

# ARTFLLY User Agreement (effective June 1, 2021)

## 1. Introduction

This User Agreement, the Mobile Application Terms of Use, and all policies and additional terms posted on and in our sites, applications, tools and services (collectively “Services”) set out the terms on which ARTFLLY offers you access to and use of our Services. The Mobile Application Terms of Use, all policies and additional terms posted on and in our sites, applications, tools, and services are incorporated into this User Agreement. You agree to comply with all terms of this User Agreement when accessing or using our Services. The entity you are engaging with is: Art Articulator, Inc. (DBA ARTFLLY), 2140 E. Southlake Blvd., Suite L-664, Southlake, TX 76092. In this User Agreement, these entities are individually and collectively referred to as “ARTFLLY,” “we,” or “us.”

**Please be advised that this User Agreement contains provisions that govern how claims you and we have against each other are resolved (see “Disclaimer of Warranties; Limitation of Liability” and “Legal Disputes” provisions below). It also contains an Agreement to Arbitrate which will, with limited exception, require you to submit claims you have against us or our agents to binding and final arbitration.**

## 2. About ARTFLLY

ARTFLLY is a marketplace that allows sellers to sell and buyers to purchase fine art from various locations delivered to the buyer(s). While ARTFLLY facilitates many aspects of the transaction, including potentially resolving any disputes between the buyer and seller, the actual contract for sale is between the seller and buyer. ARTFLLY makes best efforts to require that sellers maintain accurate listings but ARTFLLY has no control over and does not guarantee: the existence, quality, safety or legality of items offered; the truth or accuracy of users’ content or listings; the ability of sellers to sell items; the ability of buyers to pay for items; or that a buyer or seller will actually complete a transaction.

## 3. Using ARTFLLY

In connection with using or accessing the Services, you agree that you will not:

- in the case of a seller: post, list or upload content or items that are not actually offered for sale and/or intentionally mislabel or misclassify items for sale;
- breach or circumvent any laws, regulations, third-party rights or our systems, policies, or determinations of your account status;

- use our Services if you are not able to form legally binding contracts (for example, if you are under 18 years old), or are temporarily or indefinitely suspended from using our sites, services, applications or tools;
- in the case of a purchaser: fail to pay for items purchased by you. Notwithstanding, if the seller has materially changed the item's description after you made an offer to purchase or a clear typographical error is made, you may be relieved of your obligation to purchase, if in our sole discretion, we agree with such request to be relieved from such obligation;
- in the case of a seller: fail to deliver items sold by you;
- post false, inaccurate, misleading, deceptive, defamatory, or libelous content;
- transfer your ARTFLLY account and/or user ID to another party without our consent;
- distribute or post spam, unsolicited or bulk electronic communications, chain letters, or multi-level marketing/pyramid schemes;
- distribute viruses or any other technologies that may harm ARTFLLY or the interests or property of users;
- use any robot, spider, scraper, data mining tools, data gathering and extraction tools, or other automated means to access our Services for any purpose, except with the prior express permission of ARTFLLY;
- interfere with the working of our Services, or impose an unreasonable or disproportionately large load on our infrastructure;
- export or re-export any ARTFLLY application or tool, except in compliance with the export control laws of any relevant jurisdictions and in accordance with posted rules and restrictions;
- infringe any Intellectual Property Rights that belong to third parties affected by your use of the Services or post content that does not belong to you;
- infringe the copyright, trademark, patent, publicity, moral, database, and/or other intellectual property rights (collectively, "Intellectual Property Rights") that belong to or are licensed to ARTFLLY or any of our sellers. Some, but not all, actions that may constitute infringement are reproducing, performing, displaying, distributing,

copying, reverse engineering, decompiling, disassembling, or preparing derivative works from content that belongs to ARTFLLY or someone else;

- commercialize any ARTFLLY application or any information or software associated with such application, except with the prior express permission of ARTFLLY;
- harvest or otherwise collect information about users without their consent; or
- circumvent any technical measures used to provide the Services.

Sellers must meet ARTFLLY's minimum performance standards. Failure to meet these standards may result in ARTFLLY charging you additional fees, and/or limiting, restricting, suspending, or removing your seller account, temporarily or permanently.

