

## BEANS by Dumb Ways to Die NFT Terms of Sale

When you purchase Playside NFTs from Playside Studios Limited (ACN 154 789 554) (**we, us** or **PlaySide**) via Digital Chamber Pty Ltd (ACN 656 667 720) acting under license from us or via any other platform, or from any previous Owner of the PlaySide NFT via any platform, you agree to be bound by the terms and conditions set out in this document (**Terms**). The Terms may be updated from time to time and will be posted at <https://www.beansnfts.io/terms/>

For purposes of these Terms, “you”, and “your” means you as the acquirer of the PlaySide NFT. If you acquire the PlaySide NFT on behalf of a company or other entity then “you” includes you and that entity, and you represent and warrant that (a) you are an authorized representative of the entity with the authority to bind the entity to these Terms, and (b) you agree to these Terms on the entity’s behalf.

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### 1. DEFINITIONS

In these Terms:

**Business Day** means any day except a Saturday or a Sunday or other public holiday in Victoria, Australia.

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

**Confidential Information** means:

(a) information, in any form, relating to a party's business including but not limited to any products, fees, markets, operations, processes, techniques, technology, forecasts or strategies; and

(b) negotiations in relation to, and the terms of, these Terms,

but not:

(c) information in the public domain other than because of a breach of these Terms; or

(d) information already known to a party prior to the disclosure by the other party.

**Corporations Act** means the *Corporations Act 2001* (Cth).

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

**Digital Wallet** means the applicable location, wallet, address, account or storage device designated by you for the delivery of the NFTs provided by us.

**Dumb Ways to Die IP** means the Intellectual Property Rights specified in the Schedule.

**Excluded NFTs** means the NFTs specified in the Schedule.

**Insolvency Event** means the happening of any of the following events in relation to a body corporate:

- (a) the body corporate becomes an externally-administered body corporate
- (b) a person is appointed a controller (as defined in section 9 of the Corporations Act), administrator, receiver, provisional liquidator, trustee for creditors in bankruptcy or an analogous appointment is made in respect of the body corporate;
- (c) in Australia, the body corporate is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act;
- (d) the body corporate suspends payment of its debts, or enters, or takes any step towards entering, a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (e) a secured creditor of the body corporate enforces its security in relation to its debt for an amount in excess of \$50,000; or
- (f) the body corporate is, or its directors state that it is, unable to pay its debts as and when they become due and payable.

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

- (a) patents, inventions designs, copyright, trademarks, brand names, product names, domain names or rights in designs, art, images, drawings, know how, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration
- (b) any application or right to apply for registration of any of these rights
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (d) all renewals and extensions of these rights.

**Licence** has the meaning given to it in clause 6.2(a).

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

**NFT** means any blockchain-tracked non-fungible token, including those complying with the ERC-721A, ERC-721, ERC-1155, or other non-fungible token standard.

**Own** means, with respect to an NFT, any NFT we have issued where proof of ownership is recorded on a blockchain system and you control the private key associated with a Digital Wallet to which the NFT is associated or located.

**PlaySide NFT** means any PlaySide branded or themed NFT created by or on behalf of PlaySide and any other NFTs in which the underlying artwork, image, works of authorship or any other underlying content are owned by PlaySide.

**PlaySide NFT Art** means the artwork, image, works of authorship associated or other content underlying any specific PlaySide NFT.

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

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

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

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

**Your Warranties** means the warranties set out in clause 9.2.

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## 2. APPLICABILITY OF TERMS

- (a) These Terms apply to all PlaySide NFTs.
- (b) The use of any NFTs described in clause 2(a) is subject to these Terms.
- (c) Termination of these Terms will not affect any obligations which have arisen prior to termination.

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## 3. OWNERSHIP

### **3.1. PlaySide NFT**

When you acquire any PlaySide NFT, you acquire all personal property rights to the NFT underlying the PlaySide NFT.

### **3.2. PlaySide NFT Art**

- (a) Each PlaySide NFT made available by PlaySide is associated with certain PlaySide NFT Art, whether or not copyrighted or copyrightable, and regardless of the format in which any of the foregoing is made available. The PlaySide NFT Art is separate from the associated PlaySide NFT, and is not sold or otherwise transferred to you but is instead licenced to you as set forth in these Terms.
- (b) For avoidance of doubt, you may use PlaySide NFT art to create fan art as long as you aren't commercializing the created fan art.
- (c) PlaySide retains all right, title and interest in the PlaySide NFT Art and all copyright or other Intellectual Property Rights in any PlaySide NFT Art. Except for the licence rights expressly granted herein, you do not have and will not have any Intellectual Property Rights or any other right, title or interest in or to any PlaySide NFT Art.

