

## **TOMS SHOES, LLC**

### **NFT TERMS AND CONDITIONS**

Last Updated: December 16, 2022

**ARBITRATION NOTICE:** YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION. BELOW, THESE TERMS (“TERMS”) EXPLAIN SOME EXCEPTIONS AND HOW YOU CAN OPT OUT OF ARBITRATION. YOU WAIVE ANY RIGHT TO PARTICIPATE IN A TRIAL BY JURY, CLASS ACTION LAWSUIT, OR CLASS-WIDE ARBITRATION.

**EXPORT CONTROLS NOTICE:** BY ACCESSING OR PARTICIPATING IN THE OFFER DESCRIBED BELOW, YOU REPRESENT THAT YOU ARE NOT A “SANCTIONED PERSON,” AS DEFINED BELOW.

**You are entering into a binding agreement and, by participating, agree to abide by these Terms. Please carefully review these Terms.** If you don’t agree with these Terms, you may not access, use, bid on, purchase, hold, custody, or attempt to acquire any non-fungible tokens (“NFTs”) identified herein or participate in any related Utility (as defined below).

#### **1. Background: TOMS Shoes NFTs**

- a. TOMS Shoes, LLC (“TOMS,” “we,” “us”) is offering a collection of ten (10) NFTs (“TOMS NFTs”) minted by a smart contract (“TOMS Smart Contract”) deployed to the Polygon blockchain. The TOMS Smart Contract associates each TOMS NFT with a unique piece of digital artwork featuring virtual footwear (“TOMS Art”), as well as various content, information, statistics, and data related to the TOMS Art (“TOMS Data”).
- b. One hundred percent (100%) of all proceeds actually collected from the sale of TOMS NFTs will benefit International Medical Corps, a global, nonprofit, humanitarian aid organization.
- c. Owners of TOMS NFTs may be eligible to access, use, receive, or enjoy additional content, media, products, services, rights, privileges, opportunities, or experiences (collectively, “Utility”). These Terms, however, confer no Utility except as expressly provided herein, and TOMS makes no assurances or guarantees of any future Utility. All Utility offered by TOMS to TOMS NFT owners, if any, shall be in TOMS’ sole and absolute discretion, and may be subject to additional terms and conditions.
- d. If and to the extent that any third party offers any Utility in connection with any TOMS NFTs or subjects such offers to additional terms and conditions (collectively, “Third-Party Terms”), you understand and agree that TOMS shall not be a party to, or have any responsibility or liability whatsoever for, arising out of, relating to, or in connection with such Third-Party Terms.
- e. TOMS NFTs are intangible digital assets that exist only by virtue of the ownership record maintained on the Polygon blockchain, which means that TOMS does not store, hold, control, or have custody of the TOMS NFTs at any time. Under no circumstances can TOMS or any third party seize, freeze, or recover any lost, stolen, or transferred TOMS NFT or prevent any TOMS NFT from being transferred or sold to another person.

#### **2. How to Purchase a TOMS NFT**

- a. Beginning on December 16, 2022, participants, 18 years or older, will have the opportunity to visit <https://opensea.io/collection/weartomsweargood> (the “OpenSea Platform”) and purchase one or more TOMS NFTs in the form of MATIC cryptocurrency (after paying any non-refundable Polygon network “gas fees” applicable at that time (“Gas Fees”)).

