

Fragment Terms of Service

Last Updated: March 30, 2023

ARBITRATION NOTICE: YOU AGREE THAT, AS SET FORTH IN SECTION 16 BELOW, DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION, AND YOU WAIVE ANY RIGHT TO PARTICIPATE IN A CLASS-ACTION LAWSUIT OR CLASS-WIDE ARBITRATION OR A TRIAL BY JURY. BELOW, WE EXPLAIN SOME EXCEPTIONS AND HOW YOU CAN OPT OUT OF ARBITRATION.

EXPORT CONTROLS NOTICE: BY PARTICIPATING IN THIS SERVICE, YOU REPRESENT THAT YOU ARE NOT IN A SANCTIONED COUNTRY OR A "SANCTIONED PERSON," AS DEFINED BELOW, UNDER APPLICABLE LAW.

INTRODUCTION

Fragment Studios, Inc. ("Fragment," "we," "us") operates an online service that, among other things, allows users to mint, buy, and access interactive experiences and other content through non-fungible tokens ("NFTs"), each frequently associated with a piece of digital artwork ("Artwork"), through our website, accessible at fragment.xyz ("Website"), together with other services, smart contracts, software, tools, features, and functionality made available by Fragment (collectively, the "Services").

By accessing or using our Services, you are entering into a binding agreement with Fragment that includes: (i) these terms and conditions ("Terms"); (ii) our Privacy Policy, available at <https://megaforce.appliedprimate.com/privacypolicy.pdf> ("Privacy Policy"); and (iii) any other terms, conditions, or policies linked to in our Terms or Privacy Policy. Therefore, please carefully review these documents. If you do not agree with the terms of these documents, you may not use our Services. If there is a conflict between these Terms and any other terms or conditions covering a specific area of the Services, the latter terms and conditions shall control unless they expressly state otherwise.

We may modify these Terms. We reserve the right to clarify or amend these Terms by publishing an updated version of them to the Website. You acknowledge and agree that, in the event we publish a clarification or amendment of these Terms, your continued use of the Services will be contingent upon your acceptance of the updated Terms.

We may modify or discontinue the Services at any time. We reserve the right, at our sole discretion, to change the URL of the Website or modify or discontinue all or part of the Services without notice to you.

PARTICIPATION

Our Services are for adults only. By accessing or using the Services, you represent and warrant that you are 18 years old or older. If you are under the age of 18, please talk to your parent or legal guardian and ask them for help; only they are allowed to agree to these Terms for you. If you are a parent or legal guardian allowing a minor to use the Services, then you agree these Terms apply to you and that you are responsible for their and your use of the Services. You also are responsible for all activity by the minor on the Services, including any transactions.

If you wish to acquire NFTs using our Services, you must own or establish a compatible digital wallet that allows you to purchase, store, and engage in transactions using cryptocurrency (including ETH) and NFTs ("Wallet"), and you must connect and unlock your Wallet through the Services. Once you submit an order to mint or purchase an NFT, your order is passed on to the applicable digital wallet extension, which completes the transaction on your behalf. Each NFT will be transferred to the Wallet of the acquirer of the NFT, and the transaction will be completed in accordance with these Terms. You are solely responsible for the security of your Wallet, including, without limitation, safekeeping the seed phrase, private keys, and any password associated with your Wallet.

You are responsible for paying any necessary transaction fees and applicable taxes, duties, and/or assessments, if any, that may be payable as the result of your purchase, ownership, sale,

transfer, use, and/or exploitation of any NFT or Artwork. You must have enough funds in your Wallet to cover the total cost of your intended acquisition, including “gas” and any other applicable fees. All pricing and payment terms for our Services are as indicated at point of sale, otherwise on the Services, or in the Third-Party Terms (defined below), and any payment obligations you incur are binding at the time of purchase. You may not substitute any other currency, whether cryptocurrency or fiat currency, for the currency in which you have contracted to pay at the time of purchase. For clarity, no fluctuation in the value of any currency, whether cryptocurrency or otherwise, or applicable gas or other fees shall impact or excuse your obligations with respect to any purchase.