### **3.3. PlaySide Intellectual Property**

Other than the licence rights to the PlaySide expressly granted herein, nothing in these Terms give you any rights to any other trademarks or other Intellectual Property Rights belonging to PlaySide including, without limitation, to the Dumb Ways To Die IP. All of these rights are expressly reserved in the name of PlaySide.

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## **4. SALE BY PLAYSIDE**

### **4.1. Application of this clause**

The clause applies to the sale of PlaySide NFTs by PlaySide or its Personnel, including any pre-sales.

### **4.2. Pre-sales of NFTs**

- (a) We may conduct pre-sales of PlaySide NFTs from time to time, either as a stand-alone or with bundles.
- (b) Orders placed for pre-purchase of PlaySide NFTs are non-refundable, cannot be cancelled for change of mind, and require payment of the Purchase Price at the time of the pre-purchase.
- (c) We may require you to register an account with us for the pre-purchase of PlaySide NFT.

- (d) We may require you to nominate your Digital Wallet at the time of the order, or nominate a Digital Wallet at a later time, for delivery of any pre-purchased PlaySide NFT.
- (e) We will undertake reasonable endeavours to delivery any pre-purchased PlaySide NFTs to your nominated Digital Wallet by any date we provide for delivery. You acknowledge, however, that the delivery date may change for reasons including for reasons outside or within our control, including at our sole discretion.

#### **4.3. Sales of NFTs**

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

#### **4.4. Pre-conditions to sale**

- (a) You must make payment in full in any nominated Digital Currency or via any other nominated payment method as a pre-condition to any purchase of PlaySide NFT, as determined by PlaySide or its Personnel.
- (b) In the event that any payment is reversed or becomes invalid, including via either a double spend attack or recall or refund request by a payment processor, you agree to immediately return to us any PlaySide NFTs which is the subject of a sale where the Purchase Price has no longer been retained in full by us.

#### **4.5. Title and Risk**

Risk and title in any PlaySide NFT purchased shall transfer to you upon delivery of the PlaySide NFT.

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### **5. TRANSFER OF PLAYSIDE NFT**

#### **5.1. Application of this clause**

The clause applies to the transfer of PlaySide NFTs by you to any subsequent purchaser.

#### **5.2. The Transaction**

- (a) To the extent that you are not prohibited from doing so by any other terms or conditions applicable to a particular PlaySide NFT, you may transfer the PlaySide NFT to a third party, provided that the following conditions are met:

- (i) Such transfer is conducted through a marketplace or other platform that cryptographically verifies that you are the actual Owner of the applicable PlaySide NFT;
  - (ii) Such transfer must comply with:
    - (A) Any applicable terms of the marketplace or other platform on which such sale or other transfer takes place; and
    - (B) Any applicable laws, regulations, regulatory guidance, and rules; and
  - (iii) Without limitation to the above, the transfer is conditional upon the transferee agreeing to be bound by these Terms, and you must do all things necessary to ensure that the transferee is aware of and has an opportunity to review these Terms.
- (b) After such transfer, your Licence of the PlaySide NFT Art and all other licence rights under these Terms will immediately terminate without further notice.

### **5.3. Licence Fee to PlaySide**

- (a) Upon the transfer of any PlaySide NFT, in consideration of the grant of the Licence set out in clause 6 to the transferee subject to these Terms, you will pay (or cause to be paid) to PlaySide a licence fee as calculated by and as specified from time to time in the relevant marketplace or other platform or service upon which such sale or transfer takes place ("**Licence Fee**").
- (b) If the platform or service used to facilitate the transfer captures and pays the full amount of the Licence Fee directly to PlaySide, then you will have no obligation to pay any additional amounts. For avoidance of doubt, you will pay all transaction fees, payment transfer fees and taxes associated with the transfer and you will not deduct any such amounts from the amount of the Licence Fee paid or payable to PlaySide.
- (c) All amounts owed hereunder will be paid in in a cryptocurrency acceptable to PlaySide from time to time and will be paid to the account or digital wallet designated by PlaySide from time to time.

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## **6. Grant of Licence**

### **6.1. Limited Commercial Use Licence**

- (a) Subject to your continued compliance with these Terms, we grant you a non-exclusive, non-transferable, worldwide and limited licence to

reproduce, publish and communicate to the public the PlaySide NFT Art associated with your PlaySide NFT (except for any Excluded NFTs) for the Permitted Commercial Use.

