

# Avastars Terms of Use

Last Updated: December 15, 2022

## 1. Welcome

Welcome to Avastars™! This is a platform for creating non-fungible token (“NFT”) avatars. Avastars is a decentralized application and digital assets platform operating on the Ethereum blockchain that utilizes specially developed smart contracts made by nft42. Avastars are unique digital avatars, each composed of twelve layers of high-quality artwork designed by the artistic duo Marmota x Milky.

## 2. Legally Binding Agreement

These Terms of Use (the “Terms” or the “Agreement”) are between you (“You”, “Your”, or the “User”) and nft42, a Wyoming corporation that owns and operates Avastars (“Us”, “Our”, or the “Company”) (collectively, the “Parties”). These Terms govern Your use of the Avastars website located at <https://avastars.io/> (the “Website”), and all related tools, mobile applications, web applications, decentralized applications, smart contracts, and APIs associated with the Website, including without limitation, successor website(s) or application(s) thereto (collectively, the “Platform”).

THESE TERMS SET FORTH THE LEGALLY BINDING TERMS AND CONDITIONS THAT GOVERN YOUR USE OF THE WEBSITE AND THE PLATFORM. BY ACCESSING OR USING THE WEBSITE OR THE PLATFORM, INCLUDING ANY SERVICES, FEATURES, OR SMART CONTRACTS, YOU ARE ACCEPTING THESE TERMS (ON BEHALF OF YOURSELF OR THE ENTITY THAT YOU REPRESENT), AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ENTER INTO THESE TERMS (ON BEHALF OF YOURSELF OR THE ENTITY THAT YOU REPRESENT). IF YOU DO NOT AGREE WITH ALL OF THE PROVISIONS OF THESE TERMS, YOU ARE PROHIBITED FROM ACCESSING, USING, AND TRANSACTING ON THE WEBSITE AND THE PLATFORM. YOU MAY NOT ACCESS OR USE THE WEBSITE OR THE PLATFORM, OR ACCEPT THESE TERMS, IF YOU ARE NOT AT LEAST 18 YEARS OLD. YOU FURTHER REPRESENT AND WARRANT THAT YOU ARE OTHERWISE LEGALLY PERMITTED TO USE THE WEBSITE AND THE PLATFORM IN YOUR JURISDICTION, AND THAT THE COMPANY IS NOT LIABLE FOR YOUR COMPLIANCE WITH SUCH APPLICABLE LAWS. THESE TERMS SHALL BE EFFECTIVE AS OF THE DATE OF YOUR FIRST USE OF THE WEBSITE OR THE PLATFORM (THE “EFFECTIVE DATE”).

**PLEASE READ THESE TERMS CAREFULLY. THESE TERMS REQUIRE THE USE OF MANDATORY ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE**

**DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMIT THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.**

### **3. Privacy Policy**

By accessing, using, or transacting via the Website or the Platform, You acknowledge and agree to the collection, use, retention, and disclosure of Your personal information in accordance with the nft42™ Privacy Policy which is incorporated by reference into these Terms. The nft42™ Privacy Policy can be found at <https://firebasestorage.googleapis.com/v0/b/replicants-4bdc4.appspot.com/o/flamelink%2Fmedia%2Fnft42%20Privacy%20Policy%20-%20Sep%2023%202022.pdf?alt=media&token=6f707d5f-9c5f-4156-9077-9e5a0a496f89>, and describes the ways the Company may collect, use, store and disclose Your personal information.

### **4. The Platform**

#### **Accessing the Platform**

To access and use the Platform, You should first install the Google Chrome or Brave web browser. Once you have installed Chrome or Brave, you will need to create an electronic wallet using a supported third-party wallet provider such as MetaMask or WalletConnect, which allows you to purchase, store, and engage in transactions using the native Ethereum cryptocurrency, Ether (“ETH”). The Platform will only recognize you as a User, and you will only be able to interact with the Platform, if your Ethereum electronic wallet is connected and unlocked through a supported third-party wallet provider application or browser extension.

MANY TRANSACTIONS INITIATED THROUGH THE AVASTARS PLATFORM ARE FACILITATED AND OPERATED BY THIRD-PARTY APPLICATIONS AND EXTENSIONS, AND BY USING OUR PLATFORM YOU AGREE THAT YOU ARE GOVERNED BY THE TERMS OF SERVICE AND PRIVACY POLICIES FOR ANY APPLICABLE THIRD-PARTY APPLICATIONS AND EXTENSIONS. FOR METAMASK, SUCH TERMS CAN BE FOUND AT (<https://metamask.io/terms.html>) AND (<https://metamask.io/privacy.html>). FOR DISCORD, SUCH TERMS CAN BE FOUND AT (<https://discord.com/terms>).