If we believe you are abusing ARTFLLY and/or our Services in any way, we may, in our sole discretion and without limiting other remedies, limit, suspend, or terminate your user account(s) and access to our Services, delay or remove hosted content, remove any special status associated with your account(s), remove, not display, and/or demote listings, reduce or eliminate any discounts, and take technical and/or legal steps to prevent you from using our Services.

If we believe you are attempting to circumvent ARTFLLY for the purposes of conducting a transaction that ARTFLLY otherwise facilitated, you may be subject to a range of actions, including limits on your buying and selling privileges, restrictions on listings and account features, suspension of your account, application of fees, and recovery of expenses for policy monitoring and enforcement. Specifically, you agree that if you are a seller and you offer or reference your contact information or ask a buyer for their contact information in the context of buying or selling outside of ARTFLLY, you may be liable to pay a commission fee, even if no transaction is consummated.

We may cancel unconfirmed accounts or accounts that have been inactive for a long time. Additionally, we reserve the right to refuse, modify, or terminate all or part of our Services to anyone for any reason at our discretion.

## **4. Policy Enforcement**

When a buyer or seller issue arises, we may consider the user's performance history and the specific circumstances in applying our policies. We may, in our sole discretion, and with absolutely no precedential value, choose to be more lenient with policy enforcement in an effort to do the right thing for both buyers and sellers.

## **5. Taxes**

In any jurisdiction where ARTFLLY has an obligation to collect sales taxes on sales made through using ARTFLLY Services, we will collect such sales taxes during the transaction and remit them to the proper taxing authority. To the extent permitted, such transactions will be consolidated among all sellers and remitted in bulk.

## 6. Our Commission

Each Seller receives a Commission Schedule, which is deemed to be incorporated into these Terms and Conditions. We may change our Commission rates on no less than 14 days notice to you, except in the case of any temporary promotions or any permanent changes that result in the reduction of our commission, in which case no notice is required.

If you are a seller, we will retain Commissions out of all sales fully made using ARTFLLY Services, however, you are liable for payment of our Commission even if sales terms are finalized or payment is made outside of ARTFLLY. In particular, if you offer or reference your contact information or ask a buyer for their contact information in the context of buying or selling outside of ARTFLLY, you may be liable to pay a Commission on offered items, even if some or all of those items are not sold to the buyer, given your usage of ARTFLLY Services for the introduction to a buyer.

## 6. Listing Conditions

When listing an item for sale on ARTFLLY Services, you agree that:

- You are responsible for the accuracy and content of the listing and item offered, especially regarding the dimensions and price of the item offered,
- Your listing may not be immediately searchable by keyword or category for several hours.
- Content that violates any of ARTFLLY's policies may be modified, obfuscated or deleted at ARTFLLY's discretion,
- We may revise any information associated with listings to supplement, remove, or correct information or remove the listing, at our discretion,
- We strive to create a marketplace to help buyers find what they are looking for. Therefore, the appearance or placement of listings in search and browse results will depend on a variety of factors, including, but not limited to:
  - buyer's location, search query, browsing site, and history;
  - item's location, listing format, price and shipping cost, and relevance to the user query; and
  - the number of listings matching the buyer's query,
- To drive a positive user experience, a listing may not appear in some search and browse results regardless of the sort order chosen by the buyer,
- Metatags and URL links that are included in a listing may be removed or altered so as to not affect third-party search engine results,

- We may provide you with optional recommendations to consider when creating your listings and/or system-generated classification(s).

## **7. Purchase Conditions**

When buying an item on ARTFLLY Services, you agree that:

- You are responsible for reading the full item listing before purchase,
- You enter into a legally binding contract to purchase an item when you commit to buy an item.

## **8. International Buying and Selling; Translation**

This Section Intentionally omitted

## **9. Content**

When you provide content using the Services (directly or indirectly), you grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sublicensable (through multiple tiers) right to exercise any and all Intellectual Property Rights you have in that content in connection with our provision, expansion, and promotion of the Services, in any media known now or developed in the future. To the fullest extent permitted under applicable law, you waive your right to enforce your Intellectual Property Rights in that content against ARTFLLY, our assignees, our sub-licensees, and their assignees in connection with the use of that content for the provision, expansion, and promotion of the Services.

