

## BIG FAN

### DRAFT MARKETPLACE TERMS AND CONDITIONS

#### General

We are MORIOR INVICTUS LIMITED, a limited company registered in the Republic of Ireland with company Number 617012, with the registered office address of 32 Washington Street, Cork, Ireland, T12T880 ("**us**", "**we**", "**our**"), and we operate the platform that is available at [www.bigfan.io](http://www.bigfan.io) ("**Platform**").

The Platform allows users to sign in with their MetaMask wallets to purchase and display certain identifiable, non-fungible, non-replicable and non-severable cryptographic assets recorded by way of distributed ledger technology ("**Assets**"). The Assets are used as proof of authenticity and ownership over the rights in and to certain digital content ("**Content**"), including but not limited to: graphical representations, illustrations, photographs, recordings, sound tracks, audio visual material, interactive content (including video game assets), and literary works of any kind ("**NFTs**").

These terms and conditions ("**Terms**") constitute a binding legal agreement between us, as the providers of the Platform, and you ("**you**", "**yours**") as the user accessing the Platform, and govern your access to and use of the Platform, including any content, functionality, and services offered on or through the Platform.

By registering an account with us and accessing the Platform, you confirm that you understand and agree to these Terms. Subject to any provision to the contrary, the Terms are inclusive of all documents referred to herein.

We reserve the right to change or modify the Terms at any time and at our sole discretion. You are solely responsible to ensure that you regularly visit this page to access the most recent version of the Terms.

If you do not wish to be bound by these Terms (as updated from time to time), you should stop using the Platform immediately by disconnecting [the-your](#) MetaMask wallet from our Platform.

#### 1. Eligibility

- 1.1 By agreeing to these Terms, you represent and warrant that: (a) you are at least eighteen (18) years of age; (b) you have full capacity, right, power and authority to enter into the Terms; (c) you are not taking on or entering into the Terms using another person's identity; (d) you do not reside in, nor a citizen of, any jurisdiction where the trading and/or holding of cryptographic assets, and the performance of any activity contemplated in these Terms, is prohibited or otherwise forbidden; (e) entering into the Terms and performing any activity contemplated in the Terms does not contravene any applicable law, regulation, code, guidance, or rule ("**Applicable Law**"); and that (f) you have read, understood and agreed to our Privacy Notice and Cookie Policy.

#### The Platform

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## 2. Accessing the Platform

- 2.1** To sign into the Platform, and purchase the NFT, you must hold a MetaMask wallet. If you do not have a MetaMask wallet, you may obtain one at (<https://metamask.io/>). Please note that we are not responsible for any risk and/or materialisation of risk arising out of or in connection with your access to and use of the MetaMask wallet.

## 3. Changes to the Platform

- 3.1** We may in our absolute and sole discretion change, update, amend, remove, or discontinue any part of the Platform and the Content at any time without prior notice to you.

## 4. Your Use of the Platform and Conduct

- 4.1** We hereby grant you a limited, non-exclusive, non-transferable, revocable licence to access and use the Platform (the "**Platform Licence**"). Our grant of the Platform Licence is subject to the conditions set out at section 4.2 below.
- 4.2** You undertake not to (and shall not, knowingly or otherwise, authorise, allow or assist any other party to):
- 4.2.1 perform any activity that violates any applicable law, regulation, code, guideline, or rule (including but not limited to money laundering, terrorism financing and/or fraudulent activities) or immoral activities;
  - 4.2.2 attempt to defraud or mislead us, other users, or any other person, or to provide any false, inaccurate, or misleading information to us;
  - 4.2.3 attempt to or upload viruses, malicious codes, Trojan horses, and any other software capable of affecting the operability of our Platform;
  - 4.2.4 disassemble, decompile, reverse-engineer or otherwise attempt to derive the source code, object code, underlying concepts, ideas and algorithms of the Platform or any components thereof;
  - 4.2.5 use the Platform in any manner that would lead to infringement of our, our Affiliates' or any third party's Intellectual Property (as defined at section 8 below), including without limitation any copyright, design, patent or trade mark;
  - 4.2.6 use the Platform in a way that could damage, disable, impair or compromise the Platform or otherwise interfere with other users or affect our reputation;
  - 4.2.7 use the Platform in a manner that places unreasonable or disproportionately large burden or load on our infrastructure, and detrimentally interferes with the correct functioning of the Platform; and/or
  - 4.2.8 engage in any activity that is contravention to these Terms and any applicable law, regulation, code, guidance, or rule.

