

## **FUNKY FEATURES LLC NFT TERMS OF SALE**

**Last Updated: February 27, 2023**

When you (Purchaser, you) purchase FUNKY FEATURES non-fungible tokens (NFTs) from FUNKY FEATURES, LLC (a Delaware Limited Liability Company) (FUNKY FEATURES, us, we) you must agree to the terms and conditions set out in this document (NFT Terms) and the license set out in the Annexure to these NFT Terms (License), which apply to you and any subsequent person to whom you sell the NFT(s) you purchased from us in the first instance.

### **OPERATIVE CLAUSES**

#### Applicability of NFT Terms:

#### **Purchasing NFTs**

All NFTs purchased or procured by you are subject to these NFT Terms and the License, unless otherwise agreed in writing and by purchasing or pre-purchasing any NFT you are agreeing to be bound by these NFT Terms and the License.

The use of any NFTs is subject to, without limitation our Website Terms and our Privacy Policy and any ancillary document relating to the License referred to in the Annexure.

Termination of these NFT Terms for any reason will not affect any obligations which have arisen prior to termination.

#### **Sale of NFTs**

We may list NFTs for sale from time to time, which may be stand-alone or as part of a bundle of other digital goods. Orders placed for NFTs are non-refundable, cannot be cancelled for change of mind, require payment in full of the Purchase Price at the time of purchase and may require that you connect or provide a Digital Wallet for delivery of the NFT at the time of sale.

If you engage in a secondary sale of your NFT to another purchaser, that transaction may involve third party platforms or blockchain digital wallets which are not associated with us, and may be subject to transaction fees charged by that network. Should any transfer be conducted using a marketplace we provide, then fees and charges may apply to those transactions payable to us at the time of the transaction.

#### **Pre-Conditions To Sale**

You must make payment in full in any nominated Digital Currency or via any other nominated payment method as a pre-condition to any purchase of an NFT.

In the case of a primary sale, we will have no obligation to transfer any NFT to you until we have received the Purchase Price in full for any NFT. If you make payment to our Digital Wallet, you must ensure your transfer is made to the correct wallet address.

In the event that any payment is reversed or becomes invalid, including via either a double spend attack or recall or refund request by a payment processor, you agree to immediately return to us any NFTs the subject of a sale where the Purchase Price has no longer been retained in full by us.

### **Title and Risk Wallet**

Risk and title in any NFT purchase transfers to you upon purchase of the NFT and you are responsible for ensuring your Digital Wallet is accurately linked. If you lose your private key or login or seed phrase for your Digital Wallet you will likely lose access permanently to your NFTs stored in your Digital Wallet. We cannot recover any private key or seed phrase for your Digital Wallet.

### **Refunds - Risk in Value of Digital Currency**

We do not offer refunds for purchases. However, where the Purchase Price has been paid in a Digital Currency and you are entitled to a refund for any reason, you agree the refund is to be made in the same form of Digital Currency used in the initial transaction, or at our option in US Dollars equivalent to the value of the Digital Currency used in the initial transaction on the date the Purchase Price was paid, whether or not that is a greater or lesser sum.

### **Intellectual Property License in NFTs**

You acknowledge and agree that we own all legal right, title and interest in all Intellectual Property Rights in the Art. Your rights in the NFT you Own are limited to those expressly stated in the License. We reserve all rights and ownership in and to the Intellectual Property Rights in the NFT you Own that are not expressly granted in the License.

### **Termination**

#### **Termination with cause**

These NFT Terms and the License may be terminated with immediate effect: by us if any of the Purchaser warranties in clause 6 are breached by you; or by us if the limitations of the License in clauses 1.6 or 1.8(c) are breached; or by either party if the other party commits any material breach of its obligations under these NFT Terms and fails to remedy such breach (if capable of remedy) within 30 days of receipt of notice from the non-defaulting party requiring it to do so.

Termination of these NFT Terms does not affect the rights of the parties which have accrued prior to termination.

#### **Effect of Termination**

Upon termination of these NFT Terms or the License, the rights under the License will cease, including the rights to use, copy, display, and enjoy the Art associated with the NFT you Own, save that any physical objects you have created showing the art for your personal use shall be deemed to have a continuing personal license to use.

### **Acknowledgements**

You acknowledge and agree that:

We own all legal right, title and interest in and to all other elements of the Website, and all Intellectual Property Rights therein (including, without limitation, all Art, designs, systems, methods, information, computer code, software, services, "look and feel", organization, compilation of the content, code, data, and all other elements of the Website (collectively, Website Materials));

the Website Materials are protected by copyright, trade dress, patent, and trademark laws, international conventions, other relevant intellectual property and proprietary rights, and applicable laws. All Website Materials are the copyrighted property of us or our licensors, and all trademarks, service marks, and trade names associated with the Website or otherwise contained in the Website Materials are proprietary to us or our licensors;

we provide NFTs solely on a proprietary basis and if we transact with you we do so solely on a bilateral basis;

NFTs are not intended for speculative use, are not sold or represented to be financial product and nothing we publish is in any way financial advice to you or any other person;