- b. If you wish to purchase a TOMS NFT, you must own or establish a compatible digital wallet that allows you to purchase, store, and engage in transactions using cryptocurrency and NFTs on the Polygon blockchain ("Wallet"), and you must connect and unlock your Wallet through the OpenSea Platform (or, if applicable, another third-party NFT marketplace). You must have enough cryptocurrency in your Wallet to cover the total cost of your purchase, including Gas Fees and any other applicable fees, if any. You may not substitute any other currency, whether cryptocurrency or fiat currency, for the currency in which you have contracted to pay at the time of purchase. For clarity, no fluctuation in the value of any currency, whether cryptocurrency or otherwise, or applicable Gas Fees or other fees shall impact or excuse your obligations with respect to any purchase. As between you and TOMS, you are solely responsible for the security of your Wallet, including, without limitation, the safekeeping of the private keys and seed phrase associated with your Wallet.
- c. Once you authorize a transaction to purchase a TOMS NFT, your order is passed on to the applicable digital wallet extension to complete your requested transaction. TOMS is not responsible with respect to any transfer of any TOMS NFT, and TOMS will not be liable for the acts or omissions of any third parties.
- d. You are solely responsible for paying any and all taxes, duties, and assessments owed as a result of your purchase, ownership, sale, transfer, use, and/or exploitation of any TOMS NFT.
- e. All transactions and sales are final, and all costs are non-refundable. Once a TOMS NFT has been successfully transferred to a Wallet, or once a bid has been placed, it may not be returned or undone, and the payment and any associated transaction costs will not be refunded. Transactions are publicly visible on the Polygon blockchain when made.

### **3. Intellectual Property Rights and License**

- a. TOMS owns all rights, title, and interest in and to the TOMS Art and TOMS Data, including any and all copyrights, trademarks, and other intellectual property rights therein. These Terms do not grant you any rights in or to any TOMS intellectual property including, without limitation, the trademark, TOMS, or any other trade names or trademarks.
- b. Subject to your acceptance of, and continued compliance with, these Terms, upon lawfully acquiring a TOMS NFT and, for so long as you own such TOMS NFT, we grant to you a limited, worldwide, non-exclusive, non-assignable, non-sublicensable, royalty-free license to download, access, and use the TOMS Art associated with your TOMS NFT to: (i) publicly and privately display the TOMS Art; and (ii) market, promote, advertise, and sell the TOMS NFT associated with the TOMS Art.

### **4. Restrictions on Use**

You agree that you will **NOT** do (nor permit any third party to do or attempt to do) any of the following:

- a. Use any of TOMS' property including, without limitation, trademarks, copyright, and design rights, whether registered or unregistered.
- b. Make commercial use of any TOMS Art. A commercial use is one primarily intended for commercial advantage or monetary compensation and includes, for example, selling products that incorporate the TOMS Art, preparing derivative works based upon the TOMS Art, or using the TOMS Art as a logo.
- c. Use any TOMS Art or TOMS NFT or any part thereof in any way that: (i) violates the rights of any third party, any applicable law, rule, or regulation, or these Terms; (ii) is profane, pornographic, vulgar, or offensive; (iii) involves hate speech, endorses any form of hate, or harasses, abuses,

insults, harms, defames, slanders, disparages, intimidates, threatens, or discriminates against others based on gender, sexual orientation, religion, ethnicity, race, age, national origin, disability, or any other classes or characteristics as may be protected under applicable law; (iv) spreads false, deceptive, misleading, otherwise unsubstantiated or unfair information or material, or promotes any particular political agenda or message; or (v) promotes any activities that may be or appear unsafe or dangerous, including, without limitation, excessive consumption of alcohol, illegal drugs, or tobacco (or the use of any of the foregoing).

- d. Engage in or knowingly facilitate any “front-running,” “wash trading,” “pump and dump trading,” “ramping,” “cornering,” or fraudulent, deceptive, or manipulative trading activities, including, without limitation, for the purpose of creating or inducing a false, misleading, or artificial appearance of activity or value in any TOMS NFT: (i) facilitating the trading of such NFT at successively lower or higher prices or executing or causing the execution of any transaction involving the NFT which causes no material change in the beneficial ownership thereof; (ii) participating in, facilitating, assisting, or knowingly transacting with any person or persons for the purpose of artificially, unfairly, or deceptively influencing the market price of any NFT; or (iii) otherwise artificially, unduly, or improperly influencing the market price for any NFT in any manner, including without limitation, on or through social media.

