

EOS New York TERMS OF USE

Effective Date: April 12, 2019

Welcome to the EOS New York Website!

BY ACCESSING OR USING THE WEBSITE YOU ARE INDICATING THAT YOU HAVE READ AND UNDERSTAND THE TERMS, AND THAT YOU AGREE TO COMPLY WITH AND BE LEGALLY BOUND BY THE TERMS.

IF YOU DO NOT AGREE TO THE TERMS, YOU MAY NOT ACCESS OR USE THE WEBSITE OR SERVICES.

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1. **ABOUT THE TERMS**

1.1 **Key Terms**

As used in these Terms of Use:

- **“Content”** refers to any and all videos, text, photos, information and other content included, provided or made available on or through the Website.
- **“EOS New York,” “we,” or “us”** refers to the brand owned by Liberty Alpha Prime, Inc. and its affiliates and partners, officers, directors, employees, contractors and agents.
- **“Users”** means any and all persons that access or use the Website. References to “access” and/or “use” of the Website (and any variations thereof) include the acts of accessing or browsing the Website or App, and accessing or using the Services.
- **“Website”** refers to the websites currently located at www.eosnewyork.io and <https://www.eosmetro.io/>), through which access to the Content and services provided by EOS New York are available. References to the “Website” include any and all features, functionality, tools and content available on or through each such website.

1.2 **Website Rules and Supplemental Terms**

Your access to and use of the Website is governed by the terms and conditions of these Terms of Use, our Privacy Policy, currently located at <http://www.eosnewyork.io/privacy.pdf> (as described in more detail below), any and all other policies and rules referenced herein, posted on the Website, or otherwise communicated to users (the **“Website Rules”**).

Certain of the features, functionality, tools, Content and promotions available on or through the Website may be subject to additional or supplemental terms and conditions (**“Supplemental Terms”**). If you choose to access or use those features, functionality, tools or Content or participate in those promotions, the applicable Supplemental Terms are also incorporated and deemed part of these Terms of Use.

If there is a conflict between these Terms of Use and the Supplemental Terms, the Supplemental Terms will govern and control with respect to the applicable features, functionality, tools, Content and promotions.

PLEASE READ THESE TERMS OF USE, OUR PRIVACY POLICY, WEBSITE RULES AND ALL APPLICABLE SUPPLEMENTAL TERMS (COLLECTIVELY, THE “**TERMS**”) CAREFULLY, AS THEY CONTAIN TERMS AND CONDITIONS THAT IMPACT YOUR RIGHTS, OBLIGATIONS AND REMEDIES IN CONNECTION WITH YOUR USE OF THE WEBSITE. FOR EXAMPLE, THE TERMS INCLUDE:

- YOUR OBLIGATION TO COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS;
- LIMITATIONS OF OUR LIABILITY TO YOU; AND
- A REQUIREMENT THAT YOU PURSUE CLAIMS OR SEEK RELIEF AGAINST US (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ON AN INDIVIDUAL BASIS, RATHER THAN AS A PARTICIPANT IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING.

YOUR ACCESS TO AND USE OF THE WEBSITE IS CONDITIONED ON YOUR ACCEPTANCE OF AND COMPLIANCE WITH THESE TERMS.

1.3 Amendment of Terms

EOS New York reserves the right, in its sole discretion, to amend the Terms, at any time and without prior notice, including to change, modify, add to, update or remove terms and conditions (collectively “amend” or “update”). If we choose to amend the Terms, we will update the Effective Date at the top of the Terms and post the updated version. We may also, at our option, choose to notify you by e-mail or another means. By continuing to use the Website after we have posted an updated version of the Terms or otherwise notified you of an update, you are affirming that you agree to be bound by the amended Terms. This provision is subject to a few limitations in the “Dispute Resolution” section below. If the amended Terms are not acceptable to you, your only recourse is to stop using the Website.

No other modification, amendment, supplement of or to the Terms will be binding on EOS New York unless it is in writing and signed by an authorized representative of EOS New York.