You represent and warrant that, for all such content you provide, you own or otherwise control all necessary rights to do so and to meet your obligations under this User Agreement. You represent and warrant that such content is accurate. You represent and warrant that use of any such content (including derivative works) does not and will not infringe any Intellectual Property Rights of any third party. ARTFLLY takes no responsibility and assumes no liability for any content provided by you or any third party.

We offer product data (including images, descriptions and specifications) that are provided by third parties (including ARTFLLY users). You may use that content solely in your ARTFLLY listings. ARTFLLY may modify or revoke that permission at any time in our sole discretion. The product data includes copyrighted, trademarked and other proprietary materials. You agree not to remove any copyright, proprietary, or identification markings in the product data and not to create any derivative works based on that data (other than by including the data in your listings).

We try to offer reliable product data, but cannot promise that the content provided through the Services will always be available, accurate, complete, and up-to-date. You agree that ARTFLLY is not responsible for examining or warranting the listings or content provided

by third parties through the Services, and that you will not attempt to hold us or our data providers liable for inaccuracies. As a seller, you agree to ensure that content directly associated with your listings is accurate.

The name “ARTFLLY” and the term “Accu-art” and other ARTFLLY marks, logos, designs, and phrases that we use in connection with our Services are trademarks, service marks, or trade dress of ARTFLLY in the U.S. and other countries. They may not be used without the express written prior permission of ARTFLLY.

## **10. Notice for Claims of Intellectual Property Violations and Copyright Infringement Pursuant to Section 512(c) of Title 17 of the United States Code**

We respond to notices of alleged copyright infringement under the United States Digital Millennium Copyright Act. If you believe that your intellectual property rights have been infringed, please notify us at [legal@artarticulator.com](mailto:legal@artarticulator.com) and we will investigate.

## **11. Holds**

In the event of dispute between buyer and seller, ARTFLLY may withhold payment from you until a buyer’s disputed transaction is fully investigated and resolved.

## **12. Authorization to Contact You; Recording Calls; Analyzing Message Content**

ARTFLLY may contact you using autodialed or prerecorded calls and text messages, at any telephone number that you have provided us, to: (i) notify you regarding your account; (ii) troubleshoot problems with your account; (iii) resolve a dispute; (iv) collect a debt; (v) poll your opinions through surveys or questionnaires; or (vi) as otherwise necessary to service your account or enforce this User Agreement, our policies, applicable law, or any other agreement we may have with you. ARTFLLY may also contact you using autodialed or prerecorded calls and text messages for marketing purposes (e.g., offers and promotions), if you consent to such communications. Our collection, use, disclosure, retention, and protection of your personal information is governed by the Privacy Policy. As described in the Privacy Policy, ARTFLLY may collect other telephone numbers for you and may place manual non-marketing calls to any of those numbers and autodialed non-marketing calls to any landline. Standard telephone minute and text charges may apply and may include overage fees if you have exceeded your plan limits. If you do not wish to receive such communications, you may change your communications preference at any time, including through the communication preferences section of your ARTFLLY Account.

ARTFLLY may share your telephone number with its authorized service providers as stated in our Privacy Policy. These service providers may contact you using autodialed or prerecorded calls and text messages, only as authorized by ARTFLLY to carry out the purposes identified above.

ARTFLLY may, without further notice or warning and in its discretion, monitor or record telephone conversations you or anyone acting on your behalf has with ARTFLLY or its agents for quality control and training purposes, or for its own protection.

ARTFLLY's automated systems scan and analyze the contents of every message sent through its messages platform, including messages between users, to detect and prevent fraudulent activity or violations of ARTFLLY's User Agreement, including the incorporated terms, notices, rules, and policies. This scanning and analysis may occur before, during, or after the message is sent, or while in storage, and may result in your message being delayed or withheld. ARTFLLY may store message contents, including to conduct this scanning and analysis.

### **Privacy of Others; Marketing**

If ARTFLLY provides you with information about another user, you agree you will use the information only for the purposes that it is provided to you. You may not disclose, sell, rent, or distribute a user's information to a third party for purposes unrelated to the Services. Additionally, you may not use user information for marketing purposes, via electronic or other means, unless you obtain the consent of the specific user to do so.

