

# TERMS & CONDITIONS FOR NFTS MINTED AND BOUGHT AS PART OF THE INSTAPUNKS NFT COLLECTION OFFERING

Last updated on August 26, 2021

These terms and conditions constitute a legally binding agreement (the “Agreement”) between you (also referred to herein as “You”, “Your” or “User”) and InstaLabs ( “we” or “us”), governing your purchase of NFTs as part of the Instapunks NFT Collection Offering (the “Offering”).

BY PARTICIPATING IN THIS OFFERING, YOU AGREE TO BE BOUND BY THESE TERMS AND ALL OF THE TERMS INCORPORATED HEREIN AND ALL OF THE TERMS OF SERVICE INCLUDED AS PART OF OZONE NETWORKS, INC D/B/A OPENSEA <https://opensea.io/tos> (the “OpenSea Terms of Service”). If you do not agree to the terms of this Agreement, as well as the OpenSea Terms of Service, you may not participate in the Offering.

By entering into this Agreement, and/or by you participating in the Instapunks NFT Offering, you expressly acknowledge that you understand this Agreement and accept all of its terms. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT PARTICIPATE IN THE OFFERING.

## 1. Definitions

“**Art**” means any art, graphics, images, designs, logos, taglines, and drawings that may be associated with an NFT in which you acquire Licensed Rights.

“**Equivalent**” means the value, in US Dollars, of the market value of the relevant amount of cryptocurrency on the day of the transaction.

“**Name and Likeness**” means name, nicknames, images, likenesses, marks, copyrights, trade dress colors, trade dress designs, and/or all other intellectual property of InstaLabs.

“**NFT**” means any blockchain-tracked, non-fungible token.

“**Licensed Rights**” with respect to an NFT means your rights to a Licensed NFT of which you are the current rightful licensee and which you acquired from a legitimate source, where proof of such purchase is recorded on the relevant blockchain.

**“Licensed NFT”** means an NFT from InstaLabs.

**“Third Party IP”** means any third-party patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, trademarks, know-how or any other intellectual property rights recognized in any country or jurisdiction in the world.

**2. Ownership.** You acknowledge and agree that InstaLabs (or, as applicable, its licensors) owns all legal right, title and interest in and to the Art and Name and Likeness, and all intellectual property rights therein. The rights that You have in and to the Licensed NFT and Art are limited to those expressly stated in Section 3 of this Agreement. InstaLabs and its licensors reserve all rights and ownership in and to the Licensed NFT, Name and Likeness, and Art not expressly granted to You in Section 3 of this Agreement. All purchases of Licensed NFTs, as well as associated charges, are non-refundable. This no-refund policy shall apply at all times regardless of Your decision to terminate usage of the Licensed NFT, any disruption to the operations of any components of the Licensed NFT, or any other reason whatsoever.

### **3. Rights.**

(a) Your Licensed Rights. You acknowledge and agree that the Licensed NFTs are made available solely for entertainment purposes. Without limiting the foregoing and subject to your continued compliance with this Agreement (and the OpenSea Terms of Service), InstaLabs grants you a worldwide, non-exclusive, non-transferable (except as specifically provided below in section 3 (b)), royalty-free license to display the Art for your Licensed NFTs, solely for your own personal, non-commercial use.

(b) Permissible Transfers of Your Licensed NFT. You have the limited right to transfer the Licensed NFT, provided that (i) the transferee accepts all of the terms of this Agreement and all of the terms of the OpenSea Terms of Service; (ii) InstaLabs is paid ten percent (10%) of the gross amounts paid by such party relating to the Licensed NFT, including but not limited to any transfer price and any other related compensation (e.g., (1) if the transfer price is the Equivalent of \$100,000 then InstaLabs will be entitled to the Equivalent of \$10,000 or (2) if the transfer price is Equivalent to \$100,000 and an additional \$50,000 is paid as related use fee then InstaLabs would be entitled to \$15,000) and such payment shall be paid on the same terms and at the same time as you are paid; (iii) You have not prior to the transfer breached this Agreement or the OpenSea Terms of Service; (iv) prior to the transfer

your license to the Licensed NFT has not been terminated; and (v) the party purchasing the Licensed NFT provides InstaLabs with a valid e-mail address. You acknowledge and agree that the foregoing amounts payable to InstaLabs under Section 3(b)(ii) hereof do not include, and are not intended to cover, any additional fees imposed or required by the platform through which You are transferring the Licensed NFT.