## **5. User representations and warranties**

By purchasing or otherwise using any TOMS NFT, you represent and warrant that:

- a. In making the decision to purchase or use a TOMS NFT, you have not relied on any representations, warranties, or implied or express promises made by TOMS except as expressly set forth in these Terms, including any suggestions or promises of Utility that may be offered in the future in connection with a TOMS NFT.
- b. You are sophisticated, experienced, and knowledgeable in the minting, buying, owning, using, and selling of NFTs. Additionally, you have familiarized yourself with this offer and the matters contemplated by these Terms, have formed your own independent judgment regarding the benefits and risks of, and necessary and desirable practices regarding, the foregoing and, in making the determination to participate in this offer, you have relied solely on the results of such review and used your independent judgement. Without limiting the generality of the foregoing, you understand, acknowledge, and agree that the legal requirements pertaining to blockchain technologies and digital assets generally, including, without limitation, NFTs, are uncertain, and you have familiarized yourself with all potentially applicable legal requirements and the resulting risks and uncertainties, including the risk that one or more governmental entities or other persons may assert that any or all NFTs may constitute securities, commodities, or other financial instruments under applicable law. You hereby irrevocably disclaim and disavow reliance upon any statements or representations made by or on behalf of, or information made available by, TOMS, in determining to enter into these Terms, and whether to transfer, bid on, buy, sell, or otherwise interact in any way with TOMS NFTs or otherwise participate in this offer.
- c. You have all requisite capacity, power, and authority to enter into and be bound by these Terms. You represent and warrant that: (i) you have all rights, licenses, consents, permissions, authorizations, approvals, and releases necessary to enter into this agreement; (ii) the rights granted herein are owned or controlled solely by you; (iii) you are over the age of majority (or else will have your parent or legal guardian sign this agreement on your behalf); (iv) if an agent enters into this agreement on your behalf, then, by signing, the agent represents and warrants that it has the right and authority to sign on your behalf and bind you to the terms hereof and agrees to defend, indemnify, and hold harmless the Indemnified Parties (defined below) from any claims or damages arising from a breach of such representation and warranty.
- d. You have not failed to comply with, and have not violated, any applicable legal requirement relating to any blockchain technologies, transactions involving tokens, or minting of NFTs. No

investigation or review by any governmental entity is pending or, to your knowledge, has been threatened against or with respect to you, nor does any government order or action prohibit you or any of your representatives from engaging in or continuing any conduct, activity, or practice relating to this offer.

- e. Your participation in this offer will not violate the rights of any third party or any applicable agreement or law. These Terms do not, and the performance of your obligations under these Terms and your listing, buying, selling, transferring, or otherwise using any TOMS NFTs, TOMS Art, or Utility, will not: (i) if you are an entity, conflict with or violate any of the charter documents of such entity or any resolution adopted by its equity holders or other persons having governance authority over the entity; (ii) contravene, conflict with, or violate any right of any third party or any applicable legal requirement to which you or any of the assets owned or used by you, is subject; or (iii) result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under any material contract or agreement to which you are a party, permit held by you or legal requirement applicable to you.

## **6. Not an Investment**

You acknowledge and understand that the value of digital assets and artwork is subjective. NFTs, including the TOMS NFTs, and artwork, including the TOMS Art, have no inherent value, and their market prices can therefore be volatile. By purchasing or otherwise using any TOMS NFT or TOMS Art, you agree to assume all risks associated therewith, including the risk that they lose any or all of their value. Neither TOMS nor any of its related entities, nor anyone working on their behalf, including their respective officers, directors, employees, representatives, agents, affiliates, licensees, successors and assigns (collectively, the “TOMS Parties”) makes any representation regarding the likelihood of appreciation of any TOMS NFT, and has no control over the value of any TOMS NFT, including on any secondary markets, which are completely outside of the control of any of the TOMS Parties.