- (b) In this clause, **Permitted Commercial Use** means any commercial exploitation of the licence granted in clause 6.1 (a) to create physical or digital products (including physical merchandise and digital media), except for (or to the extent that it relates to) the following:
- (i) any physical or digital firearm or weapon;
  - (ii) any physical or digital tobacco product, pharmaceutical product or regulated drug, or product, substance or material containing any tobacco product or regulated drug (excluding alcohol);
  - (iii) any counterfeit physical or digital product;
  - (iv) any illegal product or service;
  - (v) in all other cases, any product, service or media that is defamatory, obscene, pornographic, indecent, abusive, offensive, harassing, violent, hateful, racist, discriminatory, inflammatory or is otherwise objectionable or inappropriate as determined by PlaySide at its sole discretion.

## **6.2. Limitation on the grant of Licence**

- (a) Clause 6.1 sets out all of your licence rights hereunder with respect to any PlaySide NFT Art ("**Licence**"). There are no other licence rights, whether express or implied, with respect to any PlaySide NFT Art in these Terms.
- (b) For avoidance of doubt, you have no right to, and you will not, and you will not authorize, permit or assist any third party to:
- (i) intentionally left blank;
  - (ii) Modify the PlaySide NFT or PlaySide NFT Art;
  - (iii) Use any PlaySide NFT Art to create, sell or attempt to create or sell any new cryptographic token;
  - (iv) Grant any sublicense of any Licence rights herein;
  - (v) Exercise any Licence rights herein to create, endorse, support, promote or condone any content, material or speech that is defamatory, obscene, pornographic, indecent, abusive, offensive, harassing, violent, hateful, racist, discriminatory, inflammatory or otherwise objectionable or inappropriate as

determined by PlaySide at its sole discretion;

- (vi) Reverse engineer, decompile or attempt to discover the source code for any PlaySide NFT or PlaySide NFT Art except to the extent that any applicable law permits you to do so notwithstanding this prohibition; or
- (vii) Use any PlaySide NFT Art in any manner not expressly authorized herein or exercise any Licence rights herein in any manner that violates any applicable law.

### **6.3. Rights on Additional Features**

Subject to your continued compliance with these Terms, PlaySide may choose to make additional features, access, content, items or other benefits available to you as Owner of the PlaySide NFTs ("**Additional Features**"). PlaySide has no obligation to provide you with any Additional Features, and you should not expect that any Additional Features will be provided when acquiring a PlaySide NFT. Additional Features may be subject to additional terms and conditions, which may be presented to you at the time they are made available.

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## **7. TERMINATION**

### **7.1. Termination with cause**

These Terms may be terminated with immediate effect:

- (a) If one of the warranties in clause 9 is breached; or
- (b) by either party if the other party commits any material breach of its obligations under these Terms and fails to remedy such breach (if capable of remedy) within 30 days of receipt of notice from the non-defaulting party requiring it to do so.

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

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## **8. ACKNOWLEDGEMENTS**

You acknowledge and agree that:

- (a) the NFTs we provide have been created in conjunction with and under a licensing agreement with PlaySide;
- (b) the PlaySide NFTs are not intended for speculative use, are not sold or represented to be financial product and nothing we publish is in any way financial advice to you or any other person;
- (c) NFTs may experience extreme price volatility, including being worthless

in the future;

- (d) we are not providing and will not provide any fiduciary, advisory, brokerage, exchange or other similar services to you or any other person;
- (e) you are solely responsible for any decision to enter into a transaction subject to these Terms, including the evaluation of any and all risks related to any such transaction;
- (f) a significant degree of IT sophistication is required to safely deal in and store NFTs of any kind using a Digital Wallet;
- (g) we are not a custodian for the purposes of the Corporations Act, and transfers of any NFTs are for transaction purposes only;
- (h) all transactions entered into and conducted under these Terms are deemed to have occurred within the jurisdiction of Victoria, Australia;
- (i) we are not responsible for any Loss caused by your failure to act in accordance with our policies, procedures or in accordance with our reasonable directions;
- (j) you purchase NFTs entirely at your own risk and understanding we have not made any representations or warranties as to the IT security or ongoing availability of such NFTs or that your access to use your NFTs will be uninterrupted, timely or secure at all times;
- (k) you understand and acknowledge that your ownership of NFTs remains contingent upon you remaining in control of the seed phrases and private key associated with your Digital Wallet and that we will not store any information in connection with your Digital Wallet beyond that required for the sale of NFTs;
- (l) we do not and cannot guarantee there will be any use for, or any particular price available for any NFT you purchase from us; and
- (m) we do not represent or guarantee any outcomes, or any financial return from your acquisition of any NFT from us.