#### **Transactions Are Recorded on the Public Ethereum Blockchain**

Transactions that take place on the Website and the Platform are managed and confirmed via the Ethereum blockchain. You understand and acknowledge that Your Ethereum public address will be made publicly visible whenever you engage in a transaction on the Website or the Platform. The Company does not own, control, or operate MetaMask, WalletConnect, Google Chrome, Brave browser, the Ethereum network, or any other third-party website, application, extension, product, or service that You might access, visit, or use for the purpose of enabling You to use the various features of the Platform. The Company will not be liable for the acts or omissions of any such third

parties, nor will it be liable for any damages You may sustain as a result of Your transactions or interactions with any such third parties.

### **Avastars is a Non-Custodial Service Provider**

The Website and the Platform facilitate User collection and creation of Avastars NFTs, but the Company and its affiliates, the Website, and the Platform are not the custodians of any User-owned Avastars NFTs. The User understands and acknowledges that the Website and the Platform do not give the Company custody, possession, or control of any User-owned NFTs or cryptocurrencies. By using the Website or the Platform, You affirm and acknowledge that although the Company provides tools to facilitate smart contract and blockchain interactions and transactions, the Company is a non-custodial service provider.

## **5. User Account and Security**

### **User is Responsible for Account Security**

You are solely responsible for the security of Your account and Your cryptocurrency wallets. Through these Terms You acknowledge that it is Your personal responsibility to maintain at all times adequate security and control of all of Your account details, passwords, private keys, recovery or seed phrases, personal information and identification numbers, and any other information that You use to access or interact with the Website or the Platform.

### **User May Not Use the Platform for Illegal Activity**

You agree to use the Website and the Platform only for purposes that are legal, proper and in accordance with these Terms and any applicable laws or regulations. Without limitation, you may not, and may not allow any third party to: (i) undertake any unlawful activity which would violate, or assist in violation of, any law, statute, ordinance, or regulation, sanctions program administered in any relevant country, including but not limited to the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"), or which would involve proceeds of any unlawful activity; (ii) distribute viruses, worms, defects, Trojan horses, corrupted files, hoaxes, or any other items of a destructive or deceptive nature; (iii) impersonate another person (via the use of an email address, wallet address, marketplace profile name, or otherwise); (iv) operate to defraud the Company, other users, or any other person or provide false, inaccurate or misleading information; (v) use the Website or the Platform to violate or infringe the legal rights (such as, but not limited to, rights of privacy, publicity and intellectual property) of others; (vi) engage in, promote, or encourage illegal activity (including, without limitation, terrorism, tax evasion or money laundering); (vii) interfere with another individual's or entity's access to or use of the Website or the Platform; (viii) harvest or otherwise collect information from the Website or the Platform about others without proper consent; (ix) exploit the Website or the Platform for any unauthorized commercial purpose; (x) modify, adapt, translate, or reverse engineer any portion of the Website or the Platform; (xi) remove any copyright, trademark or other proprietary rights notices contained in or on the Website or the Platform or any part thereof; (xii) reformat or frame any portion of the Website or the

Platform; (xiii) display any content on the Website or the Platform that contains any hate-related or violent content or contains any other material, products or services that violate or encourage conduct that would violate any criminal laws, any other applicable laws, or any third party rights; (xiv) use any robot, spider, site search/retrieval application, or other device to retrieve or index any portion of the Website or the Platform or any content posted on the Platform, or to collect information about the Platform's users for any unauthorized purpose; (xv) create user accounts by automated means or under false or fraudulent pretenses; or (xvi) access or use the Website or the Platform for the purpose of creating a product or service that is competitive with any of the Company's products or services.

### **The Company May Deny Access to or Use of the Platform**

The Company reserves the right to terminate a User's access to and/or use of any aspect of the Website or the Platform at any time, with or without notice, based on the violation of these Terms or for any other reason at the Company's sole discretion.