1.4 Consequences of Non-Compliance

Your failure to comply with the Terms may result in the suspension or termination of your account and/or access to the Website, and may subject you to civil and criminal penalties.

2. ABOUT THE WEBSITE

2.1 License to Use

Subject to your compliance with the Terms, EOS New York grants you a limited non-exclusive, non-transferable, non-assignable and non-sublicensable license to access and use the Website, for your own personal use only, and not for use for any business purpose or commercial activity. This license is granted for the sole purpose of enabling you to use and enjoy the benefit of the Website as provided by EOS New York, in the manner permitted by the Terms.

2.2 Modifications and Updates to the Website

EOS New York reserves the right, in its sole discretion, to modify or discontinue offering the Website, in whole or in part, or any features, functionality, tools or Content thereof, at any time, for any reason or no reason, with or without notice to you. You agree that EOS New York has no obligation to provide any updates or to continue to provide or enable any particular features, functionality, tools or Content, and will not be liable with respect to any such modifications, discontinuance or deletions.

2.3 International Users

The Website is controlled and operated within the United States and is not intended for use outside of the United States. You are hereby prohibited from accessing or using the Website from any territory where

the Website or any of the features, functionality, tools, Content thereof, is illegal. If you choose to access the Website from a location outside the United States, you do so at your own risk and you are solely responsible for compliance with applicable laws, rules and regulations, including export laws and any regulations and local laws regarding online conduct and content.

3. USER CONDUCT GUIDELINES

You are not authorized to access or use the Website to :

- to systematically retrieve information or content to create or compile, directly or indirectly, in single or multiple downloads, a collection, compilation, database, directory or the like, whether by manual methods, through the use of bots, crawlers, or spiders, or otherwise;
- if you are not able to form legally binding contracts (for example, if you are under 18);
- if you are a person barred from receiving services under the laws of the United States or other applicable jurisdiction; or
- access, copy, distribute, share, publish, use or store any Content, including any information from or about any other User, for purposes that are inconsistent with our Privacy Policy, or otherwise violate the privacy rights or any other rights of other Users or any other third party, including by disclosing, selling, renting, or distributing any Content to a third party, using it for marketing purposes, or otherwise using it for any purposes unrelated to the Website;
- access, copy, distribute, share, publish, use or store, or prepare derivative works from any Content that belongs to EOS New York, another User or to a third party, including works covered by any copyrights, trademark, patent, or other intellectual property right, except with prior express permission of the person or entity party holding the rights to license such use;
- circumvent our systems, policies, including by attempting to access or use the Website if you have been temporarily or permanently prohibited or blocked from using the Website;
- access, search, collect information from, or otherwise interact with the Website by “scraping,” “crawling” or “spidering” the Website, by the use of any software, device, script or robot, or by any other means (automated or otherwise) other than through the currently available, published interfaces that are provided by EOS New York, unless you have been specifically authorized to do so in a separate agreement with EOS New York;
- use, display, mirror or frame the Website, or any feature, functionality, tool or Content of the Website, EOS New York’s name, any EOS New York trademark, logo or other proprietary information, without EOS New York’s express written consent;
- interfere with, disrupt, damage or compromise the Website or our systems or the access of any User, host or network in any way, including through the use of viruses, cancel bots, Trojan horses, harmful code, flood pings, denial-of-service attacks, backdoors, packet or IP spoofing, forged routing or electronic mail address information or similar methods or technology or by overloading, flooding, spamming, mail-bombing the Website or otherwise imposing an unreasonable or disproportionately large load on the Website;
- access, tamper with or use non-public areas of any of the Website, EOS New York’s computer systems, or the technical delivery systems of EOS New York’s providers;
- probe, scan, or test the vulnerability of any system or network of EOS New York or its providers, or breach or circumvent any security or authentication measures of such system or network;
- avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by EOS New York or any of EOS New York’s providers or any other third party to protect the Website;
- forge any TCP/IP packet header or any part of the header information in any e-mail or posting, or in any way use the Website to send altered, deceptive or false source-identifying information;

- attempt to decipher, decompile, disassemble or reverse engineer any of the code or software used to provide the Website;
- export or re-export the Website, except in compliance with the export control laws and regulations of any relevant jurisdictions;
- otherwise abuse the Website or breach the Terms; or
- attempt to do any of the foregoing, or advocate, encourage or assist any third party in doing any of the foregoing.