Smart contracts determine the owner of each NFT. Once you lawfully and successfully acquire an NFT offered by Fragment, you will own that NFT. At all relevant times, Fragment will recognize the NFT owner as the one lawfully able to authorize transactions through the digital wallet associated with the applicable NFT as identified by the NFT’s verified smart contract.

NFT ownership may grant you certain rights, benefits, privileges, opportunities, or other utility (collectively, “Utility”) but, except as expressly provided herein: (i) these Terms do not confer any Utility in connection with NFT ownership; (ii) all Utility offered by Fragment, if any, shall be in Fragment’s sole and absolute discretion; and (iii) Fragment may stop providing any Utility at any time and without notice (though, in such event, Fragment will make good faith efforts to provide advance notice). Any Utility offered by Fragment in connection with a particular NFT or collection of NFTs must be expressly provided for in a separate agreement (“Additional Fragment Terms”), and in the event of a conflict between Additional Fragment Terms and these Terms, the Additional Fragment Terms shall prevail.

All transactions and sales are final, and all costs are non-refundable. Once an NFT has been successfully sold and/or transferred, it may not be returned and the payment and any associated transaction (i.e., gas) costs will not be refunded. Unless expressly stated otherwise, Fragment has no control over the transfer, storage, ownership, or maintenance of any NFT.

USER REPRESENTATIONS AND WARRANTIES

By accessing or using our Services, you represent, warrant, and agree that:

You are sophisticated, experienced, and knowledgeable in the minting, bidding on, buying, or selling of NFTs and any Utility, as applicable. Additionally, you have conducted an independent investigation of the Services and the matters contemplated by these Terms, have formed your own independent judgment regarding the benefits and risks of and necessary and desirable practices regarding the foregoing, and, in making the determination to mint, bid on, buy, or sell any NFTs and any Utility using the Services, you have relied solely on the results of such investigation and such independent judgment. Without limiting the generality of the foregoing, you understand, acknowledge, and agree that the legal requirements pertaining to blockchain technologies and digital assets generally, including, without limitation, NFTs, are uncertain, and you have conducted an independent investigation of such potentially applicable legal requirements and the resulting risks and uncertainties, including the risk that one or more governmental entities or other persons may assert that any digital assets or cryptographic tokens (including NFTs) may constitute securities under applicable legal requirements. You hereby irrevocably disclaim and disavow reliance upon any statements or representations made by or on behalf of, or information made available by, Fragment, in determining to enter into these Terms, mint, bid on, buy, or sell any NFTs or Utility or use the Services.

Your use of the Services will not violate the rights of any third party or any applicable agreement or law. These Terms do not, and the performance of your obligations under these Terms and your minting, bidding on, buying, selling, or use of any NFTs or Utility, as applicable to your use of the Services, will not: (i) if you are an entity, conflict with or violate any of the charter documents of such entity or any resolution adopted by its equity holders or other persons having governance authority over the entity; (ii) contravene, conflict with, or violate any right of any third party or any applicable legal requirement to which you or any of the assets owned or used by you, is subject; or (iii) result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under any material contract or agreement to which you are a party, permit held by you, or legal requirement applicable to you.

You have not failed to comply with, and have not violated, any applicable legal requirement relating to any blockchain technologies, token trading activities, or minting of NFTs. No investigation or review by any governmental entity is pending or, to your knowledge, has been threatened against or with respect to you, nor does any government order or action prohibit you or any of your representatives from engaging in or continuing any conduct, activity, or practice relating to the Services.

You have all requisite capacity, power, and authority to enter into and be bound by these Terms. If you accept these Terms on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to these Terms and, in such event, “you” and “your” will refer and apply to that company or other legal entity.

NOT AN INVESTMENT

You acknowledge and agree that you will not purchase, and are not purchasing, any NFTs offered or made available by Fragment for any investment purposes or with an expectation of profit. Rather, your purchase of such NFT(s) is solely for entertainment value—for example, the enjoyment of owning a digital collectible and obtaining access to the Utility, if any, that may be offered to NFT owners.

