

Nifty Gateway Terms of Use

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Welcome to Nifty Gateway! Nifty Gateway is a platform that allows you to buy, sell, create, publish and display NFTs. These Terms of Use are entered into by and between you and Nifty Gateway, LLC ("Nifty Gateway," "Company," "we," or "us"). The following terms and conditions, together with any documents they expressly incorporate by reference, govern your access to and use of Nifty Gateway, including any content, functionality, and services offered on or through <https://niftygateway.com> (the "Site").

1) Accepting these Terms

These Terms of Use set out your rights and responsibilities when you use Nifty Gateway to buy, sell, create, publish or display non-fungible tokens ("NFTs" or "NFT"), so please read them carefully. Nifty Gateway is an administrative platform that facilitates transactions between a buyer and a seller but is not a party to any agreement between the buyer and seller of NFTs or between any users. By clicking on the "I Accept" button, completing the account registration process, or using the Services, you accept and agree to be bound and abide by these Terms of Use and all of the terms incorporated herein by reference. By agreeing to these terms, you hereby certify that you are at least 18 years of age. If you do not agree to these Terms of Use, you must not access or use the Site or the Services.

Please note that this Agreement contains an arbitration clause and class action waiver. By agreeing to these Terms of Use, you agree to resolve all disputes through binding individual arbitration, which means that you waive any right to have the dispute decided by a judge or jury, and you waive any right to participate in collective action, whether that be a class action, class arbitration, or representative action.

Nifty Gateway reserves the right to change or modify these Terms of Use at any time and in our sole discretion. You agree and understand that by logging into your account, accessing or using the Site or Services following any change to these Terms of Use, you agree to the revised Terms of Use and all of the terms incorporated therein by reference. We encourage you to review the Terms of Use from time to time to ensure that you understand the terms and conditions that apply when you access or use the Site.

2) Definitions

- "Artwork" means digital art that a Creator or Publisher sells on the Nifty Gateway platform in the form of NFTs.
- "Creator" means a User who makes Artwork that is minted into NFTs and sold on Nifty Gateway.
- "Creator Content" means Artwork that a Creator creates, descriptions of the Creator and the Creator's Artwork, and any other information posted by a Creator that is not Profile Information.
- "Custody Wallet" means one or more virtual wallets maintained either by us or by a third party selected by us (a "Third Party Custodian"), used to hold and access NFTs held as custodial assets. A Custody Wallet may include a virtual wallet or wallets used to hold and access NFTs for multiple Users on an omnibus basis.
- "Drop Terms" means the number of editions, format, and price with which a Publisher or Creator sells Artwork through Nifty Gateway.
- "Marketplace Services" means the purchase, sale, or display of NFTs.
- "Minting Services" means the minting, display and sale of Artwork in the form of NFTs.
- "NFTs or Nifties" means non-fungible tokens (i.e. units of data stored on a blockchain), exclusive of any Artwork or other off-chain file or asset referenced in the code or metadata of the NFTs or otherwise associated with the token.
- "Publisher" means a User who uses the Publisher Services.
- "Publisher Content" means content that a Publisher publishes to the Publisher's public-facing storefront, including information about the NFTs, any applicable Creator(s), and any other information that is not Profile Information or Creator Content.
- "Publisher Services" means the Minting Services, together with the dedicated portal that allows Publishers to access the Minting Services, set the Publisher's Drop Terms, and create a public-facing storefront.
- "Services" means the Marketplace Services, Minting Services, and Publisher Services.
- "User" means anyone who uses Nifty Gateway for the Services.

3) Your Nifty Gateway Account

You need to create an account with Nifty Gateway to use the Services. When you create an account, we will ask you for some information about yourself. We may require you, in our sole discretion, to provide additional information and/or documents. If you do not provide complete and accurate information and/or documents in response to such a request, we may refuse to provide you with the Services.

Your Nifty Gateway account is subject to the following conditions:

- You may only open one account on Nifty Gateway. If we have a reasonable suspicion that you have opened multiple accounts on Nifty Gateway, we reserve the right to take whatever action we deem appropriate, including but not limited to closing and/or freezing your accounts.
- **Access:** you understand and agree that access to your Nifty Gateway account is limited solely to you. You agree that you will not sell, rent, lease, or grant access to your Nifty Gateway account to any person without our prior written permission.
- **Security:** you understand and agree that you are solely responsible for maintaining the security of your account and control over any user names, passwords, or any other codes that you use to access the Services. Any unauthorized access to your account by third parties could result in the loss or theft of NFTs and/or funds held in your account and any associated accounts, including your linked bank account(s) and credit card(s). You understand and agree that you will not hold us responsible for managing and maintaining the security of your account. You further understand and agree that we are not responsible (and you will not hold us responsible) for any unauthorized access to or use of your account. You are responsible for monitoring your account. If you notice any unauthorized or suspicious activity in your account, please notify us immediately and provide all relevant details.
- **Trading Fees:** by buying or selling an NFT on Nifty Gateway, you agree to pay all applicable fees and you authorize Nifty Gateway to automatically deduct fees directly from your payment. You will always be provided with a breakdown of fees prior to your purchase or sale of an NFT.
- **Communication:** you agree and understand that we will communicate with you via electronic means. To ensure that you receive all of our communications, you agree to keep your email address and telephone number current and notify us if there are any changes. You agree that any notices, agreements, disclosures, or other communications delivered to your email address on record is considered valid.
- **USD Balance:** certain approved users may carry a balance in U.S. Dollars to facilitate transactions on the Nifty Gateway platform. You are the owner of your balance.
- **Unclaimed Property:** if Nifty Gateway is holding funds in your account and has no record of your use of the Service for several years, we may be required, upon passage of applicable time periods, to report these funds as unclaimed property in accordance with the abandoned property and escheat laws. If this occurs, we will use reasonable efforts to give you written notice. If you fail to respond within seven business days or as required by law, we may be required to deliver any such funds to the applicable state or jurisdiction as unclaimed property. We reserve the right to deduct a dormancy fee or administrative fee from such unclaimed funds, as permitted by applicable law.