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## **9. WARRANTIES**

### **9.1. Our Warranties**

We represent and warrant that:

- (a) We own, or use under licence, the Intellectual Property Rights in the NFTs which we sell and are legally entitled to, and are capable of, selling the NFTs offered for sale;

- (b) We will give you notice before we discontinue or alter the rights or features of any NFTs which you have purchased; and
- (c) We will undertake reasonable efforts to deliver any pre-purchased NFTs within the planned time indicated for delivery.

## **9.2. Purchaser warranties**

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

- (a) You are sufficiently experienced and educated to make decisions regarding the procurement or purchase of NFTs from us, including sufficient experience in dealing with and storing NFTs using a Digital Wallet;
- (b) You have all necessary experience, resources, certificates, licences, permits and approvals to procure or purchase of NFTs applicable in Your Jurisdiction, and that any transactions under these Terms will be legal under the applicable laws of Your Jurisdiction;
- (c) all information you supply to us is true and accurate as at the time it is given, and that any Digital Wallet address you provide to us has been generated in accordance with best practice security measures and no other party, other than you or your authorised representative, has used, or has access to, the seed phrases, private keys or analogous passwords required to effect transfers from the Digital Wallet;
- (d) as far as you are aware, there are no facts, circumstances or other information which both:
  - (i) you have not fully and fairly disclosed to us in a manner and to an extent that it would impact our ability to make a reasonable assessment of those facts, matters and circumstances prior to entering into a transaction to sell you an NFT; and
  - (ii) is of such nature and materiality that a reasonable person, had it been made aware of, could not reasonably be expected to consider prior to entering into a transaction for the sale of NFTs;
- (e) you are not involved in any capacity in any claim, legal action, proceeding, suit, litigation, prosecution, investigation, enquiry, mediation or arbitration (nor which are pending or threatened) concerning NFTs;
- (f) if we request, you will identify and substantiate the source of funds involved in transactions to acquire NFTs;
- (g) no Digital Currency transferred to us as part of a Purchase Price has been derived from any illegal or unlawful activity;

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

- (i) you have had the opportunity to obtain independent legal advice in relation to the terms and effect of these Terms.

### **9.3. Continuous warranties**

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

### **9.4. Notification**

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

### **9.5. Mutual warranties**

Each party warrants and assures the other party that:

- (a) if it is a company, it is duly incorporated and validly exists under the law of its place of incorporation;
- (b) it is not subject to an Insolvency Event; and
- (c) these terms constitute a legal, valid and binding terms enforceable in accordance with its terms by appropriate legal remedy.

### **9.6. Consumer Guarantees**

- (a) Certain legislation, including the Australian Consumer Law (**ACL**) contained in the *Competition and Consumer Act 2010*(Cth) and similar consumer protection laws and regulations, may provide you with rights, warranties, guarantees and remedies relating to your purchase of NFTs which cannot be excluded, restricted or modified in these Terms (**Statutory Rights**).
- (b) Nothing in these Terms does, or is intended to, exclude any Statutory Rights to which you are entitled.
- (c) Where the Purchase Price has been paid in a Digital Currency and you are entitled to a refund in relation to a Statutory Right or for any reason, you agree the refund is to be made in the same form of Digital Currency used in the initial transaction, or at our option in Australian dollars equivalent to the value of the Digital Currency used in the initial transaction on the date the Purchase Price was paid.

### **9.7. Knowledge and awareness**

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

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## **10. INDEMNITY**

- (a) You hereby indemnify us and our Personnel and will keep us and our Personnel indemnified at all times to the fullest extent permitted by law in respect of any Loss or Claim which we or our Personnel may suffer, sustain or incur arising from, or connected with, a breach of a Purchaser Warranty without limitation.
  - (b) In addition, you must indemnify us and our Personnel and keep us and our Personnel indemnified at all times to the fullest extent permitted by law in respect of any Claim which we or our Personnel may suffer, sustain or incur arising from, or connected with, any breach of these Terms, other than a breach of a Purchaser Warranty, or any breach of all applicable laws, reduced to the extent of the Loss in respect of the Claim was caused by the negligent act or omission of us or our Personnel.
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## **11. LIMITATIONS OF LIABILITY**