You acknowledge and understand that the value of digital assets and artwork is subjective. By purchasing or otherwise using any NFT or Artwork, you agree to assume all risks associated therewith, including the risk that they lose any or all of their value. Neither Fragment nor any of its related entities nor anyone working on their behalf, including their respective officers, directors, employees, representatives, agents, affiliates, licensees, successors and assigns (collectively, the “Fragment Parties”) makes any representation regarding the likelihood of appreciation of any NFT or Artwork associated therewith, and has no control whatsoever on the value of any NFT, including on any secondary markets, which are completely outside of the control of any of the Fragment Parties.

FRAGMENT CONTENT

Fragment reserves all rights not expressly granted herein. Unless otherwise indicated in writing by us, the Services and all content and other materials contained therein, including, without limitation, the Fragment logo and all designs, text, graphics, pictures, information, data, software, sound files, other files and the selection and arrangement thereof (collectively, “Fragment Content”) are the proprietary property of Fragment or our respective affiliates or licensors, as applicable. Notwithstanding anything to the contrary in these Terms, the Services and Fragment Content may include software components provided by Fragment or its affiliates or a third party that are subject to separate terms, in which case those terms shall govern such software components. All other trademarks, registered trademarks, product names, and other names or logos mentioned on the Services are the property of their respective owners and may not be copied, imitated, or used, in whole or in part, without the permission of the applicable trademark holder. Except as allowed under these Terms or Additional Fragment Terms, you agree not to use any Fragment Content or any of Fragment’s intellectual property rights (such as trademarks, copyright, and design rights) whether registered or unregistered. All rights therein and goodwill associated therewith shall inure to the benefit of Fragment. Reference to any products, services, processes, or other information by name, trademark, manufacturer, supplier, or otherwise does not constitute or imply endorsement, sponsorship, or recommendation by Fragment.

PROHIBITIONS AND RESTRICTIONS

You agree that you will NOT do any of the following:

- Use, display, mirror, or frame the Services, or any individual element within the Services, or the layout and design of any page or form contained on a page, without Fragment’s express written consent;
- Access, tamper with, or use non-public areas of the Services, Fragment’s computer systems or network, or the smart contracts and technical delivery systems of Fragment and its providers;
- Attempt to probe, scan, or test the vulnerability of any Fragment system or network or breach any security or authentication measures;

- Avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by Fragment or any of Fragment’s providers or any other third party (including another user) to protect the Services;
- Use any meta tags or other hidden text or metadata utilizing a Fragment or Fragment Partner trademark, logo, URL, or product name without Fragment or Fragment Partner’s express written consent, as applicable;
- Use the Services for any commercial purpose or the benefit of any third party in any manner not otherwise permitted by these Terms;
- Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Services to send altered, deceptive, or false source-identifying information;
- Attempt to decipher, decompile, disassemble, or reverse engineer any of the software used to provide the Services;
- Interfere with, or attempt to interfere with, the access of any user, host, or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Services;
- Collect, scrape, harvest, or store any data or personally identifiable information from the Services from other users of the Services;
- Impersonate or misrepresent your affiliation with any person or entity;
- Use the Services for any illegal or unauthorized purpose, or engage in, encourage, or promote any activity that violates any applicable law or these Terms;
- Provide false or misleading information to Fragment or any Fragment Partner;
- Use or attempt to use or access a digital wallet you do not own without authorization from the owner;
- Take or attempt to take any action that in any way that could prevent, disrupt, negatively affect, or inhibit others from fully enjoying the Services, or that could alter, damage, disable, overburden, or impair the functioning of the Services in any manner;
- Engage in or knowingly facilitate any “front-running,” “wash trading,” “pump and dump trading,” “ramping,” “cornering,” or fraudulent, deceptive, or manipulative trading activities, including, for the purpose of creating or inducing a false, misleading, or artificial appearance of activity or value in any NFT: (a) facilitate the trading of such NFT at successively lower or higher prices or executing or causing the execution of any transaction involving the NFT which causes no material change in the beneficial ownership thereof; (b) participating in, facilitating, assisting, or knowingly transacting with any person or persons for the purpose of artificially, unfairly, or deceptively influencing the market price of an NFT; or (c) otherwise artificially, unduly, or improperly influencing the market price for any NFT available through the Services in any manner, including without limitation, on or through social media;
- Encourage or enable any other individual or entity to do any of the foregoing.