NFTs may experience or may have extreme price volatility, including being worthless in the future;

we are not providing and will not provide any fiduciary, advisory, brokerage, exchange or other similar services to you or any other person;

you are solely responsible for any decision to enter into a transaction subject to these NFT Terms, including the evaluation of any and all risks related to any such transaction;

a significant degree of IT sophistication is required to safely deal in and store NFTs of any kind using a Digital Wallet;

we are not a custodian for the purposes of the Corporations Act, and transfers of any NFTs are for transaction purposes only;

all transactions entered into and conducted under these NFT Terms are deemed to have occurred within the jurisdiction of Dover, Delaware;

we are not responsible for any Loss caused by your failure to act in accordance with our policies, procedures or in accordance with our reasonable directions;

you purchase NFTs entirely at your own risk and understanding and we have not made any representations or warranties as to the IT security or ongoing availability of such NFTs or the Art or that your access to use your NFTs will be uninterrupted, timely or secure at all times;

you understand and acknowledge that your ownership of NFTs remains contingent upon you remaining in control of the seed phrases and private key(s) associated with your Digital Wallet and that we will not store any information in connection with your Digital Wallet beyond that required for the sale of NFTs;

we do not and cannot guarantee there will be any use for, or any particular price available for any NFT you purchase from us; and

we do not represent or guarantee any outcomes, or any financial return from your acquisition of any NFT from us, save the ability to Own the NFT and enjoy the License.

### **Our Warranties**

We represent and warrant that:-

we own, or have the right to use under license, the Art in the NFTs which we sell and are legally entitled to, and are capable of, selling the NFTs offered for sale; and we will give you notice before we discontinue or alter the rights or features of any NFTs which you have purchased.

### **Purchaser Warranties**

You warrant and assure us that in acquiring an NFT (from us or from a third party or existing NFT holder):

you are sufficiently experienced and educated to make decisions regarding the procurement or purchase of NFTs from us, including sufficient experience in dealing with and storing NFTs using a Digital Wallet;

you have all necessary experience, resources, certificates, licenses, permits and approvals to procure or purchase of NFTs applicable in Your Jurisdiction, and that any transactions under these NFT Terms or in your use of the NFT will be legal under the applicable laws of Your Jurisdiction;

all information you supply is true and accurate as at the time it is given, and that any Digital Wallet address you provide to us has been generated in accordance with best practice security measures and no other party, other than you or your authorized representative, has used, or has access to, the seed phrases, private keys or analogous passwords required to effect transfers from, the Digital Wallet;

as far as you are aware, there are no facts, circumstances or other information which both:

you have not fully and fairly disclosed to us in a manner and to an extent that it would impact our ability to make a reasonable assessment of those facts, matters and circumstances prior to entering into a transaction to sell you an NFT; and

is of such nature and materiality that a reasonable person, had it been made aware of, could not reasonably be expected to consider prior to entering into a transaction for the sale of NFTs;

you are not involved in any capacity in any claim, legal action, proceeding, suit, litigation, prosecution, investigation, enquiry, mediation or arbitration (nor which are pending or threatened) concerning NFTs;

if we request, you will identify and substantiate the source of funds involved in transactions to acquire NFTs;

no Digital Currency transferred to us as part of a Purchase Price has been derived from any illegal or unlawful activity;

you are the lawful owner of any Digital Wallet nominated for delivery of NFTs and each Digital Wallet is owned and operated solely for your benefit, and no person has any right, title or interest in your nominated Digital Wallet;

and

you have had the opportunity to obtain independent legal advice in relation to the terms and effect of these NFT Terms.

### **Continuous Warranties**

You represent and warrant to us that each of the Purchaser Warranties is true and accurate, and not misleading or deceptive as at the date of these NFT Terms and, except as expressly stated, will be true, accurate and not misleading or deceptive each time an NFT or NFTs are provided to you.

### **Notification**

You must disclose to us anything that has or will constitute a material breach of a Purchaser's Warranty or cause a Purchaser's Warranty to be untrue or inaccurate, as soon as practicable after you become aware of it.

### **Mutual Warranties**

Each party warrants and assures the other party that:

if it is a company, it is duly incorporated and validly exists under the law of its place of incorporation;

it is not subject to an Insolvency Event; and these terms constitute a legal, valid and binding terms enforceable in accordance with its terms by appropriate legal remedy.

### **Consumer Guarantees**

Certain legislation, and similar consumer protection laws and regulations, may provide you with rights, warranties, guarantees and remedies relating to your purchase of NFTs which cannot be excluded, restricted or modified in these NFT Terms (Statutory Rights).

Nothing in these NFT Terms does, or is intended to, exclude any Statutory Rights to which you are entitled.

### **Knowledge and Awareness**

Where a warranty is given 'to the best of a party's knowledge, belief and awareness', or 'as far as the party is aware' or with a similar qualification as to the relevant party's awareness or knowledge, the party giving the warranty will be deemed to know or be aware of a particular fact, matter or circumstance if that party's directors or senior management employees are aware of that fact, matter or circumstance, or would have become aware if they had made reasonable enquires as at the date of these NFT Terms.

### **Indemnity**

You agree to indemnify us and our Personnel and will keep us and our Personnel indemnified at all times to the fullest extent permitted by law in respect of any Loss or Claim which we or our Personnel may suffer, sustain or incur arising from, or connected with, a breach of a Purchaser Warranty without limitation.

