

# Terms of Use

LAST UPDATED OCT 17, 2023

## Welcome

Thank you for your interest in Busker Inc. (“**Busker**,” “**we**,” or “**us**”) and our website at [www.busker.audio](http://www.busker.audio), along with our related websites and other services provided by us (collectively, the “**Service**”). These Terms of Service are a legally binding contract between you and Busker regarding your use of the Service.

PLEASE READ THE FOLLOWING TERMS CAREFULLY

**BY CLICKING “I ACCEPT” OR BY OTHERWISE INDICATING YOUR ACCEPTANCE, OR BY ACCESSING OR USING THE SERVICE, YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND, AS A CONDITION TO YOUR USE OF THE SERVICE, YOU AGREE TO BE BOUND BY, THE FOLLOWING TERMS AND CONDITIONS, INCLUDING. IF YOU ARE NOT ELIGIBLE, OR DO NOT AGREE TO THE TERMS, THEN YOU DO NOT HAVE OUR PERMISSION TO USE THE SERVICE. YOUR USE OF THE SERVICE, AND BUSKER'S PROVISION OF THE SERVICE TO YOU, CONSTITUTES AN AGREEMENT BY BUSKER AND BY YOU TO BE BOUND BY THESE TERMS**

## ARBITRATION NOTICE

Except for certain kinds of disputes described in Section 19 (*Dispute Resolution and Arbitration*), you agree that disputes arising under these Terms will be resolved by binding, individual arbitration, and BY ACCEPTING THESE TERMS, YOU AND BUSKER ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING.

## 1. Busker Service Overview

Busker is a digital record shop and music community for fans (“**Fans**”) to listen to, discover, and directly support the artists and music they love, and for artists, Artist Entities (as defined below) or Represented Artists (as defined below) (each, an “**Artist**”) to mint and sell their music, which is linked via decentralized file storage networks, on and through the Service on Polygon as a one-of-one non-fungible token (“**NFT**”) or in such other manner as an Artist may determine.

## 2. Eligibility

You must be at least 18 years of age to use the Services. If you are under 18 but at least 13 years old,

you may only use the Services through a parent or guardian's account and with their approval and oversight. By agreeing to these Terms, you represent and warrant to us that: (a) you are at least 18 years old; (b) you have not previously been suspended or removed from the Services; (c) your registration and your use of the Services is in compliance with any and all applicable laws and regulations; and (d) if you are the parent or guardian of a user under the age of 18 (a "**Minor**"), that you are accepting these Terms on behalf of such Minor, authorizing such Minor to use the Services pursuant to the account you've established on the Services, and remain liable for all activities of the Minor arising out of the Minor's use of the Services. If you are using or opening an account on behalf of a band or other musical group (including, but not limited to, a management representative or company to which an artist is signed), whether such entity is a company or other form of legal organization (each an "**Artist Entity**"), then you represent and warrant that you: (x) are an authorized representative of that Artist Entity and any recording artists that are members of such Artist Entity (a "**Represented Artist**") with the authority to bind such Artist Entity and all Represented Artists to these Terms; and (y) agree to be bound by these Terms on behalf of such Artist Entity and each Represented Artist.

### 3. Account and Registration

To access certain features of the Service, you must register for an account. When you register for an account, you will be required to connect your cryptocurrency wallet and provide us with some information about yourself, such as your Polygon wallet address and account handle or other contact information. You agree that the information you provide to us is accurate, authorized, complete, and not misleading, and that you will keep it accurate and up to date at all times. When you register for an account, you will be asked to verify ownership of your Polygon wallet by following instructions from Busker. You are solely responsible for maintaining the confidentiality of your account and password, and you accept responsibility for all activities that occur under your account. If you believe that your account is no longer secure, then you should immediately notify us at [info@busker.audio](mailto:info@busker.audio).

### 4. General Payment Terms

The Service allows Fans to purchase content, such as music, art, and NFTs, and certain services and utilities ("**Artist Content**") from Artists. By buying or selling Artist Content through the Service, you agree to these payment terms.

1. **Pricing.** Artists determine pricing for their Artist Content and you understand that Busker has no control over such pricing. Artists are solely responsible for keeping pricing information published on the Service up to date. You understand that Busker does not process payments for the Artist Content and, therefore, all payments are non-refundable unless otherwise agreed to by the Artist. All pricing will be expressed in MATIC or other ERC20 tokens. Transaction fees associated with a purchase are subject to market pricing and are not paid to Busker. However, Busker will receive a 10% fee from all transactions as a "service fee" to be able to sustain its services.
2. **Issues with Purchases.** You understand and agree that Busker is a platform that Artists use to facilitate sales of their Artist Content, and the Artist Content is derived solely from files provided by the relevant Artist. Each Artist, when acting as a seller of Artist Content, is solely responsible for such Artist Content. The Service links to the applicable platform through

which the transactions will be processed, but Busker is in no way involved in the processing of these transactions and disclaims any liability associated with the purchase or sale of any Artist Content. Busker is not responsible for failed transactions resulting in lost transaction (i.e., gas fees) and will not refund any transaction fees. Busker will use reasonable efforts to assist users in resolving any issues in a timely manner. However, Busker has no responsibility for resolving any issues that may arise from your purchase or use of the Artist Content.

