**ART BLOCKS PLATFORM AS A SERVICE AGREEMENT**

This Platform as a Service Agreement, together with all Exhibits attached hereto and each applicable Order Form (collectively, the “**Agreement**”), is made and entered into as of the date of the later signature on the Order Form (“**Effective Date**”) by and between Art Blocks, Inc., a Delaware corporation (“**Art Blocks**”), and the customer identified in the signature block below (“**Customer**”).

1. **BACKGROUND.** Art Blocks has developed, and hosts, operates, and supports, an online platform through which its customers and their end users can customize, mint, issue, sell and purchase non-fungible tokens (the “**Platform**,” as further defined below). Subject to the terms of this Agreement, Art Blocks would make the Platform available for Customer and End Users to mint, purchase, and sell Tokens.
2. **DEFINITIONS.** Capitalized terms shall have the meanings set forth in this section, or in the section where they are first used.
   1. “**Access Protocols**” means any tokens, passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Customer and any End Users to access the Platform.
   2. “**Affiliates**” means, with respect to either party, an entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such party, where “control” means (a) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise, and/or (b) ownership of at least fifty percent (50%) of the voting stock, shares or interests of any such entity.
   3. “**API**” means the application programming interface for sending and receiving certain data associated with the Platform and any libraries made available to Customer in connection therewith.
   4. “**Customer Materials**” means any content or data uploaded to the Platform by or on behalf of Customer, including any content or data embodied by, embedded in, or otherwise comprising a Token minted by Customer. For the avoidance of doubt, Customer Materials do not include any End User Materials or Usage and Performance Data.
   5. “**Documentation**” means the technical materials made available by Art Blocks to Customer in hard copy or electronic form describing the use and operation of the Platform, as may be updated from time to time.
   6. “**End User**” means any individual or entity (a) authorized by Customer to access the Platform as licensed by Customer through an Order Form, (b) that agrees to be bound by the End User Terms, and (c) to which Customer grants access to the Platform.
   7. “**End User Materials**” means any content or data uploaded into the Platform by or on behalf of an End User that is used in connection with Customer’s license of the Services, including any content or data embodied by, embedded in, or otherwise comprising a Token minted by any End User. For the avoidance of doubt, End User Materials do not include any Usage and Performance Data.
   8. **“End User Terms**” means Customer’s then-current standard user terms and access requirements for End Users, which shall incorporate any terms identified in writing (email to suffice) by Art Blocks from time to time.
   9. “**Fees**” means the fees specified for the Services selected by Customer under an accepted Order Form.
   10. “**Implementation Services**” means any services to be provided by Art Blocks related to the initial deployment of the Platform hereunder, including implementation or customization of the API as set forth in an Order Form.
   11. “**Intellectual Property Rights**” means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.
   12. “**NFT**” or “**Token**” means any non-fungible token minted through the Platform by Customer or any End User hereunder.
   13. “**Order Form**” means the form (including any attachments and exhibits thereto) evidencing the initial subscription for Customer’s access to and use of the Platform and any subsequent order form (including any attachments and exhibits thereto) submitted online or in written form and specifying, among other things, the Services contracted for, the applicable Fees, and other charges as agreed to between the parties, each accepted form to be incorporated into and become a part of this Agreement.
   14. “**Platform**” means the solution developed by Art Blocks, including Art Blocks’ Access Protocols, API, software, hosting services, and rendering solutions as more fully described in the applicable Order Form, access to which is to be granted to Customer by Art Blocks under one or more Order Forms executed under this Agreement.
   15. “**Professional Services**” means any customization or configuration of the Platform for Customer as identified in an Order Form.
   16. “**Services**” means the provision of access to the Platform, Support Services, Implementation Services, Professional Services, and any other services that may be purchased by Customer through an Order Form, in each case solely as described and to the extent specified on the Order Form.
   17. “**Support Services**” means the technical support services described in an Order Form.
   18. “**Usage and Performance Data**” means any data derived from Customer Materials, End User Materials and/or the use of the Platform or Services by Customer and its End Users. Such data includes, but is not limited to, performance and statistical information about the actual transactions facilitated by and/or between Customer and its End Users through the Platform, which is collected, generated and tracked by Art Blocks. For the avoidance of doubt, Usage and Performance Data does not include any Customer Materials or End User Materials from which it is derived.
