

Terms of Service

Effective Date: July 6, 2022

The previous Terms of Service effective prior to July 6, 2022 are available [here](#).

Please read these Terms of Service (the “**Agreement**”) carefully. This Agreement constitutes a binding agreement between ArtPlacer NA Inc. (“**Company**,” “**we**,” or “**us**”) and you, or, if you represent an entity or other organization, that entity or organization (in either case “**You**” or “**Your**”).

We offer products and services to artists, gallery owners, purchasers of art, and other organizations (“**Users**”) to help them market and showcase their artwork, such as:

2D Virtual Try On service that lets Users place art over a picture of a personal setting to view the artwork in scale and perspective;

3D virtual exhibitions in which users can select one of our gallery renderings and upload their artwork across the virtual room and publish or make the gallery accessible outside of the Website (defined below) via integration to the User’s website;

Products for Users to integrate into their own websites;

Augmented Reality mobile application that lets Users view art in their homes through the camera on their mobile device or tablet; and

Discover by ArtPlacer, a publicly-accessible site where Users can showcase their galleries.

This Agreement governs Your use of the Company’s products and services, mobile applications (collectively, the “**Mobile App**”), websites (collectively, the “**Website**”), tools and software products (collectively, the “**Software**”), and any data, information, and content that we make available (collectively, the “**Content**” and, together with the products, services, Mobile App, Website, and Software, the “**Platform**”). The Platform is subject to change from time to time at the Company’s sole discretion.

By creating an account, purchasing a subscription, downloading the Mobile App, browsing the Website, or otherwise accessing or using the Platform, You represent that (1) You have read, understand, and agree to be bound by the Agreement, (2) You are of legal age to form a binding contract with company, and (3) You have the authority to enter into the Agreement personally or on behalf of the entity or organization You have named as the user, and to bind that entity or organization to the Agreement. **If You do not agree to be bound by the Agreement, You may not access or use this Website or the Platform.**

Definitions. Terms used in this Agreement have the definitions given in this Agreement or, if not defined in this Agreement, have their plain English meaning as commonly interpreted in the United States.

Term. This Agreement is entered into as of the earlier of the date You first access or use the Platform (the “**Effective Date**”) and will continue until terminated as set forth herein (the “**Term**”).

Modifications. This Agreement may be amended at any time by Company from time to time without specific notice to You. The latest Agreement will be made available when You access or use the Platform, and You should review this Agreement prior to accessing or using the Platform. If any modification is unacceptable to You, Your only recourse is to terminate this

Agreement. Your continued access and use of the Platform following our posting of an amended agreement or providing You notice of a modification will constitute binding acceptance.

Eligibility. Access and use of the Platform is intended for use by Users who are at least 18 years of age and able to form legally binding contracts. If You are younger than 18, or if You have not yet reached the legal age of majority, Your parent or legal guardian must create an account for You and agree to this Agreement in order for You to use the Platform. No Users under the age of 13 are permitted to use the Platform. You represent and warrant that You are not: (a) a citizen or resident of (or located in) any jurisdiction where use of the Platform is prohibited by law; (b) a citizen or resident of (or located in) any country that is currently subject to sanctions or embargoes by the United States or any other country; (c) an individual who is, or who is employed by or associated with a Business Entity that is, identified on the U.S. Department of Commerce's Denied Persons or Entity List, the U.S. Department of Treasury's Specially Designated Nationals or Blocked Persons Lists, or the U.S. Department of State's Debarred Parties List or is otherwise ineligible to receive items subject to U.S. export control laws and regulations or other economic sanction rules of any sovereign nation.

Account.

Users. You may be permitted to access certain features of the Platform without establishing a user account, provided, that You have agreed to this Agreement. Access to and use of certain features of the Platform may require You to establish a user account ("**Account**") and create a profile with Company ("**Profile**"). Approval of Your request to establish an Account will be at the sole discretion of Company. If You are an individual, then You may access and use the Platform through Your Account as the sole "User" of Your Account. Each user identification and password for Your Account (each, "**Account ID**") is personal in nature and may be used only by You or, as applicable, the User to whom the Account ID is issued. Premium subscribers will have the ability to authorize designated Users to access and use the Platform through the subscriber's Account by creating a separate Profile for each such User.