### **User Must Be of Age**

You affirm that You are over the age of 18, as the Website and the Platform are not intended for individuals under the age of 18. IF YOU ARE UNDER THE AGE OF 18, BUT AT LEAST 13 YEARS OLD, THEN YOU AGREE TO REVIEW THESE TERMS WITH YOUR PARENT OR GUARDIAN TO MAKE SURE THAT YOU AND YOUR PARENT OR GUARDIAN UNDERSTAND AND AGREE TO THESE TERMS, AND YOU AGREE TO HAVE YOUR PARENT OR GUARDIAN REVIEW AND ACCEPT THESE TERMS ON YOUR BEHALF. IF YOU ARE A PARENT OR GUARDIAN AGREEING TO THESE TERMS FOR THE BENEFIT OF A CHILD OVER THE AGE OF 13, THEN YOU AGREE TO AND ACCEPT FULL RESPONSIBILITY FOR THAT CHILD'S USE OF THE WEBSITE AND THE PLATFORM, INCLUDING ALL FINANCIAL CHARGES AND LEGAL LIABILITY RELATED TO OR ARISING FROM SUCH USE.

## **6. The Avastars Platform**

The Platform facilitates the design, creation, and purchase of Avastars NFTs. The current version of the Platform allows a User to create and design an Avastars "Replicant" NFT using the individual traits from Avastars "Prime" NFTs that the User owns. Using the Platform, a User can create an Avastars Replicant NFT by combining up to twelve Avastars traits derived from between two to five Avastars Prime NFTs that the User owns, plus one \$ART (Avastars Replicant Token) token, plus the requisite Ethereum network gas fees at the time of creation and minting.

### **Avastars Platform Fees & Royalties**

Transactions involving Avastars NFTs may be subject to additional royalty and other fees beyond the required token and network transaction fees described in these Terms. For instance, the Company collects royalties on secondary sales of Avastars NFTs that occur on third-party NFT marketplaces, such as OpenSea and Nifty Gateway, that honor such royalties. In addition, such third-party NFT marketplaces may include additional platform fees or royalties on all secondary

sales of Avastars NFTs. By using the Website or the Platform, the User consents to the collection and disbursement of all applicable royalties and platform fees associated with the primary and secondary sales of Avastars NFTs. The User hereby waives any first sale defense or argument related to secondary market activities that result in royalties paid to the Company. The User acknowledges and agrees that the Company is not a party to any agreement or transaction between any User involving the secondary purchase, sale, or transfer of an Avastars NFT, whether or not a commission, fee, or royalty is received by the Company as a result of such transaction.

### **Primary Sales**

- For Avastars Primes, the Company receives 100% of the total Sale Price of all primary sales.
- For Avastars Replicants, the Company receives no fees, as the \$ART token is burned upon use, and the Ethereum network consumes and utilizes the gas fees to transact using the Platform.

### **Secondary Sales**

- For secondary sales, the Company receives 2.5% of the total Sale Price for each secondary sale (the “Royalty”) of Avastars NFTs, provided this smart contract Royalty is honored by the third-party NFT marketplace where the secondary sale occurs.
- For secondary sales, the third-party NFT marketplace where the secondary sale occurs may impose its own royalty fee to be deducted from the total Sale Price of each secondary sale. For example, OpenSea imposes a 2.5% royalty on all NFT sales conducted using its marketplace platform. Other third-party NFT marketplaces may impose higher or lower platform royalties. Please review the terms and conditions of such third-party NFT marketplaces prior to buying or selling Avastars NFTs on such marketplaces.

### **Platform Transactions are Executed by Smart Contracts**

To initiate a transaction on the Platform, a User must voluntarily invoke one or more smart contract operations from a User-owned Ethereum wallet. All transactions on the Platform, including but not limited to transfers, consignments, sales, and purchases of Avastars NFTs, are initiated through one or more smart contracts at the sole discretion and complete risk of the User. The smart contracts are configured to facilitate the execution of a voluntary User confirmation to create, transfer, sell, or modify Avastars NFTs. The User acknowledges the risks of interacting with smart contracts and agrees to be bound by the outcome of any smart contract operation by invoking, calling, requesting, or otherwise engaging with such smart contracts, whether or not the smart contracts behave as the User expects or intends.

### **Automated Collection and Disbursement of Fees by the Smart Contracts**

The User agrees and understands that all fees, commissions, and/or royalties are transferred, processed, or initiated directly through one or more smart contracts operating on the Ethereum blockchain network. By transacting on the Platform, the User hereby acknowledges, consents to, and accepts all automated fees, commissions, and/or royalties for the sale of Avastars NFTs. The

User hereby consents to and agrees to be bound by the Platform’s execution and distribution of any fees, commissions, and royalties. Users hereby waive any entitlement to royalties, commissions, or fees paid to another by operation of the Platform’s smart contracts.