4) Account Suspension

You agree that Nifty Gateway has the right to immediately suspend your account, pause or cancel your access to the Services, or close your account if we suspect, in our sole discretion, that (1) your account is being used for money laundering or any illegal activity; (2) you have concealed or provided false identification information or other details; (3) you have engaged in fraudulent activity; (4) you have acquired NFTs using inappropriate methods (including but not limited to using stolen funds or payments methods, or attempting to chargeback your payment while retaining or disposing of an NFT); (5) you are using, employing, or operating bots or other forms of automation and/or multiple accounts to engage in any activity on Nifty Gateway; (6) you are using the site to offer, sell, purchase, or solicit the purchase or sale of securities, derivatives, or other regulated financial products or services; or (7) you have otherwise acted in violation of these Terms of Use.

IF NIFTY GATEWAY HAS A REASONABLE BELIEF THAT YOU HAVE ENGAGED IN ACTIVITIES (1), (2), (3), (4), (5), or (6) ABOVE, NIFTY

5) Account Closure

You may close your account at any time. You agree and understand that closing an account will not affect any rights and obligations incurred prior to the date of account closure. You may be required to either cancel or complete all open orders and bids and, in accordance with the provisions of these Terms of Use, provide transfer instructions of where to transfer any NFTs, fiat currency, and/or digital assets remaining in your account. You are responsible for any fees, costs, expenses, charges, or obligations (including, but not limited to, attorney and court fees or transfer costs of NFTs, fiat currency, or digital assets) associated with the closing of your account. In the event that the costs of closing of your account exceed the value in your account, you will be responsible for reimbursing us. You may not close any of your accounts to avoid paying any fees otherwise due.

6) Communication

You agree that we may send you promotional communications by email, including, but not limited to, newsletters, special offers, surveys, and other news and information we think will be of interest to you.

You agree that we may send you communications by email or text message that pertain to the status of a purchase or sale of an NFT on Nifty Gateway, and other communications that pertain to your interaction with the Site, including but not limited to notifications about the status of an NFT you are interested in purchasing.

You may opt out of promotional communications at any time by following the instructions provided therein.

7) Profile Information

The Site allows you to create a profile where you can post certain information about yourself, link to other websites, and display NFTs that you own (collectively, "Profile Information"). Any Profile Information you post to the Site will be considered non-confidential and non-proprietary. All Profile Information must comply with these Terms of Use.

Although we are not required to monitor any Profile Information, we may, in our sole discretion, remove Profile Information at any time and for any reason without notice.

Nifty Gateway may monitor Profile Information to detect and prevent fraudulent activity or violation of Nifty Gateway's Terms of Use.

8) Creator Content

If you are a Creator, the Site allows you to publish Creator Content and mint your Artwork into NFTs. If you are a Creator, you understand and agree that you are responsible for any Creator Content you submit or contribute, and you, not Nifty Gateway, have full responsibility for such content, including its non-infringement of third party rights, legality, reliability, accuracy, and appropriateness. All Creator Content must comply with these Terms of Use. We are not responsible or liable to any third party for the content, accuracy, or appropriateness of any Creator Content posted by you. You understand and acknowledge that any Creator Content that violates any of Nifty Gateway's policies may be obfuscated or deleted by Nifty Gateway, in its sole discretion.

Although we are not required to monitor any Creator Content, we may, in our sole discretion, remove Creator Content at any time and for any reason without notice. Nifty Gateway may monitor Creator Content to detect and prevent fraudulent activity or violation of Nifty Gateway's Terms of Use.

For the avoidance of doubt, Nifty Gateway is committed to fostering a respectful and safe environment, and will not any content that Nifty Gateway construes as endorsing or instigating unlawful acts targeting individuals or groups on the grounds of race, ethnicity, nationality, religion, gender, sexual orientation, disability, or any other characteristic safeguarded by law.

9) Creator Licenses

If you are a Creator, by providing any Creator Content to Nifty Gateway, you grant us and our affiliates and our respective licensees, successors, and assigns the right to use, reproduce, modify, perform, display, distribute, retransmit, publish, broadcast, and otherwise disclose to third parties any such material for the purpose of providing Services.

As a Creator, you hereby grant Nifty Gateway the right to use your name and image for marketing or promotional purposes. You further agree that we may use or modify images from your Creator Content for marketing or promotional purposes. You also agree that we can use your biography and other public information about you to promote your Creator Content.

10) Creator Representations & Warranties

If you are a Creator, you represent and warrant that: (1) you own or have the rights to all of the Creator Content that you post to Nifty Gateway; (2) your Creator Content does not violate these Terms of Use; (3) you have acquired and will retain any third-party rights, licenses, authorizations, consents, permissions and approvals relating to your Creator Content and required for Nifty Gateway to exercise the license granted to it in these Terms of Use; (4) your Creator Content does not incorporate any artwork that is stolen or reproduced and is not designed such that it will create confusion due to its similarity with existing projects; (5) your Creator Content is free of any hate or harmful speech, as determined by Nifty Gateway in its sole discretion; and (6) you will comply with all applicable laws, regulations and industry standards when posting your Creator Content.

11) Nifty Ownership

Except as otherwise provided for herein, title to and ownership of any NFT in your account shall at all times be vested with you and will not transfer to us. We will not transfer, sell, loan or otherwise rehypothecate your NFT, and will not use any NFT in your account to secure, guarantee an obligation of, or extend credit to, us or any other person, unless specifically instructed by you or as required by valid court order, competent regulatory agency, government agency or applicable law. As owner of the NFT, you bear all risk of loss or loss in value.

You understand and agree that we may act as a custodian for NFTs associated with your account, or may use a Third Party Custodian to provide the custody service. We will use reasonable skill in the selection, appointment, and periodic review of any Third Party Custodian. You understand and agree to appoint us or a Third Party Custodian selected by us as your agent to manage custody of NFTs with a Custody Wallet. You understand that the custody service may be performed by a custodian in a jurisdiction other than where you are domiciled. You authorize us to transfer control of your NFT to a Third Party Custodian or Custodians as may be selected by us, and to instruct and cause any such Third Party Custodian to transfer control of your NFT to another Third Party Custodian or Custodians as may be selected by us, or to us, in each case without the need for any further notice to or consent from you, so long as consistent with providing the Custody Wallet services contemplated in these Terms of Use.

We will use reasonable care and commercially reasonable efforts to store and secure control of your NFT in a Custody Wallet. You understand that this does not create a fiduciary relationship between you and us or any Third Party Custodian. Neither we nor any Third Party Custodian has any fiduciary duty to you.