3. **Restrictions; Access Not Guaranteed.** You understand that the purchase of NFTs does not give you any intellectual property rights in any music embodied in such NFTs. The Service only facilitates the purchase of the Artist Content for your personal, non-commercial use unless otherwise specified, and Busker in no way guarantees or assumes any liability for any Artist Content. Busker does not guarantee you perpetual access on the Service to any Artist Content. Busker retains the right, but does not have the obligation, to immediately halt the offering or sale of any goods or services through the Service, prevent or restrict access to Artist Content, or take any other action in case of technical problems, objectionable material, inaccurate listings, third-party claims of infringement, or actions otherwise prohibited by the procedures and guidelines contained on the Service, or for any other reason in the sole and absolute discretion of Busker, and to correct any inaccurate listing or technical problems on the Service. Busker may immediately halt the offering or facilitating the sale of any goods or services through the Service upon receipt of notifications of claimed infringement, upon acquiring knowledge of actual infringement, or becoming aware of facts or circumstances from which infringing material is apparent with respect to any goods or services. You agree to waive, and do waive, any legal or equitable right or remedy you have or may have against Busker with respect to Artist Content.
4. **License Restrictions.** If you purchase any Artist Content, Artist hereby grants you a non-exclusive license to access such Artist Content through the Service and to perform and display such Artist Content solely for your personal, non-commercial use. The license grant from the Artist to you does not include the right to produce the Artist Content in time relation to visual images (i.e., you are not granted any synchronization rights) and there are no implied licenses from the Artist to you or any third party.
5. **Terms for Artists.** If you sell your Artist Content through the Service, you will set the prices for your Artist Content at your sole discretion. Pricing for all NFTs must be listed in Polygon or certain supported ERC20 tokens. Busker is not responsible for any issues that may arise during minting of NFTs, or any transaction fees that may be lost as a result of erroneous transactions or failures in the minting process. You are prohibited from incorporating any royalty fee structure, revenue share or other payment stream to purchasers of your NFTs in the NFTs that are created or sold on or through the Service. You also agree not to create or sell NFTs in any way that would violate applicable laws, including US securities laws.
6. **Taxes.** All users are responsible for determining and meeting their tax liabilities, if any, arising from the purchase or sale of NFTs or other Artist Content. You should consult your own tax advisors about the implications of purchasing or selling NFTs or Artist Content. Busker shall have no responsibility or liability for any fees and taxes associated with processing any transactions unless required by law or by an agreement with any third party facilitating such transactions.

## 5. Licenses

7. **Limited License.** Subject to your complete and ongoing compliance with these Terms, Busker grants you, solely for your personal, non-commercial use (except with respect to Artists), a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to access and use the Service.
8. **License Restrictions.** Except and solely to the extent such a restriction is impermissible under applicable law, you may not: (a) reproduce, distribute, publicly display, publicly perform, or create derivative works of the Service; (b) make modifications to the Service; or (c) interfere with or circumvent any feature of the Service, including any security or access control mechanism. If you are prohibited under applicable law from using the Service, then you may not use it.
9. **Feedback.** We respect and appreciate the thoughts and comments from our users. If you choose to provide input and suggestions regarding existing functionalities, problems with or proposed modifications or improvements to the Service (“**Feedback**”), then you hereby grant Busker an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right and license to use the Feedback in any manner and for any purpose, including to improve the Service and create other products and services. We will have no obligation to provide you with attribution for any Feedback you provide to us.

## 6. Ownership; Proprietary Rights

The Service is owned and operated by Busker. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Service provided by Busker (“**Materials**”) are protected by intellectual property and other laws. All Materials included in the Service are the property of Busker or its third-party licensors. Except as expressly authorized by Busker, you may not make use of the Materials. There are no implied licenses in these Terms and Busker reserves all rights to the Materials not granted expressly in these Terms.

## 7. Third-Party Terms

10. **Third-Party Services and Linked Websites.** Busker may provide tools through the Service that enable you to export information, including User Content (as defined below), to third-party services. By using one of these tools, you hereby authorize Busker to transfer that information to the applicable third-party service. Third-party services are not under Busker's control, and, to the fullest extent permitted by law, Busker is not responsible for any third-party service's use of your exported information. The Service may also contain links to third-party websites. Linked websites are not under Busker's control, and Busker is not responsible for their content. Please be sure to review the terms of use and privacy policy of any third-party services before you share any User Content or information with such third-party services. Once sharing occurs, Busker will have no control over the information that has been shared.