### **Third-Party Marketplace Transactions**

The User is permitted to sell or transfer their Avastars NFTs on third-party marketplaces and exchanges, however the User hereby waives any entitlement to royalties, commissions, or fees for such third-party marketplace transactions. The User irrevocably releases, acquits, and forever discharges the Company and its subsidiaries, affiliates, officers, and successors of any liability for royalties, fines, or fees not received by the User from any transaction.

### **Ethereum Gas Fees**

All User transactions on the Platform, including without limitation minting, tokenizing, purchasing, or confirming, are facilitated by smart contracts existing on the Ethereum network. The Ethereum network requires the payment of a transaction fee (a “Gas Fee”) for every transaction that occurs on the Ethereum network, and thus every transaction that occurs on the Platform. The value of the Gas Fee changes, often unpredictably, and is entirely outside of the control of the Company and its Platform. The User acknowledges that under no circumstance will a contract, agreement, offer, sale, bid, or other transaction on the Platform be invalidated, revocable, retractable, or otherwise unenforceable on the basis that the Gas Fee for a given transaction was unknown, too high, incorrectly predicted by the Platform, or otherwise unacceptable to the User. The User also acknowledges and agrees that the Gas Fee is non-refundable under all circumstances.

### **Taxes**

The Company is not responsible for determining the withholding, sales, use, value added, transfer, or other taxes, together with any interest and penalties imposed with respect thereto (the “Taxes”), that may apply to transactions involving the Website, the Platform, or Avastars NFTs. You agree that You are solely responsible for determining what, if any, Taxes apply to Your transactions, and You agree to withhold, collect, report and remit any applicable Taxes to the appropriate taxing authorities. All amounts due on the Website and the Platform are exclusive of sale, use, value added, or similar Taxes (“Sales Taxes”). This means that Sales Taxes become Your sole responsibility.

### **No Attacking or Interfering with the Smart Contracts**

Users are forbidden from engaging in any attack, hack, denial-of-service attack, interference, or exploit of any smart contracts associated with the Platform. Operations performed by a User that are technically permitted by a smart contract may nevertheless be a violation of law and/or these Terms.

### **The Company Makes No Representations or Warranties**

The Company makes no representations or warranties, express or implied, written or oral, made by or on behalf of the Company in connection therewith, including any representations or

warranties of title, non-infringement, functionality, merchantability, usage, security, suitability or fitness for any particular purpose, workmanship, or technical quality of any Avastars NFT, smart contract code, or software.

The Company shall not be liable to you for any damages in tort, contract, or otherwise, including indirect, special, incidental, consequential, punitive, or exemplary damages arising out of or related to participation in or the outcome of a Platform transaction, whether or not the Company has been advised of or knew of the possibility of such damages.

## 7. Ownership

By using the Website or the Platform, by acquiring an Avastars NFT via a secondary marketplace, or by otherwise receiving an Avastars NFT, You acknowledge and agree that Your ownership and use of all such copyrighted Avastars NFTs and NFT elements and traits are subject to the Avastars Digital Asset Ownership License (the “License”) (which can be found at this link: <https://nft.substack.com/p/the-digital-asset-ownership-license>). The License is hereby incorporated by reference into these Terms.

Unless otherwise indicated in writing by the Company, the Website and the Platform, and all content and other materials contained therein, including, without limitation, nft42 and Avastars logos, marks, designs, text, graphics, pictures, information, data, software, sound files, and other files and marks, and the selection and arrangement thereof (collectively, the “Platform Content”), are the proprietary property of the Company and its respective affiliates and/or licensors as applicable. All nft42 and Avastars logos and product and service names, marks, trade dress, and slogans are trademarks of the Company, and may not be copied, imitated, or used, in whole or in part, without the prior written consent of the Company.

It is prohibited to use any Platform Content or link to the Website without the prior written consent of the Company. In addition, the look and feel of the Platform Content, including without limitation, all page headers, custom graphics, button icons, and scripts, constitute the service mark, trademark, or trade dress of the Company and may not be copied, imitated, or used, in whole or in part, without the prior written consent of the Company.

Other than the Platform Content, all other trademarks, product names, and logos on the Website and the Platform 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 on the Website or the Platform infringes your copyright or trademark rights, please file a notice of infringement by contacting the Designated Copyright Agent listed below.

