Crossmint Master Services Agreement (MSA)

Last updated: December 9, 2022

This Master Service Agreement (this "***MSA***") is entered into by and between Paella Inc., a Delaware corporation with offices at 1317 Edgewater Dr #4296, Orlando, FL 32804 ("***Crossmint***"), and the individual or entity ("***Customer***") entering into this Order (as defined below) as of the earlier of the date of such Order and/or the date Customer first used the Service (the "***Effective Date***"). By clicking "I Accept," entering into an Order or otherwise accessing and/or using the Service, Customer acknowledges and agrees that Customer has read, understands, and agrees to be bound by this MSA.

1. DEFINITIONS

1.1.   "***Agreement***" means this MSA together with all Orders, which are hereby incorporated by reference, and all other terms and conditions that have been incorporated herein by reference.

1.2.   "***Crossmint API***" means the application programming interface for sending data to or receiving data from the Service and any software libraries made available to Customer for accessing the foregoing.

1.3.   "***Crossmint Digital Wallet***" means any Digital Wallet made available by Crossmint in connection with the Service.

1.4.   "***Crossmint Technology***" means, collectively, the Service, Crossmint API, Limited Minting API, SDK, Documentation, and any other services to be provided pursuant to the Agreement.

1.5.   "***Customer NFT***" means an NFT made available for purchase (or, as the case may be, pre-purchase) through the Customer Platform by either of (i) Customer or (ii) a Third-Party Seller, and may include, without limitation, (a) NFTs minted through the Service and (b) NFTs minted using the Limited Minting API.

1.6.   "***Customer NFT IP***" means any artwork, materials, designs, content, software programs, works of authorship, and other intellectual property rights (i) sent by Customer through the Limited Minting API in order to be minted as a Customer NFT, or (ii) that comprises or is otherwise embodied by any Customer NFT made available for purchase through the Service.

1.7.   "***Customer Platform***" means the web- and mobile-based platform through which Customer makes Customer NFTs available for purchase and uses the Service, and all websites, technology, and other services offered in connection therewith, and may include functionality to enable both primary and secondary sales of Customer NFTs.

1.8.   "***Digital Wallet***" means one or more discrete instances of software in and through which an individual or entity that controls such software can store access, view, and withdraw digital tokens (including the Customer NFTs) and other digital assets, including cryptocurrencies.

1.9.   "***Documentation***" means any and all applicable user instructions, manuals, on-line help files, or other materials that are provided by Crossmint in connection with the SDK, Crossmint API, Limited Minting API, or Service.

1.10.   "***Employee Users***" means Customer's employee or contractor personnel authorized by Customer to access and use the Service.

1.11. "**End Users**" means the individual end user purchasers of Customer NFTs offered through the Customer Platform.

1.12. "**End User Data**" means any data pertaining to End Users that is provided by End Users to Crossmint.

1.13. "**Initial Term**" means, with respect to an Order, the period of time commencing on the effective date thereof and continuing for the duration of the initial term set forth in that Order.

1.14. "**Limited Minting API**" means the application programming interface made available to Customer as set forth in an Order that enables Customer to mint Customer NFT IP as NFTs.

1.15. "**Minting Information**" means the information provided by Customer to the Limited Minting API in order to mint a Customer NFT, and may include (i) Customer NFT IP; (ii) the address of the Digital Wallet to which a Customer NFT shall be delivered by the Limited Minting API; and/or (iii) other information, including royalty amounts, as set forth in the applicable Documentation or as may otherwise be provided by Customer.

1.16. "**NFT**" means a non-fungible token minted and recorded on a blockchain supported by Crossmint.

1.17. "**Order**" means the document entered into by the parties and issued pursuant to this MSA that sets forth the Service, Crossmint Technology and/or or Professional Services to be provided and any additional terms applicable to the particular Service.

1.18. "**Professional Services**" means any implementation and training services provided by Crossmint to Customer.

1.19. "**SDK**" means the software development kit that is capable of being embedded into and/or otherwise integrated with the Customer Platform in order to enable Customer's use of the Service.