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## The NFT

### 5. Minting the NFT

- 5.1 We, and other rights holders and partners with whom we may partner from time to time ("**Partners**"), may decide to make certain Content available on the Platform for the purposes of creating or 'minting' ("**Minting**" or "**Mint**") NFTs.
- 5.2 Subject to availability, the Platform will allow you to Mint NFTs using certain Content.
- 5.3 When you exercise your right to Mint an NFT through the Platform in accordance with these Terms, the relevant NFT will be automatically created on the MetaMask wallet that you used to access the Platform.
- 5.4 Please note that, where more than one piece of Content is made available for Minting, the exact Content that will be associated with the NFT will be selected at random from the available Content.
- 5.5 For the avoidance of doubt, please note that it is not possible to change the Content that is associated with the NFT, and that any right of refund shall lapse upon the relevant NFT being Minted.

### 6. Your Ownership of the NFT

- 6.1 Upon Minting an NFT, you become its legal owner. However, unless otherwise stated by us, you do not own the Content that is associated with the relevant NFT. Instead, subject to term 6.2 below, we shall grant you a worldwide, exclusive, transferable, licence to access and display the Content associated with your NFT for non-commercial purposes ("**Content Licence**").
- 6.2 The rights granted by us in connection with the NFT pursuant to these Terms (including the Platform Licence and the Content Licence) shall at any time be subject to our ability to grant such rights pursuant to the contractual agreements with the Partners (or with any other relevant third party). In the event that we are or become unable to grant any such right, under no circumstance we shall be liable to you (or to any new holder of the NFTs).

### 7. Transferring the NFT

- 7.1 Your right to transfer an NFT in accordance with these Terms (a "**Transfer**") is subject to payment of a fixed fee or royalty ("**Royalty**"). Each NFT may be subject to a different Royalty. The Royalty is embedded within the smart contract underpinning the NFT and, as a result, is automatically applied in order to facilitate a Transfer.
- 7.2 The Content Licence that is associated with your NFT is transferred together with the NFT to the new owner of the NFT.

### Additional Terms

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## 8. Our Intellectual Property Rights

- 8.1** The Platform, the Content, and other materials contained therein, including, without limitation, our logo, and all designs, text graphics, pictures, information, data, software, and files relating to the Platform are our property or the property of our affiliates, licensors, or Partners, as applicable ("**Intellectual Property**"). Unless otherwise stated, you may not copy, imitate, or use, in whole or in part, any Intellectual Property without our express written permission.

## 9. Data Protection / Privacy

- 9.1** By using the Platform, you confirm that you have read and understood our Privacy Notice. For full and comprehensive information about when and why we collect personal information about you, how we use it, the conditions under which we may disclose it and how we keep it secure, please refer to our Privacy Notice, as available at [\[INSERT LINK\]](#).

## 10. Limitation of Services / Termination / Account Closure

- 10.1** We reserve the right, without notice and in our sole discretion, to terminate or suspend your access to or use of the Platform, at any time for any reason but in particular, if we suspect in our sole discretion that your MetaMask wallet is being used in violation of these Terms.

## 11. Risks

- 11.1** Please consider the following risk factors (many of which are specific and inherent to cryptographic assets, including NFTs) before using any part of our Platform and before purchasing your right to Mint an NFT(s). The value of an NFT as well as your ability to access and transfer an NFT could be materially and adversely affected if any of these risk factors materialise. As a result, when you purchase an NFT you expose yourself to considerable risk, including (but not limited to) any of the following:

- 11.1.1 The value of an NFT is determined in accordance with the principle of offer and demand, but can be subject to dramatic fluctuations and high volatility due to events such as but not limited to: (a) good or bad publicity; (b) changes in the industry; (c) technological advancement; (d) market trends; (e) general economic and/or political conditions; (f) degree of adoption; (g) degree of institutional support; (h) regulatory measures; (i) degree of government support; (l) market dynamics; (m) trading activities,; (n) hacking; and (o) events affecting large service providers, including exchanges.

