual currencies.

You acknowledge and agree that the characterization and regulatory scheme governing NFTs, cryptocurrencies, and blockchain technology is uncertain and continually evolving, and is accompanied by inherent risks, including risks related to faulty or insufficient hardware, software, or internet connections; introduction or intrusion of malicious code or software; hacking or unauthorized access to your digital wallet or information stored therein, or of theft or diversion of funds therefrom; volatility and unstable or unfavorable exchange rates; and the risk of unfavorable regulatory intervention and/or tax treatment in relation to transaction in cryptocurrency. You further acknowledge and agree that digital assets are highly experimental, risky, and volatile, and your use of the Site and Services to purchase digital assets may carry substantial financial risk, including the risk of loss in trading digital

assets. By using the Site or Services, you represent that you have sufficient knowledge, sophistication, and experience with respect to NFTs, cryptocurrency, and blockchain technology, to make your own evaluation of the merits and risks of any transaction conducted via the Site or Services or any digital asset associated with such transaction. Under no circumstances will the operation of all or any portion of the Site or Services by BSH be deemed to create a relationship that includes the provision or tendering of investment advice. You acknowledge and affirm that any staking rewards provided and not provided to you in any way such that you would deem them analogous to money, a share in BSH, or an investment.

Indemnification.

You shall indemnify, defend (at BSH's request) and hold harmless BSH, its affiliates and licensors, and its and their respective officers, agents, directors, representatives, contractors, and employees, from and against any and all claims, suits, demands, actions, losses, liabilities, damages, judgements, penalties, fines, expenses and other costs (including reasonable attorneys' fees) arising from your breach or alleged breach of this Agreement. BSH will also have the right to provide our own defense additionally or alternatively at our own expense.

Limitation of Liability.

In no event will BSH be liable to you for any special, incidental, exemplary, indirect, punitive, or consequential damages (including loss of profits) with respect to the subject matter of this Agreement, whether such liability arises from any claim based upon contract, warranty, tort (including negligence), strict liability or otherwise, and whether or not you have been advised of the possibility of such loss or damage. BSH's aggregate liability under this Agreement shall not exceed the net revenues actually received by BSH in connection with any transaction in which You purchased or sold your Cyberpunk Ape Executive NFT. The foregoing limitation of liability shall only apply to the extent permitted by applicable law. In no event will BSH be liable for any inability for you to access the Artwork for any reason, including as a result of any downtime, failure, obsolescence, removal, termination or other disruption relating to (a) the servers upon which the Artwork is stored; (b) any Third Party Vendor; or (c) any other NFT platform.

Virtual Items.

The Service may permit the purchase of virtual currency, such as credits, points, and gems ("Virtual Money"), and use of that Virtual Money to purchase virtual object or services ("Virtual Goods"). Virtual Money and Virtual Goods are collectively referred to as "Virtual Items." You are granted you only a limited, nontransferable, non-sublicensable, revocable license to use such Virtual Money to access and purchase Virtual Goods in conjunction with your personal use of the Service. Any balance of Virtual Items does not reflect any stored value. You agree that Virtual Items have no monetary value and do not constitute actual currency or property of any type. Only obtain Virtual Items through official channels. You agree that you will only obtain Virtual Items from us and through means provided by us, and not from any third-party platform, exchange, broker, or other mechanism, unless expressly authorized. During the term of your license to your Virtual Money, you have the option to redeem your Virtual

Money for selected Virtual Goods. Pricing and availability of Virtual Items are subject to change without notice. We reserve the right at any time to change and update our pricing and inventory of Virtual Items. All Virtual Items are provided "as is," without any warranty. You agree that all sales by us to you of Virtual Items are final and that we will not permit exchanges or refunds for any unused Items once the transaction has been made. We may cancel, suspend, or terminate your account and your access to your Virtual Items, in our sole discretion and without prior notice, in situations including, but not limited to, if (a) you fail to comply with this Agreement; (b) we suspect fraud or misuse by you of Virtual Items; (c) we suspect any other unlawful activity associated with your use of the Site; or (d) we are acting to protect the Service, our systems, any of our users, or our reputation. We have no obligation or responsibility to, and will not reimburse or refund, you for any Virtual Items lost due to such cancellation, suspension, or termination. You acknowledge that BSH is not required to provide a refund for any reason, and that you will not receive money or other compensation for unused Virtual Items if your access is terminated, whether such termination was voluntary or involuntary. In the case BSH terminates your access, BSH will not be required to provide you with prior notice or explanation in respect of such action. Notwithstanding the termination of your access in any case, you agree you will remain fully liable for any outstanding liability owed to BSH. BSH may, where it believes such action is necessary, without notice block IP addresses of any users who BSH believes have breached that Agreement. When you purchase a license to use our Virtual Items, you agree to pay taxes that we or our distribution platform assesses on your purchase. Depending on the jurisdiction, the price may or may not include any applicable VAT.