Registration Information. In connection with establishing an Account, You will be asked to submit certain information about Yourself ("**Registration Information**") and, as applicable, Your association with the purchaser of the Platform. You agree that: (a) all such Registration Information You provide will be accurate, complete, and current; (b) You will maintain and promptly update all such Registration Information to keep it accurate, complete, and current; and (c) You will not provide any Registration Information belonging to another person with the intent to impersonate that person.

Responsibilities. You are solely responsible for all access to and use of Your Account (whether authorized or unauthorized), including anything that is accessed through Your Account. Company may deem any actions taken through Your Account to have been authorized by You. You are responsible for compliance with this Agreement. You will ensure the security and confidentiality of Your Account ID and will notify Company immediately if the Account ID is lost, stolen, or otherwise compromised. You acknowledge that You are fully responsible for all costs, fees, liabilities or damages incurred, and material transferred, stored, modified, or shared through the use of Your Account ID (whether lawful or unlawful). You acknowledge that any transactions completed through Your Account will be deemed to have been lawfully completed by You. In no event will Company be liable for the foregoing obligations or the failure by You to fulfill such obligations.

Account Authority. The individual who establishes Your Account (the “**Account Authority**”) will have control over Your Account. If You are an individual who has purchased the Platform directly from Company, then You will be the Account Authority for Your Account. For premium subscribers, the subscriber will be the Account Authority for all Accounts created under that subscription. The Account Authority is solely responsible for providing adequate disclosures and obtaining all necessary consents, permissions, and authorizations for the creation and assignment of each Account under Your subscription. The Account Authority may be changed: (i) by an email sent to Company from the registered email address of the current Account Authority; (ii) by bona fide legal written notice provided to Company; or (iii) as separately set forth by Company. It is Your responsibility to properly designate a new Account Authority whenever appropriate. In the event of a dispute where multiple persons claim to be the rightful Account Authority, Company reserves the right, at its sole discretion, to suspend all access to Your Account until an Account Authority is properly designated to Company’s sole satisfaction, or terminate Your Account.

Responsibility for Accounts. If You are the Account Authority or are otherwise responsible for assigning or creating Accounts under Your subscription, You represent and warrant that: (i) You will comply with, and ensure that Your use of the Platform complies with, all applicable laws, rules, and regulations relating to privacy and data protection, including, as applicable and without limitation, the Family Educational Rights and Privacy Act, the Protection of Pupil Rights Amendment, the Children’s Online Privacy Protection Act, and other data protection laws in Your jurisdiction; and (ii) You have provided all disclosures and obtained all consents, permissions, or authorizations necessary or required in connection with any information, records, or data that You or the other Users under Your subscription share with us or that You or Your Users provide, share, or otherwise make available via the Platform, including to third parties. You are expressly prohibited from providing any information or data to us for which You do not have the required authorizations or consents, including without limitation any personal information about minors or students.

Access.

License To the Platform. Subject to the terms and conditions of this Agreement, Company hereby grants to You, during the Term, a limited, non-exclusive, non-transferable, non-sublicensable right to access and use the Platform for Your internal business purposes in accordance with the terms and conditions of this Agreement. Company and its licensors reserve all rights in and to the Platform not expressly granted to You under this Agreement. You are solely responsible for obtaining and maintaining all equipment, facilities, and connectivity required to access or use the Platform, in each case as necessary to meet Your operational and business requirements based on Your particular circumstances.

To the Software. Some of our Subscription Services (as defined in section 9) may include access to certain Software for integration or installation on your website and/or other digital properties that have been approved by the Company in writing (“Your Sites”). Subject to the terms and conditions of this Agreement and any other terms and conditions accompanying the Software or governing the Subscription Services that You purchase, Company grants to You, during the relevant Subscription Term, a limited, non-exclusive, non-transferable, revocable, and non-sublicensable license to use the Software through the Platform solely on Your Sites in connection with Your use of the Platform. Unless otherwise noted on the Platform, all Software available through the Platform is owned by Company. You will not, and will not permit any third party to: (a) alter, modify, reproduce, or create derivative works of any Software; (b) distribute, sell, resell, lend, loan, lease, license, sublicense or transfer any Software; or (c) alter, obscure,