3.1 Investigations

EOS New York reserves the right to investigate and prosecute violations of any and all reports, complaints and claims, or otherwise suspected misconduct or violations of the law to the fullest extent of the law.

Without limiting the foregoing, you acknowledge that EOS New York has the right, but not the obligation, at any time and without prior notice, to monitor access to or use of the Website by any User if we believe in good faith that it is reasonably necessary (i) to comply with any law or regulation or satisfy any legal process or governmental request (for example, a subpoena, warrant, order or other requirement of a court, administrative agency or other governmental body), (ii) to respond to claims asserted against EOS New York, (iii) to enforce and to ensure a User's compliance with the Terms, including the investigation of potential violations, (iv) to conduct risk assessments, and prevent, detect and investigate incidents of fraud, security and technical issues, (v) to protect the rights, property or safety of EOS New York, its Users or members of the public, and (vi) for the purpose of operating and improving the Website (including for customer support purposes).

We may, in our discretion, without liability to you and without limiting our other remedies, with or without prior notice and at any time, decide to take technical and legal steps to prevent you from using our Website at any time for any reason.

4. INTELLECTUAL PROPERTY OWNERSHIP

4.1 The Website

The Website, and all features, functionality, tools and Content thereof, is protected by copyright, trademark, patent and other laws of the United States and foreign countries. You acknowledge and agree that the Website, and all intellectual property rights therein are the exclusive property of EOS New York and its licensors. You will not remove, alter or obscure any copyright, trademark, service mark, patent marking, or other proprietary rights notices incorporated in or accompanying the Website.

Without limiting the foregoing, you acknowledge and agree that the trade names, logos, and other trademarks and service marks associated with EOS New York (the "**EOS New York Marks**") are the property of EOS New York, and that you are not permitted to use the EOS New York Marks without our prior written consent.

You may not use, copy, reproduce, distribute, license, sell, transfer, publish, post, publicly display, publicly perform, transmit, broadcast, adapt, modify, prepare derivative works based upon, or otherwise exploit any features, functionality, tools or Content of the Website or Services in any form or by any means, or sublicense the rights granted in the Terms, except as expressly permitted herein, without the prior written permission of EOS New York or the intellectual property owner, as applicable.

This foregoing license is subject to modification or revocation at any time at EOS New York's sole discretion.

No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by EOS New York or its licensors, except for the licenses and rights expressly granted in the Terms. All rights not expressly granted to you by the Terms are hereby reserved.

4.2 Feedback

We welcome and encourage you to provide feedback, comments, ideas and suggestions for improvements, enhancements and modifications to the Website (“**Feedback**”). You may submit Feedback by e-mailing us, at support@eosnewyork.io. You acknowledge and agree that all Feedback you give us (i) will be treated as non-confidential, and (ii) will be the sole and exclusive property of EOS New York. Without limiting the foregoing, you acknowledge that your Feedback may be disseminated or used by EOS New York or its affiliates for any purpose whatsoever, including developing, improving and marketing products. You hereby irrevocably transfer and assign to EOS New York all of your right, title, and interest in and to all Feedback, including all worldwide patent, copyright, trade secret, moral and other proprietary or intellectual property rights therein, and waive any moral rights you may have in such Feedback.

You agree to sign and deliver such documents, and otherwise provide such assistance, as may reasonably be required from time to time to perfect EOS New York’s rights in such improvements, enhancements and modifications.