THIRD-PARTY SERVICES, TERMS, AGREEMENTS, AND UTILITY

Fragment is not responsible for your use of third-party services. The Services may provide access (paid or unpaid) to content, software, products, platforms, and services operated by companies or entities other than Fragment (“Third-Party Services”). For example, transactions initiated through our Website may be executed using third-party digital wallet extensions. If you choose to access, transact with, or otherwise interact with any Third-Party Services through the Services, you acknowledge and agree that you do so at your own risk, and you understand that by using the Services, you are directing the applicable company or entity to make Third-Party Services available to you. You are solely responsible for your dealings with third parties. When you use the Services to access Third-Party

Services, these Terms and any terms provided by the Third-Party Services ("Third-Party Terms") will govern your use thereof. Fragment expressly disclaims all liability related to, or arising from, or in connection therewith.

Fragment is not responsible for, nor a party to, any agreement or interaction between you and any third party. This means that: (i) to the extent any third party offers any Utility in connection with an NFT or Artwork, or subjects the same to Third-Party Terms, you understand and agree that Fragment shall not be a party to or have any responsibility or liability whatsoever for, arising out of, relating to, or in connection with such Utility or Third-Party Terms; and (ii) if you decide to purchase or sell an NFT acquired through our Services other than as the initial recipient through the Website, then Fragment is not a party to any agreement between the applicable buyer, seller, or facilitator of the secondary sale, nor will Fragment be liable for any damages you may suffer as a result of your transactions or any other interaction with any third parties.

COMMUNITY DISPUTES

Fragment has no obligation to support the resolution of, or resolve any, dispute that may arise between or involve any owners of NFTs offered or made available by Fragment.

WARRANTY DISCLAIMER

FRAGMENT PROVIDES THE SERVICES "AS IS." EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, FRAGMENT MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND IN CONNECTION WITH THE SERVICES, NFTS, ARTWORK, ANY THIRD-PARTY SERVICES, OR ANY INFORMATION OR MATERIALS PROVIDED OR MADE AVAILABLE BY FRAGMENT. THE FRAGMENT PARTIES DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF ANY OF THE SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, WILL BE SECURE, TIMELY, UNINTERRUPTED, OR ERROR-FREE, OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA, (B) ANY STORED DATA WILL BE ACCURATE, SECURE, OR RELIABLE, OR (C) ERRORS OR DEFECTS WILL BE CORRECTED. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE FRAGMENT PARTIES DISCLAIM ALL REPRESENTATIONS, WARRANTIES, PROMISES, OR GUARANTEES OF ANY KIND WHATSOEVER AS TO THE SERVICES AND THIRD-PARTY SERVICES, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE.

EXPORT CONTROLS AND SANCTIONS

"You acknowledge and understand that the Services may be subject to U.S. export control and sanctions laws and regulations, including, without limitation, the Export Administration Regulations and the regulations, rules, and executive orders administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") (collectively, the "Export Controls and Sanctions Laws"). You represent that you are not a Sanctioned Person and agree not to take any action that will cause anyone, including, without limitation, Fragment, to be in violation of any Export Controls and Sanctions Laws. For purposes of these Terms, "Sanctioned Person" means any government, country, corporation, or other entity, group, or individual with whom or which Export Controls and Sanctions Laws prohibit or restrict a U.S. person from engaging in transactions, and includes, without limitation, any individual, corporation, or other entity that appears on OFAC's Specially Designated Nationals and Blocked Persons List or other lists maintained by OFAC or the U.S. Department of Commerce, as each such list may be amended from time to time."

