

## **1.0 - PARTIES**

This agreement ("Agreement") is a legally binding agreement between Mike Shupp ("Artist") and the individual or entity seeking to acquire the NFT defined below ("Buyer" or "you") setting forth the terms of sale and use for Buyer's acquisition of the NFT defined below. By minting or purchasing the NFT defined below, both Artist and Buyer acknowledge and agree to the terms and conditions set forth in this Agreement and agree to be bound by same.

## **2.0 - CONVEYANCE OF RIGHTS**

**2.1** For the purpose of this Agreement, the "Forgiven" ("NFT") means the non-fungible token created by Artist and first auctioned for sale on OpenSea ("Platform"). For clarity and the avoidance of doubt, in the event of a conflict between the terms of this Agreement and the terms and conditions of the Platform, the terms and conditions of the Platform shall control to the extent applicable. The NFT embodies or represents a song consisting of a musical composition (i.e. notes and lyrics) entitled Forgiven (the "Composition") which Composition is embodied in a master recording (i.e. a recorded performance of the Composition) (the "Master") as combined with certain artwork owned and/or controlled by Artist (the "Artwork"). As used herein, the Master, Composition, and Artwork embodied in the NFT (i.e. as opposed to the NFT itself) are sometimes collectively referred to herein as the "Work". Additionally, the NFT may, but is not guaranteed to, include or entitle its current owner to benefits such as off-chain assets, exclusive access to certain events or websites, or "air-drop" benefits, as determined from time to time by Artist in Artist's sole and absolute discretion ("Added NFT Benefits"). The NFT may be acquired by you through primary sale on the Platform, or by subsequent sale or transfer from a legitimate source.

**2.2** Subject to and conditional upon your compliance with these Terms, Artist grants to you the following limited rights with respect to the NFT (together the "NFT Rights"):

**2.3** Artist hereby grants to Buyer a non-exclusive, a worldwide license to access and/or display the NFT, solely for your personal, non-commercial purposes. For clarity, when Buyer acquires the NFT, Buyer owns all personal property rights to the NFT (e.g., the right to freely sell or transfer the NFT), however such rights do NOT include the ownership of, or any other rights to use or exploit, the Work, the intellectual property rights contained in the Work, or Artist's name or likeness. For clarity, The NFT is separate and distinct from the Work, and Buyer's purchase of the NFT shall not grant

Buyer any specific rights to the Work itself (including, without limitation, copyrights, or exploitation rights) as more fully set forth in section 2 below.

**2.4** Please read carefully before proceeding. This is a binding legal contract and affects your rights.

**2.4.1** YOU UNDERSTAND AND AGREE THAT BY ACQUIRING THE NFT, YOU ARE AGREEING TO BE LEGALLY BOUND BY ALL OF THESE TERMS AND CONDITIONS, WHICH INCLUDE LIMITATIONS ON USE, DISCLAIMERS OF WARRANTY, AND LIMITATIONS OF LIABILITY.

**2.4.2** Artist grants the NFT to Buyer on an "as is" basis without any other specific promises of any kind. For clarity, and without limitation, Artist does not represent or warrant that the Work does not infringe any proprietary rights or copyrights, that third parties have not created or downloaded their own copies of the Work, or that third parties will not attempt to sell their own NFTs featuring such Work. Artist has no obligation to take down any other NFTs featuring such Work.

**2.4.3** Except for the license granted in this section, Artist retains all right, title, and interest in and to the Work (i.e. all rights in and to the Work not expressly provided for in this Agreement are hereby reserved by Artist.) Buyer acknowledges and agrees that (a) this Agreement does not convey any rights in the Master, Composition, or Artwork, or any other rights, interests, revenues or royalties earned from their commercial exploitation (specifically including, but not limited to, publishing royalties, licensing fees, or streaming revenues), and (b) this Agreement does not convey to Buyer any right to use the name, image or likeness of Artist; provided that Buyer may use Artist's name as necessary to accurately describe the NFT.

**2.4.4** Only limited personal non-commercial use and resale rights in the NFT are granted, and you have no right to license, commercially exploit, reproduce, distribute, prepare derivative works, publicly perform, or publicly display the NFT or the Work contained therein. All copyright and other rights contained in the NFT or Work are reserved and not granted.

**2.4.5** For clarity, a "non-commercial license" means that Buyer may sell the NFT on a secondary market, but shall not have the right to engage in any of the other following commercial activities: (i) make money by charging tickets or licensing fees to third parties for the right to view, listen to, or use the NFT; (ii) publicly perform or broadcast the NFT at an event for profit or a place of business; (iii) incorporate the NFT into any other product or service that generates a profit; (iv) use the NFT to promote any other person, product, or business. For further avoidance of doubt, Buyer may only profit from the NFT by reselling the NFT in its entirety on a secondary market.

**2.4.6** For clarity, not modifying the NFT or preparing "derivative works" means that the Buyer shall not have the right to engage in any of the following activities: (i) use the Work (i.e. Master, Composition, and Artwork) from the NFT in any manner separate and apart from the NFT as a whole; (ii) distort, recolor, reformat, or otherwise change the "look and feel" of the NFT or (iii) create "remixes", "alternate versions", "prequels/sequels" or other ancillary content that references the NFT (including any specific themes or characters contained therein).

**2.4.7** To the extent applicable and provided for under existing law, Artist will be entitled to all public performance income generated in connection with the public performances and/or digital transmissions of the Work, if any.

### **3.0 - REPRESENTATIONS AND WARRANTIES**

**3.1** Artist hereby represents and warrants that they are the sole and exclusive owner or authorized licensee of all right, title and interest (including, without limitation, the copyright) in the Work embodied in the NFT and that the Buyer's use of the NFT in accordance with this Agreement will not violate the rights of any third party or entity.