1.20. "**Service**" means Crossmint's proprietary Software-as-a-Service platform that facilitates the minting, offer and sale (or pre-sale, as the case may be) of Customer NFTs to End Users who are interested in paying for such Customer NFTs using fiat or crypto currency.

1.21. "**Third-Party Seller**" means a third-party user that uses a Customer Platform to offer for sale Customer NFTs owned by such user.

2. SERVICES; Crossmint API AND SDK

2.1. <u>Service</u>. Subject to Customer's ongoing compliance with the terms of the Agreement, Crossmint hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable (other than as approved by Crossmint in writing), internal right commencing on the Effective Date and continuing for the remainder of the applicable Order Term (as defined below) to access and use, and allow Employee Users to access and use, the Service solely for Customer's internal business purposes.

2.2. <u>Crossmint API and SDK License</u>. Subject to Customer's ongoing compliance with the terms of the Agreement, Crossmint hereby grants Customer a non-exclusive, non-transferable, non-sublicensable (other than as approved by Crossmint in writing), internal use only license, during the Term, to: (i) use the SDK to integrate and embed the Crossmint Technology into, and make the Crossmint Technology available to, End Users through the Customer Platform, (ii) use the Crossmint API to submit to and obtain information from the Crossmint Technology in accordance with any associated Documentation solely as necessary in connection with the use of the Service; (iii) make only those copies of any Crossmint Technology, including the Crossmint API and SDK, that are reasonably necessary to exercise Customer's rights under the foregoing (i) and (ii); and (iv) make only those copies of the Documentation reasonably necessary to exercise Customer's rights hereunder and use any Documentation in connection with Customer's use of the Crossmint Technology.

2.3. <u>Professional Services</u>. Subject to Customer's timely payment of all applicable Fees, Crossmint will use commercially reasonable efforts to provide to Customer the Professional Services, if any, set forth in the Order or as otherwise agreed-upon by the parties in writing (email to suffice). Nothing in the Agreement or any attachment hereto shall be understood to prevent Crossmint from developing similar work product or deliverables for other customers.

2.4. <u>Limited Minting API</u>. Subject to Customer's ongoing compliance with the terms of the Agreement, including without limitation payment of any applicable Fees and compliance with any applicable restrictions set forth in the Order, Crossmint hereby grants Customer a non-exclusive, non-transferable, internal use only license, during the Term, to (i) use the Limited Minting API to submit Minting Information to, and obtain Customer NFTs from, the Limited Minting API in accordance with any associated Documentation; and (ii) make only those copies of the Documentation reasonably necessary to exercise Customer's rights hereunder and use any such Documentation solely in connection with Customer's use of the Limited Minting API.

2.5. <u>Restrictions</u>.

    i) Customer shall not, directly or indirectly, and shall not authorize any third party to: (a) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code, algorithms, or associated know-how of the Crossmint Technology or results provided in connection with Professional Services (except to the extent such restriction is prohibited by applicable law); (b) write or develop any program based upon the Crossmint Technology or any portion of any of the foregoing (provided that Customer's use of the SDK and/or Crossmint API as integrated into the Customer Platform in accordance with this Agreement shall not be deemed a violation of this restriction), or otherwise use the Crossmint Technology in any manner for the purpose of developing, distributing or making available products or services that compete with the Crossmint Technology; (c) sell, sublicense, transfer, assign, lease, rent, distribute, or grant a security interest in the Crossmint Technology or any rights to any of the foregoing; (d) permit the Crossmint Technology to be accessed or used by any persons other than Employee Users and End Users accessing or using the Crossmint Technology in accordance with the Agreement; (e) alter or remove any trademarks or proprietary notices contained in or on the Crossmint Technology; (f) circumvent or otherwise interfere with any authentication or security measures of the Crossmint Technology or otherwise interfere with or disrupt the integrity or performance of the foregoing; or (g) otherwise use the Crossmint Technology for any purpose other than as expressly permitted hereunder. Customer represents and warrants that it has all rights, authorizations, and consents necessary under applicable law to grant Crossmint the rights necessary to perform its obligations under this Agreement, including without limitation to store and display the Customer NFTs as contemplated hereunder.