You understand that when we act as a custodian for NFTs, or use a Third Party Custodian to provide custody service, these custodial arrangements relate to control of blockchain addresses and do not extend to custody of the Artwork or any other file or asset referenced in or associated with the NFTs. We may, but are not obligated to, store or engage third parties to store copies of the Artwork or other files associated with NFTs for our own purposes, including to enhance the functionality of the Site. We make no representations with respect to any third parties we may engage to store any such Artwork and files for any purpose. **We do not undertake any obligation with respect to the Artwork or other files or assets referenced by NFTs, including any obligation to ensure that such files will be available or that any reference to an off-chain file in the NFTs on-chain record will remain functional.**

NFTs managed with a Custody Wallet are subject to the other provisions of these Terms of Use, except where expressly stated otherwise. You understand and acknowledge that the legal treatment of NFTs remains unsettled and may vary depending on the jurisdiction in which you reside. We do not make any representation as to the treatment of NFTs associated with your account in the event of a dispute or if you, us or any Third Party Custodian becomes subject to an insolvency proceeding whether in the U.S. or in any other jurisdiction. You explicitly understand and acknowledge that the treatment of NFTs in the event of an insolvency proceeding is unsettled and not guaranteed, and that the insolvency proceeding could result in outcomes that are impossible to predict reliably.

12) Terms of Sale

By placing a bid or an order on or through Nifty Gateway, you agree that you are submitting a binding offer to purchase such NFT or

No refunds or returns are permitted except with respect to any statutory warranties or guaranties that cannot be excluded or limited by law.

Purchasing an NFT conveys ownership of the non-fungible token but does not necessarily convey ownership to the Artwork or other files or assets referenced by the NFT. Creators or Publishers may choose to provide certain rights to holders of their NFTs, including certain rights to the associated Artwork, as well as additional rights or benefits which may include, but are not limited to, physical items, special access, or other exclusive content (collectively, "Additional Items").

Any Additional Items will be provided directly to you by the Creator or Publisher. Nifty Gateway has no involvement in such transactions, is not a party to such transactions. Further, to the greatest extent allowable by law, Nifty Gateway fully disclaims all liability for the delivery of any Additional Items and for the avoidance of doubt, Nifty Gateway shall have no liability for any delays, damages, or failure to deliver such Additional Items.

Notwithstanding the above, Nifty Gateway may allow the Creator or Publisher to publish a description of the Additional Items on the Site. If you own an NFT that entitles you to Additional Items, you hereby consent to Nifty Gateway sharing your contact information with the Creator or Publisher to facilitate delivery of your Additional Items. **Unless otherwise stated, transactions on the Secondary Market are only for NFTs and do not grant the purchaser the right to any Additional Items.**

Nifty Gateway will receive payments on behalf of the seller of an NFT as the seller's agent. If you are a seller of an NFT, you appoint Nifty Gateway as your agent for the limited purpose of receiving, holding and settling payments by buyers of the NFTs you sell.

A payment received by us from a buyer, on the seller's behalf, satisfies the buyer's obligation to the seller in the amount of the payment received, regardless of whether we actually settle such payment to the seller. In the event that we do not make any such payment to a seller as described in these Terms of Use, the seller will have recourse against us only and not against the buyer, as such payment is deemed to be made by the buyer to the seller upon receipt by us. To the extent permissible under the rules of any third-party or governmental body with jurisdiction over us, the seller agrees that we are not liable for seller's acts and omissions and understands that we disclaim any such liability.

13) Intellectual Property

Unless otherwise indicated in writing by us, the Site, all content, and all other materials contained therein, including, without limitation, the Nifty Gateway logo, and all designs, text, graphics, pictures, information, data, software, sound files, other files, and the selection and arrangement thereof (collectively, "Nifty Gateway Content") are the proprietary property of Nifty Gateway or our affiliates, licensors, or users, as applicable. The Nifty Gateway logo and any Nifty Gateway product or service names, logos, or slogans that may appear on the Site or elsewhere are trademarks of Nifty Gateway or our affiliates, and may not be copied, imitated or used, in whole or in part, without our prior written permission.

You may not use any Nifty Gateway Content to link to the Site without our express written permission. You may not use framing techniques to enclose any Nifty Gateway Content without our express written consent. In addition, the look and feel of the Site and Content, including without limitation, all page headers, custom graphics, button icons, and scripts constitute the service mark, trademark, or trade dress of Nifty Gateway and may not be copied, imitated, or used, in whole or in part, without our prior written permission.

Outside the Nifty Gateway Content, all other trademarks, product names, and logos on the Site 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. Without limiting the foregoing, if you believe that third-party material hosted by Nifty Gateway infringes your copyright or trademark rights, please file a notice of infringement by contacting Nifty Gateway's Copyright Agent at intellectualproperty@niftygateway.com. In such event, please provide Nifty Gateway's Copyright Agent with the following information: (1) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (2) a description of the copyrighted work that you claim has been infringed; (3) a description of the location on Site of the material that you claim is infringing; (4) your address, telephone number and e-mail address; (5) a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law; and (6) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Nifty Gateway's policy is to suspend or terminate the account of repeat infringers. Nifty Gateway's response may depend on relevant aggravating or mitigating circumstances, but generally we will terminate an account if it is the subject of three valid infringement notices.

14) Your Use of Nifty Gateway

We hereby grant you a limited, non-exclusive, non-transferable, revocable license to access and use the Site and Services. Our grant of such license is subject to the following conditions:

- **Unlawful Activity:** you agree not to engage, or assist, in any activity that violates any law, statute, ordinance, regulation, or sanctions program, including but not limited to the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"), or that involves proceeds of any unlawful activity.
- **Abusive Activity:** you agree not to engage in any activity that poses a threat to Nifty Gateway, for example by distributing a virus or other harmful code, or through unauthorized access to the Site or other users' accounts.
- **Inappropriate Behavior:** you agree not to interfere with other users' access to or use of the Services.
- **Communication:** you agree not to communicate with other users for purposes of (1) sending unsolicited advertising or promotions, requests for donations, or spam; (2) engaging in hate speech or harassing or abusing other users; (3) interfering with transactions of other users. You agree not to use data collected from the Site to contact individuals, companies, or other persons or entities outside the Site for any purpose, including but not limited to marketing activity.
- **Fraud:** you agree not to engage in any activity which operates to defraud Nifty Gateway, others users, or any other person; or to provide any false, inaccurate, or misleading information to Nifty Gateway.
- **Gambling:** you agree not to utilize the Services to engage in any lottery, bidding fee auctions, contests, sweepstakes, or other games of chance.
- **Taxes:** Neither Nifty Gateway nor any other Nifty Gateway Party is responsible for determining the withholding, sales, use, value added, transfer or other taxes, together with any interest and penalties imposed with respect thereto ("Taxes"), that apply to your NFT transactions. You agree that you are solely responsible for determining what, if any, Taxes apply to your NFT transactions and to withhold, collect, report and remit the correct amounts of Taxes to the appropriate taxing authorities. Unless otherwise indicated on an applicable invoice, any amounts due in respect of an NFT transaction are exclusive of sale, use, value added or similar Taxes ("Sales Taxes") which shall be your responsibility. Any payments with respect to your NFT transactions shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law requires the deduction or withholding of any Tax (a "Withholding Tax") from any such payment then the sum payable by you shall be increased as necessary so that after such deduction or withholding has been made the amount received is equal to the sum that would have been received had no such deduction or withholding been made. Upon our request, you agree to promptly provide a properly executed Internal Revenue Service Form W-9, applicable Internal Revenue Service W-8, and any other tax form or other documentation that is reasonably required by us to comply with our tax obligations.
- **Intellectual Property Infringement:** you agree not to (1) engage in transactions involving items that infringe or violate any copyright, trademark, right of publicity or privacy or any other proprietary right under the law; (2) use Nifty Gateway Content (as defined in Section 10 above) without express written consent from Nifty Gateway; or (3) engage in any action that implies an untrue endorsement or affiliation with Nifty Gateway.
- **Hyperlinks:** you are hereby granted a limited, non-exclusive, non-transferable, revocable license to create a text hyperlink to the Site for noncommercial purposes, provided that such link does not portray Nifty Gateway, our affiliates, or the Services in a false, misleading, derogatory, or otherwise defamatory manner, and provided further that the linking site does not contain any adult or illegal materials, or other materials that is offensive, harassing, or otherwise objectionable.
- **Additional Prohibitions:** you agree not to (1) distribute, publish, broadcast, reproduce, copy, retransmit, or publicly display any Creator Content or Publisher Content; (2) modify or create derivative works from the Site, Creator Content or Publisher Content, or any portion thereof; (3) use any data mining, robots, or similar data gathering or extraction methods on the Site, Creator Content or Publisher Content; (4) download any portion of the Site other than for purposes of page caching, except as expressly permitted by us.

If you are unsure whether a contemplated use would violate these Terms of Use, please contact us at the address listed below under Contact Information.

15) Accidental Transfers

You understand and agree that in the event that you deposit digital assets or NFTs into an incorrect address, we may not have the ability, and are under no obligation or duty, to return such digital assets or NFTs to you. This section applies regardless of whether we control

16) Privacy

You acknowledge and agree to the collection, use, and disclosure of your personal information in accordance with Nifty Gateway's Privacy Policy, which is incorporated into this User Agreement by reference.

17) Modifications

You agree and understand that we may modify part or all of Nifty Gateway or the Services without notice.

18) Risks

Please note the following risks in accessing or using Nifty Gateway:

- The price and liquidity of blockchain assets, including NFTs, are extremely volatile and may be subject to large fluctuations;
- Fluctuations in the price of other digital assets could materially and adversely affect NFTs, which may also be subject to significant price volatility;
- Legislative and regulatory changes or actions at the state, federal, or international level may adversely affect the use, transfer, exchange, and value of NFTs;
- NFTs are not legal tender and are not backed by the government;
- Transactions in NFTs may be irreversible, and, accordingly, losses due to fraudulent or accidental transactions may not be recoverable;
- Some transactions in NFTs shall be deemed to be made when recorded on a public ledger, which is not necessarily the date or time that you initiated the transaction;
- The value of NFTs may be derived from the continued willingness of market participants to exchange fiat currency or digital assets for NFTs, which may result in the potential for permanent and total loss of value of a particular NFT should the market for that NFT disappear;
- The nature of NFTs may lead to an increased risk of fraud or cyber attack, and may mean that technological difficulties experienced by Nifty Gateway may prevent the access to or use of your Digital Assets;
- NFTs do not necessarily convey ownership or other rights to the Artwork or other files or assets associated with the NFTs, so your rights to use or display such Artwork or other files may be restricted and you may not have a right to restrict others from using or displaying any such Artwork of files or assets.
- Artwork or other files or assets associated with NFTs are likely to be stored off-chain and may become unavailable, or may be altered or replaced; Nifty Gateway does not ensure or represent that a user will have enduring or exclusive access to such Artwork or other files or assets.
- Changes to Third Party Sites (discussed in Section 19 below) may create a risk that your access to and use of the Site will suffer.

You agree and understand that you are solely responsible for determining the nature, potential value, suitability, and appropriateness of these risks for yourself, and that Nifty Gateway does not give advice or recommendations regarding NFTs, including the suitability and appropriateness of, and investment strategies for, NFTs. You agree and understand that you access and use Nifty Gateway at your own risk; however, this brief statement does not disclose all of the risks associated with NFTs and other digital assets. You agree and understand that Nifty Gateway will not be responsible for any communication failures, disruptions, errors, distortions or delays you may experience when using NFTs, however caused.

19) Third Parties

Nifty Gateway may rely on third-party platforms, including but not limited to MetaMask to perform NFT transactions. Our Site may contain links to third-party websites or applications (collectively, "Third Party Sites"). Nifty Gateway does not own or control Third Party Sites. You understand and agree that your use of any Third Party Site is subject to any terms of use and/or privacy policy provided by such Third Party Site. Nifty Gateway is not a party to any such agreement. You should review any terms of use and/or privacy policy provided by such Third Party Site and should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party.

Nifty Gateway provides these Third Party Sites only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third Party Sites, or their products or services. You use all links in Third Party Sites at your own risk. When you leave our Site, our Agreement and policies no longer govern. We may, but are not obligated to, warn you that you are leaving our Site.