- 11.1.2 NFTs are stored on cryptographic wallets, such as the MetaMask wallet that is required to sign into the Platform. A private key (for example, a passphrase) is usually necessary to access, control and/or dispose of NFTs that are stored in your cryptographic wallet. Losing access to the private key(s) associated with your Wallet may result in the permanent loss of your ability to access and dispose of your NFT(s). You are solely responsible for implementing all reasonable and appropriate measures for securing access to your private key(s) and Wallet.

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- 11.1.3 NFTs are recorded on distributed ledgers (typically shared across networks of users) which are governed by, subject to, and distinguished on the basis of certain set of rules known as protocols.

Any malfunction, breakdown, and/or abandonment of the protocols (and of any consensus mechanism, where applicable) on which an NFT is based could severely affect the price of the NFT as well as your ability to dispose of the NFT (particularly where the protocol relies on substantial participation and wide networks to operate properly).

Some protocols integrate consensus-based mechanisms for the validation of transfers ("**Consensus Protocols**"). Consensus Protocols are, therefore, susceptible to attacks at the stage of validation, where the token transactions is approved by the network. This may affect the accuracy of transactions occurring on the protocol, and in your NFT being misappropriated (for example, through what is typically referred to as double spending attacks).

NFT may be subject to expropriation and/or theft. Bad actors (including hackers, groups and organisations) may attempt to interfere with the protocols or the NFT in a variety of ways, including, but not limited to, malware attacks, denial of service attacks, consensus-based attacks, sybil attacks, smurfing and spoofing.

Furthermore, some protocols are based on open-source software and, as a result, subject to the risk of weakness being introduced to the protocols (either willingly or accidentally) at the development stage. Any such weakness may be exploited by bad actors for the purposes of misappropriating your NFT, or otherwise affect the functionality of the protocol and of your ability to dispose of your NFT.

- 11.1.4 The legal and/or regulatory framework surrounding NFTs is uncertain, not harmonised, and unsettled in many jurisdictions. As a result, it is difficult to predict what framework will become applicable to NFTs in the near future and how the implementation of dedicated legal and/or regulatory frameworks will affect the price and viability of an NFT. A newly introduced legal and regulatory framework may interfere with or otherwise limit your ability to hold or dispose of your NFT.

**11.2** As mentioned above, this section 11 is not exhaustive. You should carry out further research to determine whether purchasing and/or trading an NFT is suitable for your particular risk tolerance. You understand and agree that you access and use the Platform at your own risk.

**11.3** Furthermore, you understand and agree that we will not be responsible for any communication failures, disruptions, errors, or distortions you may experience when using NFTs or the Platform.

## 12. Taxes

**12.1** You agree that you are solely responsible for determining what, if any, taxes apply to your Minting, use, and transfer of an NFT, and we shall not be held responsible for determining the taxes that may apply to any such activity.

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## 13. Disclaimers

- 13.1** Except as expressly provided to the contrary in writing by us, the Platform, any part contained therein, and the Content, are provided on an "as is" and "as available" basis without warranties or conditions of any kind, either express or implied. We (and our affiliates and Partners) make no warranty that the Platform will (1) meet your requirements; (2) be available on an uninterrupted, timely, secure, or error-free basis; or (3) be accurate, reliable, complete, legal, or safe.
- 13.2** We will not be liable for any loss of any kind from any action taken or taken in reliance on material or information contained on the Platform. We do not represent or warrant that any content on the Platform is accurate, complete, reliable, current or error-free.
- 13.3** While we are committed to make your access to and use of the Platform safe, we do not represent or warrant that the Platform is free of viruses or other harmful components. We cannot guarantee the security of any data that you disclose online. You acknowledge and accept the inherent security risks of providing information and dealing online over the Internet. We will not be responsible for any breach of security unless it is due to our gross negligence.
- 13.4** We will not be responsible or liable to you for any loss and take no responsibility for, and will not be liable to you for, any use of the NFT including but not limited to, any losses, damages, or claims arising from: (a) you losing access to the cryptographic wallet on which you Minted or otherwise store the NFT; (b) incorrect transactions, or mistyped addresses; (c) server failure or data loss; and/or (d) corrupted wallet files.
- 13.5** TO THE FULLEST EXTENT PROVIDED BY LAW, WE HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE. THE FOREGOING DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