In addition, you must indemnify us and our Personnel and keep us and our Personnel indemnified at all times to the fullest extent permitted by law in respect of any Claim which we or our Personnel may suffer, sustain or incur arising from, or connected with, any breach of these NFT Terms, other than a breach of a Purchaser Warranty, or any breach of all applicable laws, reduced to the extent of the Loss in respect of the Claim was caused by the negligent act or omission of us or our Personnel.

### **Limitation of Liability**

In the absence of a material breach of these NFT Terms by us or the gross negligence, fraud or wilful misconduct by us when providing NFTs to you under these NFT Terms, we will not be liable to you on account of anything done, omitted or suffered by us acting in good faith when providing NFTs to you pursuant to these NFT Terms, including in respect of a Force Majeure Event.

### **Third Party Services**

Subject to clause 8.1, we will not be liable for the performance, errors or omissions of unaffiliated, nationally or regionally recognized third parties or decentralized networks such as, by way of example and not limitation: blockchain networks (whether private/permissioned or public), courier companies, national postal services and other

delivery, telecommunications and other companies not under our reasonable control, and third parties not under our reasonable control providing services to the blockchain industry generally, such as, by way of example and not limitation, companies and other entities providing processing and payment or transaction services (including “Layer 2” or similar “roll-up” or optimization services), banking partners, custody services, market making services and/or third party pricing services and decentralized blockchain networks such as, by way of example and not limitation, the blockchain(s) upon which any NFT depends or forks of those blockchain(s).

### **Compliance With Laws – No Monitoring Responsibilities**

We will have no liability or responsibility for your compliance with laws or regulations governing the transfer and use of NFTs. Further, you are solely responsible for compliance with all applicable requirements of any laws, rules, and regulations of governmental authorities in Your Jurisdiction.

You further acknowledge that neither we nor any of our Personnel is, and will not be, by virtue of providing NFTs to you, an advisor or fiduciary to you.

No liability for consequential loss

Neither party will be liable to the other for any Loss or Claim in the nature of consequential or indirect loss, including without limitation loss of profits, loss of chance, loss of expectations, or loss or opportunity.

### **Liability Cap**

Our total liability to you under any circumstances is limited to the amount for which an NFT was originally sold by us to you and we shall not be liable for any amount above that sum.

### **Tax**

The Purchase Price for any transaction will be considered to be inclusive of any applicable Sales Tax.

If any additional Sales Tax is applicable by virtue of any law under Your Jurisdiction, you agree to pay such amount as is payable on behalf of us, and inform us of that payment forthwith.

Any reference to a cost or expense incurred by a party in these NFT Terms excludes any amount of Sales Tax forming part of the relevant cost or expense when incurred by the party for which the party can claim an input tax credit.

Each party is solely responsible for any taxation which arises as a result of dealing in the NFTs, including capital gains or income tax and no party shall have a Claim for any Loss against the other in respect of any taxation amounts how so ever arising.

### **Notices**

Unless a provision of these NFT Terms expressly state otherwise, a notice, consent, approval, waiver or other communication (notice) in connection with these NFT Terms must be in writing and in English and sent to, in the case of us, our nominated email, of in the case of you, to your nominated email or published on the Website with public access to such notice.

Any notice will be deemed to be received within 24 hours of sending the electronic message (unless a rejection message is received) or publication online.

A party must immediately notify the other party in writing of any changes to its contact details.

Disputes

### **Proceedings Suspended**

You must not begin legal proceedings in connection with a dispute arising out of or in connection with these NFT Terms unless the steps in this clause 11 have been followed. However, this limitation does not apply:

to a party who wants to apply for equitable relief or urgent interlocutory relief; or

to a party who attempts in good faith to comply with clauses 11.2, 11.3 and 11.4 but cannot do so because the other party does not comply with those clauses.

**Notice of Dispute**

If a dispute arises out of or in connection with these NFT Terms (including the validity, breach or termination of it), a party may notify the other party to the dispute. The notice must specify the dispute and indicate that the notifying party wants the dispute to be referred to mediation.

**Commencement of Mediation**

If the dispute is not resolved within 10 Business Days after a notice under clause 11.2 has been served (Notice Period), the dispute is by this clause 11.3 submitted to mediation.

The mediation must be conducted in Dover, Delaware in accordance with the mediation guidelines / rules of the Resolution Institute, save any process in these NFT Terms which is inconsistent with those guidelines or rules will take precedence to the extent of any inconsistency.

If the parties have not agreed on the mediator and the mediator's remuneration within 5 Business Days after the end of the Notice Period:

the mediator is the person appointed by; and

the remuneration of the mediator is the amount or rate determined by, the AAA Rules.

**If Dispute Not Resolved**

If the dispute is not resolved within 1 month after the appointment of the mediator, you may take legal proceedings in connection with the dispute

**Confidentiality**

Each party must keep confidential, all information relating to the subject matter of a dispute as disclosed during or for the purposes of dispute resolution under this clause 11, unless that party is compelled by an regulatory or government authority, court or tribunal to disclose that information.