In order to use some functionality of our Services, you must open a "Dwolla Platform" account provided by Dwolla, Inc. and you must accept the Dwolla Terms of Service and Privacy Policy. Any funds held in the Dwolla account are held by Dwolla's financial institution partners as set out in the Dwolla Terms of Service. You authorize Nifty Gateway to share your identity and account data with Dwolla for the purposes of opening and supporting your Dwolla account, and you are responsible for the accuracy and completeness of that data. You understand that you will access and manage your Dwolla account through our application, and Dwolla account notifications will be sent by us, not Dwolla. Nifty Gateway will provide customer support for your Dwolla account activity, and can be reached at support@niftygateway.com.

Some transactions on our site may be facilitated and run by Metamask. Any such transactions are governed by the Metamask Terms of Service and Privacy Policy.

20) External Projects

Except for those NFTs sold by the Nifty Gateway Curated Publisher, Nifty Gateway allows for the display, purchase, and sale of NFTs that are listed directly by a Publisher ("Publisher Projects") or that were not initially sold through Nifty Gateway ("External Projects"). Nifty Gateway has the right, in its sole discretion, to determine the criteria that Publisher Projects and External Projects must meet before being allowed onto the Nifty Gateway Platform and to remove any Publisher Projects or External Projects that do not comply with these Terms of Use or other requirements of Nifty Gateway.

- 1. Creators of External Projects.** If you are a Creator of an External Project, you will be entitled to the same share of sales of your NFTs on Nifty Gateway as you would be on the platform on which you initially released the NFTs; provided, however, that: (i) you and your NFT Creations from External Projects comply with these Terms of Use; and (ii) you provide Nifty Gateway with all information that it requests from you. By selling your NFT Creations from an External Project on Nifty Gateway, you represent and warrant that you have all necessary licenses and permits to the artwork contained in your NFTs. As a Creator of an External Project, you grant Nifty Gateway all licenses granted by Creators under these Terms of Use. Your proceeds will be credited to your Nifty Gateway account.
- 2. Owners of NFTs from External Projects.** If you acquired an NFT from an External Project outside Nifty Gateway, by transferring such NFT to your Nifty Gateway account, you represent and warrant that you have all right and title to such NFT and that you have the right to display and/or sell such NFT on Nifty Gateway.
- 3. Buyers of Publisher Projects and External Projects.** You understand and agree that your purchase of an NFT from a Publisher Project or an External Project is made from the seller of such NFT and not Nifty Gateway. Nifty Gateway makes no representations or warranties with respect to NFTs from Publisher Projects or External Projects, or with respect to any Artwork or other files or assets associated with any such NFTs, and all such purchases are made on an "as is" basis.

21) External Listings

Nifty Gateway may display NFTs, including prices, made available by or obtained from platforms other than Nifty Gateway ("External Listings"). These External Listings will be identified as such. While Nifty Gateway endeavors to publish and maintain accurate pricing information for External Listings, it is not possible for Nifty Gateway to guarantee the prices displayed for External Listing, which can be changed at any time. By purchasing an External Listing, you acknowledge and agree that Nifty Gateway is in no way responsible for the accuracy, timeliness, or completeness of such External Listings.

If you choose to purchase an NFT from an External Listing, Nifty Gateway will act as a facilitator in the acquisition of such NFT and transfer it to you. Nifty Gateway will cease acting as facilitator as soon as such NFT is transferred to you.

To facilitate the acquisition of your External Listing, Nifty Gateway will charge your method of payment, in addition to the price of the External Listing, any applicable charges for taxes and fees (an amount that will be disclosed to you before you elect to proceed). This charge includes an amount we pay on your behalf to recover the amount we pay to the External Listing platform in connection with your acquisition.

If Nifty Gateway is unable to acquire an NFT from an External Listing for any reason whatsoever, Nifty Gateway will cancel the transaction

22) Disclaimers

EXCEPT AS EXPRESSLY PROVIDED TO THE CONTRARY IN A WRITING BY NIFTY GATEWAY, THE SITE, CONTENT CONTAINED THEREIN, AND NFTs LISTED THEREIN ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED. NIFTY GATEWAY (AND ITS SUPPLIERS) MAKE NO WARRANTY THAT THE SITE WILL (1) MEET YOUR REQUIREMENTS; (2) BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS; OR (3) BE ACCURATE, RELIABLE, COMPLETE, LEGAL, OR SAFE.

WE WILL NOT BE LIABLE FOR ANY LOSS OF ANY KIND FROM ANY ACTION TAKEN OR TAKEN IN RELIANCE ON MATERIAL OR INFORMATION, CONTAINED ON THE SITE. NIFTY GATEWAY DOES NOT REPRESENT OR WARRANT THAT CONTENT ON THE SITE IS ACCURATE, COMPLETE, RELIABLE, CURRENT OR ERROR-FREE.

WHILE NIFTY GATEWAY ATTEMPTS TO MAKE YOUR ACCESS TO AND USE OF THE SITE AND CONTENT SAFE, NIFTY GATEWAY CANNOT AND DOES NOT REPRESENT OR WARRANT THAT THE SITE, CONTENT, ANY NFTs LISTED ON OUR SITE OR OUR SERVERS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WE CANNOT GUARANTEE THE SECURITY OF ANY DATA THAT YOU DISCLOSE ONLINE. YOU ACCEPT THE INHERENT SECURITY RISKS OF PROVIDING INFORMATION AND DEALING ONLINE OVER THE INTERNET AND WILL NOT HOLD US RESPONSIBLE FOR ANY BREACH OF SECURITY UNLESS IT IS DUE TO OUR GROSS NEGLIGENCE.

WE WILL NOT BE RESPONSIBLE OR LIABLE TO YOU FOR ANY LOSS AND TAKE NO RESPONSIBILITY FOR, AND WILL NOT BE LIABLE TO YOU FOR, ANY USE OF NFTs INCLUDING BUT NOT LIMITED TO ANY LOSSES, DAMAGES OR CLAIMS ARISING FROM: (1) USER ERROR SUCH AS FORGOTTEN PASSWORDS, INCORRECTLY CONSTRUCTED TRANSACTIONS, OR MISTYPED ADDRESSES; (2) SERVER FAILURE OR DATA LOSS; (3) CORRUPTED WALLET FILES; (4) UNAUTHORIZED ACCESS TO APPLICATIONS; (5) ANY UNAUTHORIZED THIRD PARTY ACTIVITIES, INCLUDING WITHOUT LIMITATION THE USE OF VIRUSES, PHISHING, BRUTEFORCING OR OTHER MEANS OF ATTACK AGAINST THE SITE OR NFTs.