or remove any Company copyright, trademark, or any other notices that are provided on or in connection with any Software, except as provided in Section 6.5 (Branding). All use of the Software will be in accordance with any documentation for the Software provided by Company. The Platform may provide You with the choice to access Software developed, provided, or maintained by other third-party providers (“**Third-Party Software**”). In addition to the terms of this Agreement, Your access to and use of any Third-Party Software may also be subject to any other agreement You may agree to before being given access to the Third-Party Software (each, a “**Third-Party Software Agreement**”). The terms of any Third-Party Software Agreement (which may include payment of additional fees) will apply to the applicable Third-Party Software provided under that Third-Party Software Agreement in addition to the terms of this Agreement but will not apply to any other Software You may access through Platform. Except as may be set forth in a separate agreement with Company, Company is under no obligation to provide to You with any support, maintenance, or training relating to the Software. Notwithstanding the foregoing, should Company elect to provide You with any support, maintenance, or training for the Software, such support, maintenance, or training will be pursuant to Company’s then-current terms for support, maintenance, or training, as applicable. Any updates, upgrades, new versions, or new releases of or to the Software provided by Company will be treated as part of the “Software” for purposes of this Agreement. Except as set forth in this Agreement, You are granted no licenses or rights in or to any Software, or any IPR (as defined below) therein or related thereto.

To the Content. Subject to the terms and conditions of this Agreement and any other terms and conditions accompanying the Company Content, You will be provided with access to a variety of Content through the Platform solely for Your own personal purposes in connection with Your use of the Platform. Unless otherwise noted on the Platform, all Content available through the Platform is owned or licensed by Company (“**Company Content**”). All Company Content is provided for informational purposes only and You are solely responsible for verifying the accuracy, completeness, and applicability of all Company Content and for Your use of any Company Content. You will not, and will not permit any third party to: (a) alter, modify, reproduce, or create derivative works of any Company Content; (b) distribute, sell, resell, lend, loan, lease, license, sublicense or transfer any Company Content; or (c) alter, obscure, or remove any copyright, trademark, or any other notices that are provided on or in connection with any Company Content. Certain Content may include or be based on data, information or content from other third-party Content providers (“**Third-Party Content**”). In addition to the terms of this Agreement, Your access to and use of any Third-Party Content is also subject to any other agreement You may agree to before being given access to the Third-Party Content (each, a “**Third-Party Content Agreement**”). The terms of any Third-Party Content Agreement (which may include payment of additional fees) will apply to the applicable Third-Party Content provided under that Third-Party Content Agreement in addition to the terms of this Agreement but will not apply to any other Content You may access through Platform. Company has not verified the accuracy of, and will not be responsible for any errors or omissions in, any Third-Party Content provided through the Platform.

To Other Users. The Platform may allow You to link, connect, or otherwise communicate with other Users through the Platform. By linking, connecting, or communicating with other Users, You are agreeing to allow those Users to communicate directly with You through the Platform. You agree that You are solely responsible for all communications between You and any other User through the Platform. Your extension or acceptance of a link, connection, or other communication with another User will serve as Your affirmative “opt in” to the disclosure by Company of Your Content (as defined below) (which may include Your personal information) to that other User.

Branding. Subject to the terms and conditions of this Agreement and any other terms and conditions accompanying the AP Marks (defined below), Company will grant you, during the Subscription Services Term, a limited, non-exclusive, non-transferable, revocable, and non-sublicensable license to use the AP Marks solely as necessary to integrate and maintain the Software on Your Sites. If You purchased a premium subscription to the Software, the Software can be white-labeled for You at no additional cost and You may brand the Software with Your trademarks and trade names (collectively, “**Your Marks**”) when you integrate the Software in to Your Site. For all non-premium subscribers, use of and integration with the Software will include the subtitle “Powered by ArtPlacer.” To remove this subtitle, You will need to upgrade Your subscription to a premium subscription.