   19. “**Work Product**” means any custom development work or other work product produced within the scope of this Agreement and the Intellectual Property Rights thereto.
3. **PROVISION OF SERVICES**
   1. **Access.** Subject to Customer’s payment of the Fees set forth in an accepted Order Form and Customer’s compliance with the terms of this Agreement, Art Blocks will provide the Services to Customer in accordance with the terms of this Agreement and the applicable Order Form. On or as soon as reasonably practicable after the Effective Date, Art Blocks shall provide to Customer the Access Protocols to allow Customer to access the Services. Customer’s End Users will be granted access to the Services by Customer in accordance with any access protocols designated by Customer.
   2. **Implementation Services.** Art Blocks shall provide Implementation Services as agreed upon by the parties and as set forth in the Order Form. The fees and terms for such Implementation Services will be as provided in the applicable Order Form.
   3. **Professional Services.** Art Blocks will provide any Professional Services, which may include customization or configuration of the Art Blocks platform, as agreed upon by the parties and as set forth in the Order Form. The fees and terms for such Professional Services will be as provided in the applicable Order Form.
   4. **Hosting.** Art Blocks shall provide for the hosting of the Platform; provided, however, that except as otherwise specifically set forth in an Order Form, Art Blocks shall not be required to provide for, or bear any responsibility with respect to, the hosting of any particular Token(s) or any Customer or End User telecommunications or computer network hardware, software, services or access. Art Blocks reserves the right to charge certain fees to Customer in connection with hosting any Token(s) hereunder (“**Hosting Fees**”).
   5. **Support Services.** Included in the Platform access fees are Art Blocks’ Support Services. Subject to Customer’s payment of the Fees for the Platform, Art Blocks will provide Customer with Support Services in accordance with the terms herein. For the avoidance of doubt, Art Blocks shall have no obligation to provide Support Services to End Users under this Agreement.
4. **INTELLECTUAL PROPERTY**
   1. **License Grant.** Subject to the terms and conditions of this Agreement, Art Blocks grants to Customer a non-exclusive, non-transferable license, solely during the Term and solely for Customer’s internal business purposes, and not for the benefit of any third party (other than consumer End Users), to: (a) to access and use the Platform in accordance with the Documentation; and (b) to use and reproduce a reasonable number of copies of the Documentation solely to support Customer’s use of the Services.
   2. **Powered by Art Blocks.** If requested by Art Blocks, Customer will display or cause the display of a trademark, service mark, or other indicia of Art Blocks specified by Art Blocks (e.g., a “Powered by Art Blocks” logo, or such other language as may be specified by Art Blocks from time to time) on Customer’s framing or other End User-facing display of the Platform. Any such display of any such Art Blocks mark shall inure to the benefit of Art Blocks and be subject to the prior and continuing written consent of Art Blocks. Subject to Customer’s ongoing compliance with the terms and conditions of this Agreement and any Art Blocks brand guidelines furnished in writing by Art Blocks, Art Blocks grants Customer a limited, non-exclusive, revocable license to use Art Blocks’ marks for the sole purpose of identifying Art Blocks as the operator of the Platform. Customer agrees that it shall not use the Art Blocks mark, or any confusingly similar marks, assert any right, license or interest with respect to any marks of Art Blocks, or represent or suggest any affiliation between Art Blocks and Customer.