### **11.1. Limitation of liability**

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

### **11.2. Third party services**

Subject to clause 11.1, we will not be liable for the performance, errors or omissions of unaffiliated, nationally or regionally recognised third parties or decentralised networks such as, by way of example and not limitation, blockchain networks (whether private or public) courier companies, national postal services and other delivery, telecommunications and other companies not under our reasonable control, and third parties not under our reasonable control providing services to the blockchain industry generally, such as, by way of example and not limitation, companies and other entities providing processing and payment or transaction services (including “Layer 2” services), banking partners, custody services, market making services and/or third party pricing services and decentralised blockchain networks such as, by way of example and not limitation, the blockchain(s) upon which any NFT depends or forks of those blockchain(s).

### **11.3. Compliance with laws – No monitoring responsibilities**

- (a) We will have no liability or responsibility for your compliance with laws or regulations governing the transfer and use of NFTs. Further, you are solely

responsible for compliance with all applicable requirements of any laws, rules, and regulations of governmental authorities in Your Jurisdiction.

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

#### 11.4. No Consequential Loss

Neither party to these Terms will be liable to the other for any Claim, howsoever arising, for loss of profits, loss of opportunity, loss of expectation, loss of chance, or in the nature of an indirect or consequential loss.

#### 11.5. Liability Cap

You agree that our liability to you arising in respect of any matters in connection with these Terms are limited to the greater of:

- (a) The total amount paid to us for any NFT, in respect of a claim concerning an NFT; or
  - (b) AUD\$100.
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### 12. CONFIDENTIALITY

#### 12.1. Confidential Information

- (a) Each Party acknowledges that it may receive access to Confidential Information (**Receiving Party**) of the other party (**Disclosing Party**) pursuant to these Terms.
- (b) The Receiving Party will not, and must ensure that each member of the Receiving Party's Personnel do not, use the Confidential Information for any purpose other than strictly for the purposes of complying with the Receiving Party's obligations, or exercising the Receiving Party's rights, under these Terms.
- (c) The Receiving Party will ensure that the Receiving Party, and each member of the Receiving Party's Personnel, will not disclose or permit the disclosure of the Confidential Information to any person other than to the extent the Receiving Party can prove:
  - (i) the disclosure is to a member of the Receiving Party's Personnel who requires the Confidential Information for the purpose of performing the Receiving Party's obligations under these Terms, is aware of the Receiving Party's obligations under this clause 12 and has agreed to comply with the Receiving Party's obligations under this clause 12 as if the person was a party to these Terms;
  - (ii) the disclosure is in accordance with the Disclosing Party's specific and prior written consent; or
  - (iii) the disclosure is required by law.

## **12.2. Remedy**

Without prejudice to any other rights or remedies that a Disclosing Party may have, the Receiving Party acknowledges that damages alone would not be an adequate remedy for any breach or threatened breach by the Receiving Party of this clause 12 and accordingly, the Disclosing Party shall be entitled without proof of special damage to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of this clause.

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**13. SALES TAX**

- (a) The Purchase Price for any transaction will be considered to be exclusive of any applicable Sales Tax.
  - (b) If any additional Sales Tax is applicable by virtue of any law under Your Jurisdiction, you agree to pay such amount as is payable on behalf of us, and inform us of that payment forthwith.
  - (c) Any reference to a cost or expense incurred by a party in these Terms excludes any amount of Sales Tax forming part of the relevant cost or expense when incurred by the party for which the party can claim an input tax credit.
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**14. NOTICES**

- (a) Unless a provision of these Terms expressly state otherwise, a notice, consent, approval, waiver or other communication (notice) in connection with these Terms must be in writing and in English and sent to, in the case of us, [insert email address or website link], in the case of you, the email address nominated in the transfer.
  - (b) Any notice will be deemed to be received within 24 hours of sending the electronic message or publication online.
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**15. DISPUTES****15.1. Proceedings suspended**

- (a) A party must not begin legal proceedings in connection with a dispute arising out of or in connection with these Terms unless the steps in this clause 15 have been followed. However, this limitation does not apply:
  - (b) to a party who wants to apply for equitable relief or urgent interlocutory relief; or
  - (c) to a party who attempts in good faith to comply with clauses 15.2, 15.3 and 15.4 but cannot do so because the other party does not comply with those clauses.