    ii) Customer represents and warrants that it and all Employee Users will, at all times during the Term, comply with all applicable laws in connection with the use of the Crossmint Technology. Customer represents and warrants that (a) there is no legal proceeding pending that relates to Customer's activities relating to the minting and sale of Customer NFTs or other digital asset-trading or blockchain-related activities; (b) Customer has not violated or otherwise failed to comply with any applicable laws or regulatory requirements relating to any blockchain technologies or digital assets; (c) no investigation or review by any governmental entity is pending or to Customer's knowledge has been threatened against Customer, nor does any governmental order or action prohibit Customer from engaging on or continuing any conduct related to blockchain technology or digital assets; (d) Customer will (I) comply with all applicable anti money laundering laws, rules, and regulations in connection with its use of the Services hereunder, including but not limited to, establish know-your-customer ("**KYC**") protocols in accordance with cryptocurrency industry's best practices regarding customer KYC

activities and (II) Customer is not, and Customer will not authorize, enable, or permit any use of the Customer Platform or any other Services by a person that is: (i) in, under the control of, or a national or resident of any jurisdiction subject to a U.S. trade embargo (each a "**Sanctioned Country**") and/or (ii) identified on any export- or sanctions-related restricted party list, including but not limited to the U.S. Department of the Treasury's Specially Designated Nationals and Blocked Persons List or the U.S. Department of Commerce's Denied Persons List, Unverified List, or Entity List (collectively, the "**Restricted Party Lists**"); (e) Customer will not, and shall ensure that Customer's Platform and the Customer NFTs do not, and Customer shall not permit or authorize any third party (including, without limitation, End Users) to, (I) facilitate any "front-running," "wash trading," "pump and dump trading," "ramping," "cornering" or fraudulent, deceptive or manipulative trading activities, including: (w) trading a Customer NFT at successively lower or higher prices for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such Customer NFT, (x) unduly or improperly influencing the market price for such Customer NFT or establishing a price which does not reflect the true state of the market in such Customer NFT; (y) executing or causing the execution of any transaction in a Customer NFT which involves no material change in the beneficial ownership thereof; (z) participating in, facilitating, assisting or knowingly transacting with any pool, syndicate or joint account organized for the purpose of unfairly or deceptively influencing the market price of a Customer NFT; (II) engage in or facilitate any financial activities subject to registration or licensing; or (III) engage in or facilitate fundraising subject to regulation for a business, protocol, or platform, including but not limited to creating, listing, or buying assets that (1) are redeemable for financial instruments; (2) give owners any rights to participate in an ICO or any securities offering, or (3) entitle owners to financial rewards, including but not limited to DeFi yield bonuses, staking bonuses, and burn discount; for the avoidance of doubt, Customer represents and warrants that the Customer NFTs are pure "utility" in nature, and bear no resemblance to a security as may currently be defined by law or regulation, in neither form nor function; specifically, the transactions to be performed by Customer through the Service will not constitute an "investment contract", and thus they would fail the "Howey Test" as set forth in SEC v. W.J. Howey Co, 328 U.S. 293 (1946) so that the NFTs are not considered securities under any circumstances (all the foregoing, "**Prohibited Activities**").

iii) Customer represents and warrants that, at all times during the Term, it maintains and enforces policies and procedures with respect to each of Customer's Third-Party Sellers that provide and ensure (1) that such Third-Party Sellers comply with all applicable laws in connection with their offering of any Customer NFT, including but not limited to, anti-money laundering regulations and the corresponding KYC protocols; and (2) that no Third-Party Seller engages in, causes, or permits any Prohibited Activity.

iv) Customer acknowledges that Crossmint may, but is under no obligation to, monitor Customer's use of the Service. Crossmint may suspend Customer's, or an Employee User's, access to the Service for any period during which Customer, an Employee User, or a Third-Party Seller is, or Crossmint has a reasonable basis for alleging Customer, an Employee User, or a Third-Party Seller is, in noncompliance with the foregoing.

2.6.   Support. Commencing on the Effective Date and continuing for the remainder of the applicable Order Term, Crossmint will make commercially reasonable efforts to make the Service available in accordance with, and provide the support set forth in, this Agreement. Customer acknowledges and agrees that Customer's sole and exclusive remedy and Crossmint's entire liability arising out of any failure to meet any such commitments are to terminate this Agreement.