   3. **Limitations.** Customer agrees that it will not, and will not permit any Authorized User, End User, or other party to: (a) permit any party to access the Platform or Documentation or use the Services, other than the Authorized Users and End Users, as authorized under this Agreement; (b) modify, adapt, alter or translate the Platform or Documentation, except as expressly allowed herein; (c) sublicense, lease, rent, loan, distribute, or otherwise transfer the Platform or Documentation to any third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Platform; (e) use or copy the Platform or Documentation except as expressly allowed under this section; (f) disclose or transmit any data (other than Customer Materials) contained in the Platform to any individual other than an Authorized User or End User, except as expressly allowed herein; (g) provide false or misleading information to Art Blocks; (h) use or attempt to use a digital wallet without authorization from the owner of such digital wallet; (i) create or mint counterfeit non-fungible tokens; (j) use the Platform to carry out any illegal activities, including but not limited to money laundering, terrorist financing or deliberately engaging in activities designed to adversely affect the performance of the Platform; (k) engage in or knowingly facilitate any “front-running,” “wash trading,” “pump and dump trading,” “ramping,” “cornering” or fraudulent, deceptive or manipulative trading activities using the Platform; (l) use the Platform to carry out any financial activities subject to registration or licensing, including but not limited to using the Service to transact in securities, commodities futures, trading of commodities on a leveraged, margined or financed basis, binary options (including prediction-market transactions), real estate or real estate leases, equipment leases, debt financings, equity financings or other similar transactions; or (m) use the Platform to participate in fundraising for a business, protocol, or platform, including but not limited to creating, listing, or buying assets that are redeemable for financial instruments, that give owners rights to participate in an ICO or any securities offering, or that entitle owners to financial rewards, including but not limited to, DeFi yield bonuses, staking bonuses, and burn discount.
   4. **Ownership.** The Services, Platform, Work Product, Documentation, Usage and Performance Data (other than any Customer Materials or End User Materials contained therein), and all worldwide Intellectual Property Rights in each of the foregoing, are the exclusive property of Art Blocks. No Work Product shall be considered work made for hire, and Customer agrees that all right, title and interest in and to Work Product shall vest upon creation in Art Blocks. All Customer Materials, and all worldwide Intellectual Property Rights therein, shall be the exclusive property of Customer and its suppliers. All End User Materials, and all worldwide Intellectual Property Rights in it, is the exclusive property of the applicable End User. All rights not expressly granted to Customer under this Agreement are reserved by Art Blocks.
   5. **Open Source Platform.** Certain items of software, including smart contracts, may be provided or otherwise made available to Customer with, in, or in connection with the Platform and are subject to “open source” or “free software” licenses (“**Open Source Software**”). Nothing in this Agreement limits Customer’s rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Art Blocks makes such Open Source Software, and Art Blocks’ modifications to that Open Source Software, available by written request.
   6. **Customer Materials and End User Materials.**  **CUSTOMER ACKNOWLEDGES AND AGREES THAT (I) ART BLOCKS IS NOT RESPONSIBLE FOR AND DOES NOT CONTROL THE CUSTOMER MATERIALS OR END USER MATERIALS; AND (II) ART BLOCKS HAS NO OBLIGATION TO REVIEW OR MONITOR, AND DOES NOT APPROVE, ENDORSE OR MAKE ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE CUSTOMER MATERIALS OR END USER MATERIALS.**
   7. **Usage and Performance Data.** As part of the Services, Art Blocks collects and tracks Usage and Performance Data to assist with the necessary operation and function of the Services, to provide reporting to Customer and its End Users, and for internal purposes, including, without limitation, to facilitate in the provision of updates, support, and invoicing, as well as research and development. Such Usage and Performance Data will be owned by Art Blocks and may be used for any lawful purpose. Customer shall have access to and shall have a limited, non-exclusive right to use Usage and Performance Data for its internal business purposes only. Customer shall not (a) modify or alter the Usage and Performance Data; (b) furnish, sell, rent, lease, or license any Usage and Performance Data to any third parties; (c) distribute or otherwise make available to third parties any Usage and Performance Data or (d) remove any copyright or other proprietary notices contained in any Usage and Performance Data.
5. **FEES AND EXPENSES; PAYMENTS** 
   1. **Fees.**  In consideration for the access rights granted to Customer and the Services performed by Art Blocks under this Agreement, Art Blocks shall receive the amounts on the schedule(s) set forth in the applicable Order Form(s). Art Blocks may suspend access to the Platform immediately upon notice to Customer if Customer fails to pay any amounts hereunder by the date that is thirty (30) days following the applicable due date. Art Blocks shall be entitled to withhold performance and discontinue service until all unpaid amounts due are paid in full. Additionally, subject to the terms of each Order Form, Art Blocks shall invoice Customer for, and Customer shall pay Art Blocks, a percentage of the total compensation received by Customer from each sale of a Token, regardless of whether such sale takes place on the Platform. Without limiting the foregoing, Customer shall also pay to Art Blocks a Hosting Fee as set forth in an Order Form. Any amounts not paid when due may bear interest at the rate of one and one half percent (1.5%) per month, or the maximum legal rate if less.