INVESTIGATIONS

If Fragment becomes aware of any possible violations by you of these Terms, Fragment reserves the right to investigate such violations. If, as a result of the investigation, Fragment believes that criminal activity may have occurred, Fragment reserves the right to refer the matter to, and to cooperate with, any and all applicable legal authorities. Fragment is entitled, except to the extent prohibited by applicable law, to disclose any information or materials on or in the Services in Fragment's possession in connection with your use of the Services, to (i) comply with applicable laws, legal process, or governmental request; (ii) enforce these Terms, or (iii) protect the rights, property, or personal safety of

Fragment, its affiliates, its users, the public, and all law enforcement or other government officials, as Fragment in its sole discretion believes to be necessary or appropriate.

Fragment may require you to provide additional information and documents at the request of any competent authority or in order to help Fragment comply with applicable law, regulation, or policy, including laws related to anti-laundering (legalization) of incomes obtained by criminal means, or for counteracting financing of terrorism. Fragment may also require you to provide additional information and documents in cases where it has reasons to believe that: (i) your Wallet or other access to the Services is being used for money laundering or for any other illegal activity; (ii) you have concealed or reported false identification information and other details; or (iii) transactions effected via your Wallet were effected in breach of these Terms or other applicable terms, laws, rules, covenants, orders, or regulations. In such cases, Fragment, in its sole discretion, may pause or cancel your transactions through our Services until such requested additional information and documents have been reviewed by Fragment and accepted as satisfying the requirements of applicable law, regulation, or policy. If you do not provide complete and accurate information and documents in response to such a request, Fragment may refuse to provide any Content, product, service and/or further access to the Services to you.

ASSUMPTION OF RISK; LIABILITY WAIVER

You understand, acknowledge, and knowingly and voluntarily assume all blockchain-related risks, including that:

- Transacting on a blockchain, including, without limitation, signing or effectuating transactions using a Wallet, contains inherent risk. Such risks include but are not limited to: (a) risk of sudden asset price changes; (b) risk of smart contract failure or exploit; (c) risk of hardware, software, or connectivity failure; (d) risk of malicious software; (e) risks of unauthorized access to your digital wallet; (f) risk that you will no longer successfully retain ownership of or access to the NFT(s); (g) risk that any data or any Artwork becomes unavailable or decoupled from the NFT, including, without limitation, because of an outage, data loss or pursuant to a valid Digital Millennium Copyright Act takedown procedure; (h) risk from regulatory inquiries, regulatory actions, legislation, or court rulings; and/or (i) risks, bugs, malfunctions, cyberattacks, or changes to a blockchain network (e.g., forks) or related technologies that disrupt or result in a total loss of NFTs, their market value, or digital funds.
- Your participation in the Services is at your own risk. You should not participate in the Services, including to engage in blockchain-based transactions, unless it is suitable given your circumstances and financial resources.
- Fragment shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with any of these risks.
- The sale of NFTs as part of the Services is facilitated and run by numerous third parties including, without limitation, your digital wallet provider and one or more public peer-to-peer networks including, without limitation, the Ethereum network or other blockchain network and the Interplanetary File System (“IPFS”) or other distributed system for storing and accessing files or other data. None of these are under the control or influence of Fragment. Fragment shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with any third party, including, without limitation, lost, late, incomplete, damaged, delayed, inaccurate, stolen, misdirected, undelivered, or garbled NFTs, or for errors or difficulties of any kind related thereto, whether human, mechanical, electronic, computer, network, typographical, or otherwise.
- Transactions are publicly visible on the Ethereum or other applicable blockchain when made.
- Fragment is not a fiduciary and owes no duties to you, including the duty to ensure fair pricing of any NFT(s).