Your notice must contain the following information as required by the Digital Millennium Copyright Act (17 U.S.C. §512) (“DMCA”):

- The full name and a physical or electronic signature of the person authorized to act on behalf of the copyright owner;

- Identification of the copyrighted work claimed to have been infringed. If multiple copyrighted works are covered by your notice, you may provide a representative list of the copyrighted works that you claim have been infringed;
- Reasonably sufficient detail to enable the Company to identify and locate the copyrighted work that is claimed to be infringing (e.g. a link to the page on the Website that contains the material);
- A mailing address, telephone number, and email address where the Company can contact you;
- A statement that you have a good faith belief that the disputed use of the copyrighted work is not authorized by the copyright owner, its agent, or the law; and
- A statement made by you, under penalty of perjury, that the information in the notice is accurate and that you are the copyright owner or authorized to act on behalf of the copyright owner.

Please submit your notice to the Designated Agent below:

nft42  
Attn: Legal Department  
PO Box 20310 #52531  
Cheyenne, Wyoming 82003  
Email: [legal@nft42.com](mailto:legal@nft42.com)

Once you provide the Company with an adequate notice as described above, the Company will respond expeditiously and take whatever action, in its sole discretion, that is deemed appropriate.

PLEASE NOTE THAT THE COMPANY INTENDS TO COMPLY WITH ALL PROVISIONS OF THE DIGITAL MILLENNIUM COPYRIGHT ACT, BUT WILL NOT UNILATERALLY TAKE RESPONSIBILITY FOR POLICING AND REMOVING MATERIAL THOUGHT TO BE INFRINGING.

## **8. Disclaimers, Limitations on Liability, & Assumption of Risk**

### **Limitations on Liability**

TO THE EXTENT PERMITTED BY LAW, THE COMPANY AND ITS AFFILIATES ARE NOT RESPONSIBLE FOR LOST PROFITS, REVENUES, OR DATA, FINANCIAL LOSSES OF ANY KIND, OR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES. TO THE EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF THE COMPANY AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, IS LIMITED TO THE TOTAL AGGREGATE AMOUNTS PAID BY YOU IN TRANSACTION FEES TO USE THE PLATFORM OVER THE PRIOR TWELVE (12) MONTHS.



TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY AND ITS AFFILIATES, OFFICERS, EMPLOYEES, DIRECTORS, SHAREHOLDERS, PARENTS, SUBSIDIARIES, AGENTS, AND LICENSORS, DISCLAIM ANY AND ALL WARRANTIES, CONDITIONS, AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING THOSE RELATED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND THOSE ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY AND ITS AFFILIATES MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE ACCURACY OR COMPLETENESS OF CONTENT AVAILABLE ON OR THROUGH THE WEBSITE OR THE PLATFORM REGARDING THE VALUE OF OR TITLE TO AVASTARS NFTS, OR THE CONTENT OR APPLICATION OF ANY THIRD-PARTY WEBSITES OR SERVICES LINKED TO OR INTEGRATED WITH THE WEBSITE. THE COMPANY AND ITS AFFILIATES DISCLAIM ALL LIABILITY FOR: (A) ERRORS, MISTAKES, OR INACCURACIES OF PLATFORM CONTENT; (B) PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM ACCESS TO OR USE OF THE WEBSITE OR THE PLATFORM OR CONSUMPTION OF ANY PRODUCTS OFFERED THROUGH THE SAME; (C) ANY UNAUTHORIZED ACCESS TO OR USE OF THE COMPANY'S WEBSITE, PLATFORM, SERVERS, OR ANY PERSONAL INFORMATION OR USER DATA CONTAINED THEREIN; (D) ANY INTERRUPTION OF SERVICE OR TRANSMISSION TO OR FROM THE WEBSITE OR THE PLATFORM; (E) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED ON OR THROUGH THE WEBSITE, THE PLATFORM, OR SERVICES OR APPLICATIONS OFFERED BY ANY THIRD PARTY; (F) ANY ERRORS, INCORRECT INFORMATION, OR MISREPRESENTATIONS FROM OR BY THIRD PARTY TOOLS OR WEBSITES THAT INTERACT WITH THE WEBSITE OR THE PLATFORM; (G) ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED THROUGH THE WEBSITE OR THE PLATFORM; OR (G) LOSS OR DAMAGED CAUSED BY ANOTHER USER'S VIOLATION OF THESE TERMS.