**General****Governing Law and Jurisdiction**

These NFT Terms are governed by the laws of Kent County and Delaware. The parties irrevocably submit to the exclusive jurisdiction of the courts of Kent County and the Kent County division of the Federal Court of Delaware and the courts of appeal from them.

**Amendment**

We reserve the right to amend these NFT Terms from time to time in our absolute discretion. Amendments will be effective as soon as such changes are notified to you in writing from time to time.

**Precedence**

Where there is inconsistency between these NFT Terms and other content displayed as part of the Platform concerning the sale of NFTs, the content of these NFT Terms will prevail to the extent of any inconsistency

**Force Majeure**

We will not be liable for any delay or failure to perform our obligations under these NFT Terms if such delay is due to any circumstances beyond our reasonable control (including but not limited to epidemics, pandemics, blockchain congestion or attacks, Government sanctions or orders, whether known or unknown at the time the parties enter into these NFT Terms) (Force Majeure Event).

**Waiver**

A provision of these NFT Terms or a right created under it may not be waived except in writing signed by the party granting the waiver.

**Exercise of a Right**

A party may exercise a right at its discretion and separately or together with another right. If a party exercises a single right or only partially exercises a right, then that party may still exercise that right or any other right later. If a party fails to exercise a right or delays in exercising a right, then that party may still exercise that right later.

### **Remedies Cumulative**

The rights and remedies provided in these NFT Terms are cumulative with and not exclusive of the rights and remedies provided by law independently of these NFT Terms.

### **No Merger**

The rights and obligations of the parties (including under the warranties) will not merge on completion of any transaction under these NFT Terms. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

### **Assignment**

These NFT Terms are for the benefit of the parties and their successors and assigns. The parties and their successors and assigns are bound by these NFT Terms.

To the extent that any party purchases an NFT from you, they are deemed to have taken an assignment of these NFT Terms as published at the time of the purchase and you must provide that party with a link or copy of these NFT Terms.

We may assign our rights under these NFT Terms without your consent, including at any time.

### **Severance**

If any provision of these NFT Terms are void, voidable, unenforceable, illegal, prohibited or otherwise invalid in a jurisdiction, in that jurisdiction the provision must be read down to the extent it can be to save it but if it cannot be saved by reading it down, words must be severed from the provision to the extent they can be to save it but if that also fails to save it the whole provision must be severed. That will not invalidate the remaining provisions of these NFT Terms nor affect the validity or enforceability of that provision in any other jurisdiction where it is not invalid.

### **Entire Agreement**

These NFT Terms constitute the entire agreement of the parties in respect of the subject matter of these NFT Terms and supersedes all prior discussions, representations, undertakings and agreements.

None of our agents or representatives are authorized to make any representations, conditions or agreements not expressed by us in writing nor are we bound by any such statements.

Further assurances

Each party must, at its own expense, do everything reasonably necessary to give effect to these NFT Terms and the transactions contemplated by it, including but not limited to the execution of documents.

### **Relationship**

Nothing in these NFT Terms constitutes the parties as partners or agents of the other and no party has any authority to bind the other legally or equitably save as expressly stated in these NFT Terms.

### **Knowledge**

In these NFT Terms, a reference to the awareness or knowledge by you is a reference to the actual knowledge, information and belief you have as at the date of any transaction taking place pursuant to these NFT Terms.

### **Costs**

Each party must pay its own fees, costs and expenses incurred by it incident to or in connection with the negotiation, preparation, execution, delivery and completion of these NFT Terms and the transactions contemplated by these NFT Terms including without limitation its own legal, accounting and corporate advisory fees.

### **Definitions**

In These NFT Terms:

**Art** means any art, design, wording and drawings (in any form or media, including, without limitation, video or photographs) that are associated with an NFT that you Own;

**Business Day** means any day except a Saturday or a Sunday or other public holiday in Dover, Delaware;

**Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, however arising whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to these NFT Terms and where and to the extent the context permits, includes all associated Loss;

**Digital Currency** means a cryptographically secured virtual currency or virtual asset which we identify as an acceptable means of payment or transacting with us;

**Digital Wallet** means the applicable “Metamask” location, public key or wallet address, account or storage device which we choose to support for the delivery of the NFTs provided by us;

**Insolvency Event** means the happening of any of the following events in relation to a body corporate:  
the body corporate becomes an externally-administered body corporate;  
a person is appointed a controller, administrator, receiver, provisional liquidator, trustee for creditors in bankruptcy or an analogous appointment is made in respect of the body corporate;  
the body corporate suspends payment of its debts, or enters, or takes any step towards entering, a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;  
a secured creditor of the body corporate enforces its security in relation to its debt for an amount in excess of \$50,000; or  
the body corporate is, or its directors state that it is, unable to pay its debts as and when they become due and payable;

**Intellectual Property Rights** means any and all present and future intellectual property rights, conferred by statute, at common law or in equity and wherever existing, including:  
patents, inventions, discoveries, designs, copyright, moral rights, trademarks, service marks, trade names, brand Names, business Names, product Names, domain Names or rights in designs, art, images, drawings, know how, product Names, trading styles, get-up, processes, methodologies, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;  
any application or right to apply for registration of any of these rights or other rights of a similar nature arising or capable of arising under statute or at common law anywhere in the world;  
other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organization 1967;  
any registration of any of those rights or any registration of any application referred to in paragraph (b); and all renewals and extensions of these rights;