INDEMNIFICATION

You agree to defend, indemnify, and hold the Fragment Parties harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, expenses, and other similar results or occurrences (including attorneys' fees) that directly or indirectly arise from or are related to or in connection with any claim, suit, action, dispute, demand, proceeding, occurrence, process, or other similar activity, that is initiated, made, brought, or financed by a third party against any of the Fragment Parties, or on account of the investigation, defense, or settlement thereof, arising out of, related to, or in connection with: (a) your use or misuse of the Services, (b) your violation of these Terms or applicable law; (c) your violation of the rights of any third party, including another user of any digital wallet; (d) any breach or non-performance of any representation, warranty, covenant, or agreement made by you; (e) your buying, selling, or trading of any NFTs; and (f) your access to or use of any NFT marketplace or third-party or decentralized services or products. Counsel to be used in the defense of such claim must be approved by Fragment in writing prior to retention of such counsel and, upon our request, you will allow us to participate in the defense of any such claims. You will not enter into any settlement or compromise of any claim or litigation that includes an admission of liability without our prior written consent.

LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL ANY FRAGMENT PARTY BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE LOSSES OR DAMAGES, OR DAMAGES FOR SYSTEM FAILURE OR MALFUNCTION OR LOSS OF PROFITS, DATA, USE, BUSINESS, OR GOOD-WILL OR OTHER INTANGIBLE LOSSES, ARISING OUT OF OR IN CONNECTION WITH THESE TOS OR THE SERVICES. IN NO EVENT WILL THE FRAGMENT PARTIES' CUMULATIVE LIABILITY TO YOU OR ANY OTHER PERSON OR ENTITY, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, EXCEED ONE DOLLAR (\$1.00).

UNDER NO CIRCUMSTANCES SHALL ANY FRAGMENT PARTY BE REQUIRED TO DELIVER TO YOU ANY VIRTUAL CURRENCY OR CRYPTOCURRENCY AS DAMAGES, MAKE SPECIFIC PERFORMANCE, OR ANY OTHER REMEDY. IF YOU WOULD BASE YOUR CALCULATIONS OF DAMAGES IN ANY WAY ON THE VALUE OF VIRTUAL CURRENCY OR CRYPTOCURRENCY, YOU AND WE AGREE THAT THE CALCULATION SHALL BE BASED ON THE LOWEST VALUE OF THE VIRTUAL CURRENCY OR CRYPTOCURRENCY DURING THE PERIOD BETWEEN THE INITIAL INCIDENT RESULTING IN THE ACCRUAL OF THE CLAIM AND THE AWARD OF DAMAGES.

THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THESE TERMS HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER THE ASSERTED LIABILITY OR DAMAGES ARE BASED ON CONTRACT, INDEMNIFICATION, TORT, STRICT LIABILITY, STATUTE, OR ANY OTHER LEGAL OR EQUITABLE THEORY AND WHETHER OR NOT THE FRAGMENT PARTIES HAVE BEEN INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGE.

YOU EXPRESSLY AGREE THAT THE RELEASE, WAIVER, AND LIMITATION OF LIABILITY CONTAINED HEREIN IS INTENDED TO BE AS BROAD AND AS INCLUSIVE AS PERMITTED BY APPLICABLE LAW AND THAT IF ANY PORTION HEREOF IS HELD INVALID, IT IS AGREED THAT THE BALANCE SHALL, NOTWITHSTANDING, CONTINUE IN FULL LEGAL FORCE AND EFFECT.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN WARRANTIES AND LIABILITIES PROVIDED IN THIS SECTION, SO SOME OF THE ABOVE LIMITATIONS AND DISCLAIMERS MAY NOT APPLY TO YOU. TO THE EXTENT APPLICABLE LAW DOES NOT PERMIT FRAGMENT PARTIES TO DISCLAIM CERTAIN WARRANTIES OR LIMIT CERTAIN LIABILITIES, THE EXTENT OF FRAGMENT PARTIES' LIABILITY AND THE SCOPE OF ANY SUCH WARRANTIES WILL BE AS PERMITTED UNDER APPLICABLE LAW.

LIMITATION OF ACTIONS AND REMEDIES

You may only initiate a cause of action against Fragment within one year of the occurrence giving rise to such claim. Regardless of any statute or law to the contrary, any dispute, claim, controversy, or cause of action arising out of or relating, either directly or indirectly, to any Dispute (defined below) must be filed in the applicable tribunal within one (1) year after such Dispute arose, or will be forever barred.