Some jurisdictions do not allow the exclusion of certain warranties and limitations of liability provided in this section. If you are in such a jurisdiction, some of the above limitations and disclaimers may not apply to you. To the extent the Company may not, as a matter of applicable law, disclaim any implied warranty or limit its liabilities, the scope and duration of such warranty and the extent of the Company's liability will be the minimum permitted by applicable law.

### **Assumption of Risk**

Transactions occurring on the Platform, including but not limited to sales, listings, and other operations through the Website, utilize experimental smart contract and blockchain technology, including non-fungible tokens, cryptocurrencies, consensus algorithms, and decentralized or peer-to-peer networks and systems. Users acknowledge and agree that such technologies are experimental, speculative, and inherently risky. Users acknowledge and agree that the Platform smart contracts may be subject to bugs, malfunctions, timing errors, hacking and theft, or changes to the protocol rules of the Ethereum blockchain (i.e., "forks"), which can adversely affect the

smart contracts and may expose Users to the risks of total loss, forfeiture of digital currency or NFTs, or lost opportunities to buy or sell NFTs. The Company assumes no liability or responsibility for any smart contract or blockchain related failures, risks, or uncertainties. Users hereby acknowledge and assume the risk of initiating, interacting with, and/or participating in transactions on the Platform, and assume full responsibility and liability for the outcome of any transaction initiated on the Platform, whether or not the smart contracts, the Website, or other features of the Platform behave as expected or intended. Users hereby represent that they are knowledgeable, experienced, and sophisticated in using blockchain technology and initiating Ethereum-based transactions.

USERS FURTHER REPRESENT AND WARRANT THAT THEY UNDERSTAND AND ARE WILLING TO ACCEPT THE RISKS ASSOCIATED WITH SYSTEMS SUCH AS THE ETHEREUM BLOCKCHAIN, SMART CONTRACTS, NON-FUNGIBLE TOKENS, THE INTERPLANETARY FILE SYSTEM, AND ARWEAVE.

THE COMPANY WILL NOT BE RESPONSIBLE FOR OR LIABLE TO YOU FOR ANY LOSSES YOU MAY INCUR AS THE RESULT OF YOUR USE OF THE ETHEREUM NETWORK OR ANY ETHEREUM ELECTRONIC WALLET, INCLUDING BUT NOT LIMITED TO ANY LOSSES, DAMAGES OR CLAIMS ARISING FROM: (A) USER ERROR, SUCH AS FORGOTTEN PASSWORDS OR INCORRECTLY CONSTRUED SMART CONTRACTS OR ATTEMPTING TO MANUALLY ADJUST GAS FEES OR OTHER TRANSACTIONS; (B) SERVER FAILURE OR DATA LOSS; (C) CORRUPTED WALLET FILES; (D) UNAUTHORIZED ACCESS OR ACTIVITIES BY THIRD PARTIES, INCLUDING BUT NOT LIMITED TO THE USE OF VIRUSES, PHISHING, BRUTEFORCING OR OTHER MEANS OF ATTACK AGAINST THE WEBSITE, THE PLATFORM, THE ETHEREUM NETWORK, OR ANY ETHEREUM-COMPATIBLE BROWSER OR ELECTRONIC WALLET; (E) FAILED TRANSACTIONS ON THE BLOCKCHAIN NETWORK WHERE THE ACTION IS NOT PERFORMED BUT THE INITIATOR OF THE CONTRACT IS STILL REQUIRED TO PAY A NETWORK FEE; OR (F) EXPLOITS OF THIRD-PARTY TOOLS CONNECTED TO THE WEBSITE OR A USERS' ELECTRONIC WALLET

THE COMPANY IS NOT RESPONSIBLE FOR OR LIABLE TO YOU FOR LOSSES DUE TO THE MALFUNCTION OR INOPERABILITY OF THE ETHEREUM BLOCKCHAIN, OTHER FEATURES OF THE ETHEREUM NETWORK, OR ANY ETHEREUM-COMPATIBLE BROWSER OR ELECTRONIC WALLET, INCLUDING BUT NOT LIMITED TO LATE REPORTING BY DEVELOPERS OR REPRESENTATIVES (OR NO REPORT AT ALL) OF ANY ISSUES WITH THE BLOCKCHAIN SUPPORTING THE ETHEREUM NETWORK, INCLUDING FORKS, TECHNICAL NODE ISSUES, OR ANY OTHER ISSUES RESULTING IN THE LOSS OF FUNDS OR ASSETS.