5. THIRD PARTY LINKS

The Website may also provide links to third-party websites, resources or services. You acknowledge and agree that EOS New York is not responsible or liable for (i) the availability, terms or practices of such websites, resources or services, or (ii) the content, products or services available on or through such websites, resources or services, including that any information provided is complete, accurate or up-to-date. Links to such websites, resources or services do not imply any endorsement by EOS New York of such websites, resources or services or the content, products or services available on or through such websites, resources or services. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites, resources or services or the content, products or services available on or through such websites or services.

We will not be responsible or liable for any damage or harm resulting from your interactions with such websites or services, or the content, products or services available on or through such websites or services.

6. WARRANTIES, DISCLAIMERS, LIMITATION OF LIABILITY & INDEMNIFICATION

6.1 Warranties by Users

You represent and warrant to EOS New York that:

- (i) you have the power and authority to accept and agree to the Terms;
- (ii) you own or control all of the rights necessary to grant the rights and licenses granted herein;
- (iii) you will not violate any federal, state or local laws, rules or regulations or infringe the rights of any third party, including, any intellectual property, privacy or publicity-related rights, in connection with your access to or use of the Website;
- (iv) the exercise by EOS New York of the rights granted by you hereunder will not cause EOS New York to violate any applicable laws, rules or regulations, to infringe the rights of any third party; and
- (v) all account information provided by you will be complete, accurate and up-to-date when provided, and updated as necessary to ensure that it remains complete, accurate and up-to-date.

6.2 Disclaimers

EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE WEBSITE IS PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, EOS NEW YORK EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE OR RIGHTFUL CLAIM, WARRANTIES AS TO THE RELIABILITY OR AVAILABILITY OF THE WEBSITE, OR THAT USE OF THE WEBSITE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, OR WARRANTIES AS TO THE COMPLETENESS, ACCURACY OR TIMELINESS OF ANY WEBSITE CONTENT.

6.3 Limitation of Liability

YOU ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW:

- THE ENTIRE RISK ARISING OUT OF OR RELATING TO YOUR USE OF THE WEBSITE IS AND REMAINS WITH YOU.
- IN NO EVENT WILL EOS NEW YORK BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR DAMAGES FOR LOST REVENUES OR PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE, OR FOR ANY DAMAGES FOR PERSONAL OR BODILY INJURY OR EMOTIONAL DISTRESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED IN WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT EOS NEW YORK HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.
- CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSIVE OR LIMITATION OF CERTAIN DAMAGES AS SET FORTH IN THIS SECTION, SO THESE LIMITATIONS AND EXCLUSIONS APPLY TO YOU ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW. IN THE EVENT THAT THE FOREGOING LIMITATION OF LIABILITY IS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE UNENFORCEABLE, EOS NEW YORK'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO ONE HUNDRED U.S. DOLLARS (US\$100).

6.4 Basis of the Bargain

YOU ACKNOWLEDGE AND AGREE THAT THE WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH ABOVE ARE ESSENTIAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN EOS NEW YORK AND YOU, AND WILL SURVIVE AND APPLY EVEN IF YOUR REMEDIES ARE FOUND OR ALLEGED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

6.5 Exclusions

NOTHING IN THE TERMS FURTHER IS INTENDED TO EXCLUDE OR LIMIT ANY CONDITION, WARRANTY, RIGHT OR LIABILITY WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE FROM DEATH OR PERSONAL INJURY. ACCORDINGLY, ONLY THE ABOVE LIMITATIONS IN THIS SECTION THAT ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU, AND OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT REQUIRED BY LAW.