You may not seek injunctive relief against Fragment. You agree that your exclusive remedy for any alleged breach of these Terms by Fragment is the right to bring an action for monetary damages, and that you shall not have the right to terminate this agreement or to restrain or enjoin Fragment or any sublicensees from exercising any rights granted to Fragment under these Terms or otherwise.

RESOLUTION OF DISPUTES; AGREEMENT TO ARBITRATE

PLEASE READ THIS SECTION CAREFULLY – IT SIGNIFICANTLY AFFECTS YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT AND TO HAVE A JURY HEAR YOUR CLAIMS. IT CONTAINS PROCEDURES FOR MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.

We will attempt to resolve any and all disputes in good faith. Prior to commencing any legal proceeding of any kind against the other party, including an arbitration as set forth below, you and we agree that we will attempt to resolve any dispute, claim, controversy, or cause of action between us arising out of or relating to these Terms, the Services, or any NFTs made available through the Services (each, a “Dispute”) by engaging in good faith negotiations. Such good faith negotiations require, at a minimum, that the aggrieved party provide a written notice to the other party specifying the nature and details of the Dispute. The party receiving such notice shall have (30) days to respond to the notice. Within sixty (60) days after the aggrieved party sent the initial notice, the parties shall meet and confer in good faith by videoconference or by telephone to try to resolve the Dispute. If the parties are unable to resolve the Dispute within ninety (90) days after the aggrieved party sent the initial notice, the parties may agree to mediate their Dispute, or either party may submit the Dispute to arbitration as set forth below. Notwithstanding anything to the contrary, the foregoing shall not apply to: (i) any Dispute seeking to enforce or protect, or concerning the validity of, any party’s intellectual property rights; (ii) any Dispute related to, or arising from, allegations of theft, piracy, invasion of privacy, or unauthorized use; or (iii) any claim for equitable relief (such as an injunction).

You and we expressly waive a trial by jury. Except as provided below, you and we agree that any Dispute that cannot be resolved through the procedures set forth herein will be resolved through binding arbitration, as set forth herein, on an individual basis. Class actions and class arbitrations are not allowed.

All Disputes between the parties arising hereunder shall be resolved by arbitration conducted by JAMS in New York, New York before a single retired judge or professional arbitrator with relevant subject-matter experience in accordance with the then-current JAMS Streamlined Arbitration Rules and Procedures. The arbitration shall allow for the discovery or exchange of non-privileged information relevant to the Dispute. Any arbitral award shall consist of a written statement stating the disposition of each claim or Dispute and provide a concise written statement of the essential findings and conclusions on which the award is based. Judgment upon any arbitral award may be entered in any court of competent jurisdiction. The arbitration hearing shall be within ninety (90) days, which time period can be modified by the tribunal in its discretion or at the request of any party. The tribunal is under no obligation to modify this time period. Notwithstanding anything to the contrary, (i) we agree, upon your request, to resolve any Dispute in accordance with these Terms through an in-person arbitration hearing in your hometown area rather than New York, New York, provided that we may appear virtually at any such hearing; and (ii) if you are outside of the United States, the arbitration will be conducted by the International Centre for Dispute Resolution in accordance with its International Expedited Procedures.

These Terms are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of New York. In the

event a Dispute is for any reason not subject to arbitration, any legal suit, action, or proceeding arising out of or related, either directly or indirectly, to these Terms or the Services will be instituted exclusively in the federal courts of the United States or the courts of the State of New York in each case located in the city and County of New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

You may bring a claim only on behalf of yourself and cannot seek relief that would affect other users of our Services. If there is a final judicial ruling that any particular Dispute (or a request for particular relief) cannot be arbitrated in accordance with these Terms, then only that particular Dispute or request for relief may be brought in court. All other Disputes (or requests for relief) remain subject to this provision. Questions of arbitrability—i.e., whether a particular claim is subject to arbitration—shall be treated as any other Dispute as set forth herein.