Purchases by End Users Outside the U.S.

Virtual Items may only be purchased and held by legal residents of countries where access to and use of the Service are permitted. If you live in the European Union, you have certain rights to withdraw from online purchases. However, please note that once you transfer of Virtual Money from us, any right of withdrawal you may have had ends. If you live in the European Union, you will need to ensure your compliance with VAT when required to do so by law. We reserve the right to control, regulate, change, or remove any Virtual Money or Virtual Goods without any liability to you.

Waiver of Warranties.

BSH WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY INACCURACIES IN THE DATA OR THE INFORMATION ON ITS WEBSITES, FORUM, SOCIAL MEDIA CHANNELS, NOR WILL IT HAVE ANY LIABILITY FOR ANY ACT OR FAILURE TO ACT EXCEPT TO THE EXTENT RESULTING FROM BSH'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, GOOD AND WORKMANLIKE PRODUCT OR SERVICE OR OTHERWISE, ARE DISCLAIMED BY BSH AND WAIVED BY PARTICIPANT.

Assignment.

BSH will have the unrestricted right to assign this Agreement and to assign, subcontract, license and sublicense any or all of its rights and obligations hereunder. This Agreement is personal to you and shall

not be assigned or transferred by you. Any other attempt by you to assign, sub-license, or transfer your rights under this Agreement shall be null and void.

Remedies.

Your rights and remedies in the event of any breach of this Agreement are strictly limited to the right, if any, to recover damages, and you acknowledge that your remedy of money damages is adequate. You will not be entitled by reason of any such breach, and you will not seek, any equitable relief, whether injunctive or otherwise.

Arbitration / Dispute Resolution For U.S. Residents.

Governing Law. These Terms shall be governed by and construed in accordance with the laws of the State of California without application of conflict of laws rules, except that these Arbitration provisions shall be governed by the Federal Arbitration Act.

Resolution of Any Dispute. In the event a dispute arises between you and BSH (“Dispute”), we want to provide you with an efficient, neutral and cost-effective means of resolving the dispute. If a Dispute cannot be resolved by the personnel directly involved, the parties shall first attempt in good faith to resolve the Dispute promptly by negotiation between duly appointed executive officers or other representatives of such parties, with full authority to negotiate and settle the Dispute. If a Dispute has not been resolved by negotiations within 90 days as provided hereinabove, such Dispute shall be submitted to JAMS, or its successor (collectively, “JAMS”), for mediation as provided hereinbelow. Any party involved in the Dispute may commence mediation by providing to JAMS and each other party involved in the Dispute a written request for mediation, setting forth the subject of the Dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS’ panel of neutrals and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties; provided, however, that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. None of the parties may commence arbitration or a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 30 business days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of arbitration or a civil action, if the parties so desire.

Limitation of Legal Remedies. If there is a Dispute that remains unresolved after mediation, INSTEAD OF SUING IN COURT, YOU AND BSH EACH AGREE TO THE FULLEST EXTENT PERMITTED BY LAW TO ARBITRATE DISPUTES THROUGH BINDING ARBITRATION PURSUANT TO THE JAMS ARBITRATION RULES AND PROCEDURES, ON AN INDIVIDUAL BASIS, WITHOUT CLASS RELIEF, EXCEPT FOR DISPUTES PERTAINING TO BSH’S INTELLECTUAL PROPERTY RIGHTS AND STATUTORY CLAIMS THAT PURSUANT TO LAW ARE NOT ARBITRABLE. This agreement to arbitrate is intended to be broadly interpreted. It includes claims based in contract, tort, statute, fraud, misrepresentation or any other legal theory (“Claim(s)”). The arbitrator's decision and award are final and binding, with some exceptions under the

Federal Arbitration Act, 9 U.S.C. 1, et seq., and judgment on the award may be entered in any court with jurisdiction.

Jury Trial Waiver. YOU AND BSH EACH VOLUNTARILY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESOLVING ANY DISPUTE BETWEEN US ARISING OUT OF THESE TERMS OR THE SITES OR SERVICES.

Class Action Waiver. YOU AND BSH EACH AGREE THAT CLAIMS AGAINST THE OTHER MAY ONLY BE BROUGHT IN AN INDIVIDUAL CAPACITY AND NOT IN A CLASS ACTION OR REPRESENTATIVE PROCEEDING. All arbitrations under these Terms must be conducted on an individual (and not a class-wide) basis, and an arbitrator will have no authority to award class-wide relief. You acknowledge and agree that these Terms specifically prohibit you from commencing any legal proceedings as a representative of others, participating in a class, representative, or collective action as a class representative, class member or an opt-in party, acting as a private attorney general, or joining or consolidating Claims with claims or proceedings brought by any other person ("Class Action Waiver").