3.   **NFT PURCHASE AGREEMENTS**

3.1. <u>Purchase Agreement Terms</u>. In connection with the Service, Crossmint may enter into one or more agreements with Customer or Customer's Third-Party Seller(s) (each of Customer and such Third-Party Sellers, a "**Seller**") to purchase (or, pre-purchase, as the case may be) Customer NFTs from such Seller on behalf of one or more End Users ("***Purchase Agreements***"). Customer agrees, on its own behalf and on behalf of each Third-Party Seller, to make such Customer NFTs available to Crossmint on terms no less favorable than Customer's standard commercial terms. Customer agrees that Customer NFTs made available for End Users to purchase from Crossmint with fiat or crypto currency through the Service shall be offered to Crossmint at a rate of exchange that results in a price no less favorable than the price at which such Customer NFTs are made available in any cryptocurrency.

3.2. <u>Customer Representations and Warranties</u>. Customer represents and warrants that, where Customer (I) makes Customer NFT IP available through the Limited Minting API and/or (II) is Seller of a Customer NFT (i) Customer is the sole owner of Customer NFT IP embodied thereby, or otherwise has the right and unrestricted ability to grant any license to Crossmint in and to such Customer NFT IP that is necessary for Crossmint to perform its obligations under this Agreement (ii) neither the Customer NFT IP nor any element thereof will infringe upon or misappropriate any copyright, patent, trademark, trade secret, right of publicity or privacy, or any other proprietary right of any person, whether contractual, statutory or common law, and that all Customer NFT IP will comply with the then-current Crossmint NFT [Content Policy](#). Customer represents and warrants that, at all times during the Term, Customer maintains and enforces policies and procedures with respect to each Third-Party Seller that provide and ensure that (a) such Third-Party Seller has all right, title and interest in and to the Customer NFT (including the Customer NFT IP) necessary to make such Customer NFT available for sale on the Customer Platform and through the Service or otherwise has the right and unrestricted ability to grant any license to Crossmint in and to such Customer NFT IP that is necessary for Crossmint to perform its obligations under this Agreement; (b) neither the Customer NFT IP nor any element thereof will infringe upon or misappropriate any copyright, patent, trademark, trade secret, right of publicity or privacy, or any other proprietary right of any person, whether contractual, statutory or common law, and that all Customer NFT IP will comply with the then-current Crossmint NFT [Content Policy](#). Customer represents and warrants that, to the extent any End User Data is made available by Crossmint to Customer or a Third-Party Seller, as applicable under this Agreement, Customer shall process (and shall procure that such Third-Party Seller processes) such End User Data in accordance with all applicable law and the terms of Crossmint's then-current [Privacy Policy](#).

3.3. <u>End User Disputes</u>. In the event of a dispute between a Seller and any third party, including any End User, related to the Customer NFT, including any dispute arising out of or related to (i) Customer NFT IP or any other intellectual property embodied by or offered in connection with such Customer NFT; (ii) any off-chain benefits or other rights granted to purchasers or later owners of a Customer NFT; or (iii) any royalty rights applicable to secondary sales of such Customer NFT, Customer acknowledges and agrees, and shall procure that Third-Party Sellers agree, that, as between Crossmint and the applicable Seller, the Seller is solely responsible for resolving such dispute and Crossmint will not be liable to Customer or such Seller in connection with or otherwise a party to any such dispute.

3.4. <u>Third-Party Beneficiaries</u>. Customer acknowledges and agrees, and shall procure that any Third-Party Seller acknowledges and agrees, that each End User shall be an intended third-party beneficiary of any Purchase Agreement into which Crossmint enters on such End User's behalf.

3.5. <u>Refunds; Chargebacks</u>. In the event of any dispute between Crossmint and any End User with respect to a Customer NFT that results in a chargeback, reversal, or other failure to pay or receive payment for such Customer NFT, Customer acknowledges and agrees (and shall procure that each Third-Party Seller acknowledges and agrees) that Crossmint reserves the right to seek a refund from Customer or such Third-Party Seller of the Crossmint purchase price paid by Crossmint to Customer plus any costs and fees incurred by Crossmint in connection with such chargeback, reversal, or other failure to pay (and Crossmint shall return any such Customer NFT to the applicable seller, if such Customer NFT is still in Crossmint's

possession). Customer shall, and shall procure that any Third-Party Seller, promptly refund the full amount sought by Crossmint to Crossmint in such circumstance.