Instead of commencing an arbitration, you or we may also bring claims in your local “small claims” court if the rules applicable to that court allow it. Otherwise, the claims must be resolved by binding, individual arbitration as set forth herein.

In all cases, there shall be one (1) arbitrator, who will be agreed to by the parties within thirty (30) days of receipt by respondent of a copy of the demand for arbitration. The arbitrator will have experience adjudicating matters involving Internet technology, software applications, financial transactions and, ideally, blockchain technology. If no single arbitrator can be agreed upon by the parties, the arbitrator shall be selected in accordance with the rules of JAMS. The arbitrator’s decision in any such arbitration shall be final and binding upon the parties, and the arbitrator shall be empowered to order specific performance and injunctive relief.

The costs and fees of arbitration shall be allocated in accordance with the arbitration provider’s rules, including the [JAMS Arbitration Schedule of Fees and Costs](#) and rules regarding frivolous or improper claims. For the sake of clarity, if you initiate an arbitration against Fragment, you are only required to pay a fee of \$250, which is approximately equivalent to current court filing fees. All other costs shall be borne by Fragment, including any remaining JAMS Case Management Fee and all professional fees for the arbitrator’s services. In the event that Fragment initiates an arbitration against you, Fragment will pay all costs associated with the arbitration. The prevailing party, as determined by the tribunal, shall be entitled to recover its reasonable costs and attorneys’ fees and costs from the non-prevailing party. Except as expressly provided herein, the location of the arbitration shall be New York, New York, but the arbitration may be conducted virtually. Judgment thereon may be entered in any court of competent jurisdiction.

Notwithstanding anything to the contrary, any remedies that would otherwise be available to you under applicable federal, state, or local laws shall remain available under this arbitration clause.

Arbitration proceedings are confidential. Except as may be required by law, the parties shall preserve the confidentiality of all aspects of the arbitration, and shall not disclose to a third party (other than disclosure to the affiliates of a party on a need-to-know basis and such affiliates are informed of the confidential nature of such information and are instructed to keep such information confidential), all information made known and documents produced in the arbitration not otherwise in the public domain, all evidence and materials created for the purpose of the arbitration, and all awards arising from the arbitration, except, and to the extent that disclosure is required by law or regulation, is required to protect or pursue a legal right or is required to enforce or challenge an award in legal proceedings before a court or other competent judicial authority.

You can opt out of arbitration. You may opt out of this arbitration agreement within thirty (30) days of the date you agreed to these Terms. To opt out, you must send an email to us at legal@fragment.xyz with your full name and email address and a clear statement that you want to opt out of this arbitration agreement (such notice, an “[Arbitration Opt-out Notice](#)”). If you do not provide us with an Arbitration Opt-out Notice within the thirty (30) day period, you will be deemed to have knowingly and intentionally waived your right to litigate any Dispute.

MISCELLANEOUS TERMS AND CONDITIONS

These Terms are severable. Should any portion of these Terms be rendered void, invalid, or unenforceable by any court of competent jurisdiction, the remaining provisions shall nevertheless be binding upon the parties.

These Terms survive expiration or termination of this agreement. Any provision of these Terms that by its nature would extend beyond its expiration or termination shall remain in effect in perpetuity or until fulfilled.

This is the entire agreement between the parties. These Terms constitute the sole and entire agreement of the parties with respect to the subject matter of these Terms and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.

Only Fragment may assign this agreement. These Terms will be binding on and inure to the benefit of the parties and (as applicable) their respective successors, heirs, executors, legal representatives, affiliates, and authorized assigns. You may not, directly or indirectly, assign all or part of your rights or obligations under these Terms to any other person or entity without first obtaining the written permission of Fragment. Any purported assignment without Fragment's prior written approval shall be null and void.

CONTACT INFORMATION

You may contact us at any time. If you have any questions, would like to provide feedback, or would like more information about Fragment, please feel free to email us at hi@fragment.xyz.