**3.2** Artist further represents and warrants that the code in the actual NFT, commonly known as the "smart contract," will, to the extent applicable, be consistent with what the parties have agreed to in this agreement.

**3.3** Buyer represents and warrants that they will not use the NFT outside of the rights granted herein.

**3.4** Buyer represents and warrants that they will not use the NFT or Artist's name, image, or likeness in any manner that is disparaging, misleading, or likely to cause Artist public embarrassment, humiliation, or ridicule, or in any manner that would reasonably be viewed to constitute an endorsement by Artist of any third party product or service.

**3.5** This Agreement constitutes the entire and only agreement and understanding between the parties concerning the subject matter hereof and all other prior negotiations, agreements, representations and understandings, whether oral or written (other than the terms and conditions of any applicable Platform where the NFT is exchanged), are superseded hereby.

**3.6** This Agreement is binding upon and shall inure to the benefit of the respective successors and/or assigns of the parties hereto.

### **4.0 - TRANSFERS**

**4.1** All subsequent transactions of the NFT are subject to the following terms: (i) the NFT transferee (the "Transferee") shall, by purchasing, accepting, accessing or otherwise using the NFT be deemed to accept all of the terms of this Agreement as a "Buyer" hereof; (ii) you (the "Transferor") shall provide notice to the Transferee of this Agreement, including a link or other method by which the terms of this Agreement can be accessible by the Transferee; and (iii) Artist and shall be entitled to receive an aggregate of 10 (%) percent of the gross amounts paid by the Transferee as set forth in the on-chain metadata associated with the NFT. Artist shall be paid on the same terms and at the same time as Transferor is paid by the Transferee. You acknowledge and agree that the amounts payable to Artist under this Section herein does not include, and is not intended to cover any additional fees, including Gas Fees imposed or required by the transferring platform through which you transfer the NFT.

**4.1.1** Buyer further acknowledges and agrees that all subsequent transactions of the NFT will be effected on the blockchain network governing the NFT, and Buyer will be required to make or receive payments exclusively through its Wallet.

## **5.0 - JURISDICTION**

This Agreement shall be construed and enforced in accordance with the laws of the United States of America and of the State of Virginia

## **6.0 - TAXES**

Buyer is solely responsible for all applicable federal, state, provincial, and local taxes arising from any fees or compensation Buyer receives from any secondary sale of the NFT.

## **7.0 - ARBITRATION**

If there is a disagreement between Artist and Buyer concerning the interpretation of this Agreement, the parties shall use reasonable efforts to resolve their dispute directly prior to resorting to alternative legal remedies. In the event the parties are unable to resolve their dispute directly, any controversy or claim arising out of, or relating to, this Agreement shall be settled by arbitration conducted by the American Arbitration Association (AAA) under its Commercial Arbitration Rules (or such substitute provisions therefore then in effect). Any such arbitration shall be conducted in Virginia. The arbitration of such issues, including the determination of the amount of any damages suffered by any party hereof by reason of the acts or omissions of another shall be to the exclusion of any court of law except as set forth below. The decision of the arbitrator shall be final and binding on all parties and their respective heirs, executors, administrators, successors, and

assigns. Any action to secure a judicial confirmation of the arbitration award may be brought in any state or federal court of competent jurisdiction.

## **8.0 - BREACH**

In the event of breach or alleged breach of this Agreement by Artist, Buyer rights will be limited to those at law for money damages. In no event will Buyer have the right to seek or obtain injunctive or other equitable relief.

Before either party can be deemed to be in breach of this Agreement the other party must give written notice and the party receiving that notice has 10 business days to "cure" the breach identified in that notice. All notices to Artist shall be sent to [info@mikeshupp.com](mailto:info@mikeshupp.com).

## **9.0 - INDEMNIFICATION**

Artist and Buyer will indemnify, defend and hold harmless one another from and against any and all claims, causes of action, liabilities, damages, losses, costs and expenses arising out of or related to any alleged breach of any provision in this Agreement.

## **10.0 - MISCELLANEOUS**

**10.1** By buying or selling the NFT, Buyer agrees to pay all applicable fees and, if applicable, Buyer authorizes Artist to automatically deduct fees (including any transaction fees, or so-called "Gas Fees", as applicable) directly from Buyer's payments for the transaction or subsequent transactions.

**10.2** BUYER UNDERSTANDS AND ASSUMES THE RISKS INHERENT IN ANY BLOCKCHAIN TRANSACTION AND AGREES THAT ARTIST WILL NOT BE RESPONSIBLE OR LIABLE TO BUYER FOR ANY LOSS, AND TAKES NO RESPONSIBILITY FOR, AND WILL NOT BE LIABLE FOR, ANY IMPROPER USE OF THE NFT INCLUDING BUT NOT LIMITED TO ANY LOSSES, DAMAGES OR CLAIMS ARISING FROM: (I) USER ERROR SUCH AS FORGOTTEN PASSWORDS, INCORRECTLY CONSTRUCTED TRANSACTIONS, OR MISTYPED WALLET ADDRESSES; (II) SERVER FAILURE OR DATA LOSS; (III) CORRUPTED CRYPTOCURRENCY WALLET FILES; (IV)OR (V) ANY UNAUTHORIZED THIRD PARTY ACTIVITIES, INCLUDING WITHOUT LIMITATION THE USE OF VIRUSES, PHISHING, BRUTEFORCING OR OTHER MEANS OF ATTACK AGAINST THE BLOCKCHAIN NETWORK UNDERLYING THE NFT.