**4. Restrictions.** You agree that you may not, nor permit any third party to do or attempt to do any of the following without express prior written consent from InstaLabs in each case: (i) modify the Licensed NFT, Name and Likeness and/or Art for your Licensed NFT in any way, including, without limitation, the shapes, designs, drawings, attributes, or color schemes; (ii) use the Licensed NFT, Name and Likeness and/or Art for your Licensed NFTs to advertise, market, or sell any product or service; (iii) use the Licensed NFT, Name and Likeness and/or Art from your Licensed NFTs in connection with images, videos, or other forms of media that depict hatred, intolerance, violence, cruelty, or anything else that could reasonably be found to constitute hate speech or otherwise infringe upon the rights of others, drugs (including, without limitation, both prescription and non-prescription) or other supplements, death, pornography or other “adult only” or sexually explicit activities, massage parlors, prostitution or any dating or escort activities, weapons or ammunition, denigration or discrimination against individuals based on race, national origin, gender, religion, disability, ethnicity, sexual orientation, gender identity or age, medical conditions and/or political campaigns or causes; (iv) use the Licensed NFT, Name and Likeness and/or Art from Your Licensed NFTs in movies, videos, or any other forms of media, except solely for Your own personal, non-commercial use; (v) sell, distribute for commercial gain (including, without limitation, giving away in the hopes of eventual commercial gain), or otherwise commercialize merchandise that includes, contains, or consists of the Licensed NFT, Name and Likeness and/or Art from Your Licensed NFTs; (vi) attempt to trademark, copyright, or otherwise acquire additional intellectual property rights in or to the Licensed NFT, Name and Likeness and/or Art from Your Licensed NFTs; or (vii) otherwise utilize the Art from your Licensed NFTs for Your or any third party’s commercial benefit.

To the extent that the Licensed NFT, Name and Likeness and/or Art associated with Your Licensed NFTs contains Third Party IP You understand and agree as follows: (i) 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 the

license and restrictions contained herein; (ii) that, depending on the nature of the license granted from the owner of the Third Party IP, InstaLabs may need to pass through additional terms and/or restrictions on Your ability to use the Art; and (iii) to the extent that InstaLabs informs You of such additional restrictions in writing (email is permissible), You will be responsible for complying with all such restrictions from the date that You receive the notice, and that failure to do so will be deemed a breach of this Agreement.

The restrictions in this Section 4 will survive the expiration or termination of this Agreement.

**5. Termination of the License.** The Licensed Rights granted to You hereunder shall automatically terminate and all rights shall return to InstaLabs if: (i) at any time You sell, trade, donate, give away, transfer, or otherwise dispose of Your Licensed NFT for any reason except as specially provided in section 3 of this Agreement; (ii) You breach any of the Agreement and conditions and/or Ozone Networks, Inc. d/b/a OpenSea terms of service, <https://opensea.io/tos>; (iii) You have a trustee, receiver or similar party appointed for Your property, become insolvent, acknowledge Your insolvency in any manner, make an assignment for the benefit of your creditors, or file a petition of bankruptcy; (iv) You engage in any unlawful business practice related to the Licensed NFT; (iv) You initiate any legal actions, except an arbitration as specifically provided herein, against any of InstaLabs and/or its officers, directors, affiliates, agents, attorneys and employees.