**Loss** includes any loss, damage, cost, charge, liability or expense (including legal costs and expenses);

**Own** means, with respect to an NFT, any NFT we have issued, that you have purchased or otherwise rightfully acquired from a legitimate source, where proof of ownership is recorded on a blockchain system and you control the private key associated with a Digital Wallet to which the NFT is associated or located;

**Personnel** means any employee, contractor, subcontractor, agent, partner, shareholder, ultimate beneficial owner, director or officer of a party;

**Platform** means the Openseas platform;

**Privacy Policy** means the privacy policy on the Website as may be varied from time to time.

**Purchase Price** means the amount advertised for the purchase (or pre-purchase) of any NFT or bundle containing an NFT, which may be denominated in a Digital Currency;

**Purchaser Warranties** means the warranties set out in clause 6.2.

**Sales Tax** means any form of value added tax including GST as defined in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or other similar sales tax;

**Third Party IP** means any third party Intellectual Property Rights;

**Website** means <https://funkyfeatures.com> and/or any other website we may operate from time to time.

**Website Terms** means the terms and conditions on the Website as may be varied from time to time; and

**Your Jurisdiction** means the country or state where you are ordinarily resident or from which you enter into any agreement with us.

### **Interpretation**

The following rules of interpretation apply in these NFT Terms unless the context requires otherwise:

singular includes plural and plural includes singular;

reference to legislation includes any amendments to it, any legislation substituted for it, and any statutory instruments issued under it and in force;

reference to a person includes a corporation, joint venture, association, government body, firm and any other entity;

reference to a thing (including a right) includes a part of that thing;

reference to a party includes that party's personal representatives, successors and permitted assigns;

references to time mean that time in Dover, Delaware;

if a party comprises two or more persons:

reference to a party means each of the persons individually and any two or more of them jointly;

a promise by that party binds each of them individually and all of them jointly;

a right given to that party is given to each of them individually;

a representation, warranty or undertaking by that party is made by each of them individually;

headings do not affect interpretation;

another grammatical form of a defined expression has a corresponding meaning;

a provision must not be construed against a party only because that party put the provision forward; and

a provision must be read down to the extent necessary to be valid; if it cannot be read down to that extent, it must be severed.

**FUNKY FEATURES LLC NFT LICENSE**  
**PERSONAL LICENSE (“CBE-PERSONAL” Last Updated: February 27, 2023)**

By acquiring lawful ownership to a non-fungible token (“NFT”) associated with the NFT Funky Features made available under this NFT License (“**Funky Features NFT**”) created by the owner or entity that has created this Funky Features NFT (“**Creator**” or “**we**” or “**our**”), you agree to these NFT License Terms and Conditions (the “**Terms**”). When you lawfully own a Funky Features NFT, you own all personal property rights to the NFT underlying the Funky Features NFT (e.g., the right to freely sell, transfer, or otherwise dispose of that Funky Features NFT). However, your rights to the associated artwork, images, video, content or other works of authorship linked to your specific Funky Features NFT which was developed by Creator (“**NFT Media**”) are only as outlined below.

## **1. NFT LICENSE GRANT**

**1.1 NFT Media License.** For as long as you lawfully own a Funky Features NFT, Creator grants you a nonexclusive, perpetual, irrevocable (except as set forth in Section 3.2 below)] worldwide license under our copyrights to use, distribute, reproduce, display, and perform (but not modify) the specific NFT Media linked to your Funky Features NFT for personal non-commercial uses, with the right to sublicense such rights solely to third parties to enable the right to display the NFT Media, with Creator being a third party beneficiary to all such sublicenses with the ability to enforce such agreements. This license includes the right to display NFT Media as a profile picture. All intellectual property rights in and to the NFT Media and any other intellectual property rights of Creator not expressly licensed herein are reserved by Creator.

### **1.2 Reserved.**

**1.3 No Rights to Trademarks.** Nothing in these Terms is meant to grant you any rights to any logos, trademarks, service marks, and trade dress associated with Creator or the Funky Features NFTs (“**Funky Features Trademarks**”). Unless you have our prior written approval, you may not use any Funky Features Trademarks for any use that would require a license from us, including to register any domain names or social media accounts using any Funky Features Trademarks or to advertise or promote any other products or services.

**1.4 Transfer and Sublicensing.** The licenses granted in these Terms are non-transferrable, except that if you lawfully transfer ownership of your Funky Features NFT, the license to the NFT Media in Section 1.1 to you shall terminate upon the effective date of such transfer, and such licenses will be assigned to the new owner of the Funky Features NFT associated with such NFT Media. As a condition to sales, transfers or similar transactions of the Funky Features NFTs, the transferee agrees upon the acquisition of the Funky Features NFT that (a) the transferee is not a Restricted Party and (b) the transferee accepts these Terms. Further, if you choose to sublicense any of your licensed rights set forth in Section 1.1 above, you are only permitted to do so if any such sublicensees agree (i) that they are not Restricted Parties and (ii) that if your licensed rights in Section 1.1 are transferred (such as because you sell your Funky Features NFT), then any such sublicenses you have granted in such licensed rights will automatically terminate. Because virtually all public blockchains are licensed under open source licenses, it is possible that the blockchain may fork, merge, or duplicate the original blockchain that initially recorded ownership of your Funky Features NFT. In such case, any rights granted under these Terms to owners of any Funky Features NFT will only be granted to the lawful owners of such Funky Features NFT whose ownership is recorded on the mainnet version of the blockchain that is generally recognized and predominantly supported in the blockchain industry as the legitimate successor of the original blockchain (as determined in our sole discretion).