## **7. Export Controls and Sanctions**

You acknowledge and understand that this offer may be subject to U.S. and other export control and sanctions laws and regulations, including, without limitation, the Export Administration Regulations and other regulations, rules, and executive orders administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”), the United Nations Security Council (“UNSC”), Her Majesty’s Treasury (“HMT”), the European Union or any of its member states, or other relevant sanctions authorities, as applicable (collectively, the “Export Controls and Sanctions Laws”). You represent that you are not a Sanctioned Person (as defined below) and agree not to take any action that will cause anyone, including, without limitation, any of the TOMS Parties, to be in violation of any applicable Export Controls and Sanctions Laws. For purposes of these Terms, “Sanctioned Person” means any government, country, corporation, or other entity, group, or individual with whom or which Export Controls and Sanctions Laws prohibit or restrict a person or entity in the U.S. or your jurisdiction of residence from engaging in transactions, and includes, without limitation, any individual, corporation, or other entity that (a) appears on OFAC’s Specially Designated Nationals and Blocked Persons List or other lists maintained by OFAC, UNSC, HMT, the European Union or any of its member states, or other relevant sanctions authority or the U.S. Department of Commerce or similar entity, as each such list may be amended from time to time, or (b) is currently the subject or the target of any comprehensive sanctions laws and regulations.

## **8. Assumption of Risk; Limitation of Liability**

By participating in this offer:

- a. You acknowledge and accept that transacting on a blockchain, including, without limitation, signing or effectuating transactions using a Wallet, contains inherent risk. Such risks include but are not limited to: (i) risk of sudden asset price changes; (ii) risk of smart contract failure or

exploit; (iii) risk of hardware, software, or connectivity failure; (iv) risk of malicious software; (v) risk of unauthorized access to your Wallet or other digital wallets; (vi) risk that you will no longer successfully retain ownership of or access to the TOMS NFT(s) or other NFTs; (vii) risk that any TOMS Data or any TOMS Art becomes unavailable or decoupled from the TOMS NFT including, without limitation, because of an outage or data loss; (viii) risk from regulatory inquiries or actions, legislation, or court rulings; (ix) risk from breaches or scams; and/or (x) bugs, malfunctions, cyberattacks, or changes to a blockchain network (e.g., forks) or related technologies that disrupt or result in a total loss of NFTs, their market value, or digital funds.

- b. You understand and accept that this offer is facilitated and run by numerous third parties including, without limitation, digital wallet providers and extensions, third-party payment processors, blockchain networks, and NFT marketplaces. These include, without limitation, the OpenSea Platform, the Polygon network, and the Interplanetary File System or other system or serve for storing, sharing, and distributing data. None of these are under the control or influence of TOMS. TOMS shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with any third party, including, without limitation, lost, late, incomplete, damaged, delayed, inaccurate, stolen, misdirected, undelivered, or garbled NFTs, or for errors or difficulties of any kind related thereto, whether human, mechanical, electronic, computer, network, typographical, or otherwise. YOU ACKNOWLEDGE AND AGREE THAT NO THIRD PARTIES, INCLUDING ANY OF THE FOREGOING, ARE UNDER THE CONTROL OF TOMS, AND THAT TOMS SHALL NOT BE RESPONSIBLE OR LIABLE FOR, DIRECTLY OR INDIRECTLY, ANY DAMAGE OR LOSS CAUSED OR ALLEGED TO BE CAUSED BY OR IN CONNECTION WITH ANY THIRD PARTY.
- c. You acknowledge and accept that transactions are publicly visible on the Polygon blockchain when made.
- d. You acknowledge and agree that TOMS is not a fiduciary and owes no duties to you, including the duty to ensure fair pricing of NFTs or provide any Utility.