Upgrades by the Ethereum Foundation to the Ethereum network, a hard fork in the Ethereum network, or a change in how transactions are confirmed on the Ethereum network, may have unintended, adverse effects on all blockchains, platforms, and/or marketplaces using the ERC-20, ERC-721, or ERC-1155 token standards, or any other accepted token standards, including the Platform.

## **Financial and Regulatory Risks of Digital Assets**

Use of the Platform, including creating, buying, selling, trading, and exchanging digital assets, may carry financial risk. Digital assets, such as NFTs, are, by their nature, highly experimental, risky, and volatile, and transactions executed via the Platform are irreversible, final, and non-refundable. You acknowledge and agree that you will access and use the Platform at your own risk. The risk of loss in trading digital assets can be substantial. You should, therefore, carefully consider whether buying or selling digital assets is suitable for you in light of your circumstances and financial resources. By using the Platform, you represent that you are and will be solely responsible for making your own independent appraisal and investigations into the risks of a given transaction and the underlying digital assets. You represent that you have sufficient knowledge, market sophistication, professional advice and experience to make your own evaluation of the merits and risks of any transaction conducted via the Platform or any underlying digital asset. You accept all consequences of using the Platform, including the risk that You may lose access to Your digital assets indefinitely. All transaction decisions are made solely by You. Notwithstanding anything in this Agreement, the Company accepts no responsibility whatsoever, and will in no circumstances be liable to You, in connection with Your use of the Platform. Under no circumstances will the operation of all or any portion of the Platform be deemed to create a relationship that includes the provision or tendering of investment advice.

The prices of blockchain assets are extremely volatile. Fluctuations in the price of other digital assets could materially and adversely affect the value of Avastars NFTs, which may also be subject to significant price volatility. A lack of use or public interest in the creation and development of distributed ecosystems could negatively impact the development of the Platform, and therefore the potential utility or value of Avastars NFTs. The Platform, the Ethereum blockchain, and digital assets could be impacted by one or more regulatory inquiries, regulatory actions, or legislative policies which could impede or limit the ability of the Company to develop the Platform, or which may impede or limit Your ability to access or use the Platform or the Ethereum blockchain.

## **9. Mandatory Arbitration and Waiver of Jury Rights**

The following Arbitration Agreement requires You to arbitrate any and all disputes with the Company that relate to or arise out of Your use of the Website or the Platform, or these Terms, and limits the manner in which You may seek relief from the Company.

### **Scope of Arbitration**

All controversies, claims, counterclaims, or other disputes arising between You and the Company relating to or arising out of these Terms, the Website, the Platform, Avastars NFTs, or any other products or services offered by the Company shall be submitted for binding arbitration under the Rules of the American Arbitration Association (“AAA Rules”). The arbitration will be heard and determined by a single arbitrator. The arbitrator’s decision will be final and binding upon the Parties and may be enforced in any court of competent jurisdiction. The Parties agree that the arbitration will be kept confidential and that the existence of the proceeding and any element of it (including, without limitation, any pleadings, briefs or other documents submitted or exchanged and any testimony or other oral submissions and awards) will not be disclosed beyond the

arbitration proceedings, except as may lawfully be required in judicial proceedings relating to the arbitration or by applicable disclosure rules and regulations of securities, regulatory authorities, or other governmental agencies.

### **Authority of Arbitrator**

The arbitrator shall have exclusive authority to (a) determine the scope and enforceability of this Arbitration Agreement, and (b) resolve any dispute related to the interpretation, applicability, enforceability or formation of this Arbitration Agreement, including, but not limited to, any claim that all or any part of this Arbitration Agreement is void or voidable. The arbitration will decide the rights and liabilities, if any, of the Parties. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the arbitral forum's rules, and these Terms (including the Arbitration Agreement). The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon the Parties. The Parties agree that to the extent monetary or non-monetary remedy or relief is granted, such request for relief may be enforced as needed by any court of competent jurisdiction.

### **Waiver of Jury Rights**

**THE PARTIES HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO HAVE ANY DISPUTE, CLAIM, OR CONTROVERSY DECIDED BY A JUDGE OR JURY IN A COURT.**

The Parties instead elect to have any and all claims and disputes resolved by arbitration under this Arbitration Agreement, except as otherwise indicated herein. An arbitrator can award on an individual basis the same damages and relief as a court and must follow this Arbitration Agreement as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.