**1.5 Third Party Content.** The Creator hereby represents and warrants to you that all of the copyrights in the NFT Media are owned by the Creator, and does not contain (a) any artwork, images, video, content or other works of authorship, (b) logos, trademarks, service marks, or trade dress or rights of personality in which the relevant intellectual property rights are not owned by the Creator (“**Third Party Content**”), provided that the foregoing shall not apply if the Creator has obtained a license to such Third Party Content consistent with the licenses under this Agreement or the Creator has supplemented this NFT License with an additional license that governs your right to use such Third Party Content.

**1.6 Restrictions.** If a Funky Features NFT is fractionalized into smaller ownership interests (which may be represented by other tokens), the rights licensed hereunder do not transfer to each of the owners of such fractionalized interests in the Funky Features NFT, but are only granted to those who own all fractionalized interests in a Funky Features NFT or as may otherwise be agreed by the owners of such fractionalized interests if each of such owners agree that (a) the owner is not a Restricted Party and (b) the owner accepts these Terms. In order to purchase the Funky Features NFT if you are an individual, you must be 18 years of age or older if the age of lawfully capacity of forming binding contracts is older in the relevant jurisdiction. If you are an entity, the individual agreeing to the Terms must have the legal authority to bind the entity. If (a) you are an individual, you agree on your own behalf and (b) if you are an entity, you agree that neither the entity nor any of your owners or investors or any of their directors, officers, employees, agents or affiliates acting on your behalf: (i) is related in any way to, the governments of, or any persons within, any country or jurisdiction under a U.S. embargo enforced by the Office of Foreign Assets Control (“**OFAC**”), or any persons who are named on any list of sanctioned individuals or entities; (ii) is (or has ever been) prohibited from the transaction pursuant to U.S. anti-money laundering, anti-terrorist, economic sanctions and asset control laws; and (iii) is resident in a country or jurisdiction under a U.S. embargo enforced by OFAC (“**Restricted Parties**”).

## **2. DISCLAIMERS, LIMITATIONS OF LIABILITY, AND INDEMNIFICATION**

**2.1 Disclaimers.** YOUR ACCESS TO AND USE OF THE FUNKY FEATURES NFT AND NFT MEDIA IS AT YOUR OWN RISK. EXCEPT AS EXPRESSLY SET FORTH HEREIN, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, CREATOR, ITS PARENTS, AFFILIATES, PARTNERS, EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS, AGENTS, LICENSORS AND EQUITYHOLDERS (THE “CREATOR ENTITIES”) DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT IN THE FUNKY FEATURES NFTS AND NFT MEDIA. THE CREATOR ENTITIES MAKE NO WARRANTY OR REPRESENTATION AND DISCLAIM ALL RESPONSIBILITY AND LIABILITY FOR: (A) THE COMPLETENESS, ACCURACY, AVAILABILITY, TIMELINESS, ORIGINALITY, SECURITY OR RELIABILITY OF THE FUNKY FEATURES NFTS AND NFT MEDIA; (B) THE OPERATION OR COMPATIBILITY WITH ANY OTHER APPLICATION OR ANY PARTICULAR SYSTEM, DEVICE, BLOCKCHAIN, DIGITAL WALLET, HARDWARE OR MARKETPLACE; AND (C) WHETHER THE FUNKY FEATURES NFTS AND NFT MEDIA WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE OR ERROR-FREE BASIS; AND (D) THE DELETION OF, OR THE FAILURE TO STORE OR TRANSMIT THE FUNKY FEATURES NFTS AND NFT MEDIA. THE FUNKY FEATURES NFTS AND NFT MEDIA ARE INTENDED FOR CONSUMER ENJOYMENT, USE AND CONSUMPTION ONLY.

**2.2 Limitations of Liability.** TO THE EXTENT NOT PROHIBITED BY LAW, YOU AGREE THAT IN NO EVENT WILL THE CREATOR ENTITIES BE LIABLE (A) FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE, DATA OR PROFITS, BUSINESS INTERRUPTION OR ANY OTHER DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE FUNKY FEATURES NFT OR THE NFT MEDIA), HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER UNDER THESE TERMS OR OTHERWISE ARISING IN ANY WAY IN CONNECTION WITH THE FUNKY FEATURES NFTS AND NFT MEDIA OR THESE TERMS AND WHETHER IN CONTRACT, PRODUCT LIABILITY OR TORT (INCLUDING STRICT LIABILITY OR NEGLIGENCE) OR OTHERWISE, EVEN IF THE CREATOR ENTITIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, OR (B) FOR ANY OTHER CLAIM, DEMAND OR DAMAGES WHATSOEVER RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR THE DELIVERY, USE OR PERFORMANCE OF THE FUNKY FEATURES NFTS AND NFT MEDIA. THE MAXIMUM AGGREGATE LIABILITY OF THE CREATOR ENTITIES FOR ALL DAMAGES AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING STRICT LIABILITY OR NEGLIGENCE) OR OTHERWISE, SHALL BE THE GREATER OF (I) \$1,000 OR (II) THE AMOUNT YOU PAID FOR YOUR FUNKY FEATURES NFT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL

OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU.