### **13. Disputes between Buyer and Seller**

ARTFLLY is designed to facilitate a smooth transaction between buyer and seller, but if there's a problem with a purchase, ARTFLLY helps buyers and sellers resolve issues. Sellers are responsible for maintaining the accuracy of their listings and – to the extent that the items comport with the description(s) of those listings, all sales are considered final. In the rare instance where this is not the case, ARTFLLY will endeavor to resolve the issue. Because the items listed for sale are necessarily unique goods, both buyer and seller understand that replacements may not be available or perfect replicas. Nonetheless, you agree to comply with the policy and permit us to make a final decision, in our sole discretion, on any disputed case.

### **14. Disclaimer of Warranties; Limitation of Liability**

We try to keep our Services safe, secure, and functioning properly, but we cannot guarantee the continuous operation of or access to our Services.

You agree that you are making use of our Services at your own risk, and that they are being provided to you on an "AS IS" and "AS AVAILABLE" basis. Accordingly, to the extent permitted by applicable law, we exclude all express or implied warranties, terms and conditions including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, and non-infringement.

In addition, to the extent permitted by applicable law, we (including our parent, subsidiaries, and affiliates, and our and their officers, directors, agents and employees) are

not liable, and you agree not to hold us responsible, for any damages or losses (including, but not limited to, loss of money, goodwill or reputation, profits, other intangible losses, or any special, indirect, or consequential damages) resulting directly or indirectly from:

- the content you provide (directly or indirectly) using the Services;
- your use of or your inability to use our Services;
- pricing, shipping, format, or other guidance provided by ARTFLLY;
- delays or disruptions in our Services;
- viruses or other malicious software obtained by accessing or linking to our Services;
- glitches, bugs, errors, or inaccuracies of any kind in our Services;
- damage to your hardware device from the use of any ARTFLLY Service;
- the content, actions, or inactions of third parties, including items listed using our Services or the destruction of allegedly fake items;
- a suspension or other action taken with respect to your account;
- the duration or manner in which listings appear in search results; or
- your need to modify practices, content, or behavior, or your loss of or inability to do business, as a result of changes to this User Agreement or our policies.

Some jurisdictions do not allow the disclaimer of warranties or exclusion of damages, so such disclaimers and exclusions may not apply to you, but to the extent that you are permitted to do so, you hereby waive any rights to seek compensation based on a breach of warranty claim.

Notwithstanding the previous paragraphs, if we are found to be liable to a buyer, our liability to you or to any third party is limited to the sales price of the item (including any applicable sales tax) plus original shipping costs (if applicable). Notwithstanding the previous paragraphs, if we are found to be liable to a seller, our liability to you or to any third party is limited to the disputed portion of any seller commissions for any item in dispute.

## **15. Release**

If you have a dispute with one or more users, you release us (and our affiliates and subsidiaries, and our and their respective officers, directors, employees and agents) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes. **In entering into**

**this release you expressly waive any protections (whether statutory or otherwise) that would otherwise limit the coverage of this release to include only those claims that you may know or suspect to exist in your favor at the time of agreeing to this release.**

## **16. Indemnity**

You will indemnify and hold us (including our affiliates and subsidiaries, as well as our and their respective officers, directors, employees, agents) harmless from any claim or demand, including reasonable legal fees, made by any third party due to or arising out of your breach of this User Agreement, your improper use of ARTFLLY's Services or your breach of any law or the rights of a third party.

## **17. Legal Disputes**

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

**You and ARTFLLY agree that any claim or dispute at law or equity that has arisen, or may arise, between you and ARTFLLY (including any claim or dispute between you and a third-party agent of ARTFLLY) that relates in any way to or arises out of this or previous versions of this User Agreement, your use of, or access to, or restriction from the Services, the actions of ARTFLLY or its agents, or any products or services sold or purchased through the Services, will be resolved in accordance with the provisions set forth in this Legal Disputes Section.**

### **A. Applicable Law**

You agree that, except to the extent inconsistent with or preempted by federal law, the laws of the State of New York, without regard to principles of conflict of laws, will govern this User Agreement and any claim or dispute that has arisen or may arise between you and ARTFLLY, except as otherwise stated in this User Agreement.