   2. **Taxes.** Amounts due to Art Blocks are exclusive of all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and Customer will be responsible for payment of all such taxes (other than taxes based on Art Blocks’ revenue or income), fees, duties, and charges and any related penalties and interest, arising from the payment of amounts due hereunder, the delivery of Services, or the use of the Platform by Customer. Customer will make all payments of amounts due to Art Blocks free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of amounts due to Art Blocks will be Customer’s sole responsibility, and Customer will provide Art Blocks with official receipts issued by the appropriate taxing authority, or such other evidence as Art Blocks may reasonably request, to establish that such taxes have been paid. Customer shall indemnify and hold harmless Art Blocks in connection with any proceedings brought by any taxing authorities arising from Customer’s failure to pay the taxes for which Customer is responsible hereunder.
6. **CUSTOMER RESPONSIBILITIES**
   1. **License.** Customer grants Art Blocks a non-exclusive, worldwide, royalty-free and fully paid license (a) to use the Customer Materials and End User Materials for purposes of providing the Platform in accordance with the terms of this Agreement, and as otherwise permitted hereunder; and (b) to use the Customer trademarks, service marks, and logos as required to provide the Platform and in accordance with Section 12.8.
   2. **Authorized User Access to Services.** Customer may permit its authorized employees or contractors (“**Authorized Users**”) to access and use the Platform as contemplated by this Agreement. Customer is responsible for all activity that occurs on behalf of its Authorized Users’ accounts or other means of access to the Platform and for Authorized Users’ compliance with this Agreement. Customer shall prevent unauthorized access to, or use of, the Services, and notify Art Blocks promptly of any such unauthorized use known to Customer.
   3. **Customer Warranty.** Customer represents, warrants and covenants that: (a) it has all necessary rights, approvals and consents to make the Customer Materials and End User Materials available to Art Blocks for use hereunder and that Art Blocks’ use of same will not be unlawful or otherwise violate the rights of a third party; (b) any Customer Materials and End User Materials shall not contain any viruses, worms or other malicious computer programming codes that may damage or disable any network, systems or data of Art Blocks or any other third party; and (c) any Token minted hereunder or other use of the Platform will not (i) be unlawful, libelous or defamatory, (ii) infringe any right of any third party (including, without limitation, any patent, copyright, trademark, trade secret, contractual, privacy or publicity right), or (iii) disparage Art Blocks or tarnish any Art Block mark.
   4. **Customer Responsibility for End User Materials.** As between Art Blocks and Customer, Customer shall have sole responsibility for all End User Materials. Customer shall ensure that each End User enters into End User Terms that (i) grant Customer and Art Blocks all rights, including intellectual property rights in and to the End User Materials, necessary to perform their respective obligations under this Agreement; (ii) prohibit the minting of any Token or other use of the Platform for any purpose that violates any law, rule, or regulation, or that may subject Art Blocks, Customer, or the activities provided for herein to public disrepute, contempt, scandal or ridicule, or otherwise tarnish Art Blocks by its association with Customer, the End User, or any Token; (iii) establish know-your-customer (“**KYC**”) protocols in accordance with the cryptocurrency industry’s best practices regarding customer KYC activities; and (iv) prohibit each End User from, whether directly or indirectly: (a) engaging in or attempting to engage in any act or omission, employing any device, scheme or artifice to defraud, or otherwise materially misleading, Art Blocks or any person using the Platform; (b) engaging or attempting to engage in or assist any hack of or attack on the Platform, including any “sybil attack,” “DoS attack” or “griefing attack” or theft of NFTs, or funds, or upload files that contain viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs that may damage the operation of another’s computer or property or interfere with the Platform; (c) providing, uploading, or otherwise making available, End User Materials that contain images, photographs, software or other material that, infringes or is in a manner infringing the copyright, trademark, patent, trade secret, privacy, publicity or other Intellectual Property Rights of others or that is libelous, defamatory, profane, obscene, pornographic, indecent, unlawful or otherwise objectionable; (d) defaming, abusing, harassing, stalking, threatening or otherwise violating the legal rights (such as rights of privacy and publicity) of another user of the Platform; (e) attempting to circumvent any content-filtering techniques on the Platform; (f) engaging in or knowingly facilitating any “front-running,” “wash trading,” “pump and dump trading,” “ramping,” “cornering” or fraudulent, deceptive or manipulative trading activities (g) utilizing the Platform to transact in securities, commodities futures, trading of commodities on a leveraged, margined or financed basis, binary options (including prediction-market transactions), real estate or real estate leases, equipment leases, debt financings, equity financings or other similar transactions; (h) utilizing the Platform to buy, sell or advertise personal, professional or business services, except with the prior written consent of Art Blocks and Customer; or (i) utilizing the Platform to engage in token-based or other financings of a business, enterprise, venture, decentralized autonomous organization, software development project or other initiative, including initial coin offerings, decentralized autonomous coin offerings, initial exchange offerings, “yield farming” or other token-based fundraising events.