**2.3 Assumption of Risk.** THE VALUE OF THE FUNKY FEATURES NFTS IS SUBJECTIVE, HAVE NO INHERENT VALUE AND THEREFOR CAN BE VOLATILE. YOU AGREE TO ASSUME ALL RISK ASSOCIATED WITH THE USE AND VALUE OF THE FUNKY FEATURES NFT AND NFT MEDIA

**2.4 Fundamental Elements.** THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN THE CREATOR ENTITIES AND YOU.

**2.5 Template Provider Disclaimers.** You and Creator each agree and acknowledge and agree that (i) these terms are based on a template that has been provided for public use, and (ii) each party and its heirs, successors and assigns, irrevocably covenants and agrees not to assert or bring any suit, claim, demand or challenge against the providers of such template, their parents, affiliates, related companies, officers, directors, employees, agents, representatives, partners, service providers and licensors (the “**Template Provider Entities**”) in connection with these terms, (iii) the availability of these terms shall not be construed as legal advice for any particular facts or circumstances and are not meant to replace consulting competent counsel who is aware of your specific facts and circumstances and those of creator, and (iv) these terms might not reflect all current updates to the law or applicable interpretive guidance.

**2.6 Indemnification.** By entering into these Terms and accessing or using the Funky Features NFTs or NFT Media, you agree that you shall defend, indemnify and hold the Creator Entities harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys’ fees and costs) incurred by the Creator Entities arising out of or in connection with: (i) your violation or breach of any term of these Terms or any applicable law or regulation; (ii) your violation of any rights of any third party; (iii) your access to or use of the Funky Features NFT or NFT Media; or (iv) any fraud, negligence or wilful misconduct committed by you. For these limited purposes, the Creator Entities (other than the Creator) are third party beneficiaries of the Terms.

### 3. ADDITIONAL PROVISIONS

**3.1 Additional Features.** Creator may choose to make additional features, access, content, items or other benefits available to owners of Funky Features NFTs (“**Additional Features**”). Creator has no duty or obligation to provide you with any Additional Features, and you should not expect any Additional Features when acquiring a Funky Features NFT. Additional Features may be subject to additional terms and conditions, which may be presented to you at the time they are made available.

**3.2 Termination of License.** If you materially breach any of the provisions of these Terms, Creator may terminate all of the licenses granted to you under these Terms. Creator will use commercially reasonable efforts to provide you with notice of such termination, though for the avoidance of doubt your licenses shall terminate regardless of whether such notice is actually received. Upon the termination of your licenses, you shall cease all use of the rights granted in Article 1 and shall cease all further use of the NFT Media, and all sublicenses you have granted in the NFT Media shall automatically terminate. The following sections shall survive the termination of these Terms and shall continue in full force and effect subsequent to and notwithstanding any termination of these Terms by Creator or you: Sections 1.3, 1.4, 1.6, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 3.3, 3.4, 3.5, and 3.6. Termination will not limit any of Creator’s other rights or remedies at law or in equity.

**3.3 Third Party IP.** You understand and agree that if the Art associated with the NFT you Own may contain Third Party IP, that: you will not have the right to use such Third Party IP in any way except as incorporated in the Art, and subject to this License; depending on the nature of the license granted from the owner of the Third Party IP, we may need to, subject to our discretion, place additional restrictions on the License; and to the extent that we inform you in writing of additional restrictions under clause 1.7(b) of this License, you will be responsible for complying with all such restrictions from the date that you receive such written notice, and that failure to do so will be deemed a breach of this License.

For the avoidance of any doubt the restrictions on the License survive termination or assignment transfer of this License; this License is limited to the time you Own the NFT and upon your sale of the NFT to another party the License is assigned to the purchaser of the NFT and your rights under the License cease to have any effect, and you must draw to the other party's attention the contents of this License prior to your sale of the NFT; and the sale of your NFT does not constitute a "commercial use" of your NFT for the purposes of this License.

**3.4 Commercial And Derivative Rights.** You acknowledge that the NFT you Own contains individual layered files and traits that are owned by us.

The NFT you Own may not be used to: create merchandise using the NFT, once you no longer Own that NFT; or create, sell or promote Counterfeit NFTs or associated collections.

For the avoidance of doubt, the individual layered files, traits and Art of the NFT you Own may not be used individually, separately or in combination of each other, other than as provided above, for commercial or any other purpose.