1. **Your Content.**

1.1. You are solely responsible for all data, information, and other content that You may provide to or generate through Your use of the Platform, including Your Profile and Registration Information (collectively, “**Your Content**”). Your Content includes Your artwork, paintings, and/or photography (collectively, “**Your Artwork**”) that You upload to the Platform. As between You and Company, You retain ownership of Your Content.

1.2. During the Term, You grant Company a nonexclusive, royalty-free (unless otherwise agreed), and fully sublicensable (including, without limitation, to Users, the purchaser of the Platform, and other third parties) right to use, copy, store, reproduce, modify, display, adapt, publish, translate, create derivative works from, distribute, and display (“**Use**”) Your Content (excluding Your Artwork) for purposes of providing the Platform to You and for use in making enhancements and improvements to the Platform. In addition to the foregoing, You grant Company a nonexclusive, royalty-free (unless otherwise agreed), revocable, non-sublicensable right to use, copy, reproduce, display, modify (for limited purposes of resizing and watermarking), and publish Your Artwork for purposes of featuring the same on Company’s Discover ArtPlacer Galleries page on the Website and on any other Company websites (including social media sites) where Company features its Users’ art.

1.3. You represent and warrant that none of Your Content or the Use of Your Content by Company or any other party: (1) violates this Agreement, the Privacy Policy, applicable third-party platform policies, or any requirements under applicable laws; (2) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (3) is libelous, defamatory, obscene, abusive, pornographic, threatening, or an invasion of privacy; (4) constitutes an infringement, misappropriation or violation of the IPR or other rights of any third party; (5) is illegal in any way or advocates illegal activity; (6) is an advertisement or solicitation of funds, goods, or services; (7) is false, misleading, or inaccurate; or (8) is or could be considered junk mail, spam, a part of a pyramid scheme, a disruptive commercial message or disruptive advertisement. Company is not responsible or liable for any deletion, correction, destruction, damage, loss or failure to store, restore or back-up any of Your Content. You agree that You have all right, title, interest and consent in Your Content necessary to allow Company to Use Your Content as set forth in the rights and licenses You grant to Company under this Agreement.

2. **Purchases.** In addition to any products and services available for no charge through the Platform, You may be offered the opportunity to purchase, subscribe to, or otherwise obtain access to Software, Content, or other products or services through the Platform

for an additional fee. Any purchase or subscription will be subject to any terms and conditions displayed in connection with the purchase or subscription in addition to the terms of this Agreement. Unless otherwise indicated on the Platform, purchases or subscriptions made by You through the Platform cannot be exchanged and any fees or charges in connection with those purchases or subscriptions are non-refundable. All information that You provide in connection with a purchase or other transaction through the Platform must be accurate complete and current. You authorize Company (or a company chosen to act on behalf of Company) to charge the credit card, debit card, mobile services account, or other payment method provided in connection with any transaction made through Your Account on the Platform and agree to honor all charges incurred in connection with any such transaction.

3. Fees and Auto-Renewal.

3.1. Auto Renewal. Some products and services available through the Platform require payment from You on a recurring basis (“Subscription Services”). When you sign up for a Subscription Service, including after any free trial period, you agree to pay us the subscription fee (“Subscription Fee”) and acknowledge that the Subscription Services may subject you to recurring fees and/or terms. Your subscription to any Subscription Services will continue and automatically renew on a recurring basis corresponding to the term of Your subscription unless and until You cancel Your subscription, or Your Account is otherwise suspended or terminated pursuant to this Agreement (the “Subscription Term”). Subscription Fees will be charged to Your credit or debit card or other payment account as part of the automatic renewal plan. Unless otherwise provided in a Subscription Service’s terms, Subscription Fees will be charged when you sign up a Subscription Service or after any applicable free trial period has expired, and, unless canceled, you will continue to be charged on a monthly or annual basis depending on the payment plan you elected. The annual or monthly billing is Your “Billing Period.” Prior to Your subscription renewing, You will receive an e-mail to the e-mail address You provided in the Registration Information informing You of the date that Your annual subscription will be renewing. For monthly subscribers, You will receive an e-mail if Your monthly subscription is renewing for a 12th month, and thereafter on an annual basis.