4.   FEES; PAYMENT. Customer will pay to Crossmint any fees or charges (collectively, "*Fees*") set forth in an Order at the rates set forth therein or, if no such rates are included, at Crossmint's then-current standard rates. If Professional Services are rendered for Customer by Crossmint and Fees for Professional Services are not set forth on the Order, such Fees will be paid for Professional Services rendered at Crossmint's then prevailing time and materials rates. Unless otherwise set forth in an Order: (i) all Fees are non-cancellable, non-refundable, and non-recoupable; and (ii) all invoices for Fees are due and payable in United States dollars (or an alternative currency or cryptocurrency to be agreed-upon by the parties in writing) within 30 days after the invoice date, without deduction or setoff. Notwithstanding any fluctuation in the value of any currency, whether fiat or cryptocurrency, Customer shall pay all Fees in the currency in which Customer has agreed to pay such Fees. Interest accrues from the due date at the lesser of 1.5% per month or the highest rate allowed by law. Customer is responsible for all federal, state, local, sales, use, value added, excise, or other taxes, fees, or duties arising out of the Agreement or the transactions contemplated by the Agreement (other than taxes based on Crossmint's net income). For pre-sales of Customer NFTs, in the event that the Customer or a Third-party Seller, as the case may be, does not deliver the Customer NFTs to the End Users, Customer will be liable to pay all Crossmint Fees incurred, as well as any payment and transactional costs incurred, including any dispute management costs if applicable.

App exchanges. If Customer uses the Service together or integrated with an application, product or service that is distributed through any third-party app exchange (including, but not limited to, the Apple App Store© or Google Play App Store ©), Customer shall be responsible for payment of any charges levied by such app exchange.

5.   PROPRIETARY RIGHTS. Customer acknowledges that Crossmint owns and retains all rights, title, and interest, including all intellectual property rights, in and to (i) the Crossmint Technology, including all technology, software, algorithms, user interfaces, trade secrets, techniques, designs, inventions, works of authorship, and other tangible and intangible material and information pertaining thereto or included therein, and (ii) any work product or deliverables created in connection with the Professional Services, and nothing in the Agreement shall preclude or restrict Crossmint from using or exploiting any concepts, ideas, techniques or know-how of or related to the Crossmint Technology or otherwise arising in connection with Crossmint's performance under the Agreement. Other than as expressly set forth in the Agreement, no licenses or other rights in or to the Crossmint Technology are granted to Customer and all such rights are hereby expressly reserved.

6.   TERM AND TERMINATION

6.1.   Term. The Agreement will start on the Effective Date and will continue until terminated in accordance with the Agreement (the "*Term*"). Unless otherwise stated in an Order, each Order will continue until completion of the Initial Term, and upon expiration of the Initial Term, shall renew in accordance with Crossmint's then-standard terms (each such period with respect to that Order, a "*Renewal Term*" and all Renewal Terms of an Order together with the Initial Term of that Order, the "*Order Term*") unless either party provides notice of non-renewal at least 30 days prior to the end of the then current Initial Term or Renewal Term.

6.2.   Termination. Either party may terminate the Agreement by written notice (i) if no Orders are then-currently in effect; or (ii) if (a) the other party ceases to carry on its business; (b) a receiver or similar officer is appointed for the other party's business, property, affairs or revenues and such proceedings continue for 45 days; (c) the other party becomes insolvent, admits in writing its inability to pay debts generally as they come due, is adjudicated bankrupt, or enters composition proceedings, makes an assignment for the benefit of its creditors or another arrangement of similar import; (d) proceedings under bankruptcy or insolvency laws are commenced by or against the other party and are not dismissed within 45 days. Crossmint may terminate the Agreement and/or any Orders then in effect immediately upon written notice if (a) Customer