NFTs ARE INTANGIBLE DIGITAL ASSETS. THEY EXIST ONLY BY VIRTUE OF THE OWNERSHIP RECORD MAINTAINED IN THE ETHEREUM NETWORK. ANY TRANSFER OF TITLE THAT MIGHT OCCUR IN ANY UNIQUE DIGITAL ASSET OCCURS ON THE DECENTRALIZED LEDGER WITHIN THE ETHEREUM PLATFORM. WE DO NOT GUARANTEE THAT NIFTY GATEWAY OR ANY NIFTY GATEWAY PARTY CAN EFFECT THE TRANSFER OF TITLE OR RIGHT IN ANY NFTs.

Nifty Gateway is not responsible for sustained losses due to vulnerability or any kind of failure, abnormal behavior of software (e.g., wallet, smart contract), blockchains, or any other features of NFTs. Nifty Gateway is not responsible for sustained losses due to late reports by developers or representatives (or no report at all) of any issues with the blockchain supporting NFTs including forks, technical node issues or any other issues having fund losses as a result.

Nothing in this Agreement shall exclude or limit liability of either party for fraud, death or bodily injury caused by negligence, violation of laws, or any other activity that cannot be limited or excluded by legitimate means.

TO THE FULLEST EXTENT PROVIDED BY LAW, NIFTY GATEWAY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AS TO THE SITE AND CONTENT CONTAINED THEREIN.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

23) Limitation of Liability

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL NIFTY GATEWAY BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST PROFIT OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM THIS AGREEMENT, THE SITE, PRODUCTS OR THIRD PARTY SITES AND PRODUCTS, OR FOR ANY DAMAGES RELATED TO LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, OR LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE AND EVEN IF NIFTY GATEWAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO, AND USE OF, THE SITES, PRODUCTS OR THIRD PARTY SITES AND PRODUCTS ARE AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR MOBILE DEVICE OR LOSS OF DATA RESULTING THEREFROM.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL THE MAXIMUM AGGREGATE LIABILITY OF NIFTY GATEWAY ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE ACCESS TO AND USE OF THE SITE, CONTENT, NFTs, OR ANY PRODUCTS OR SERVICES PURCHASED ON THE SITE EXCEED THE GREATER OF (A) \$100 OR (B) THE AMOUNT YOU HAVE PAID TO NIFTY GATEWAY FOR THE SERVICES IN THE LAST SIX MONTHS OUT OF WHICH LIABILITY AROSE. THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO LIABILITY OF NIFTY GATEWAY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY A MEMBER OF NIFTY GATEWAY'S NEGLIGENCE; OR FOR (B) ANY INJURY CAUSED BY A MEMBER OF NIFTY GATEWAY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. Some jurisdictions also limit disclaimers or limitations of liability for personal injury from consumer products, so this limitation may not apply to personal injury claims.

24) Indemnification

To the fullest extent permitted by applicable law, you agree to indemnify, defend and hold harmless Nifty Gateway, and our respective past, present and future employees, officers, directors, contractors, consultants, equity holders, suppliers, vendors, service providers, parent companies, subsidiaries, affiliates, agents, representatives, predecessors, successors and assigns (individually and collectively, the "Nifty Gateway Parties"), from and against all actual or alleged third party claims, damages, awards, judgments, losses, liabilities, obligations, penalties, interest, fees, expenses (including, without limitation, attorneys' fees and expenses) and costs (including, without limitation, court costs, costs of settlement and costs of pursuing indemnification and insurance), of every kind and nature whatsoever, whether known or unknown, foreseen or unforeseen, matured or unmatured, or suspected or unsuspected, in law or equity, whether in tort, contract or otherwise (collectively, "Claims"), including, but not limited to, damages to property or personal injury, that are caused by, arise out of or are related to (a) any intellectual property disputes relating to your Profile Information, Creator Content (if you are a Creator), or your Publisher Content (if you are a Publisher); (b) your use or misuse of the Services, the Site, or NFTs, (c) any Feedback you provide, (d) your violation of these Terms of Use, (e) your violation of the rights of a third party, including another user or MetaMask, and (f) your failure to pay any Withholding Taxes or Sales Taxes in connection with your NFT transactions or to provide us with a properly executed tax form described in Section 13. You agree to promptly notify Nifty Gateway of any third party Claims and cooperate with the Nifty Gateway Parties in defending such Claims. You further agree that the Nifty Gateway Parties shall have the right to control the defense or settlement of any third party Claims as they relate to Nifty Gateway, if it so chooses. THIS INDEMNITY IS IN ADDITION TO, AND NOT IN LIEU OF, ANY OTHER INDEMNITIES SET FORTH IN A WRITTEN AGREEMENT BETWEEN YOU AND NIFTY GATEWAY.

25) Governing Law

These Terms of Use, your use of Nifty Gateway, your rights and obligations, and all actions contemplated by, arising out of or related to these Terms of Use shall be governed by the laws of the State of New York, as if these Terms of Use are a contract wholly entered into and wholly performed within the State of New York. YOU UNDERSTAND AND AGREE THAT YOUR USE OF NIFTY GATEWAY AS CONTEMPLATED BY THESE TERMS OF USE SHALL BE DEEMED TO HAVE OCCURRED IN THE STATE OF NEW YORK AND BE SUBJECT TO THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO ITS CONFLICTS OF LAWS PROVISIONS.

26) Dispute Resolution

Please read the following agreement to arbitrate ("Arbitration Agreement") in its entirety. This Arbitration Agreement requires you and Nifty Gateway to arbitrate disputes with one another and limits the manner in which either party can seek relief from the other.