   5. **Customer Responsibility for Data and Security.** Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Materials and End User Materials. Customer shall be responsible for delivery of all Customer Materials and End User Materials to Art Blocks, and Art Blocks shall not be responsible for any liability or loss (including any loss of data) arising from Customer’s delivery of (or failure to deliver) same.
   6. **No Pass-through of Fees**. Customer shall not in any way characterize in any fashion, or otherwise suggest or imply, that any amounts charged by it to any of its partners or customers are attributable to, result from, or are “passed through” on account of, any amounts to be received by Art Blocks.
7. **WARRANTIES AND DISCLAIMERS**
   1. **Limited Warranty.** Art Blocks warrants to Customer that the Platform will substantially conform to, and otherwise operate in accordance with, the Documentation and the terms of this Agreement. Provided that Customer notifies Art Blocks in writing of any breach of the foregoing warranty during the Term, Art Blocks shall, as Customer’s sole and exclusive remedy, use commercially reasonable efforts to provide that the Platform operates in accordance with the foregoing performance warranty at no additional cost to Customer.
   2. **Disclaimer.** THE LIMITED WARRANTY SET FORTH IN THIS SECTION IS MADE FOR THE BENEFIT OF CUSTOMER ONLY. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PLATFORM, DOCUMENTATION, AND SERVICES ARE PROVIDED “AS IS,” AND ART BLOCKS MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE PLATFORM, DOCUMENTATION, AND/OR SERVICES (IN WHOLE OR IN PART) OR ANY OTHER DATA, PRODUCTS OR SERVICES PROVIDED TO CUSTOMER BY ART BLOCKS. ART BLOCKS DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT THE OPERATION OF THE PLATFORM AND SERVICES SHALL BE UNINTERRUPTED OR ERROR-FREE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER USES ALL END USER MATERIALS AND INTERACTS WITH END USERS AT ITS OWN RISK AND ART BLOCKS WILL NOT BE RESPONSIBLE FOR ANY LIABILITY INCURRED AS A RESULT OF SUCH USE OR INTERACTIONS, INCLUDING FOR ANY SALES TAX LIABILITY IN CONNECTION THEREWITH. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

NFTS ARE INTANGIBLE DIGITAL ASSETS. THEY EXIST ONLY BY VIRTUE OF THE OWNERSHIP RECORD MAINTAINED IN THE BLOCKCHAIN NETWORK. ANY TRANSFER OF TITLE THAT MIGHT OCCUR IN ANY UNIQUE DIGITAL ASSET OCCURS ON THE DECENTRALIZED LEDGER WITHIN THE BLOCKCHAIN. ART BLOCKS DOES NOT GUARANTEE THAT IT OR ANY AFFILIATE CAN EFFECT THE TRANSFER OF TITLE OR RIGHT IN ANY TOKENS. ART BLOCKS CANNOT AND DOES NOT GUARANTEE THAT THE PLATFORM WILL BE INTEROPERABLE WITH ANY OTHER BLOCKCHAIN, PLATFORM, PRODUCT OR SERVICE.