By signing up for a Subscription Service, You acknowledge that Your purchase of the Subscription Services:

- (a) Is subject to automatic renewal;**
- (b) Will continue until You cancel the subscription; and**
- (c) Is subject to automatic charges on Your method of payment.**

You may cancel Your subscription at any time by going to Your “Account” page and selecting “CANCEL SUBSCRIPTION.” Alternatively, You may e-mail info@artplacer.com to cancel Your subscription.

3.2. Payment of Subscription Fee. Unless otherwise indicated, You will be required to provide a credit card or other payment method accepted by us, as may be updated from time to time (“Payment Method”). We will charge Your Payment Method the Subscription Fee on a recurring basis corresponding to the terms of Your subscription,

and any applicable taxes. You are solely responsible for any and all Subscription Fees charged to Your Payment Method. When You provide a Payment Method, we will attempt to verify the information You entered by processing an authorization hold. We do not charge You in connection with this authorization hold, but Your available balance or credit limit may be reduced. If You want to use a different Payment Method than the one You signed up to use during registration, You may edit Your Payment Method information by logging in to Your Account and viewing Your Account details.

3.3. **Cancellation.** You can cancel Your subscription by logging into Your Account and following the instructions on Your Account page on the Website. You must cancel Your subscription prior to 11:59 p.m. Eastern time on the day before Your next recurring billing date to avoid being charged. Unless otherwise communicated, if You cancel Your subscription, You will continue to have access to the Platform through the end of Your current Billing Period. Payments are nonrefundable. There are circumstances where we may provide credits on a case by case basis. The amount and form of such credits, and the decision to provide them, are at our sole and absolute discretion. If You cancel, modify Your subscription, or if Your account is otherwise terminated under this Agreement, You will not receive a credit.

3.4. **Changes to Subscription Fees.** We reserve the right to change our Subscription Fee upon thirty (30) days' advance notice. Your continued use of the Subscription Services after notice of a change to our Subscription Fee will constitute your acceptance of and agreement to such changes.

4. **Termination.** We may terminate this Agreement or your access to the Platform, at any time and with or without notice to You, if You violate the terms of this Agreement. We may add or remove, suspend, stop, delete, discontinue or impose conditions on the Platform or any feature or aspect of the Platform. We will take reasonable steps to notify you of such termination or Platform changes by email or at the next time you attempt to access your Account. You may also terminate the terms of the Agreement applicable to your Account by closing your Account or by emailing us at info@artplacer.com. Upon termination or expiration of this Agreement for any reason: (1) all rights and subscriptions granted to You under this Agreement will terminate; (2) You will immediately cease all use of and access to the Platform (including, without limitation, all Content You obtained prior to termination); and (3) Company may, in its sole discretion, delete Your Account and any of Your Content held by Company at any time. Sections 1 (Definitions), 8 (Purchases), 10 (Termination), 13 (Ownership), 14 (Representations and Warranties), 15 (No Warranties; Disclaimers), 16 (Indemnity), 17 (Limitation on Liability), 18 (Confidentiality), 19 (Data Privacy), 21 (Governing Law and Venue), 22 (Notices), 23 (International Website Use); 25 (Equitable Relief); and 26 (Additional Terms) will survive any expiration or termination of this Agreement.

5. **Suspension.** Without limiting Company's right to terminate this Agreement, Company may also suspend Your access to Your Account and the Platform (including Your Content), with or without notice to You, upon any actual, threatened, or suspected breach of this Agreement or applicable law or upon any other conduct deemed by Company to be inappropriate or detrimental to the Platform, Company, or any other User or customer.

6. **Platform Technology.** The Platform, including without limitation the Software, and the databases and technology used by or on behalf of Company to operate the Platform, and the structure, organization, and underlying data, information, and software code thereof (collectively, the "**Technology**"), constitute valuable trade secrets of Company

and its third-party providers. You will not, and will not permit any third party to: (1) access or attempt to access the Technology except as expressly provided in this Agreement; (2) use the Technology in any unlawful manner or in any other manner that could damage, disable, overburden or impair the Technology; (3) use automated scripts to collect information from or otherwise interact with the Technology; (4) alter, modify, reproduce, create derivative works of the Technology; (5) distribute, sell, resell, lend, loan, lease, license, sublicense or transfer any of Your rights to access or use the Technology or otherwise make the Technology available to any third party; (6) reverse engineer, disassemble, decompile, or otherwise attempt to derive the method of operation of the Technology; (7) attempt to circumvent or overcome any technological protection measures intended to restrict access to any portion of the Technology; (8) monitor the availability, performance, or functionality of the Technology; (9) interfere with the operation or hosting of the Technology; or (10) alter, obscure, or remove any copyright, trademark, or any other notices that are provided on or in connection with the Technology.