### **B. Agreement to Arbitrate**

**You and ARTFLLY each agree that any and all disputes or claims that have arisen, or may arise, between you and ARTFLLY (including any disputes or claims between you and a third-party agent of ARTFLLY) that relate in any way to or arise out of this or previous versions of the User Agreement, your use of or access to the Services, the actions of ARTFLLY or its agents, or any products or services sold, offered, or purchased through the Services shall be resolved exclusively through final and binding arbitration, rather than in court. Alternatively, you may assert your claims in small claims court, if your claims qualify and so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis. The Federal Arbitration Act governs the interpretation and enforcement of this Agreement to Arbitrate.**

#### **1. Prohibition of Class and Representative Actions and Non-Individualized Relief**

**YOU AND ARTFLLY AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, OR REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL ACTION OR PROCEEDING. UNLESS BOTH YOU AND ARTFLLY AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, CLASS, OR PRIVATE ATTORNEY GENERAL ACTION OR PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER USERS.** If a court decides that applicable law precludes enforcement of any of this paragraph's limitations as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court, subject to your and ARTFLLY's right to appeal the court's decision. All other claims will be arbitrated.

## **2. Arbitration Procedures**

Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, and court review of an arbitration award is very limited. However, an arbitrator can award the same damages and relief on an individual basis that a court can award to an individual. An arbitrator should apply the terms of the User Agreement as a court would. All issues are for the arbitrator to decide, except that issues relating to arbitrability, the scope or enforceability of this Agreement to Arbitrate, or the interpretation of Section 1 of this Agreement to Arbitrate ("Prohibition of Class and Representative Actions and Non-Individualized Relief"), shall be for a court of competent jurisdiction to decide.

The arbitration will be conducted by the American Arbitration Association ("AAA") under its rules and procedures, including the AAA's Consumer Arbitration Rules (as applicable), as modified by this Agreement to Arbitrate. The AAA's rules are available at [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879. The use of the word "arbitrator" in this provision shall not be construed to prohibit more than one arbitrator from presiding over an arbitration; rather, the AAA's rules will govern the number of arbitrators that may preside over an arbitration conducted under this Agreement to Arbitrate.

A party who intends to seek arbitration must first send to the other, by certified mail, a Notice of Dispute ("Notice"). The Notice to ARTFLLY should be sent to Art Articulator, Inc. (DBA ARTFLLY), Attn: Litigation Department, Re: Notice of Dispute, 2140 E. Southlake Blvd., Suite L-664, Southlake, TX 76092. ARTFLLY will send any Notice to you to the physical address we have on file associated with your ARTFLLY account, if any, with a copy to your email address on file; it is your responsibility to keep your physical address and email address up to date. The Notice must provide: your full name; your full mailing address; your email address; the email address associated with your ARTFLLY account (only if different from your email address),

your day and evening telephone number(s); a description of the nature and basis of the claims you are asserting; and the relief sought.

If you and ARTFLLY are unable to resolve the claims described in the Notice within 30 days after the Notice is sent, you or ARTFLLY may initiate arbitration proceedings. A form for initiating arbitration proceedings is available on the AAA's site at [www.adr.org](http://www.adr.org). In addition to filing this form with the AAA in accordance with its rules and procedures, the party initiating the arbitration must mail a copy of the completed form to the opposing party. You may send a copy to ARTFLLY at the following address: Art Articulator, Inc. (DBA ARTFLLY) 2140 E. Southlake Blvd., Suite L-664, Southlake, TX 76092. In the event that ARTFLLY initiates arbitration against you, it will send a copy of the completed form to the physical address we have on file associated with your ARTFLLY account. Any settlement offer made by you or ARTFLLY shall not be disclosed to the arbitrator.

The arbitration hearing shall be held in the county in which you reside or at another mutually agreed location. If the value of the relief sought is \$10,000 or less, you or ARTFLLY may elect to have the arbitration conducted by telephone or based solely on written submissions, which election shall be binding on you and ARTFLLY subject to the arbitrator's discretion to require an in-person (or other remote live) hearing, if the circumstances warrant. In cases where an in-person hearing is held, you and/or ARTFLLY may attend by telephone, unless the arbitrator requires otherwise.