You and Nifty Gateway agree and understand that any controversy, claim, or dispute arising out of or relating to these Terms of Use or your relationship with Nifty Gateway—past, present, or future—shall be settled solely and exclusively by binding arbitration held in the county in which you reside, or another mutually agreeable location, including remotely by way of video conference administered by National Arbitration and Mediation ("NAM") and conducted in English, rather than in court. You and Nifty Gateway expressly agree that any dispute about the scope of these Terms of Use to arbitrate and/or the arbitrability of any particular dispute shall be resolved in arbitration in accordance with this section. You and Nifty Gateway expressly agree that an arbitrator may issue all appropriate declaratory and injunctive relief necessary to ensure the arbitration of disputes (but only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim). You and Nifty Gateway agree to keep any arbitration strictly confidential.



disputes in which a party is named as a defendant involving claim(s) arising from or related to these Terms of Use or any other Nifty Gateway agreement or program terms, even if Nifty Gateway is not named or added as a defendant. Any such co-defendant or defendant is a third-party beneficiary entitled to enforce this arbitration provision.

You and Nifty Gateway agree that the arbitrator shall have the authority to order any remedies, legal or equitable, which a party could obtain from a court of competent jurisdiction in an individual case based on the claims asserted, and nothing more. The arbitrator shall not award punitive or exemplary damages to either party, unless such remedies would otherwise be available under applicable law.

You and Nifty Gateway acknowledge that this arbitration provision evidences a transaction involving interstate commerce and that the Federal Arbitration Act, 9 U.S.C. s. 1 et seq. ("FAA"), will govern its interpretation and enforcement and proceedings pursuant thereto. It is the intent of the parties to be bound by the provisions of the FAA for all purposes, including, but not limited to, interpretation, implementation, enforcement, and administration of this arbitration provision, and the FAA shall preempt all state laws to the fullest extent permitted by the law.

You and Nifty Gateway agree that good-faith, informal efforts to resolve disputes often can result in a prompt, low-cost, and mutually beneficial outcome. Therefore, a party who intends to seek arbitration must first send to the other a written Notice of Dispute ("Dispute Notice"). Any Dispute Notice to Nifty Gateway must be sent to support@niftygateway.com ("Notice Address"). Any Dispute Notice to you by Nifty Gateway will be sent to the email address registered with your Nifty Gateway Account. Any Dispute Notice must include: (a) the name, address, and email address of the party providing the Dispute Notice; (b) a description of the nature and basis of the claim or dispute, including any relevant facts regarding Nifty Gateway or your use of Nifty Gateway; (c) an explanation of the specific relief sought, including the total damages sought, if any, and the basis for the damage calculations; (d) a signed statement from the party providing the Dispute Notice verifying the accuracy of the contents of the Dispute Notice; and (e) if the dispute is from you, and you have retained an attorney, a signed statement from you authorizing Nifty Gateway to disclose your account details to your attorney if necessary in resolving your claim or dispute. Any Dispute Notice from you must be individualized, meaning it can only concern your dispute and no other person's dispute. And any Dispute Notice from Nifty Gateway must be individualized, meaning it can only concern you and no other person. You also agree that, after sending a Demand Notice to Nifty Gateway, at Nifty Gateway's request you will personally participate in a discussion by telephone with Nifty Gateway to discuss whether an agreement can be reached to resolve the claim before arbitration is initiated. If you are represented by counsel, you agree that you will personally attend the telephone conference with your counsel. Nifty Gateway also agrees to participate in such a telephone discussion at your request. Any informal dispute resolution conferences shall be individualized, such that a separate conference must be held each time either party intends to commence individual arbitration; multiple individuals initiating claims cannot participate in the same informal telephonic dispute resolution conference, unless mutually agreed to by the parties. You agree that compliance with these informal dispute resolution procedures is a condition precedent to commencing arbitration, and that the arbitrator shall dismiss any arbitration filed without fully and completely complying with these informal dispute resolution procedures.

If you and Nifty Gateway do not reach an agreement to resolve a claim within 60 days after a Demand Notice is received, you or Nifty Gateway may commence an arbitration proceeding; except that, if either you or Nifty Gateway send the other an incomplete Dispute Notice, the 60-day period begins only after a complete Dispute Notice is received, and if either you or Nifty Gateway request a telephone discussion, the 60-day period begins only after the discussion has occurred. The statute of limitations and any filing fee deadlines shall be tolled while the parties engage in these informal dispute resolution procedures.

Should any dispute proceed to arbitration, you and Nifty Gateway agree that any such arbitration shall be conducted in accordance with the prevailing NAM rules and procedures (including the Comprehensive Dispute Resolution Rules and Procedures and/or the Supplemental Rules for Mass Arbitration Filings, as applicable) ("NAM Rules"), with the following exceptions to the NAM Rules if in conflict:

- The arbitration shall be conducted by one neutral arbitrator;
- Each side agrees to bear its own attorney's fees, costs, and expenses, unless such remedies would otherwise be available under applicable law, or unless the arbitrator finds that a claim, counterclaim, or defense is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)); and
- All pleadings submitted in arbitration are subject to the standards set forth in Federal Rule of Civil Procedure 11, which, among other things, permits sanctions to be imposed where pleadings are submitted for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
- The arbitrator may issue orders (including subpoenas to third parties, to the extent permitted by law) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes. For example, the arbitrator shall apply the Apex Doctrine and preclude depositions of either party's current or former high-level officers absent a showing that the officer has unique, personal knowledge of discoverable information and less burdensome discovery methods have been exhausted.

Additionally, if, at any time, 25 or more similar demands for arbitration are asserted against either party or their related parties by the same or coordinated counsel or entities ("Mass Filing"), the additional protocols set forth below shall apply:

- NAM's Mass Filing Rules shall apply if the parties' dispute is deemed by NAM, in its sole discretion pursuant to the NAM Rules and this Dispute Resolution section, to be part of a Mass Filing.
- Any Mass Filing shall be subject to a bellwether proceeding intended to reach a fair and speedy resolution of all claims included in the Mass Filing. In any Mass Filing, NAM shall select 15 demands for arbitration to proceed ("Bellwether Arbitrations"). While the Bellwether Arbitrations are adjudicated, no other demand for arbitration that is part of the Mass Filings may be filed, processed, or adjudicated, and no filing fees for such a demand for arbitration shall be due from either party to the administrator. Any applicable statute of limitations regarding such a demand for arbitration shall remain tolled beginning when the Mass Filing claimant first provided the other party with its Dispute Notice, as defined above.
- Following the resolution of the Bellwether Arbitrations, the parties shall engage in a global mediation of all remaining demands for arbitration comprising the Mass Filing. The mediation shall be administered by NAM. If the parties are unable to resolve the remaining demands for arbitration comprising the Mass Filing within 30 days following the mediation, the remaining demands for arbitration comprising the Mass Filing shall be administered by NAM on an individual basis pursuant to the NAM Rules.