YOU ACKNOWLEDGE AND AGREE THAT THESE TERMS DO NOT REPRESENT A COMPLETE STATEMENT OF RISK FACTORS ASSOCIATED WITH DIGITAL ASSETS, PRODUCTS, OR EXPERIENCES THAT MAY BE AVAILABLE OR DISCUSSED IN CONNECTION WITH THE OFFER OR UTILITY AVAILABLE TO TOMS NFT OWNERS. YOU UNDERSTAND AND ACCEPT THESE AND ALL ASSOCIATED RISKS AND RESPONSIBILITIES AND AGREE THAT YOUR PARTICIPATION IN THE OFFER IS AT YOUR OWN RISK. YOU AGREE THAT TOMS SHALL NOT BE RESPONSIBLE OR LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY DAMAGE OR LOSS CAUSED OR ALLEGED TO BE CAUSED BY OR IN CONNECTION WITH ANY OF THESE RISKS. YOU ACKNOWLEDGE AND AGREE THAT YOU SHOULD NOT PARTICIPATE IN ANY MATTER CONTEMPLATED BY THESE TERMS, INCLUDING TO ENGAGE IN BLOCKCHAIN-BASED TRANSACTIONS, UNLESS IT IS SUITABLE GIVEN YOUR CIRCUMSTANCES AND FINANCIAL RESOURCES.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL ANY OF THE TOMS PARTIES BE LIABLE TO YOU FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE LOSSES OR DAMAGES, OR DAMAGES FOR SYSTEM FAILURE OR MALFUNCTION OR LOSS OF PROFITS, DATA, USE, BUSINESS, OR GOOD-WILL OR OTHER INTANGIBLE LOSSES, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR THE OFFER.

UNDER NO CIRCUMSTANCES SHALL ANY TOMS PARTY BE REQUIRED TO DELIVER TO YOU ANY VIRTUAL CURRENCY OR NFTS AS DAMAGES, MAKE SPECIFIC PERFORMANCE, OR ANY OTHER REMEDY. IF YOU WOULD BASE YOUR CALCULATIONS OF DAMAGES IN ANY WAY ON THE VALUE OF VIRTUAL CURRENCY OR NFTS, YOU AND WE AGREE THAT THE CALCULATION SHALL BE BASED ON THE LOWEST VALUE OF THE VIRTUAL CURRENCY OR NFTS DURING THE PERIOD BETWEEN THE INITIAL INCIDENT RESULTING IN THE ACCRUAL OF THE CLAIM AND THE AWARD OF DAMAGES.

THE RELEASE AND WAIVER OF LIABILITY CONTAINED HEREIN IS INTENDED TO BE AS BROAD AND AS INCLUSIVE AS IS PERMITTED BY APPLICABLE LAW AND THAT IF ANY PORTION HEREOF IS HELD INVALID, IT IS AGREED THAT THE BALANCE SHALL, NOTWITHSTANDING, CONTINUE IN FULL LEGAL FORCE AND EFFECT.

THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THESE TERMS HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER THE ASSERTED LIABILITY OR DAMAGES ARE BASED ON CONTRACT, INDEMNIFICATION, TORT, STRICT LIABILITY, STATUTE, OR ANY OTHER LEGAL OR EQUITABLE THEORY AND WHETHER OR NOT THE TOMS PARTIES HAVE BEEN INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGE.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN WARRANTIES AND LIABILITIES PROVIDED IN THIS SECTION, SO SOME OF THE ABOVE LIMITATIONS AND DISCLAIMERS MAY NOT APPLY TO YOU. TO THE EXTENT APPLICABLE LAW DOES NOT PERMIT ANY TOMS PARTIES TO DISCLAIM CERTAIN WARRANTIES OR LIMIT CERTAIN LIABILITIES, THE EXTENT OF THE TOMS PARTIES' LIABILITY AND THE SCOPE OF ANY SUCH WARRANTIES WILL BE AS PERMITTED UNDER APPLICABLE LAW.