The arbitrator will decide the substance of all claims in accordance with applicable law, including recognized principles of equity, and will honor all claims of privilege recognized by law. The arbitrator shall not be bound by rulings in prior arbitrations involving different users, but is bound by rulings in prior arbitrations involving the same ARTFLLY user to the extent required by applicable law. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

### **3. Costs of Arbitration**

Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, unless otherwise stated in this Agreement to Arbitrate. If the value of the relief sought is \$10,000 or less, at your request, ARTFLLY will pay all filing, administration, and arbitrator fees associated with the arbitration. Any request for payment of fees by ARTFLLY should be submitted by mail to the AAA along with your Demand for Arbitration and ARTFLLY will make arrangements to pay all necessary fees directly to the AAA. If (a) you willfully fail to comply with the Notice of Dispute requirement discussed above, or (b) in the event the arbitrator determines the claim(s) you assert in the arbitration to be frivolous, you agree to reimburse ARTFLLY for all fees associated with the arbitration paid by ARTFLLY on your behalf that you otherwise would be obligated to pay under the AAA's rules.

4. **Severability**

With the exception of any of the provisions in Section 1 of this Agreement to Arbitrate (“Prohibition of Class and Representative Actions and Non-Individualized Relief”), if an arbitrator or court decides that any part of this Agreement to Arbitrate is invalid or unenforceable, the other parts of this Agreement to Arbitrate shall still apply.

5. **Opt-Out Procedure**

**IF YOU ARE A NEW USER OF OUR SERVICES, YOU CAN CHOOSE TO REJECT THIS AGREEMENT TO ARBITRATE (“OPT-OUT”) BY MAILING US A WRITTEN OPT-OUT NOTICE (“OPT-OUT NOTICE”). THE OPT-OUT NOTICE MUST BE POSTMARKED NO LATER THAN 30 DAYS AFTER THE DATE YOU ACCEPT THE USER AGREEMENT FOR THE FIRST TIME. YOU MUST MAIL THE OPT-OUT NOTICE TO ART ARTICULATOR, INC. (DBA ARTFLLY), ATTN: LITIGATION DEPARTMENT, RE: OPT-OUT NOTICE, 2140 E. Southlake Blvd., Suite L-664, Southlake, TX 76092.**

Your Opt-Out Notice must provide your name, full mailing address (including street address, city, state and zip code), and the user ID(s) and email address(es) associated with the ARTFLLY Service account(s) to which the opt-out applies along with a statement requesting to opt-out. You must sign the Opt-Out Notice for it to be effective. This procedure is the only way you can opt out of the Agreement to Arbitrate. If you opt out of the Agreement to Arbitrate, all other parts of this User Agreement and its Legal Disputes Section will continue to apply to you. Opting out of this Agreement to Arbitrate has no effect on any previous, other, or future arbitration agreements that you may have with us.

6. **Future Amendments to the Agreement to Arbitrate**

Notwithstanding any provision in the User Agreement to the contrary, you and we agree that if we make any amendment to this Agreement to Arbitrate (other than an amendment to any notice address or site link provided herein) in the future, that amendment shall not apply to any claim that was filed in a legal proceeding against ARTFLLY prior to the effective date of the amendment. The amendment shall apply to all other disputes or claims governed by the Agreement to Arbitrate that have arisen or may arise between you and ARTFLLY. We will notify you of amendments to this Agreement to Arbitrate by posting the amended terms on [www.ArtArticulator.com](http://www.ArtArticulator.com) at least 30 days before the effective date of the amendments and by providing notice through the ARTFLLY Message Center and/or by email. If you do not agree to these amended terms, you may close your account within the 30-day period and you will not be bound by the amended terms.

## **C. Judicial Forum for Legal Disputes**

Unless you and we agree otherwise, in the event that the Agreement to Arbitrate above is found not to apply to you or to a particular claim or dispute, either as a result of your

decision to opt out of the Agreement to Arbitrate or as a result of a decision by the arbitrator or a court order, you agree that any claim or dispute that has arisen or may arise between you and ARTFLLY must be resolved exclusively by a state or federal court located in New York City, New York. You and ARTFLLY agree to submit to the personal jurisdiction of the courts located within New York City, New York for the purpose of litigating all such claims or disputes.