### **Waiver of Class and Other Non-Individualized Relief**

**ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A COLLECTIVE CLASS BASIS. ONLY INDIVIDUAL RELIEF IS AVAILABLE, AND CLAIMS OF MORE THAN ONE HOLDER, PURCHASER, OR USER CANNOT BE ARBITRATED OR CONSOLIDATED WITH THOSE OF ANY OTHER HOLDER, PURCHASER, OR USER.**

If a decision is issued stating that applicable law precludes enforcement of any part of this subsection's limitations as to a given claim for relief, then that claim must be severed from the arbitration and brought in the state or federal courts located in the State of Wyoming. All other claims shall be arbitrated. Except as provided herein, if any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable, then such specific part or parts

shall be of no force and effect and shall be severed and the remainder of the Arbitration Agreement shall continue in full force and effect. This Arbitration Agreement will survive the termination of Your relationship with the Company. Notwithstanding any provision in these Terms to the contrary, the Company agrees that if it makes any future material change to this Arbitration Agreement, You may reject such change within thirty (30) days of the change becoming effective by writing to the Company at: nft42, Attn: Legal Department, PO Box 20310 #52531, Cheyenne, Wyoming 82003.

## 10. Miscellaneous Terms

### **These Terms May Change**

The Company reserves the right, in its sole and absolute discretion, to change, amend, modify, alter, replace or supplement these Terms and the smart contracts accessible through the Platform from time to time. The User agrees that a modification to one or more of the Platform's smart contracts does not alter any right or obligation conferred by these Terms.

The most current version of these Terms will be posted on the Website with the "Last Revised" date at the top of the Agreement amended to reflect the date of the most recent change or update to the Terms. Any changes or updates will be effective immediately upon posting the revisions to the Website. You shall be responsible for reviewing and becoming familiar with any such changes or updates. You waive any right you may have to receive specific notice of such changes or updates. You are expected to check this page frequently so you are aware of any changes or updates, as they are binding on you. Your use of the Website or the Platform on or after any change or update to the Terms constitutes your acceptance of the Terms as modified. If you do not agree to the Terms in effect when you access or use the Website or the Platform, the Company may, at any time and without liability or prior notice, modify or discontinue Your access to and use of all or part of the Platform (including access to the Platform via any third-party applications, links, or software).

### **Indemnification**

To the fullest extent permitted by applicable law, You agree to indemnify, defend and hold harmless the Company, its affiliates, and its respective past, present and future employees, officers, directors, contractors, consultants, equity holders, suppliers, vendors, service providers, subsidiaries, agents, representatives, predecessors, successors and assigns (individually and collectively, the "nft42 Parties"), from and against any and 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") that are caused by, arise out of, or are related to: (a) Your use or misuse of the Website, the Platform, the Platform Content, or Avastars NFTs; (b) Your violation of these Terms; (c) Your violation of the rights of any third party, including another user; and (d) Your failure to pay any Taxes or Sales Taxes in connection with Your transactions on the Website or

the Platform. You agree to promptly notify the Company of any third party Claims and cooperate with the nft42 Parties in defending such Claims. You further agree that the nft42 Parties shall have control of the defense or settlement of any third party Claims. THIS INDEMNITY IS IN ADDITION TO, AND NOT IN LIEU OF, ANY OTHER INDEMNITIES SET FORTH IN A WRITTEN AGREEMENT BETWEEN YOU AND THE COMPANY.

### **Severability**

If any provision of these Terms is found to be unlawful or unenforceable, then that provision will be deemed severable from these Terms and will not affect the enforceability of any other provisions.

### **No Assignment**

Neither Party may assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party, provided that the Company may assign this Agreement without your prior consent to any of the Company's affiliates, or to its successors in interest of any business associated with the services provided by the Company. This Agreement shall be binding upon the permitted assigns or transferees of each Party.

### **Governing Law and Jurisdiction**

These Terms, Your rights and obligations thereunder, and all actions contemplated by, arising out of, or related to these Terms shall be governed by the laws of Wyoming, as if these Terms are a contract wholly entered into and wholly performed within the State of Wyoming. YOU UNDERSTAND AND AGREE THAT YOUR USE OF THE WEBSITE AND THE PLATFORM AS CONTEMPLATED BY THESE TERMS SHALL BE DEEMED TO HAVE OCCURRED IN THE STATE OF WYOMING AND BE SUBJECT TO THE INTERNAL LAWS OF THE STATE OF WYOMING WITHOUT REGARD TO ITS CONFLICTS OF LAWS PROVISIONS.