7. **Ownership.** Company and its third-party providers retain all right, title and interest, including, without limitation, all IPR (as defined below), in and to the Technology and any additions, improvements, updates and modifications thereto. You receive no ownership interest in or to the Technology and You are not granted any right or license to use the Technology itself, apart from Your ability to access and use the Platform under this Agreement. The Company name, logo, and all product and service names associated with the Platform are trademarks of Company and its third-party providers (“**AP Marks**”) and, except as otherwise provided under this Agreement, You are granted no right or license to use them. For purposes of this Agreement, “**IPR**” means all intellectual property rights, proprietary rights, rights of publicity, rights of privacy, and any and all other legal rights protecting data, information or intangible property throughout the world, including, without limitation, any and all copyrights, trademarks, service marks, trade secrets, patent rights, moral rights, sui generis rights in databases, and contract rights.

8. **Representations and Warranties.**

8.1. **Compliance With Laws.** You acknowledge that the Platform is not specifically designed to facilitate compliance with any specific law, rule, or regulation. Your use of the Platform in compliance with any specific law, rule, or regulation applicable to You, or to Your Content, is Your sole responsibility. Company is not responsible for enabling Your compliance with any such law, rule, or regulation or for Your failure to comply. You represent and warrant to Company that Your use of and access to the Platform will comply with all applicable laws, rules, and regulations and will not cause Company itself to violate any applicable laws, rules, and regulations.

8.2. **End User Consent.** You represent and warrant that that You: (a) have given adequate notice and made any required disclosures to end users of Your Sites regarding the processing of any end user data that results from Your use of the Software or the Platform; (b) obtained all necessary rights, permissions, and valid consents which may be required in order for You use the Platform and, as applicable, use and integrate the Software on Your Sites, including any consents which may be required to be obtained from end users of Your Sites.

9. **No Warranties; Disclaimer.** EXCEPT AS PROVIDED HEREIN, THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” COMPANY AND ITS THIRD-PARTY PROVIDERS DO NOT WARRANT OR GUARANTEE THE ACCURACY, COMPLETENESS, ADEQUACY, OR

CURRENCY OF ANY SOFTWARE, CONTENT, PRODUCTS, OR SERVICES AND DO NOT ENDORSE THE VIEWS OR OPINIONS THAT MAY BE EXPRESSED IN THE SOFTWARE, CONTENT, OR SERVICES PROVIDED THROUGH THE PLATFORM. COMPANY AND ITS THIRD-PARTY PROVIDERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH REGARD TO THE PLATFORM AND ANY OTHER SUBJECT MATTER OF THIS AGREEMENT, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, OR NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY COMPANY, ITS EMPLOYEES, OR THIRD-PARTY PROVIDERS WILL INCREASE THE SCOPE OF, OR CREATE ANY NEW WARRANTIES IN ADDITION TO, THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT. YOU EXPRESSLY AGREE THAT YOUR ACCESS AND USE OF THE PLATFORM IS AT YOUR SOLE RISK.

10. **Indemnity.** You hereby agree to indemnify, defend, and hold harmless Company and our third-party providers, officers, directors, shareholders, affiliates, employees, agents, contractors, assigns, customers, providers, licensees, and successors in interest (“**Indemnified Parties**”) from any and all claims, losses, liabilities, damages, fees, expenses and costs (including attorneys' fees, court costs, damage awards, and settlement amounts) that result from any claim or allegation against any Indemnified Party arising in any manner from: (1) Your access to or use of the Platform; (2) Your Content or other data, information, or Content that You access or provide through the Platform; (3) Your violation of any third party right, including any infringement or misappropriation of any third-party's IPR or privacy right; (4) Your violation of laws; and (5) Your breach of any representation, warranty, or other provision of this Agreement. Company will provide You with notice of any such claim or allegation, and Company will have the right to participate in the defense of any such claim at its expense.