is in material breach of the Agreement; (b) Customer or a Third-Party Seller becomes subject to investigation or review by a governmental entity related to or arising from the Customer NFTs or any of Customer's or such Third-Party Seller's other activity related to digital assets, cryptocurrency or blockchain technology; (c) Customer breaches any of Customer's material obligations to End Users or Customer's other customers, including without limitation any obligations with respect to the Customer NFTs; or (d) any Third-Party Seller engages in any Prohibited Activity in connection with the Services or such Third-Party Seller's Customer NFTs. Notwithstanding anything to the contrary herein, if Customer fails to pay any amounts owed to Crossmint within five (5) days after written notice of nonpayment of any amounts owed to Crossmint, which may be provided any time after any amount becomes past due, Crossmint may immediately terminate this Agreement. For the avoidance of doubt, Customer's noncompliance with Section 2.5 shall be deemed a material breach of the Agreement.

6.3.   Effect of Termination. Upon the effective date of the expiration or termination of the Agreement for any reason: (i) Customer's access to the Service, and the licenses granted to Customer hereunder will automatically terminate; (ii) all outstanding payment obligations of Customer will become due and payable immediately; and (iii) Customer shall immediately return, or at Crossmint's request destroy and certify the destruction of any tangible embodiments of Crossmint's Confidential Information, including all copies of the SDK and Crossmint API. The following provisions will survive the expiration or termination of the Agreement for any reason: Sections 1, 2.5, 3, 4, 5, 6.3, and 7 through 11.

7.   CONFIDENTIALITY

7.1.   Definition. "***Confidential Information***" means: (i) any information disclosed, directly or indirectly, by or on behalf of one party ("***Disclosing Party***") to the other party ("***Receiving Party***") pursuant to the Agreement that is designated as "confidential," or in some other manner to indicate its confidential nature; and (ii) any information that otherwise should reasonably be expected to be treated in a confidential manner based on the circumstances of its disclosure or the nature of the information itself. Without limiting the foregoing, the Crossmint Technology and End User Data are the Confidential Information of Crossmint. However, Confidential Information does not include any information that: (a) is or becomes generally known and available to the public through no act of the Receiving Party; (b) was already rightfully in the Receiving Party's possession without a duty of confidentiality at the time of disclosure by the Disclosing Party, as shown by the Receiving Party's contemporaneous records; (c) is rightfully obtained by the Receiving Party from a third party who has the express right to make such disclosure; or (d) is independently developed by the Receiving Party without use of or reference to the Disclosing Party.

7.2.   Use; Maintenance. Neither party shall use the Confidential Information of the other party for any purpose except to exercise its rights and perform its obligations under the Agreement. Neither party shall disclose, or permit to be disclosed, either directly or indirectly, any Confidential Information of the other party, except: (i) to its employees, contractors, advisors, or other representatives who need to know such information to perform the Receiving Party's obligations or exercise the Receiving Party's rights, in each case subject to written obligations of confidentiality and non-use that are consistent with the terms herein, or (ii) where the Receiving Party becomes legally compelled to disclose Confidential Information, notwithstanding the Receiving Party's having given the Disclosing Party prior notice of such legally compelled disclosure (to the extent legally permitted) and a reasonable opportunity to seek a protective order or other confidential treatment for such Confidential Information (if permitted by applicable law). Each party will take reasonable measures and care to protect the secrecy of, and avoid disclosure and unauthorized use of the other party's Confidential Information, and will take at least those measures taken to protect its own most confidential information of a similar nature.

8.   INDEMNIFICATION

Customer shall defend or, at its option, settle, any claim brought against Crossmint by a third party: (i) alleging that the Customer NFTs, the Customer Platform, or Customer's other activity related to digital assets, cryptocurrency or blockchain technology infringes or misappropriates any third party's rights or