ART BLOCKS IS NOT RESPONSIBLE FOR ANY LOSSES OR HARMS SUSTAINED BY CUSTOMER, ANY AUTHORIZED USER OR ANY END USER DUE TO VULNERABILITY OR ANY KIND OF FAILURE, BEHAVIOR OF SOFTWARE (E.G., SMART CONTRACT), BLOCKCHAINS, OR ANY OTHER FEATURES OF OR INHERENT TO NFTS. ART BLOCKS IS NOT RESPONSIBLE FOR CASUALTIES DUE TO DEVELOPERS’ OR REPRESENTATIVES’ DELAY OR FAILURE TO REPORT ANY ISSUES WITH ANY BLOCKCHAIN SUPPORTING THE PLATFORM OR NFTS MINTED THEREON, INCLUDING WITHOUT LIMITATION FORKS, TECHNICAL NODE ISSUES, OR ANY OTHER ISSUES THAT RESULT IN LOSSES OF ANY SORT.

1. **LIMITATION OF LIABILITY**
   1. **Types of Damages.** WITH THE EXCEPTION OF A PARTY’S OBLIGATION TO FULFILL ITS INDEMNIFICATION OBLIGATIONS (SECTION 10) AND BREACHES OF SECTION 9 (CONFIDENTIALITY), TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER PARTY (NOR ITS SUPPLIERS) SHALL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS OR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, REVENUE, GOODWILL, PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN CONNECTION WITH SUCH PARTY’S PERFORMANCE HEREUNDER OR THE USE, MISUSE, OR INABILITY TO USE THE PLATFORM, DOCUMENTATION, SERVICES, DATA, OR OTHER PRODUCTS OR SERVICES HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES.
   2. **Amount of Damages.** WITH THE EXCEPTION OF A PARTY’S OBLIGATION TO FULFILL ITS INDEMNIFICATION OBLIGATIONS AND BREACHES OF SECTION 9 (CONFIDENTIALITY), THE MAXIMUM LIABILITY OF EACH PARTY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS RETAINED BY ART BLOCKS IN THE TWELVE MONTHS PRECEDING THE ACT, OMISSION OR EVENT GIVING RISE TO SUCH LIABILITY. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE EITHER PARTY’S LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF SUCH PARTY OR ITS EMPLOYEES OR AGENTS OR FOR DEATH OR PERSONAL INJURY. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO THE PARTIES.
   3. **Basis of the Bargain.** The parties agree that the limitations of liability set forth in this section shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.
2. **CONFIDENTIALITY**
   1. **Confidential Information.** During the Term, each party (the “**Disclosing Party**”) may provide the other party (the “**Receiving Party**”) with certain non-public information regarding the Disclosing Party’s business, technology, products, or services that is marked or designated by the Disclosing Party as “confidential” or “proprietary” at the time of disclosure or that would reasonably be understood to be confidential given the nature of the information disclosed or the circumstances of disclosure (collectively, “**Confidential Information**”). Without limiting the generality of the foregoing, the Platform, Documentation, and the Usage and Performance Data, and all enhancements and improvements thereto, will be considered the Confidential Information of Art Blocks; the Customer Materials will be considered the Confidential Information of Customer; provided that notwithstanding anything to the contrary contained in this Section 9, Art Blocks shall have the right to disclose Customer Materials for the purpose of facilitating the Services, and to the extent such Customer Materials do not permit the identification of Customer, any End User or any individual.
   2. **Protection of Confidential Information.** The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except to provide or use the Platform or Services hereunder and as otherwise expressly permitted under this Agreement. The Receiving Party will limit access to the Confidential Information to Authorized Users (with respect to Customer) or Customer’s selected End Users and to those employees and subcontractors who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information. In addition, the Receiving Party will protect the Disclosing Party’s Confidential Information from unauthorized use, access, or disclosure using a degree of care no less protective of the Confidential Information of Disclosing Party than Receiving Party uses to protect its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party’s request or upon the expiration or any termination of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement.
   3. **Exceptions.** The confidentiality obligations set forth in this section will not apply to any information that (a) becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving Party at the time of disclosure; or (d) the Receiving Party demonstrates was independently developed by employees and contractors of the Receiving Party who had no access to the Confidential Information. Additionally, without limiting any other restrictions on the use of such information contained herein, the parties agree that any information stored on and made publicly available through the blockchain pursuant to this Agreement shall not be considered the Confidential Information. Notwithstanding anything herein to the contrary, Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for Receiving Party to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that Receiving Party promptly notifies Disclosing Party in writing of such required disclosure and cooperates with Disclosing Party if Disclosing Party seeks an appropriate protective order.