11. **Limitation on Liability.** COMPANY, AND ITS THIRD-PARTY PROVIDERS, WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE), ARISING IN CONNECTION WITH OR OUT OF THE ACCESS OR USE OF THE PLATFORM, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF YOUR CONTENT, OPPORTUNITY, REVENUES OR PROFITS, BUSINESS INTERRUPTION, OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES. COMPANY'S, AND ITS THIRD-PARTY PROVIDERS', TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE PLATFORM PROVIDED UNDER THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED \$100 OR, IN THE CASE OF ANY PURCHASES YOU MAKE THROUGH THE PLATFORM, THE AMOUNTS PAID BY YOU TO COMPANY FOR THOSE PURCHASES IN THE SIX (6) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO ANY LIABILITY. YOU AGREE THAT COMPANY WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. IN JURISDICTIONS WHERE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES IS NOT PERMITTED, COMPANY'S, AND ITS THIRD-PARTY PROVIDERS', LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW. ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PLATFORM MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED EXCEPT IN THE CASE OF CLAIMS FOR WHICH THE

APPLICABLE STATUTE OF LIMITATIONS MAY NOT BE SHORTENED BY CONTRACT, AS DETERMINED BY THE GOVERNING LAW PROVIDING FOR SUCH CLAIM.

1. **Confidentiality.** For purposes of this Agreement, “**Confidential Information**” means the Software, Content, and all documentation and materials relating to the Platform, regardless of the form thereof, including all copies and extracts thereof. You will not disclose Confidential Information to any third party without Company’s prior written consent. You may disclose the Confidential Information only to those individuals who have a need to know the Confidential Information for purposes of Your valid use of the Software or Content as permitted under this Agreement, or authorized by Company in writing, and who are bound by an obligation of confidentiality at least as protective of the Confidential Information as the terms of this Agreement. You will treat all Confidential Information with the same degree of care as You treat Your own confidential information which, in no event, will be less than reasonable care. You will not utilize the Confidential Information other than as expressly permitted in this Agreement.

2. **Usage Data.** You acknowledge and agree that Company has the right to collect, extract, compile, synthesize, and analyze usage data, analytics, statistics, and other information resulting from Your access to and use of the Platform (“**Usage Data**”). Company retains ownership of all right, title, and interest in and to Usage Data, which may be used by Company in connection with its performance of its obligations under this Agreement and for any other lawful business purpose, including, but not limited to, benchmarking, data analysis, and to improve the Platform and Company’s services, systems, and algorithms.

3. **Claims of Infringement.**

We adhere to the following notice and take down policy, in full compliance with the Digital Millennium Copyright Act of 1998 (17 U.S.C. § 512 et seq.). We may remove any materials posted on the Website upon receipt of notification alleging that such material infringes on the intellectual property rights of another (hereafter a “**DMCA Takedown Notice**”). To be valid, a DMCA Takedown Notice must (a) be provided to our designated agent, (“**Copyright Agent**”), and (b) must include the following:

A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;

Identification of the work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;

Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;

Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number, and, if available, an electronic mail;

A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and

A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Our Copyright Agent to receive DMCA Takedown Notices is:

Copyright Agent
ArtPlacer NA Inc.
181 Hudson Street
New York, NY 10013
copyright@artplacer.com

For clarity, only DMCA Takedown Notices should go to the Copyright Agent; any other feedback, comments, requests for technical support, and other communications should be directed to customer service through copyright@artplacer.com. You acknowledge that in order for us to takedown any materials, your DMCA Takedown Notice must comply with all of the requirements set forth above. Upon receipt of a valid DMCA Takedown Notice, we may (i) remove the allegedly infringing materials, or disable access thereto, and (ii) take reasonable steps to contact the provider of such allegedly infringing materials. Upon receipt of a conforming response to your DMCA takedown Notice, we may replace the removed materials within 10 business days unless You provide a court order to restrain us from doing so.