11. **Third-Party Software.** The Service may include or incorporate third-party software components that are generally available free of charge under licenses granting recipients broad rights to copy, modify, and distribute those components (“**Third-Party Components**”). Although the Service is provided to you subject to these Terms, nothing in these Terms prevents, restricts, or is intended to prevent or restrict you from obtaining Third-Party Components under the applicable third-party licenses or to limit your use of Third-Party Components under those third-party licenses.
12. **Smart Contracts.** Each NFT may be subject to contractual terms embodied in a so-called smart contract. By minting, purchasing or selling an NFT, you do so subject to the provisions of the applicable smart contract. You are solely responsible for understanding the provisions of each smart contract governing any transaction to which you are a party.

## 8. User Content

13. **User Content Generally.** Certain features of the Service may permit users to submit, upload, link to, distribute, re-distribute, broadcast, transmit, re-transmit, or otherwise publish (collectively, “**Post**”) content to the Service, including sound recordings (“**Sound Recordings**”), and the musical works embodied within Sound Recordings (the Artist's “**Music**”), NFTs, messages, reviews, images, photographs, artwork, folders, data, text, and any other works of authorship, trademarks, or other works protected by proprietary rights (collectively, “**User Content**”). User Content includes Artist Content that may be for sale on or through the Service. You retain any copyright and other proprietary rights that you may hold in the User Content that you Post to the Service, subject to the licenses and rights granted in these Terms.
14. **License to User Content.** By Posting User Content, you hereby grant Busker a worldwide, non-exclusive, royalty-free, fully paid, sublicensable, and transferable license to use, edit, modify, reproduce, distribute, prepare derivative works of, publicly display, publicly perform (including on a through-to-the-audience basis and by means of a digital audio transmission), communicate to the public, synchronize, and otherwise use the User Content to provide the Service and Busker's (and its successors and assigns) business, including, without limitation, for promoting and redistributing all or part of the Service or the availability of User Content in any media formats and through any media channels (including, without limitation, third party websites), whether now known or hereafter developed. To the extent that we create any marketing collateral based upon your User Content, our right to the User Content in such marketing collateral will be perpetual and irrevocable, provided that no new marketing materials can be created after termination of these Terms. You also hereby do and shall grant each user of the Service a non-exclusive license to access your User Content through the Service, and to perform, and display such User Content solely for personal, non-commercial use. For clarity, the foregoing license grant to Busker does not affect your other ownership or license rights in your User Content, including the right to grant additional licenses to the material in your User Content, unless otherwise agreed in writing.
15. **Specific Rules for Photographs and Images.** If any term, clause, or provision of these Terms of Use is held invalid or unenforceable, then that term, clause, or provision shall be severable from these Terms of Use and will not affect the validity or enforceability of any remaining part of that term, cause, or provision, or any other terms, clause, or provision of these Terms of Use.
16. **You Must Have Rights to the Content You Post; User Content Representations and Warranties.** You must not Post User Content if you are not the owner of or are not fully

authorized to grant rights in all of the elements of that User Content. Busker disclaims any and all liability in connection with User Content. You are solely responsible for your User Content and the consequences of providing User Content via the Service. By providing User Content via the Service, you affirm, represent, and warrant to us that:

- a. you are the creator and owner of the User Content, or have the necessary licenses, rights, consents, and permissions to authorize Busker and users of the Service to use and distribute your User Content as necessary to exercise the licenses granted by you in this Section, in the manner contemplated by Busker, the Service, and these Terms;
  - b. you agree to pay all royalties and other amounts owed to any and all persons or entities (including, but not limited to, performing rights organizations (“PROs”), music publishers, vocalists, musicians, engineers, producers, and labels), due to your Posting of any User Content to the Service;
  - c. your User Content, and the Posting or other use of your User Content as contemplated by these Terms, does not and will not: (i) infringe, violate, misappropriate, or otherwise breach any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property, contract, or proprietary right; (ii) slander, defame, libel, or invade the right of privacy, publicity or other property rights of any other person; or (iii) cause Busker to violate any law or regulation or require us to obtain any further licenses from or pay any royalties, fees, compensation or other amounts or provide any attribution to any third parties; and
  - d. your User Content could not be deemed by a reasonable person to be objectionable, pornographic, harassing, threatening, hateful, or otherwise inappropriate.
17. **Monitoring Content.** Busker does not control and does not have any obligation to monitor: (a) User Content; (b) any content made available by third parties; or (c) the use of the Service by its users. You acknowledge and agree that Busker reserves the right to, and may from time to time, monitor any and all information transmitted or received through the Service for operational and other purposes. If at any time Busker chooses to monitor the content, then Busker still assumes no responsibility or liability for content or any loss or damage incurred as a result of the use of content. During monitoring, information may be examined, recorded, copied, and used in accordance with our Privacy Policy (defined below). Busker may block, filter, mute, remove, or disable access to any User Content uploaded to or transmitted through the Service without any liability to the user who Posted such User Content to the Service or to any other users of the Service.
18. **Removal of User Content.** You can request removal of your User Content from the Busker systems and servers by emailing [info@busker.audio](mailto:info@busker.audio) or sending a request through the support Discord servers and Busker will use reasonable efforts to honor such requests. However, notwithstanding the foregoing, you hereby acknowledge and agree that once you User Content is minted, Busker is not obligated to ensure the deletion of your User Content from any servers or systems or to require that any user of the Service deletes any item of your User Content. If Busker determines that any User Content does not conform to these Terms, we may investigate the allegation and determine in our sole discretion whether to remove the User Content, which we reserve the right to do at any time and without notice. Busker has no control over and cannot delete your User Content from the blockchain.
19. **Music.** Busker will not have any ownership rights in any elements of an Artist's Music, however, in order to operate the service, you hereby grant Busker the licenses set forth in these Terms. If you are an Artist uploading Music to the Service, you hereby grant Busker a