## 14. Limitation of Liability

**14.1** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL WE BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST PROFIT OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM THESE TERMS, THE PLATFORM, THE NFT OR FOR ANY DAMAGES RELATED TO LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF ACCESS, LOSS OF GOODWILL, OR LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE AND EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO, AND USE OF THE PLATFORM, IS AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA RESULTING THEREFROM. WE SHALL NOT BE LIABLE FOR ANY LOSS INCURRED BY YOU RESULTING FROM YOUR ACCESS TO OUR PLATFORM OR FROM YOUR PURCHASE OF THE RIGHT TO MINT, OR FROM YOUR TRANSFER OR USE OF THE NFT. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL OUR MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR IN ANY WAY RELATED TO THESE TERMS, THE ACCESS AND USE OF THE PLATFORM, THE CONTENT, OR NFTS EXCEED US\$100. THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO OUR LIABILITY FOR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE OR ANY INJURY CAUSED ANY FRAUD OR FRAUDULENT MISREPRESENTATION ON OUR PART.

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## 15. Indemnification

- 15.1** To the widest extent permitted by law, you agree to indemnify, defend and hold us (and all our employees, affiliates, and Partners) harmless from and against all actual or alleged third party claims, damages, awards, judgments, losses, liabilities, obligations, penalties, interest, fees, expenses (including, without limitation, court costs, costs of settlement and costs of pursuing indemnification and insurance), of every kind and nature whatsoever, whether known or unknown, foreseen or unforeseen, matured or unmatured, or suspected or unsuspected, in law or equity, whether in tort, contract or otherwise, including, but not limited to, damages to property or personal injury, that are caused by, arise out of or are related to (a) your use or misuse of the Platform, the Content or the NFTs, (b) your breach of these Terms, and (c) your breach or violation of the rights of a third party. You agree to promptly notify us of any third party claim and cooperate with us in defending such claim. You further agree that we shall have control of the defence or settlement of any third party claims.

## 16. Transfer, Assignment or Delegation

- 16.1** Unless otherwise stated herein, these Terms, and any rights and obligations and licences granted hereunder, are limited, revocable, non-exclusive and personal to you and therefore may not be transferred, assigned or delegated by you to any third-party without our written consent, but may be transferred, assigned or delegated by us without notice and restriction, including without limitation to any of the entities within our group, or to any successor in interest of any business associated with the Platform. Any attempted transfer or assignment in violation hereof shall be null and void.

## 17. Severability

- 17.1** If any term or part-term is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the Terms (save for the term or part-term that is deemed invalid, illegal or unenforceable).

## 18. Entire Agreement

- 18.1** These Terms constitutes the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 18.2** Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms.

## 19. Waiver

- 19.1** No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other

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right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## 20. Notices and Communications

**20.1** By using the Platform, you agree that we may provide you with notices or other communications, including marketing, relating to your use of the Platform electronically: (a) via email (in each case to the address that you provide), or (b) by posting to the Platform. For notices made by email, the date of receipt will be deemed the date on which such notice is transmitted. You will always be given the option to unsubscribe from receiving any marketing material from us.

**20.2** Notices to us should be sent electronically to [\[INSERT\]info@bigfan.io](mailto:{INSERT}info@bigfan.io).

## 21. Third Party Rights

**21.1** These Terms do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term contained herein.

## 22. Governing Law and Jurisdiction

**22.1** The Terms and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Terms or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**22.2** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Terms or its subject matter or formation.