**15.2. Notice of dispute**

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

### 15.3. Commencement of mediation

- (a) If the dispute is not resolved within 10 Business Days after a notice under clause 15.2 has been served (**Notice Period**), the dispute is by this clause 15.3 submitted to mediation.
- (b) The mediation must be conducted in Victoria in accordance with the mediation guidelines / rules of the Resolution Institute, save any process in this clause which is inconsistent with those guidelines or rules.
- (c) If the parties have not agreed on the mediator and the mediator's remuneration within **5 Business Days** after the end of the Notice Period:
  - (i) the mediator is the person appointed by; and
  - (ii) the remuneration of the mediator is the amount or rate determined by,

the President of the Law Institute of Victoria or the President's nominee, acting on the request of any party.

### 15.4. If dispute not resolved

If the dispute is not resolved within **1 month** after the appointment of the mediator, any party may take legal proceedings to resolve the dispute.

### 15.5. Confidentiality

Each party must keep confidential, all information relating to the subject matter of a dispute as disclosed during or for the purposes of dispute resolution under this clause 15, unless that party is compelled by a regulatory or government authority, court or tribunal to disclose that information.

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## 16. GENERAL

### 16.1. Governing law and jurisdiction

These Terms are governed by the laws of Victoria and Australia. The parties irrevocably submit to the exclusive jurisdiction of the courts of Victoria and the Victorian division of the Federal Court of Australia and the courts of appeal from them.

### 16.2. Amendment

We reserve the right to amend these Terms from time to time. Amendments will be effective as soon as such changes are notified to the public by publishing the Terms at [\[https://www.beansnfts.io/\\_files/ugd/bc9d97\\_2392380bc2334a0985bb54333f27a](https://www.beansnfts.io/_files/ugd/bc9d97_2392380bc2334a0985bb54333f27a)

### **16.3. Force Majeure**

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

### **16.4. Waiver**

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

### **16.5. Exercise of a right**

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

### **16.6. Remedies cumulative**

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

### **16.7. No merger**

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

### **16.8. Assignment**

- (a) These Terms are for the benefit of the parties and their successors and assigns. The parties and their successors and assigns are bound by these Terms.
- (b) To the extent that any party purchasing an NFT from you is taking an assignment of these Terms, you must provide that party with a link or copy of these Terms.
- (c) We may assign our rights under these Terms without your consent, including at any time.

### **16.9. Severance**

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

#### **16.10. Entire agreement**

- (a) These Terms constitute the entire agreement of the parties in respect of the subject matter of these Terms and supersedes all prior discussions, representations, undertakings and agreements.
- (b) None of our agents or representatives are authorised to make any representations, conditions or agreements not expressed by us in writing nor are we bound by any such statements.

#### **16.11. Further assurances**

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

#### **16.12. Relationship**

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

#### **16.13. Knowledge**

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

#### **16.14. Costs**

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

## SCHEDULE

<b>Excluded NFTs</b>	<p>The four original characters that are in the 10k random collection:</p> <ul style="list-style-type: none"><li>● Bean#1154 - Klod</li><li>● Bean#1758 – Hapless</li><li>● Bean#8799 - Ohno (hapless before bear bites head off), Bean#4772 - Botch</li><li>● Bean#4522 – Divvy</li></ul> <p>NFT collection "Beans - Classics"</p>
<b>Dumb Ways to Die IP</b>	<p>All Intellectual Property Rights in relation to the "Dumb Ways to Die" branding and the "BEANS" branding, including but not limited to:</p> <ul style="list-style-type: none"><li>● "Dumb Ways to Die" and "BEANS" characters (including art, color palette, voice and distinctive movements)</li><li>● Rights to use the "Dumb Ways to Die" and "BEANS" style guide (as updated from time to time), including the logo, trademarks, livery, concept and the character art depicted for the selected characters therein, packaging and branding, editorial, color palette and type fonts;</li><li>● Rights to use the Dumb Ways to Die video (synchronized), viewable at <a href="http://www.youtube.com/watch?v=IJNR2EpS0jw">http://www.youtube.com/watch?v=IJNR2EpS0jw</a> ("<b>Dumb Ways to Die Video</b>");</li><li>● Rights to use the animated and still images, illustrations, text and graphics in the Dumb Ways to Die Video;</li><li>● Rights to use the name, likeness, voice and distinctive movements of the characters in the Dumb Ways to Die Video; and</li><li>● Rights to use the sound recording of the Dumb Ways to Die song, accessible at <a href="https://itunes.apple.com/au/album/dumb-ways-to-die-single/id575962249">https://itunes.apple.com/au/album/dumb-ways-to-die-single/id575962249</a> ("<b>Dumb Ways to Die Song</b>").</li></ul>