## **9. Indemnity**

You agree to defend, indemnify, and hold the TOMS Parties harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, expenses, and other similar results or occurrences (including attorneys' fees) that directly or indirectly arise from or are related to or in connection with any claim, suit, action, dispute, demand, proceeding, occurrence, process, or other similar activity, that is initiated, made, brought, or financed by a third party (including any person who accesses or transacts using any TOMS NFT, whether or not such person personally purchased a TOMS NFT) against the TOMS Parties, or on account of the investigation, defense, or settlement thereof, arising out of, related to, or in connection with: (a) your access to or use of any NFT marketplace or third-party or decentralized services or products, (b) your breach or alleged breach of these Terms; or (c) your actual or alleged violation of applicable law or the rights of any third party. Counsel to be used in the defense of such claim must be approved by TOMS in writing prior to retention of such counsel and, upon our request, you will allow us to take over or participate in the defense of any such claims. You will not enter into any settlement or compromise of any claim or litigation or that includes an admission of liability without our prior written consent.

## **10. Warranty Disclaimer**

TOMS PROVIDES THE TOMS NFTS, TOMS ART, AND TOMS DATA "AS IS." EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, TOMS MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND IN CONNECTION WITH THE MATTERS CONTEMPLATED HEREIN OR ANY INFORMATION OR MATERIALS PROVIDED OR MADE AVAILABLE BY TOMS. NONE OF THE TOMS PARTIES REPRESENT OR WARRANT THAT (A) THE USE OF ANY OF THE FOREGOING WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, WILL BE SECURE, TIMELY, UNINTERRUPTED, OR ERROR-FREE, WILL BE AVAILABLE WHEN YOU DESIRE TO UTILIZE THEM OR OPERATE THEM IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA, (B) ANY STORED DATA WILL BE ACCURATE, SECURE, OR RELIABLE, OR (C) ERRORS OR DEFECTS WILL BE CORRECTED. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE TOMS PARTIES DISCLAIM ALL REPRESENTATIONS, WARRANTIES, PROMISES, OR GUARANTEES OF ANY KIND WHATSOEVER AS TO THE OFFER, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE.

## **11. Investigation**

- a. If TOMS becomes aware of any possible violations by you of these Terms, TOMS reserves the right to investigate such violations. If, as a result of the investigation, TOMS believes that criminal activity may have occurred, TOMS reserves the right to refer the matter to, and to cooperate with, any and all applicable legal authorities. TOMS is entitled, except to the extent prohibited by applicable law, to disclose any information or materials in TOMS' possession in connection with your participation in the offer to: (i) comply with applicable laws, legal process, or governmental request; (ii) enforce these Terms; or (iii) protect the rights, property, or personal safety of TOMS, its affiliates, its users, the public, and all law enforcement or other government officials, as TOMS in its sole discretion believes to be necessary or appropriate.
- b. TOMS may require you to provide additional information and documents at the request of any competent authority or in order to help TOMS comply with applicable law, regulation, or policy, including laws related to anti-laundering (legalization) of incomes obtained by criminal means, or for counteracting financing of terrorism. TOMS may also require you to provide additional information and documents in cases where it has reasons to believe that: (i) your Wallet or other access to the offer is being used for money laundering or for any other illegal activity; (ii) you have concealed or reported false identification information and other details; or (iii) transactions effected via your Wallet were effected in breach of these Terms or other applicable terms, laws, rules, covenants, orders, or regulations.
- c. In such cases, TOMS, in its sole discretion, may terminate these Terms and revoke any license or other Utility provided to you in connection with your TOMS NFT.

## **12. Resolution of Disputes; Agreement to Arbitrate**

PLEASE READ THIS SECTION CAREFULLY – IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT AND TO HAVE A JURY HEAR YOUR CLAIMS. IT CONTAINS PROCEDURES FOR MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.

### Governing Law

These Terms will be governed by the laws of the State of California, without regard to conflict of law provisions. You and we expressly agree that any claim or Dispute must be resolved exclusively by a state or federal court or arbitration located in Los Angeles County, California, except as described in the agreement to arbitrate below or as otherwise mutually agreed by the parties.