6.6 Indemnification

To the maximum extent not prohibited by applicable law, you agree to release, defend, indemnify, and hold EOS New York its parent, subsidiaries, affiliates, licensors and service providers, and its and their officers, directors, shareholders, agents, employees and representatives, harmless (collectively "indemnify" or any variation thereof) from and against any claims, liabilities, damages, losses, costs and expenses, including, any bodily injury, illness, death or damage to any real or personal property, or any other injuries, losses, or damages (whether compensatory, direct, incidental, consequential or otherwise)

of any kind, and including reasonable legal fees and litigation expenses and costs, arising out of or relating to or in any way connected with (i) your access to or use of the Website, including any and all features, functionality, tools, Content and promotions available on and through the Website, (ii) your breach of the Terms, including any violation of national, federal, state or local or other applicable laws, rules or regulations or any infringement or misappropriation of the rights of any third party, and (iii) your gross negligence or willful misconduct.

6.7 Obligation to Defend.

You agree that, at EOS New York's option, you will conduct the defense of any such claim or action; provided that, notwithstanding our election that you to conduct the defense, (i) EOS New York may nevertheless participate in such defense or settlement negotiations and pay its own costs associated therewith, and (ii) you will not enter into any settlement or other compromise without the prior written approval of EOS New York (which approval shall not be unreasonably withheld), unless such settlement or other compromise includes a full and unconditional release of the relevant parties from all liabilities and other obligations in respect of such claim or action.

6.8 No Implied Indemnity.

No person or entity shall be entitled to any form of equitable or implied indemnification at any time, except as provided by the Terms.

7. GOVERNING LAW & DISPUTE RESOLUTION

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR RIGHTS AND WILL HAVE A SUBSTANTIAL IMPACT ON HOW CLAIMS YOU AND EOS New York HAVE AGAINST EACH OTHER ARE RESOLVED.

7.1 Governing Law

The Terms shall be governed by and interpreted in accordance with the laws of the State of New York without regard to conflict of law principles.

7.2 Arbitration

Notwithstanding any contrary provision of these Terms, all disputes, claims, controversies and matters relating to or in connection with these Terms (or the breach thereof) or any transactions hereunder shall be settled by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules ("**AAA Rules**"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall take place in the State of New York before a single neutral arbitrator appointed in accordance with the AAA Rules and shall be conducted in the English language. All arbitrations shall be conducted and resolved on an individual basis and not a class-wide, multiple plaintiff or similar basis. No arbitration shall be consolidated with any other arbitration proceeding involving any other person or entity.

7.3 Jurisdiction and Venue

Subject to the above arbitration provisions, you and EOS New York agree that any and all disputes, claims and actions, at law or in equity, arising out of or relating to or in connection with the Terms or the breach, termination, enforcement, interpretation or validity thereof, or to the use of the Website (collectively, "**Disputes**") in the federal or state courts located in the State of New York and each of us agrees that such courts shall have exclusive jurisdiction and venue for any such actions, except that EOS New York retains the right to submit a Dispute to any court of competent jurisdiction. EOS New York also may seek injunctive or other equitable relief for breach of these Terms in any court of competent jurisdiction wherever located. You consent to the jurisdiction of and venue in such courts and waive any objection as to inconvenient forum. The prevailing party in any suit, action or proceeding, including any arbitration proceeding, will be entitled to recover its reasonable legal fees and costs and expenses from the other party.

7.4 Prohibition of Class and Representative Actions and Non-Individualized Relief

YOU AGREE THAT YOU MAY BRING CLAIMS AGAINST EOS NEW YORK ONLY ON AN INDIVIDUAL BASIS AND HEREBY WAIVE THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING, TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW. FURTHER, UNLESS BOTH YOU AND EOS NEW YORK OTHERWISE AGREE IN WRITING, THE COURT MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING.

7.5 Future Amendments to this Section

Both of us agree that if we make any amendment to this **Dispute Resolution** section (other than an amendment to any notice address or site link provided herein) in the future, that amendment will not apply to any claim that was filed in a legal proceeding against us prior to the effective date of the amendment. However, the amendment will apply to all other disputes or claims governed by this section that have arisen or may arise between you and EOS New York. We will notify you of amendments to this section by posting the amended Terms on www.eosnewyork.io. If you do not agree to the amended terms, you may close your account within 30 days and you will not be bound by the amended dispute resolution terms. If you do not have an account (or once you have closed your account, if applicable), you must cease using the Website immediately. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and EOS New York in accordance with the provisions of this "Dispute Resolution" section as of the date you first accepted the Terms (or accepted any subsequent changes to the Terms).