3. **INDEMNIFICATION**
   1. **Indemnification.**
      * 1. **By Art Blocks.** Art Blocks will defend at its expense any claim asserted against Customer, and will pay any settlement Art Blocks makes or approves, or any damages finally awarded in any suit, insofar as such assertion is based on a claim by any third party alleging that the Platform or the Services misappropriate or infringe any trade secret, trademark, copyright, patent or other intellectual or proprietary rights of a third party. If any portion of the Platform or the Services becomes, or in Art Blocks’ opinion is likely to become, the subject of a claim of infringement, Art Blocks may, at Art Blocks’ option: (i) procure for Customer the right to continue using the Platform or the Services; (ii) replace the Platform or the Services with non-infringing software or services which do not materially impair the functionality of the Platform or the Services; (iii) modify the Platform or the Services so that it/they become non-infringing; or (iv) terminate this Agreement and refund any unearned fees actually paid by Customer to Art Blocks, and upon such termination, Customer will immediately cease all use of the Platform, Documentation, and Services. Notwithstanding the foregoing, Art Blocks shall have no obligation under this section or otherwise with respect to any assertion by a third party based upon (w) any End User Materials (x) any use of the Platform or the Services not in accordance with this Agreement or as specified in the Documentation; (y) any use of the Platform or the Services in combination with other products, equipment, software or data not supplied by Art Blocks; or (z) any modification of the Platform or the Services by any person other than Art Blocks or its authorized agents. This subsection states the sole and exclusive remedy of Customer and the entire liability of Art Blocks, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for infringement claims and actions.
        2. **By Customer.** Customer will defend at its expense any claim asserted against Art Blocks, and will pay any settlement Customer makes or approves, or any damages finally awarded in any suit, insofar as such suit is based on a claim arising out of or relating to Customer’s breach of any representation, warranty or covenant in this Agreement, including, without limitation, any use of the Platform, Services, Documentation, End User Materials, or Usage and Performance Data other than as provided in this Agreement or specified in the Documentation. This subsection states the sole and exclusive remedy of Art Blocks and the entire liability of Customer, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for the claims and actions described herein.
        3. **Procedure.** The indemnifying party’s obligations as set forth aboveare expressly conditioned upon each of the following: (i) the indemnified party shall promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (ii) the indemnifying party shall have sole control of the defense or settlement of any claim or suit; and (iii) the indemnified party shall cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit. An indemnifying party will not be liable for any settlement of an action effected without its written consent (which consent will not be unreasonably withheld or delayed), nor will an indemnifying party settle any such action without the written consent of the indemnified party (which consent will not be unreasonably withheld or delayed).
   2. **Insurance.** Each party shall maintain, at its own cost, general liability and other appropriate insurance in an amount appropriate to the nature and scope of its services, products and business, which is reasonable and customary in their respective industries for companies of comparable size and activities. Each party shall, upon the written request of the other party, provide the other party with a certificate of insurance confirming coverage and naming such other party as an additional insured.
4. **TERM AND TERMINATION**
   1. **Term.** This Agreement commences on the Effective Date and remains in effect until the expiration of any term set forth in an Order Form (the “**Term**”).
   2. **Termination.** Either party may terminate this Agreement immediately upon thirty (30) days’ written notice to the other party if the other party materially breaches this Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach.
   3. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason:
      * 1. Customer’s right to access or use the Services immediately ceases;
        2. Except as expressly set forth in this Section 11.3 all rights and licenses shall terminate;
        3. Art Blocks shall continue to have the right to use the Customer Materials as set forth herein. Except as required by law, any public use or disclosure of Customer Materials to a third party by Art Blocks must be made in an anonymized and aggregated form and in a manner that does not permit the identification of Customer, any End User or any individual;
        4. Customer shall continue to have the right to use any Usage and Performance Data that Art Blocks made available to it during the Term provided that such use complies with the restrictions set forth herein;and
        5. If this Agreement is terminated for any reason other than a material breach by Art Blocks, any unpaid amounts shall be accelerated and immediately become due and payable.