Governing Law and Venue. The interpretation of the rights and obligations of the parties under this Agreement, including, to the extent applicable, any negotiations, other proceedings hereunder, will be governed in all respects exclusively by the laws of the State of New York, U.S.A. as such laws apply to contracts between New York residents performed entirely within New York without regard to the conflict of laws provisions thereof. Each party shall bring any action or proceeding arising from or relating to this Agreement exclusively in a federal or state court in New York City, Borough of Manhattan, U.S.A., and each party irrevocably submits to the personal jurisdiction and venue of any such courts in any such action or proceeding brought in such courts.

Notices. Unless otherwise specified in this Agreement, any notices required or allowed under this Agreement will be provided to Company by postal mail to the address for Company listed above or on the Platform. Company may provide You with any notices required or allowed under this Agreement by sending You an email to any email address You provide to Company in connection with Your Account, provided that in the case of any notice applicable both to You and other Users of the Platform, Company may instead provide such notice by posting on the Platform. Notices provided to Company will be deemed given when actually received by Company. Notice provided to You will be deemed given 24 hours after posting to the Platform or sending via e-mail, unless (as to e-mail) the sending party is notified that the e-mail address is invalid.

International Use. We control and operate the Platform from our offices in New York. We do not represent that the Platform or any materials on the Platform are appropriate or available for use in other locations outside of the United States of America. Persons who choose to access the Platform from other locations do so on their own initiative, and are responsible for compliance with local laws, if and to the extent local laws are applicable. You agree to comply with all applicable laws, rules and regulations in connection with Your use of the Platform. Without limiting the generality of the foregoing, You agree to comply with all applicable laws regarding the transmission or transfer of any data or technical information in connection with Your access to or use of the Platform.

Linked Sites. The Platform may contain links to third-party sites, which contain content at such sites that are not under the control of Company. If You access a third-party site or content from the Platform, then You do so at Your own risk and Company is not responsible for any such site

or content on any linked site. If the Platform links to any third-party site or content, it is not an indication of an endorsement, authorization, or sponsorship to such third-party site or content.

Equitable Relief. You acknowledge and agree that due to the unique nature of Confidential Information, there can be no adequate remedy at law for any breach of the obligations hereunder, that any such breach may allow You or third parties to unfairly compete with Company resulting in irreparable harm to Company, and therefore, that upon any such breach of this Agreement or threat thereof, You will not oppose any attempt by Company to obtain, in addition to whatever remedies it may have at law, an injunction or other appropriate equitable relief without making any additional showing of irreparable harm (and agree to support the waiver of any requirement that Company be required to post a bond prior to the issuance of any such injunction or other appropriate equitable relief).

Additional Terms. Unless otherwise amended as provided herein, this Agreement will exclusively govern Your access to and use of the Platform, and is the complete and exclusive understanding and agreement between the parties, and supersedes any oral or written proposal, agreement or other communication between the parties, regarding Your access to and use of the Platform. All waivers by Company under this Agreement must be in writing or later acknowledged by Company in writing. Any waiver or failure by Company to enforce any provision of this Agreement on one occasion will not be deemed a waiver by Company of any other provision or of such provision on any other occasion. If any provision of this Agreement is held to be unenforceable, that provision will be removed to the extent necessary to comply with the law, replaced by a provision that most closely approximates the original intent and economic effect of the original, and the remaining provisions will remain in full force. Neither this Agreement nor any rights or obligations of You hereunder may be assigned or transferred by You (in whole or in part and including by sale, merger, consolidation, or other operation of law) without the prior written approval of Company. Any assignment in violation of the foregoing will be null and void. Company may assign this Agreement to any party that assumes Company's obligations hereunder. The parties hereto are independent parties, not agents, employees or employers of the other or joint venturers, and neither acquires hereunder any right or ability to bind or enter into any obligation on behalf of the other. Company may reference You as a User of the Platform and use Your name and logo, as applicable, in listings of Users of the Platform appearing on Company's website and for other marketing and promotional purposes relating to the Platform.

The previous Terms of Service effective prior to May 11, 2022 are available here: [\[LINK\]](#)