worldwide, non-exclusive, royalty-free, right and license to: (a) reproduce, distribute through the Service, publicly perform (including on a through-to-the-audience basis and by means of a digital audio transmission), publicly display, create derivative works of, communicate to the public, synchronize on the Service and otherwise use (collectively, “Use”) (1) the Artist's Music and perform the Service on the Artist's behalf (e.g., reproduce, transcode, copy and store the Artist's Music on computers or servers owned and/or operated by or on behalf of Busker, and publicly perform, transmit, synchronize, stream, distribute, and playback the Artist's Music) using any technologies or methodologies now known or hereafter developed, and (2) Use all associated copyrightable works or metadata, including, without limitation, song lyrics and musical notations, album cover artwork, photographs, graphics, and descriptive text (“**Artworks**”) in connection with the Service; (b) allow users of the Service to receive public performances and public displays of the Artist's Music and Artworks and to reproduce the Artist's Music and Artworks on any and all devices owned or controlled by the user for non-commercial purposes and receive performances and displays of same; and (c) reproduce, use, and publish, and to permit others to reproduce, use and publish, the name(s), trademarks, likenesses, and personal and biographical materials of the Artist, in connection with the provision of the Service.

20. **Marketing.** If you are an Artist, you hereby grant to Busker the worldwide, non-exclusive, royalty-free, sublicensable, and transferable right to use, distribute, reproduce, copy, and display your trademarks, service marks, slogans, logos or similar proprietary rights solely in connection with the Service or in the marketing, promotion or advertising of the Service, including in all forms of marketing, promotion, and advertising materials now known or hereafter created. You agree that we may use or modify images from the User Content that you create for marketing or promotional purposes. You also agree that we can use your biography and other public information about you to promote the User Content that you create.
21. **Additional Warranties.** By uploading any Music or Artworks to the Service:
- e. you represent and warrant, and can demonstrate to Busker's full satisfaction upon request, that (a) you own or otherwise control all rights to your Music and Artworks (or that such Music and Artworks are in the public domain or have otherwise been directly licensed to the Artist in writing with a grant of rights sufficient to permit the Artist to enter into these Terms and to grant all of the rights with respect to the Artist's Music or Artworks as set forth in these Terms); (b) you have full authority to act on behalf of any and all owners of any right, title or interest in and to any Music you upload to the Service and to the Artworks; (c) you have permission to use the name and likeness of each identifiable individual person whose name or likeness is contained or used within the Music and/or Artworks, and to use such individual's identifying or personal information (to the extent such information is used or contained in the Music and/or Artworks) as contemplated by these Terms of Use, and (d) you are authorized to grant all of the aforementioned rights to the Music and/or Artworks to Busker and all users of the Service;
  - f. you represent and warrant that the Use of your Music and/or Artworks by Busker and/or by users of the Service as contemplated by these Terms will not infringe or violate the rights of any third party, including, without limitation, any privacy rights, publicity rights, copyrights, contract rights, or any other intellectual property or proprietary rights;
  - g. you represent and warrant that no fees of any kind shall be due by Busker to any third party, including, but not limited to, any PRO, record label, music publisher, third-party administrator, union, guild, non-featured vocalist or musician, engineer, producer or other record royalty participant, for the Use of your Music as authorized under these Terms; and

- h. you represent and warrant that you are fully aware of, acknowledge, and accept that by uploading your User Content to the Polygon blockchain through the Service, your User Content can be accessed and indexed by any third-party due to the nature of the blockchain, even in the event your User Content is removed from the Service, and that Busker will have no right or ability to control the availability of your User Content to any third party with access to the Polygon blockchain.

## **9. Performing Rights Organizations, Music Publishers and Record Labels**

If you are a composer or author of a musical work and have granted non-exclusive rights to a PRO, then you must notify your PRO of the royalty-free license you grant through these Terms to Busker. You are solely responsible for ensuring your compliance with the relevant PRO's reporting obligations. If you have assigned your rights to a music publisher or a PRO, then you must obtain the consent of that music publisher or PRO to grant the royalty-free license(s) set forth in these Terms or have that music publisher or PRO enter into these Terms with Busker. Just because you authored a musical work (e.g., wrote a song) does not mean you have the right to grant Busker the licenses in these Terms. If you are a recording artist under contract governing your rights to use the User Content, then you are solely responsible for ensuring that your use of the Service is in compliance with any contractual obligations you have, including if you create any new recordings through the Service that may be claimed by a third party. Finally, if you wish to perform a cover song and Post it to the Service, you are responsible for securing all rights in and to the underlying musical work before Posting your recording or performance of that musical work to the Service.