The sections and subsections titled *Definitions, Limitations, Warranties and Disclaimers, Limitation of Liability, Confidentiality, Indemnification, Effect of Termination*, and *Miscellaneous,* all provisions related to intellectual property ownership (including ownership of data), and all provisions that by their terms survive expiration or termination, will survive expiration or termination of this Agreement for any reason.

1. **MISCELLANEOUS**
   1. **Governing Law and Venue.** This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of Texas, without giving effect to any conflicts of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The exclusive jurisdiction of any action arising out of or related to this Agreement will be the state or federal courts located in Houston, Texas, and Customer and Art Blocks hereby agree and submit to the personal and exclusive jurisdiction and venue of these courts.
   2. **Export.** Customer agrees not to export, re-export, or transfer, directly or indirectly, any U.S. technical data acquired from Art Blocks, or any products utilizing such data, in violation of the United States export laws or regulations.
   3. **Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.
   4. **Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
   5. **Remedies.** Except as provided in the sections titled *Limited Warranty* and *Indemnification*, the parties’ rights and remedies under this Agreement are cumulative. Customer acknowledges that the Services, Platform, and Documentation contain valuable trade secrets and proprietary information of Art Blocks, that any actual or threatened breach of the sections titled *Intellectual Property* or *Confidentiality* or any other breach by Customer of its obligations with respect to Intellectual Property Rights of Art Blocks will constitute immediate, irreparable harm to Art Blocks for which monetary damages would be an inadequate remedy. In such case, Art Blocks will be entitled to immediate injunctive relief without the requirement of posting bond.
   6. **No Assignment.** Neither party shall assign, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted assignment, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that Art Blocks may assign this Agreement in connection with a merger, acquisition, change of control, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent of Customer; provided that the assignee agrees in writing to be bound by the terms of this Agreement. The terms of this Agreement shall be binding upon the parties and their respective successors and permitted assigns.
   7. **Force Majeure.** Any delay in the performance of any duties or obligations of either party will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, epidemic, pandemic, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.
   8. **Publicity.** Art Blocks reserves the right to reference the Customer as a user of the Platform in its customer lists. Neither party shall make a formal announcement or press release of this Agreement or the relationship between the parties without the prior written consent of the other party. Consent shall not be unreasonably withheld or delayed. The parties shall agree upon the content and timing of an initial public announcement. If the parties agree to issue a press release(s), no Confidential Information will be released as part of such press release.
   9. **Independent Contractors.** Customer’s relationship to Art Blocks is that of an independent contractor, and neither party is an agent or partner of the other. Customer will not have, and will not represent to any third party that it has, any authority to act on behalf of Art Blocks.
   10. **Notices.** Customer is responsible for providing Art Blocks with Customer’s most current e-mail address and associating it with Customer’s designated point of contact. For administrative or operational notices, Art Blocks may provide notice via email to the email address given pursuant to the previous sentence. Each party must deliver all legal notices or communications required or permitted under this Agreement in writing to the other party at the address listed on the Order Form by a nationally-recognized express mail service. Notice will be effective upon receipt or refusal of delivery. Each party may change its address for receipt of notice by giving notice of such change to the other party in accordance with this section.
   11. **Entire Agreement.** This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by authorized signatories of Customer and Art Blocks. To the extent of any conflict among the terms of this Agreement and the terms in an Order Form, the terms of this Agreement shall govern and control.
   12. **Subcontractors**. Art Blocks may use one or more subcontractors in fulfilling its obligations hereunder. Art Blocks’ use of such subcontractors shall in no way relieve Art Blocks of any of its duties or obligations hereunder, and Art Blocks shall remain fully responsible for the performance of its subcontractors’ obligations under this Agreement to the same extent as if Art Blocks had performed such obligations.

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their duly authorized representatives as of the date indicated below:

| **Customer: Ilja Borisovs** |
| --- |
| Signature: |
| Print Name: |
| Title: |
| Date |
| **Art Blocks** |
| Signature: |
| Print Name: |
| Title: |
| Date |

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