violates any laws or regulations; (ii) arising out of any unauthorized access or use of the Service by Customer or any Employee Users or any third party utilizing any access credentials of Customer or any Employee Users; (iii) arising out of the use of the Service in violation or in connection with a violation of this Agreement (including the Crossmint NFT Content Policy) or applicable law; (iv) arising out of any Third-Party Seller's Prohibited Activity; (v) arising out of the operation of Customer's business; or (vi) arising out of the Customer NFTs being considered a security. Customer will indemnify Crossmint for all costs, liabilities, damages, and expenses incurred by Crossmint (or the amount of any settlement entered into or approved in writing by Customer) with respect to such a claim. Crossmint shall provide Customer with: (a) prompt written notice of; (b) sole control over the defense and settlement of; and (c) all information and assistance reasonably requested by Customer in connection with the defense or settlement of, any such claim. Customer agrees that in the event Customer does not promptly undertake any such defense or settlement Crossmint may assume control of the defense or settlement of any such claim at Customer's expense, and that Customer may not enter into any settlement with respect to any such claim without Crossmint's prior written consent (such consent to be provided or withheld at Crossmint's sole discretion).

9. DISCLAIMER. THE SERVICE IS PROVIDED "AS IS" AND WITH ALL FAULTS. CROSSMINT HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, LOSS OF DATA, OR ACCURACY OF RESULTS. CROSSMINT DOES NOT WARRANT THAT THE CROSSMINT TECHNOLOGY WILL BE ERROR-FREE, UNINTERRUPTED, OR COMPATIBLE WITH ANY PARTICULAR DEVICE, OR THAT ANY DATA PROVIDED BY OR THROUGH THE CROSSMINT TECHNOLOGY WILL BE ACCURATE OR COMPLETE.

10. LIMITATION OF LIABILITY. EXCEPT FOR CUSTOMER'S INDEMNIFICATION OBLIGATIONS, BREACH OF SECTION 2.5 (RESTRICTIONS), OR GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BREACH OF CONFIDENTIALITY OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THE AGREEMENT, HOWEVER CAUSED, AND BASED ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, CROSSMINT'S TOTAL LIABILITY IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE GREATER OF (X) THE AMOUNT PAID BY CUSTOMER HEREUNDER DURING THE 12-MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE OR (Y) $100. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY. CUSTOMER ACKNOWLEDGES AND AGREES THAT CUSTOMER BEARS ALL RESPONSIBILITY, AND CROSSMINT WILL HAVE NO LIABILITY FOR, ANY CLAIMS RELATED TO OR ARISING FROM THE CUSTOMER NFTS, INCLUDING ANY VIOLATION OF LAW OR REGULATION WITH RESPECT THERETO OR ANY INTELLECTUAL PROPERTY EMBODIED THEREBY.

11. GENERAL PROVISIONS

11.1. <u>Assignment</u>. Neither party may assign the Agreement or any of its rights or obligations under the Agreement without the prior written consent of the other party, except that Crossmint may assign the Agreement without the consent of Customer as part of a corporate reorganization, or upon a change of control, consolidation, merger, sale of all or substantially all of its business or assets related to the Agreement, or a similar transaction or series of transactions. Subject to the foregoing, the Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

11.2.   Force Majeure. Except for the obligation to pay money, neither party will be liable for any failure or delay in its performance under the Agreement due to any cause beyond its reasonable control, including without limitation an act of war, terrorism, act of God, earthquake, flood, pandemic, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure or degradation of the Internet. The delayed party shall give the other party notice of such cause and shall use its commercially reasonable efforts to correct such failure or delay in performance.

11.3.   Governing Law. The Agreement shall be governed by and construed under the laws of the State of New York without reference to conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Subject first to Section 11.6, if a lawsuit or court proceeding is permitted under the Agreement, the parties will be subject to the exclusive jurisdiction of the state and federal courts located in New York, New York, and the parties hereby agree and consent to the exclusive jurisdiction and venue of such courts.

11.4.   Publicity. Crossmint may use Customer's name and logo as a reference for marketing or promotional purposes on Crossmint's website and in other communication with existing or potential Crossmint customers.