**6. DISCLAIMER OF WARRANTIES & LIMITATION OF LIABILITY.** ALL LICENSED NFTs ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, INSTALABS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, IN NO EVENT SHALL INSTALABS BE LIABLE TO YOU FOR ANY PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, COST OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER AND/OR DEVICE OR TECHNOLOGY FAILURE OR MALFUNCTION, OR FOR ANY FORM OF DIRECT OR INDIRECT DAMAGES, AND/OR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES BASED ON

ANY CAUSES OF ACTION WHATSOEVER RELATED TO ANY NFT, INCLUDING BUT NOT LIMITED TO THE LICENSED NFT, THE AUCTION, ANY TECHNOLOGY AND/OR PARTIES RELATED TO THE AUCTION, INCLUDING BUT NOT LIMITED TO BLOCKCHAIN, METAMASK WALLET AND/OR OZONE NETWORKS, INC D/B/A OPENSEA. YOU AGREE THAT THIS LIMITATION OF LIABILITY APPLIES WHETHER SUCH ALLEGATIONS ARE FOR BREACH OF CONTRACT, TORTIOUS BEHAVIOR, NEGLIGENCE, OR FALL UNDER ANY OTHER CAUSE OF ACTION, REGARDLESS OF THE BASIS UPON WHICH LIABILITY IS CLAIMED AND EVEN IF A DISCLAIMING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, AND IN ANY EVENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INSTALABS' TOTAL AGGREGATE LIABILITY SHALL NOT EXCEED TEN PERCENT (10%) OF THE TOTAL SUM PAID DIRECTLY BY YOU TO INSTALABS FOR THE APPLICABLE LICENSED NFT. YOU ACCEPT THE INHERENT SECURITY RISKS OF PROVIDING INFORMATION AND DEALING ONLINE OVER THE INTERNET AND AGREE THAT WE HAVE NO LIABILITY OR RESPONSIBILITY FOR ANY BREACH OF SECURITY UNLESS IT IS DUE TO OUR GROSS NEGLIGENCE. IF APPLICABLE LAW DOES NOT ALLOW ALL OR ANY PART OF THE ABOVE LIMITATION OF LIABILITY TO APPLY TO YOU, THE LIMITATIONS WILL APPLY TO YOU ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW.

**7. Assumption Of Risk.** As noted above, the Licensed NFTs are made available solely for entertainment purposes. You agree that You assume the following risks: (A) To the extent there is a price or market for a blockchain asset such as an NFT, such markets and prices are extremely volatile, and variations in the price of other digital assets could materially and adversely affect the value of any digital asset(s) You own, including Your Licensed NFT, and there is no guarantee that Your Licensed NFTs will have or retain any value; (B) the commercial or market value on a Licensed NFT that You purchase may materially diminish in value as a result of a variety of things such as negative publicity ; (C) there are risks associated with using an Internet-native assets (e.g., non-fungible tokens, cryptocurrencies, etc.) including, but not limited to, the risk of hardware, software and Internet connections and/or failures, the risk of malicious software introduction, and the risk that third parties may obtain unauthorized access to information stored within your digital “wallet” or elsewhere, and InstaLabs will not be responsible for any of these, however caused; (D) InstaLabs does not make any promises or guarantees about the availability of the Licensed NFT or the