## **10. Communications**

We may send you emails concerning our products and services, as well as those of third parties. You may opt out of promotional emails by following the unsubscribe instructions in the promotional email itself.

## **11. Prohibited Conduct**

BY USING THE SERVICE, YOU AGREE NOT TO:

22. use the Service for any illegal purpose or in violation of any local, state, national, or international law;
23. harass, threaten, demean, embarrass, bully, or otherwise harm any other user of the Service;
24. interfere with any listings on the Service;
25. violate, encourage others to violate, or provide instructions on how to violate, any right of a third party, including by infringing or misappropriating any third-party intellectual property right;
26. interfere with security-related features of the Service, including by: (a) disabling or circumventing features that prevent or limit use, printing or copying of any content; or (b) reverse engineering or otherwise attempting to discover the source code of any portion of the Service except to the extent that the activity is expressly permitted by applicable law;
27. interfere with the operation of the Service or any user's enjoyment of the Service, including by: (a) uploading or otherwise disseminating any virus, adware, spyware, worm, or other malicious code; (b) making any unsolicited offer or advertisement to another user of the Service; (c) collecting personal information about another user or third party without



- consent; or (d) interfering with or disrupting any network, equipment, or server connected to or used to provide the Service;
28. perform any fraudulent activity including impersonating any person or entity, claiming a false affiliation or identity, accessing any other Service account without permission;
  29. sell or otherwise transfer the access granted under these Terms or any Materials or any right or ability to view, access, or use any Materials; or
  30. attempt to do or assist any other person to do any of the acts described in this Section 11 (*Prohibited Conduct*).

## 12. Intellectual Property Rights Protection

31. **Respect of Third-Party Rights.** Busker respects the intellectual property rights of others, takes the protection of intellectual property rights very seriously, and asks users of the Service to do the same. Infringing activity will not be tolerated on or through the Service.
32. **DMCA Notification.** We comply with the provisions of the Digital Millennium Copyright Act applicable to Internet service providers (17 U.S.C. § 512, as amended). If you have an intellectual property rights-related complaint about any material on the Service, you may contact with us from [info@busker.audio](mailto:info@busker.audio)
33. **Procedure for Reporting Claimed Infringement.** If you believe that any content made available on or through the Service has been used or exploited in a manner that infringes an intellectual property right you own or control, then please promptly send a written **“Notification of Claimed Infringement”** to the Designated Agent identified above containing the following information:
  - i. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other right being infringed;
  - j. a description of the copyrighted work or other intellectual property right that you claim has been infringed;
  - k. a description of the material that you claim is infringing and where it is located on the Service;
  - l. your address, telephone number, and email address;
  - m. a statement by you that you have a good faith belief that the use of the materials on the Service of which you are complaining is not authorized by the copyright or other intellectual property right owner, its agent, or the law; and
  - n. a statement by you that the above information in your notice is accurate and that, under penalty of perjury, you are the copyright or other intellectual property right owner or authorized to act on the copyright or intellectual property owner's behalf.
  - o. Your Notification of Claimed Infringement may be shared by Busker with the user alleged to have infringed a right you own or control as well as with the operators of publicly available databases that track notifications of claimed infringement, and you consent to Busker making such disclosures. You should consult with your own lawyer or see 17 U.S.C. § 512 to confirm your obligations to provide a valid notice of claimed infringement.
34. **Repeat Infringers.** Busker policy is to: (a) remove or disable access to material that Busker believes in good faith, upon notice from an intellectual property rights owner or authorized agent, is infringing the intellectual property rights of a third party by being made available through the Service; and (b) in appropriate circumstances, to terminate the accounts of and block access to the Service by any user who repeatedly or egregiously infringes other people's copyright or other intellectual property rights. Busker will terminate the accounts of

users that are determined by Busker to be repeat infringers. Busker reserves the right, however, to suspend or terminate accounts of users in our sole discretion.