### Agreement to Attempt to Resolve Disputes Through Good Faith Negotiations

Prior to commencing any legal proceeding of any kind against any TOMS Party, including an arbitration as set forth below, we agree that we will attempt to resolve any dispute, claim, or controversy arising out of or relating to these Terms or TOMS NFTs (each, a "Dispute") by engaging in good faith negotiations. Such good faith negotiations require, at a minimum, that the aggrieved party provide a written notice to the other party specifying the nature and details of the Dispute. The party receiving such notice shall have (30) days to respond to the notice. Within sixty (60) days after the aggrieved party sent the initial notice, the parties shall meet and confer in good faith by videoconference or by telephone to try to resolve the Dispute. If the parties are unable to resolve the Dispute within ninety (90) days after the aggrieved party sent the initial notice, the parties may agree to mediate their Dispute, or either party may submit the Dispute to arbitration as set forth below.

### Agreement to Arbitrate

**You and we expressly waive a trial by jury. Except as provided below, you and we agree that any Dispute that cannot be resolved through the procedures set forth above will be resolved through binding arbitration on an individual basis. Class actions and class arbitrations are not allowed.**

You may bring a claim only on behalf of yourself and cannot seek relief that would affect other users of our services. If there is a final judicial ruling that any particular claim (or a request for particular relief) cannot be arbitrated in accordance with these Terms, then only that particular claim or request for relief may be brought in court. All other claims (or requests for relief) remain subject to this provision. Questions of arbitrability—i.e., whether a particular claim is subject to arbitration—shall be resolved in arbitration.

Instead of commencing an arbitration, you or we may also bring claims in your local “small claims” court if the rules applicable to that court allow it. Otherwise, the claims must be resolved by binding, individual arbitration.

If you are in the United States, the arbitration will be conducted by the American Arbitration Association (AAA) under its Consumer Arbitration Rules. If you are outside of the United States, the arbitration will be conducted by the International Centre for Dispute Resolution in accordance with its International Expedited Procedures. The arbitration will be decided by a sole arbitrator. The arbitrator will have experience adjudicating matters involving Internet technology, software applications, financial transactions and, ideally, blockchain technology. The costs and fees of arbitration shall be allocated in accordance with the arbitration provider's rules, including rules regarding frivolous or improper claims.

The arbitration will be governed by the Federal Arbitration Act. The prevailing party will be entitled to an award of their reasonable attorney's fees and costs. Except as may be required by law, neither a party nor its representatives may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of (all/both) parties.

#### Arbitration Opt-Out

You can opt out of this arbitration agreement within 30 days of the date you agreed to these Terms. To opt out, you must send an email to us at [legal@toms.com](mailto:legal@toms.com) with your full name and email address and a clear statement that you want to opt out of this arbitration agreement (such notice, an “Arbitration Opt-out Notice”). If you do not provide us with an Arbitration Opt-out Notice within the thirty (30) day period, you will be deemed to have knowingly and intentionally waived your right to litigate any dispute.

#### Confidentiality of Arbitration

Except as may be required by law, the parties shall preserve the confidentiality of all aspects of any arbitration, and shall not disclose to a third party (other than disclosure to the affiliates of a party on a need-to-know basis and such affiliates are informed of the confidential nature of such information and are instructed to keep such information confidential), any information made known and documents produced in the arbitration not otherwise in the public domain, any evidence and materials created for the purpose of the arbitration, and any awards arising from the arbitration, except and to the extent that disclosure is required by law or regulation, is required to protect or pursue a legal right, or is required to enforce or challenge an award in legal proceedings before a court or other competent judicial authority.

#### Limitation of Actions

You may only initiate a cause of action against a TOMS Party within one (1) year of the occurrence giving rise to such claim. Regardless of any statute or law to the contrary, any Dispute arising out of or relating, either directly or indirectly, to these Terms or the Offer must be filed within one (1) year after such claim or cause of action arose, or will be forever barred.

### **13. Severability**

Should any portion of these Terms be rendered void, invalid, or unenforceable by any court of competent jurisdiction, the remaining provisions shall nevertheless be binding upon the parties.

### **14. Survival**



Any provision of these Terms that by its nature would extend beyond its expiration or termination shall remain in effect in perpetuity or until fulfilled.