8. MISCELLANEOUS

8.1 Privacy

Our collection and use of information about Users is governed by our Privacy Policy. By accessing and using the Website, you consent to the collection and use of this information, including the transfer of this information outside the United States and/or other countries, for storage, processing and use by EOS New York. As part of providing you the Website, we may need to provide you with certain communications, such as service announcements and administrative messages. You may not be able to opt-out from receiving these messages.

8.2 Entire Agreement

These Terms, including these Terms of Use, our Privacy Policy, the applicable Supplemental Terms and any and all Website Rules, constitute the entire and exclusive understanding and agreement between you and EOS New York regarding your access to and use of the Website and supersede and replace any and all prior or contemporaneous oral or written understandings or agreements between you and EOS New York and regarding the subject matter hereof.

8.3 Assignment

You may not assign, transfer, delegate or sublicense any of your rights or obligations under the Terms, including by operation of law or merger or consolidation, without our express prior written consent, which may be granted or withheld in our sole discretion. Any attempted assignment, transfer, delegation or sublicense without the foregoing consent will be null and void. EOS New York may assign, transfer, delegate and/or sublicense our rights and obligations under the Terms, in whole or in part, in its sole discretion, without restriction.

Subject to the foregoing, the Terms will bind and inure to the benefit of the parties, their successors and assigns.

8.4 No Agency

Except as otherwise expressly set forth herein, no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by the Terms.

8.5 Survival of Terms

Any provisions of the Terms that contemplate performance or observance subsequent to the expiration or termination of these Terms of Use shall survive such expiration or termination.

8.6 Notices

Any notices or other communications permitted or required hereunder, including those regarding modifications to the Terms, will be in writing and given by EOS New York (i) via e-mail (in each case to the address that you provide), or (ii) by posting to the Website or via the App. For notices made by e-mail, the date on which such notice is transmitted will be deemed the date of receipt.

8.7 Waiver

Our failure to exercise any right or enforce any obligation under these Terms of Use or to take action with respect to a breach by you or others will not constitute a waiver of such right, obligation or breach. The waiver of any right, obligation or breach will be effective only if in writing and signed by a duly authorized representative of EOS New York. In addition, no waiver granted in any instance shall constitute a waiver in any other instance.

8.8 Remedies

Except as expressly set forth in the Terms, the exercise by either party of any of its remedies under the Terms will be without prejudice to its other remedies available under contract, at law, in equity or otherwise.

8.9 Severability

Except as otherwise provided in the Terms, if an arbitrator or a court of competent jurisdiction finds any provision of the Terms to be invalid, void or unenforceable, in whole or in part, for any reason, the offending provision will be enforced to the maximum extent permissible and will not affect the validity or enforceability of the remaining provisions, which will remain in full force and effect.

8.10 Headings

The headings in the Terms are for reference purposes only and do not limit or otherwise affect the meaning or interpretation of any of the provisions hereof.

8.11 Third Party Beneficiaries

Except as otherwise expressly set forth herein, the Terms do not and are not intended to confer any rights or remedies upon any person other than the parties hereto.

8.12 Contact Us

If you have any questions or concerns, please contact EOS New York at support@eosnewyork.io.

8.13 California Residents

Pursuant to California Civil Code §1789.3, California residents are also entitled to the following specific consumer rights notice:

Complaints regarding the Website or Services or requests to receive further information regarding use of the Website or Services may be sent to the above address or to support@eosnewyork.io.

The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Boulevard, Suite N112, Sacramento, CA 95834 or by telephone at (916) 445-1245 or (800) 952-5210. Hearing impaired persons may call TDD (800)-326-2297 or TDD (916)-928-1227, see www.dca.ca.gov for additional information.

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