You and Nifty Gateway agree to abide by all decisions and awards rendered in such proceedings and you and Nifty Gateway agree that such decisions and awards rendered by the arbitrator shall be final and conclusive, except for any appeal rights under the FAA.

To the extent you or Nifty Gateway seek emergency relief in connection with any controversy, claim, or dispute arising out of or relating to these Terms of Use or the breach thereof, or your relationship with Nifty Gateway, you and Nifty Gateway agree that these Terms of Use restrict you or Nifty Gateway from seeking emergency relief from any court (except as provided below), including without limitation temporary restraining orders and/or preliminary injunctions, and you and Nifty Gateway agree that, to the extent either party breaches these Terms of Use by seeking such relief from a court, that party shall be responsible for paying the opposing party's attorneys' fees in opposing such relief, and the arbitrator shall render an award of such attorneys' fees at the earliest possible time after such fees are incurred.

Notwithstanding the foregoing obligation to settle disputes through arbitration, you or Nifty Gateway may assert claims, if they qualify, in small claims (or an equivalent) court in New York County or any United States county where you live. However, if the claims are transferred, removed, or appealed to a different court, they shall be subject to arbitration.

You and Nifty Gateway agree that you or Nifty Gateway may, without inconsistency with this arbitration provision, apply to any court for an order enforcing the arbitral award. You and Nifty Gateway irrevocably and unconditionally agree to waive any objection that you or Nifty Gateway may now or hereafter have to the laying of venue of any action or proceeding relating to enforcement of the arbitral award in the federal or state courts located in the State of New York.

You and Nifty Gateway agree that all such controversies, claims, or disputes shall be settled in this manner in lieu of any action at law or equity. **In arbitration the parties waive their rights to have a jury trial.**

IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES NOT APPLICABLE OR FOR ANY OTHER REASON LITIGATION PROCEEDS IN COURT THEN THE PARTIES AGREE THAT YOU AND NIFTY GATEWAY:

- TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS AND REGULATIONS, HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THESE TERMS OF USE OR THE SERVICES THAT NIFTY GATEWAY PROVIDES OR ANY OTHER MATTER INVOLVING US HERETO, AND
- SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE FEDERAL OR STATE COURTS LOCATED IN NEW YORK COUNTY, NEW YORK AND YOU AGREE NOT TO INSTITUTE ANY SUCH ACTION OR PROCEEDING IN ANY OTHER COURT IN ANY OTHER JURISDICTION.

You and Nifty Gateway agree to arbitrate solely on an individual basis, and agree and understand that these Terms of Use do not permit class action or private attorney general litigation or arbitration of any claims brought as a plaintiff or class member in any class or

If any portion of this Arbitration Agreement is held to be invalid or unenforceable, the remaining portions will nevertheless remain in force. In any case in which (1) the dispute is filed as a class or representative action and (2) there is a final judicial determination that all or part of the Representative and Class Action Waiver is unenforceable, the class and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Representative and Class Action Waiver that is enforceable shall be enforced in arbitration. Additionally, if a court determines that a public injunctive relief claim may proceed notwithstanding the Representative and Class Action Waiver, and that determination is not reversed on appeal, then the public injunctive relief claim will be decided by a court after any individual claims are arbitrated, and the parties will ask the court to stay the public injunctive relief claim until the other claims have been finally concluded in arbitration.

You agree that this section of these Terms of Use has been included to rapidly and inexpensively resolve any disputes with respect to the matters described herein, and that this section shall be grounds for stay or dismissal of any court action commenced by you with respect to a dispute arising out of such matters.

A printed version of these Terms of Use shall be admissible in judicial or administrative proceedings.

27) Setoff and Security Interest

You grant us a security interest in your account, including any NFTs in your account, for debts, amounts owed, or liabilities incurred to us or any of our affiliates by you or any of your authorized representatives ("Obligations"). Obligations may include both secured and unsecured debts, and obligations you owe individually or together with someone else, including Obligations under other transactions or agreements between you and us or any of our affiliates.

We also may set off or take from your account, including any NFT in your account, or deduct from any obligations we may have to you, for any direct, indirect, and acquired Obligations that you owe us or our affiliates. These rights are in addition to other rights we may have to take, transfer, or charge from any assets or balance in your account for Obligations you owe us or our affiliates pursuant to these Terms of Use.

Your acceptance of these Terms of Use serves as your consent to our asserting a security interest or exercising a right of setoff should any laws governing your account require your consent. If the law restricts our ability to take, transfer, or setoff for any Obligations, or if your account balance is protected from attachment, levy, or legal process, you waive those conditions and limits to the full extent that you may do so by contract.

28) Termination

We reserve the right, without notice and in our sole discretion, to terminate your license to access or use Nifty Gateway, the Services, or the Site, at any time and for any reason. You understand and agree that we shall have no liability or obligation to you in such an event.

29) Severability

If any term, clause, or provision of these Terms of Use is held invalid or unenforceable, then that term, clause, or provision shall be severable from these Terms of Use and will not affect the validity or enforceability of any remaining part of that term, cause, or provision, or any other terms, clause, or provision of these Terms of Use.

30) Entire Agreement

These Terms of Use comprise the entire agreement between you and Nifty Gateway relating to your access to and use of Nifty Gateway, the Services, and the Site, and supersede any and all prior discussions agreements, and understandings of any kind (including without limitation prior versions of these Terms of Use). Except as otherwise provided herein, these Terms of Use are intended solely for the benefit of the parties and are not intended to confer third party beneficiary rights upon any other person or entity.

31) Survival

You agree and understand that all provisions of these Terms of Use shall survive the termination or expiration of these Terms of Use.

32) Contact Information

If you have any questions, would like to provide feedback, or would like more information about Nifty Gateway, please feel free to email us at support@niftygateway.com. If you would like to lodge a complaint, please contact us at support@niftygateway.com or write to us at: Nifty Gateway 600 Third Avenue, 2nd Floor New York, New York 10016.

END OF AGREEMENT

Nifty Gateway Studio