35. **Counter Notification.** If you receive a notification from Busker that material made available by you on or through the Service has been the subject of a Notification of Claimed Infringement, then you will have the right to provide Busker with what is called a “**Counter Notification**”. To be effective, a Counter Notification must be in writing, provided to Busker’s Designated Agent through one of the methods identified in Section 12.2 (*DMCA Notification*), and include substantially the following information:
- p. your physical or electronic signature;
  - q. identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled;
  - r. a statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled; and
  - s. your name, address, and telephone number, and a statement that you consent to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if you are residing outside of the United Kingdom, then for any judicial district in which Busker may be found, and that you will accept service of process from the person who provided notification under Section 12.2 (*DMCA Notification*) above or an agent of that person.
  - t. A party submitting a Counter Notification should consult a lawyer or see 17 U.S.C. § 512 to confirm the party’s obligations to provide a valid counter notification under the Copyright Act.
36. **Posting of Content Subject to a Counter Notification.** If you submit a Counter Notification to Busker in response to a Notification of Claimed Infringement, then Busker will promptly provide the person who provided the Notification of Claimed Infringement with a copy of your Counter Notification and inform that person that Busker will replace the removed User Content or cease disabling access to it in 10 business days, and Busker will replace the removed User Content and cease disabling access to it not less than 10, nor more than 14, business days following receipt of the Counter Notification, unless Busker’s Designated Agent receives notice from the party that submitted the Notification of Claimed Infringement that such person has filed an action seeking a court order to restrain the user from engaging in infringing activity relating to the material on Busker’s system or network.
37. **False Notifications of Claimed Infringement or Counter Notifications.** The Copyright Act provides at 17 U.S.C. § 512(f) that: “[a]ny person who knowingly materially misrepresents under [Section 512 of the Copyright Act (17 U.S.C. § 512)] (1) that material or activity is infringing, or (2) that material or activity was removed or disabled by mistake or misidentification, will be liable for any damages, including costs and attorneys’ fees, incurred by the alleged infringer, by any copyright owner or copyright owner’s authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of [Busker] relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.” Busker reserves the right to seek damages from any party that submits a Notification of Claimed Infringement or Counter Notification in violation of the law.

### 13. Modification of Terms

We may, from time to time, change these Terms. We may also require that you accept modified Terms in order to continue to use the Service. Please check these Terms periodically for changes. Revisions will be effective immediately except that, for existing users, material revisions will be effective 30 days after posting or notice to you of the revisions unless otherwise stated; provided, however, that if we require you to accept modified Terms to continue using the Service and you agree to such modified Terms, such modified terms will be effective immediately. If you do not agree to the modified Terms, then you are no longer authorized to use the Service. Except as expressly permitted in this Section 13 (*Modification of Terms*), these Terms may be amended only by a written agreement signed by authorized representatives of the parties to these Terms.

### 14. Term, Termination, and Modification of the Service

38. **Term.** These Terms are effective when you accept the Terms or first access or use the Service, and end when terminated as described in Section 14.2 (*Termination*).
39. **Termination.** If you violate any provision of these Terms, then your authorization to access the Service and these Terms automatically terminates. In addition, Busker may, at its sole discretion, terminate these Terms or your account on the Service, or suspend or terminate your access to the Service, at any time for any reason or no reason, with or without notice, and without any liability to you arising from such termination. You may terminate your account and these Terms at any time by contacting us at [info@busker.audio](mailto:info@busker.audio), or requesting account termination in the following channels of our Discord server: #support.
40. **Effect of Termination.** Upon termination of these Terms: (a) your license rights will terminate and you must immediately cease all use of the Service; (b) you will no longer be authorized to access your account or the Service; and (c) Sections 4 (*General Payment Terms*), 5.3 (*Feedback*), 6 (*Ownership; Proprietary Rights*), 8 (*User Content*), 14.3 (*Effect of Termination*), 15 (*Indemnity*), 17 (*Disclaimers; No Warranties by Busker*), 18 (*Limitation of Liability*), 19 (*Dispute Resolution and Arbitration*), and 20 (*Miscellaneous*) will survive. You are solely responsible for retaining copies of any User Content you Post to the Service since upon termination of your account, you may lose access rights to any User Content you Posted to the Service. If your account has been terminated for a breach of these Terms, then you are prohibited from creating a new account on the Service using a different name, email address or other forms of account verification.
41. **Modification of the Service.** Busker reserves the right to modify or discontinue all or any portion of the Service at any time (including by limiting or discontinuing certain features of the Service), temporarily or permanently, without notice to you. Busker will have no liability for any change to the Service, including any paid-for functionalities of the Service, or any suspension or termination of your access to or use of the Service. You should retain copies of any User Content you Post to the Service so that you have permanent copies in the event the Service is modified in such a way that you lose access to User Content you Posted to the Service.

### 15. Indemnity

To the fullest extent permitted by law, you are responsible for your use of the Service, and you will defend and indemnify Busker, its affiliates and their respective shareholders, directors, managers, members, officers, employees, consultants, and agents (together, the “**Busker Entities**”) from and

against every claim brought by a third party, and any related liability, damage, loss, and expense, including attorneys' fees and costs, arising out of or connected with: (1) your unauthorized use of, or misuse of, the Service; (2) your violation of any portion of these Terms, any representation, warranty, or agreement referenced in these Terms, or any applicable law or regulation; (3) your violation of any third-party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; (4) any dispute or issue between you and any third party; or (5) your User Content. For the avoidance of doubt, you hereby agree to defend, indemnify, and hold harmless Busker from any and all claims by a third party owning, controlling or claiming any right in or to your Music, including claims for performance royalties, synchronization royalties, mechanical royalties, and use or re-use fees. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of those claims.