11.5.   Government Rights. Crossmint provides the Crossmint Technology, including any related software, data, and technology, for ultimate government end use solely in accordance with the following: The Crossmint Technology shall constitute "commercial" computer software. Government technical data and software rights related to the Crossmint Technology include only those rights customarily provided to the public as defined in the Agreement. These customary commercial licenses are provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Customer-Side Application) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Customer-Side Application or Computer Customer-Side Application Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Crossmint to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

11.6.   Arbitration. The parties agree to resolve all disputes arising under or in connection with the Agreement through binding arbitration. A party who intends to seek arbitration must first send a written notice of the dispute to the other party. The parties will use good faith efforts to resolve the dispute directly, but if the parties do not reach an agreement to do so within 30 days after the notice is received, either party may commence an arbitration proceeding. The arbitration will be conducted in accordance with the applicable rules of the American Arbitration Association ("*AAA*"). The arbitration will be conducted in English in New York, New York. If the parties do not agree on an arbitrator, the arbitrator will be selected in accordance with the applicable rules of the AAA for the appointment of an arbitrator. The selection of an arbitrator under the rules of the AAA will be final and binding on the parties. The arbitrator must be independent of the parties. The arbitrator's decision will be final and binding on both parties, and the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The costs and expenses of the arbitration will be shared equally by both parties; however, if the arbitrator finds that either the substance of the claim or the relief sought in arbitration is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. Notwithstanding the foregoing, this Section 11.6 will not prohibit either party from: (i) bringing an individual action in small claims court; (ii) seeking injunctive or other equitable relief in a court of competent jurisdiction; (iii) pursuing an enforcement action through the applicable federal, state, or local agency if that action is available; or (iv) filing suit in a court of law to address an intellectual property infringement or misappropriation claim. If this Section 11.6 is found to be unenforceable, the parties agree that the exclusive jurisdiction and venue described in Section 11.3 will govern any action arising out of or related to the Agreement.

11.7.   Miscellaneous. We reserve the right in our sole discretion to modify, suspend, or discontinue the Service, or any features or parts thereof, whether temporarily or permanently, at any time, with or without notice to you, in our sole discretion. Notwithstanding anything contained in this Agreement, we reserve the right, without notice and in our sole discretion, to terminate your right to access or use the Service at any time and for any or no reason, and you acknowledge and agree that we shall have no liability or obligation to you in such event and that you will not be entitled to a refund of any amounts that you have already paid to us, to the fullest extent permitted by applicable law. If any term, clause or provision of this Agreement is held invalid or unenforceable, then that term, clause or provision will be severable from this Agreement and will not affect the validity or enforceability of any remaining part of that term, clause or provision, or any other term, clause or provision of this Agreement. In the event of a conflict between this MSA and any Order, the terms and conditions of this MSA will prevail unless otherwise expressly stated in the Order. The Agreement is the sole agreement of the parties concerning the subject matter hereof, and supersedes all prior agreements and understandings with respect to said subject matter. Customer may not subcontract or delegate any rights or obligations granted to it under the Agreement to any third parties, including its consultants or contractors, without the prior written consent of Crossmint. Customer agrees that it is solely responsible for any liability arising out of Employee Users' access and use of the Crossmint Technology in violation of this Agreement. No terms of any purchase order, acknowledgement, or other form provided by Customer in connection with an Order will modify the Agreement, regardless of any failure of Crossmint to object to such terms. Any ambiguity in the Agreement shall be interpreted without regard to which party drafted the Agreement or any part thereof. Except as expressly set forth herein, there are no third party beneficiaries to the Agreement. The headings in the Agreement are inserted for convenience and are not intended to affect the interpretation of the Agreement. Whenever the word "including" or any derivative thereof is used herein, it shall be construed as if followed by the phrase "without limitation." Any required notice shall be given in writing by customary means with receipt confirmed at the address of each party set forth above, or to such other address as either party may substitute by written notice to the other, or by email. Notices will be deemed to have been given at the time of actual delivery in person, 1 day after delivery to an overnight courier service, 3 days after deposit in certified mail, or upon sending of an email to an address designated by the parties to receive such notice and referencing this Section 11.7. The relationship between the parties shall be that of independent contractors. Waiver of any term of the Agreement or forbearance to enforce any term by either party shall not constitute a waiver as to any subsequent breach or failure of the same term or a waiver of any other term of the Agreement. Any provision found to be unlawful, unenforceable or void shall be severed from the remainder of the Agreement and the remainder of the Agreement will continue in full force and effect without said provision. The parties agree to comply with all applicable export control laws and regulations related to their performance of the Agreement.