## **18. General**

Except as otherwise provided in this User Agreement, if any provision of this User Agreement is held to be invalid, void or for any reason unenforceable, such provision shall be struck out and shall not affect the validity and enforceability of the remaining provisions. In our sole discretion, we may assign this User Agreement, and in such event, we will post notice on our website.

Headings are for reference purposes only and do not limit the scope or extent of such Section. Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches. We do not guarantee we will take action against all breaches of this User Agreement.

We may amend this User Agreement at any time by posting the amended terms on our website. Our right to amend the User Agreement includes the right to modify, add to, or remove terms in the User Agreement. We will provide you 30 days' notice by posting the amended terms. Additionally, we will notify you through the ARTFLLY Message Center and/or by email. Your continued access or use of our Services constitutes your acceptance of the amended terms. We may also ask you to acknowledge your acceptance of the User Agreement through an electronic click-through. This User Agreement may not otherwise be amended.

The policies and terms posted on our Services may be changed from time to time. Changes take effect when we post them on the ARTFLLY Service.

If you create or use an account on behalf of a business entity, you represent that you are authorized to act on behalf of such business and bind the business to this User Agreement. Such account is owned and controlled by the business entity. No agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this User Agreement.

The User Agreement and all terms and policies posted through our Services set forth the entire understanding and agreement between you and ARTFLLY, and supersede all prior understandings and agreements of the parties.

The following Sections survive any termination of this User Agreement: Fees, Content, Disclaimer of Warranties; Limitation of Liability; Release, Indemnity, Legal Disputes, and General.

If you are a California resident, in accordance with Cal. Civ. Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

Pursuant to 815 ILCS 414/1.5(c), for transactions involving tickets to events in Illinois, buyers and sellers may elect to submit complaints against one another to the American Arbitration Association (“AAA”) under its rules and procedures. The AAA’s rules are available at [www.adr.org](http://www.adr.org). Such complaints shall be decided by an independent arbitrator in accordance with this User Agreement.

## **ARTFLLY Mobile Application Terms of Use (effective May 1, 2021)**

If you are accessing ARTFLLY from a mobile device using an ARTFLLY Mobile Application (the “Application”), the following terms and conditions (“Terms of Use”) apply to you in addition to the User Agreement. Your use of the Application confirms your agreement to these Terms of Use as well as the User Agreement.

**Application Use.** ARTFLLY grants you the right to use the Application only for your personal use. You must comply with all applicable laws and third party agreements (e.g. your wireless data service agreement) when using the Application, which may not contain the same functionality available on any ARTFLLY website(s).

**Intellectual Property.** ARTFLLY owns, or is the licensee to, all right, title, and interest in and to its Applications, including all rights under patent, copyright, trade secret, trademark, or unfair competition law, and any and all other proprietary rights, including all applications, renewals, extensions, and restorations thereof. You will not modify, adapt, translate, prepare derivative works from, decompile, reverse-engineer, disassemble, or otherwise attempt to derive source code from any Application and you will not remove, obscure, or alter ARTFLLY’s copyright notice, trademarks or other proprietary rights notices affixed to, contained within, or accessed in conjunction with or by any ARTFLLY Application.

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## **iOS – Apple**

1. These Terms of Use are an agreement between you and ARTFLLY, and not with Apple. Apple is not responsible for the Application and the content thereof.
2. ARTFLLY grants you the right to use the Application only on an iOS product that you own or control and as permitted by the Usage Rules set forth in the App Store Terms of Service.
3. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Application.
4. Apple is not responsible for the investigation, defense, settlement, and discharge of any third party intellectual property infringement claim.
5. Apple is not responsible for addressing any claims by you or any third party relating to the Application or your possession and/or use of the Application, including but not limited to: (a) product liability claims; (b) any claim that the Application fails to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation.
6. In the event of any failure of the Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price, if applicable, for the Application to you; and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Application.
7. Apple and Apple's subsidiaries are third party beneficiaries of these Terms of Use, and, upon your acceptance, Apple as a third party beneficiary thereof will have the right (and will be deemed to have accepted the right) to enforce these Terms of Use against you.