Arbitration Procedures. A party who intends to seek arbitration must first send to the other a written Notice of Dispute describing the nature and basis of the Claim and setting forth the specific relief sought ("Notice"). All Notices to BSH must be sent to BSH's registered agent. Our notice to you will be sent to you based on the most recent contact information that you provide us but if no such information exists or if such information is not current, then we have no obligation under this Section. Upon receipt of such Notice, the receiving party will have a 60-day period in which it may satisfy the Claim against it by fully curing the Claim, providing all the relief requested in the Notice, or entering into a settlement to resolve the Claim to the mutual satisfaction of the parties. After the expiration of such 60-day cure period, you or BSH may commence an arbitration proceeding. Unless otherwise agreed to by you and BSH in writing, the arbitration will be governed and conducted by JAMS before a single arbitrator with substantial experience in the internet industry and shall follow substantive law in adjudicating the Dispute. This Section shall be construed as a written agreement to arbitrate pursuant to the Federal Arbitration Act ("FAA"). You and BSH agree that this Section satisfies the writing requirement of the FAA. The arbitration of any claim will be conducted in the State of California in Alameda County, and for any non-frivolous claim that does not exceed \$5,000.00, you shall have the choice as to whether the hearing is conducted in person or by telephone. Each party will pay the fees and costs of its own counsel, experts and witnesses. The JAMS rules are available on its website at www.jamsadr.com. To the extent that this dispute resolution Section conflicts with JAMS minimum standards for procedural fairness, the JAMS rules and/or minimum standards for arbitration procedures in that regard shall control. Neither party shall sue the other party other than as provided herein or for enforcement of this clause or for the arbitrator's award; and any such suit may be brought only in Federal District Court or, if any such court lacks jurisdiction, in any state court that has jurisdiction. The arbitrator, and not any federal, state, or local court, shall have exclusive authority to resolve any Dispute relating to the interpretation, applicability, unconscionability, arbitrability, or enforceability of these Terms including any claim that all or any part of these Terms are void or voidable. However, the preceding sentence shall not apply to the clause entitled "Class Action Waiver".

Exception to Arbitration. Only disputes or actions pertaining to BSH's intellectual property rights, or statutory claims that pursuant to law are not arbitrable, are exempt from arbitration.

Survival. This arbitration provision shall survive termination of these Terms.

Severability. If any provision of this Section is declared or found by a court of competent jurisdiction or arbitrator to be unlawful, unenforceable or void, such provision will be ineffective only to the extent that it is found unlawful, unenforceable or void, and the remainder of the provision and all other provisions will remain fully enforceable, except that if the Class Action Waiver for any Claim cannot be enforced, then the provision to arbitrate will not apply.

Dispute Resolution Non-U.S. Residents

In the event of any dispute you and we agree to send a written notice to the other providing a reasonable description of the dispute, along with a proposed resolution of it. Our notice to you will be sent to you based on the most recent contact information that you provide us but if no such information exists or if such information is not current, then we have no obligation under this section. Your notice to us must be sent to our registered agent by mail. For a period of 60 days from the date of receipt of notice from the other party, BSH and you will engage in a dialogue in order to attempt to resolve the dispute, though nothing will require either you or BSH to resolve the dispute on terms either you or BSH, in each of our sole discretion, are unsatisfactory. Nothing in this section will prevent a party from pursuing their claims in court or another complaint process.

If your country of residence or establishment is outside the U.S., these Terms will be governed by and interpreted in accordance with U.S. law in the State of California in Alameda County. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded. This choice of law does not impact your rights as a consumer according to the consumer protection laws of your country of residence. If you are a consumer, you may be able to bring judicial proceedings against us arising from or in connection with these Terms in a court within a jurisdiction according to the laws of your country of residence or the U.S. courts. If you are acting as a business, you agree to submit to the exclusive jurisdiction of the U.S. courts.

If you have any comments, queries or complaints about these Terms or our Services, please contact our registered agent.

No Rights Of Third Parties.

You agree that there are no third-party beneficiaries to these Terms.

Miscellaneous Terms.

This Agreement constitutes the complete understanding and agreement of you and BSH with respect to the Articles and supersedes any and all prior or contemporaneous written or oral agreements between you and BSH. The language of any clause or term of this Agreement will not be construed for or against the drafter. No right or term of this Agreement will be deemed waived, and no breach of this Agreement excused, unless the waiver or consent is in writing and signed by you and BSH. Any modification or amendment to this Agreement must be made in writing and signed by you and BSH.