**3.5 Permissible Transfers Of The NFT You Own.** You and any future owner of the NFT you Own have a limited right to transfer the NFT you Own (Secondary Sale), provided that: the transferee accepts all of the terms of this License and the current NFT Terms; prior to the transfer, you have not breached this License or the current NFT Terms; and we will be paid the Revenue Share percentage of the gross amounts paid by such party to the Secondary Sale.

**3.6 Miscellaneous.** These Terms constitutes the entire and exclusive understanding and agreement between Creator and you regarding the Funky Features NFT and NFT Media and supersedes and replaces any and all prior oral or written understandings or agreements between Creator and you regarding the Funky Features NFT and NFT Media. If any provision of these Terms shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions. These Terms and the licenses granted hereunder may be freely assigned by Creator. Any purported assignment in violation of these Terms will be null and void. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default.

**Governing Law & Arbitration.** You and Creator shall cooperate in good faith to resolve any dispute, controversy or claim arising out of, relating to or in connection with these Terms, including with respect to the formation, applicability, breach, termination, validity or enforceability thereof (a "**Dispute**"). If the parties are unable to resolve a Dispute within ninety (90) days of notice of such Dispute being received by all parties, such Dispute shall be finally settled by Binding Arbitration (as defined below). Any Dispute not resolved within ninety (90) days shall be referred to and finally resolved by arbitration administered by the American Arbitration Association ("**AAA**") under its Consumer Arbitration Rules (the "**AAA Rules**") then in effect, except as modified by these Terms. The AAA Rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. A party who wishes to start arbitration must submit a written Demand for Arbitration to AAA and give notice to the other party as specified in the AAA Rules. The AAA provides a form Demand for Arbitration at [www.adr.org](http://www.adr.org). If your claim is for U.S. \$10,000 or less, You may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic or video-conference hearing, or by an in-person hearing as established by the AAA Rules. If Your claim exceeds U.S. \$10,000, the right to a hearing will be determined by the AAA Rules. Any arbitration hearings will take place in Dover, Delaware, or if you request, the county (or parish) where You live, unless both Parties agree to a different location. The parties agree that the arbitrator shall have exclusive authority to decide all issues relating to the interpretation, applicability, enforceability and scope of this arbitration agreement. Payment of all filing, administration and arbitrator fees will be governed by the AAA Rules. The language to be used in the arbitral proceedings shall be English. The arbitration award shall be final and binding on the parties ("**Binding Arbitration**"). The parties undertake to carry out any award without delay and waive their right to any form of recourse insofar as such waiver can validly be made. Judgment upon the award may be entered by any court having jurisdiction thereof or having

jurisdiction over the relevant party or its assets. You and Creator will each pay their respective attorneys' fees and expenses. These Terms and any action related thereto will be governed by the laws of the State of Delaware, without regard to its conflict of laws provisions. Any dispute arising out of or related to these Terms is personal to you and Creator and will not be brought as a class arbitration, class action or any other type of representative proceeding. **You and Creator each agree that any claims may only be brought on an individual basis and not as a plaintiff or class member in any purported class or representative action or other proceeding in which a person attempts to resolve a dispute as a representative of another person or group of persons. Unless both you and Creator agree otherwise, the arbitrator may not consolidate or join more than one person's or party's claims, and may not otherwise preside over any form of a consolidated, representative, or class proceeding.** If you are a California resident, in accordance with Cal. Civ. Code § 1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210.

## **Definitions**

### In this License:

**Art** means any art, design, wording and drawings (in any form or media, including, without limitation, video or photographs) that are associated with an NFT that you Own;

**Counterfeit NFT** means an NFT that contains art that is identical or substantially indistinguishable from the NFT you Own, including: an NFT described as a knock-off, replica, imitation, clone, faux, fake, mirror image, or similar term used to describe an NFT; or an NFT that mimics the layers, features or traits of the NFT you Own, in an attempt to pass it off as a genuine creation by us;

**Digital Wallet** means the applicable "Metamask" location, public key or wallet address, account or storage device which we choose to support for the delivery of the NFTs provided by us;

**Intellectual Property Rights** means any and all present and future intellectual property rights, conferred by statute, at common law or in equity and wherever existing, including:

patents, inventions, discoveries, designs, copyright, moral rights, trademarks, service marks, trade names, brand names, business names, product names, domain names or rights in designs, art, images, drawings, know how, product names, trading styles, get-up, processes, methodologies, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;

any application or right to apply for registration of any of these rights or other rights of a similar nature arising or capable of arising under statute or at common law anywhere in the world;

other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organization 1967;

any registration of any of those rights or any registration of any application referred to in paragraph (b); and all renewals and extensions of these rights;

**Marketplace** means a software platform or software (including a Blockchain digital wallet) which permits the transfer, purchase or sale of an NFT, provided that the Marketplace at all times cryptographically verifies the NFT owner's right to Own the NFT;

**Own** means, with respect to an NFT, any NFT we have issued, that you have purchased or otherwise rightfully acquired from a legitimate source, where proof of ownership is recorded on a blockchain system and you control the private key associated with a Digital Wallet to which the NFT is associated or located;

**Revenue Share** means 2.5%;

**Third Party IP** means any third party Intellectual Property Rights; and

**Website** means <https://funkyfeatures.com> and/or any other website we may operate from time to time.

© 2023 FUNKY FEATURES LLC