Art on the Internet or that they will host the Licensed NFT or the Art at any specific location and/or for any specific period of time; (E) upgrades to the Ethereum platform, a hard fork or other change in the Ethereum platform, a failure or cessation of Ethereum, or a change in how transactions are confirmed on the Ethereum platform may have unintended, adverse effects on all blockchains using such technologies, including without limitation Licensed NFTs; (F) InstaLabs does not make any promises or guarantees related to MetaMask Wallet, Ozone Networks, Inc. d/b/a OpenSea, Blockchain or any other third parties related to this auction and each of their applications and/or services, including but not limited to the continued availability of either and/or the protection and/or storage of any data you provide to those parties; (G) the risk of losing access to Licensed NFT due to loss of private key(s), custodial error or purchaser error; (H) the risk of mining attacks; (I) the risk of hacking, security weaknesses, fraud, counterfeiting, cyber attacks and other technological difficulties (J) the risk of changes to the regulatory regime governing blockchain technologies, cryptocurrencies, and tokens and new regulations, unfavorable regulatory intervention in one or more jurisdictions or policies any of which may materially adversely affect the use and value of the Licensed NFT; (K) the risks related to taxation; (L) that NFTs are not legal tender and are not back by any government; (M) the risks of unfavorable changes of the visual representation of your NFTs made by InstaLabs and by NFT holders; and (N) InstaLabs is not responsible for any transaction between you and a third party (e.g., Your transfer of a Licensed NFT from a third party on the so-called "secondary market"), and InstaLabs shall have no liability in connection with any such transaction. In addition to assuming all of the above risks, you acknowledge that You have obtained sufficient information to make an informed decision to license the Licensed NFT and that You understand and agree that you are solely responsible for determining the nature, potential value, suitability and appropriateness of these risks for yourself. InstaLabs cannot and does not represent or warrant that any Licensed NFT, or its supporting systems or technology, is reliable, current or error-free, meets Your requirements, or that defects in the Licensed NFT, or its supporting systems or technology, will be corrected. InstaLabs cannot and does not represent or warrant that the Licensed NFT or the delivery mechanism for it are free of viruses or other harmful components. You accept and acknowledge that InstaLabs will not be responsible for any communication failures, disruptions, errors, distortions or delays You may experience related to the Auction.

**8. Governing Law.** This Agreement and all matters related to it and/or any Licensed NFT shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Massachusetts, as they are applied to agreements entered into and to be performed entirely within Massachusetts and without regard to conflict of law principles, except to the extent that law is inconsistent with or preempted by federal law.

**9. Changes to this Agreement.** InstaLabs may make changes to this Agreement from time to time. When InstaLabs makes such changes, we will make the updated Agreement available on this website and update the “Last Updated” date at the beginning of the Agreement accordingly. Please check this page periodically for changes. Any changes to this Agreement will apply on the date that they are made and, by way of example, Your continued access to or use of the Licensed NFT and the Art after the Agreement has been updated will constitute your binding acceptance of the updates.

**10. Eligibility:**

(a) Participation in the InstaLabs NFT Collection Offering is open only to individuals who have the right and authority to enter into this Agreement, are fully able and competent to satisfy the terms, conditions, and obligations herein and who are using currency that such party is the lawful holder thereof. It is not available to Users who have had their User privileges temporarily or permanently deactivated. You may not allow other persons to use your User credentials, and You agree that You are the sole authorized user.

(b) By becoming a User, you represent and warrant that you are at least 18 years old.

**11. Indemnity:** You will defend, indemnify, and hold InstaLabs, including each of their respective affiliates, subsidiaries, parents, successors and assigns, and each of our respective officers, directors, employees, agents, or shareholders, harmless from any claims, actions, suits, losses, costs, liabilities and expenses (including reasonable attorneys’ fees) relating to or arising out of your license, sale or possession of the Licensed NFT and/or Your participation in the Offering, including: (1) Your breach of this Agreement or the documents it incorporates by reference; (2) Your violation of any law or the rights of a third party as a result of your own interaction with such third party; (3) any allegation that any materials that You submit to us or transmit in the course of the auction, communications seeking InstaLabs’ consent to activities or otherwise, infringe or otherwise violate the copyright, trademark,

trade secret or other intellectual property or other rights of any third party; and/or (4) any other activities in connection with the Offering or the Licensed NFT. This indemnity shall be applicable without regard to the negligence of any party, including any indemnified person.

**12.** If you are provided a translation of this Agreement, the original version in English will be used in deciding any issues or disputes which arise under this Agreement.

### **13. Severability**

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

### **14. Contact Us**

If you have any questions or concerns, including if you need to access this Agreement in an alternative format, we encourage you to contact us via e-mail at [hello@instapunks.com](mailto:hello@instapunks.com).