## 16. Risks

Please note the following risks in accessing or using Busker: the price and liquidity of blockchain assets, including Artist Content, are extremely volatile and may be subject to large fluctuations; fluctuations in the price of other digital assets could materially and adversely affect Artist Content, which may also be subject to significant price volatility; legislative and regulatory changes or actions at the state, federal, or international level may adversely affect the use, transfer, exchange, and value of Artist Content; Artist Content are not legal tender and are not backed by the government; transactions facilitated through the Service may be irreversible, and, accordingly, losses due to fraudulent or accidental transactions may not be recoverable; some transactions facilitated through the service shall be deemed to be made when recorded on a public ledger, which is not necessarily the date or time that you initiated the transaction; the value of Artist Content may be derived from the continued willingness of market participants to exchange digital assets on the Service, which may result in the potential for permanent and total loss of value of a particular Artist Content should the market for that Artist Content disappear; the nature of Artist Content may lead to an increased risk of fraud or cyber-attack, and may mean that technological difficulties experienced by the Service may prevent the access to or use of your Artist Content; access to your Artist Content or User Content may be limited to those having access to your cryptographic wallet and your failure to provide your heirs, administrators or others with access to your wallet credentials may result in the permanent loss of your Artist Content in the event of death, disability or incapacity; and changes to third-party services and Third-Party Components may create a risk that your access to and use of the Service will suffer. You agree and understand that you are solely responsible for determining the nature, potential value, suitability, and appropriateness of these risks for yourself, and that Busker does not give advice or recommendations regarding Artist Content, including the suitability and appropriateness of Artist Content. You agree and understand that you access and use the Service at your own risk; however, this Section 16 does not disclose all of the risks associated with Artist Content and other digital assets. You agree and understand that Busker will not be responsible for any communication failures, disruptions, errors, distortions or delays you may experience when using the Service, however caused. By using the Service, you represent that (a) you are sophisticated, experienced and knowledgeable in the minting and buying of any NFTs, (b) you have conducted an independent investigation of the Service and the matters contemplated by these Terms, and have formed your own independent judgment regarding the benefits and risks of and necessary and desirable practices regarding the foregoing, and, (c) in making the determination to mint, list, buy, or sell any NFTs using the Service, you have relied solely on the results of such

investigation and such independent judgement and not on any statements, representations or warranties of Busker unless expressly set forth in these Terms.

## **17. Disclaimers; No Warranties by Busker**

42. THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. BUSKER DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE, INCLUDING: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (B) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. BUSKER DOES NOT WARRANT THAT THE SERVICE OR ANY PORTION OF THE SERVICE, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SERVICE, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND BUSKER DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED.
43. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICE OR BUSKER ENTITIES OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE WILL CREATE ANY WARRANTY REGARDING ANY OF THE BUSKER ENTITIES OR THE SERVICE THAT IS NOT EXPRESSLY STATED IN THESE TERMS. WE ARE NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE SERVICE AND YOUR DEALING WITH ANY OTHER SERVICE USER. YOU UNDERSTAND AND AGREE THAT YOU USE ANY PORTION OF THE SERVICE AT YOUR OWN DISCRETION AND RISK, AND THAT WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE SERVICE) OR ANY LOSS OF DATA, INCLUDING USER CONTENT.
44. BUSKER IS NOT A BROKER, FINANCIAL INSTITUTION, OR CREDITOR. YOU BEAR FULL RESPONSIBILITY FOR VERIFYING THE IDENTITY, LEGITIMACY, AND AUTHENTICITY OF NFTS YOU PURCHASE THROUGH OR IN CONNECTION WITH THE SERVICE. BUSKER MAKES NO CLAIMS ABOUT THE IDENTITY, LEGITIMACY, OR AUTHENTICITY OF NFTS OFFERED FOR SALE ON OR THROUGH THE SERVICE.
45. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION 17 (*DISCLAIMERS; NO WARRANTIES BY BUSKER*) APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. Busker does not disclaim any warranty or other right that Busker is prohibited from disclaiming under applicable law.

## **18. Limitation of Liability**

46. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE BUSKER ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY MATERIALS OR CONTENT ON THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY BUSKER ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE.
47. EXCEPT AS PROVIDED IN SECTIONS 19.5 (*COMMENCING ARBITRATION*) AND 19.7 (*ARBITRATION RELIEF*) AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE

LIABILITY OF THE BUSKER ENTITIES TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE ANY PORTION OF THE SERVICE OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO EUR€100.

48. EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 18 (*LIMITATION OF LIABILITY*) WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## 19. Dispute Resolution and Arbitration

49. **Generally.** Except as described in Section 19.2 (*Exceptions*) and 19.3 (*Opt-Out*), you and Busker agree that every dispute arising in connection with these Terms, the Service, or communications from us will be resolved through binding arbitration. Arbitration uses a neutral arbitrator instead of a judge or jury, is less formal than a court proceeding, may allow for more limited discovery than in court, and is subject to very limited review by courts. This agreement to arbitrate disputes includes all claims whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. Any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement will be resolved by the arbitrator.

YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND BUSKER ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

50. **Exceptions.** Although we are agreeing to arbitrate most disputes between us, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law in aid of arbitration; or (d) to file suit in a court of law to address an intellectual property infringement claim.
51. **Opt-Out.** If you do not wish to resolve disputes by binding arbitration, you may opt out of the provisions of this Section 19 (*Dispute Resolution and Arbitration*) within 30 days after the date that you agree to these Terms by sending an email to Busker Inc., that specifies: your full legal name, Polygon wallet address associated with their account, and the email address associated with your account on the Service (if applicable), and a statement that you wish to opt out of arbitration ("**Opt-Out Notice**"). Once Busker receives your Opt-Out Notice, this Section 19 (*Dispute Resolution and Arbitration*) will be void and any action arising out of these Terms will be resolved as set forth in Section 20.2 (*Governing Law*). The remaining provisions of these Terms will not be affected by your Opt-Out Notice.
52. **Commencing Arbitration.** Before initiating arbitration, a party must first send a written notice of the dispute to the other party by an electronic mail ("**Notice of Arbitration**"). The Notice of Arbitration must: (a) identify the name or account number of the party making the

claim; (b) describe the nature and basis of the claim or dispute; and (c) set forth the specific relief sought (“**Demand**”). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice of Arbitration is received, you or Busker may commence an arbitration proceeding. If you commence arbitration in accordance with these Terms, Busker will reimburse you for your payment of the filing fee.

53. **Arbitration Proceedings.** Any arbitration hearing will take place in the county and state of your residence unless we agree otherwise or, if the claim is for EUR€10,000 or less (and does not seek injunctive relief), you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a telephonic or video hearing; or (c) by an in-person hearing based in your residence. During the arbitration, the amount of any settlement offer made by you or Busker must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. Regardless of the manner in which the arbitration is conducted, 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.
54. **Arbitration Relief.** Except as provided in Section 19.8 (No Class Actions), the arbitrator can award any relief that would be available if the claims had been brought in a court of competent jurisdiction. If the arbitrator awards you an amount higher than the last written settlement amount offered by Busker before an arbitrator was selected, Busker will pay to you the higher of: (a) the amount awarded by the arbitrator and (b) EUR€10,000. The arbitrator’s award shall be final and binding on all parties, except (1) for judicial review expressly permitted by law or (2) if the arbitrator's award includes an award of injunctive relief against a party, in which case that party shall have the right to seek judicial review of the injunctive relief in a court of competent jurisdiction that shall not be bound by the arbitrator's application or conclusions of law. Judgment on the award may be entered in any court having jurisdiction.
55. **No Class Actions.** YOU AND BUSKER AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Busker agree otherwise, the arbitrator may not consolidate more than one person’s claims and may not otherwise preside over any form of a representative or class proceeding.
56. **Modifications to this Arbitration Provision.** If Busker makes any substantive change to this arbitration provision, you may reject the change by sending us written notice within 30 days of the change to Busker’s address for Notice of Arbitration, in which case your account with Busker will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.
57. **Enforceability.** If Section 19.8 (*No Class Actions*) or the entirety of this Section 19 (*Dispute Resolution and Arbitration*) is found to be unenforceable, or if Busker receives an Opt-Out Notice from you, then the entirety of this Section 19 (*Dispute Resolution and Arbitration*) will be null and void and, in that case, the exclusive jurisdiction and venue described in Section 20.2 (*Governing Law*) will govern any action arising out of or related to these Terms.

## 20. Miscellaneous

58. **General Terms.** These Terms, including the Privacy Policy and any other agreements expressly incorporated by reference into these Terms, are the entire and exclusive understanding and agreement between you and Busker regarding your use of the Service. You may not assign or transfer these Terms or your rights under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms and all rights granted under these Terms, including with respect to your User Content, at any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Terms, or any provision of these Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of Section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision. Throughout these Terms the use of the word “including” means “including but not limited to.” If any part of these Terms is held to be invalid or unenforceable, then the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.
59. **Governing Law.** These Terms are governed by the laws of the England and Wales without regard to conflict of law principles. You and Busker submit to the personal and exclusive jurisdiction of the state courts and federal courts located within England and Wales for resolution of any lawsuit or court proceeding permitted under these Terms. We operate the Service from our offices in London, and we make no representation that Materials included in the Service are appropriate or available for use in other locations.
60. **Privacy Policy.** Please read the Busker Privacy Policy [] (the “**Privacy Policy**”) carefully for information relating to our collection, use, storage, and disclosure of your personal information. The Busker Privacy Policy is incorporated by this reference into, and made a part of, these Terms.
61. **Additional Terms.** Your use of the Service is subject to all additional terms, policies, rules, or guidelines applicable to the Service or certain features of the Service that we may post on or link to from the Service (the “**Additional Terms**”). All Additional Terms are incorporated by this reference into, and made a part of, these Terms.
62. **Consent to Electronic Communications.** By using the Service, you consent to receiving certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing.
63. **Contact Information.** The Service is offered by Busker Inc., You may contact us by sending correspondence to our emailing us at [info@busker.audio](mailto:info@busker.audio) for general inquiries.
64. **No Support.** We are under no obligation to provide support for the Service. In instances where we may offer support, the support will be subject to published policies.