

Terms of Use

Greetings to All Who Cherish Magic!

Whether you are the proud Keeper of this CharmNFT or an admirer drawn to its enchantment, this document illuminates the magical journey ahead. Here, we outline how everyone can partake in the charm's magic and the special place its Keeper holds. Let's ensure the magic thrives for all!

The Power of Collective Magic

By embracing and sharing the charm's magic, everyone contributes to its strength and vitality. The wider the appreciation and care for the charm, the more its enchantment grows. This collective participation benefits all—enhancing the magic for admirers and amplifying opportunities for the Keeper.

For Everyone: Embrace and Share the Magic

Personal use of the art, music, and magic of this CharmNFT are gifts to be enjoyed by all living beings.

You are warmly invited to:

- **Display the Artwork:** Non-commercially share the charm's captivating visuals in your personal and social spaces, both publicly and privately, inspiring wonder in all who behold it.
- **Enjoy the Melody:** Let the enchanting song accompany your moments, uplifting you in personal settings or as part of non-commercial creations.
- **Incorporate into Personal Creations:** Weave the charm's art and music into your personal posts and videos on social media or other platforms—even if you earn a few gold coins (money) from the platform—so long as:
 - The use is for creative entertainment related purposes.
 - The art and music are not used to advertise or promote products or services.
 - You are an individual (not a corporate entity) and are not using the charm on behalf of a business for commercial advertising purposes.

A Kindly Reminder: All personal use and enjoyment should honor the charm's magical purpose, keeping experiences pure and free from profit-driven intentions. By sharing and cherishing the magic, we all help it grow stronger!

For the Keeper of the Charm: Wielding Exclusive Commercial Magic

As the CharmNFT owner, you are the esteemed Keeper of the Charm, holding exclusive shared commercial rights alongside NiftyCharms. This magical partnership allows you to explore the charm's magic in the commercial realm:

• Artwork Magic:

- **Create and Sell Physical Wonders:** Craft and sell physical items like prints, apparel, or collectibles, bringing the charm's visual magic to the world.
- **Guarding the Digital Enchantment:** To preserve the charm's unique magic and ensure its power and value remain undiluted, the following actions are **not permitted**:
 - Creating NFTs from the original artwork or any derivative works.
 - Selling digital versions of the artwork.
 - Sublicensing any commercial rights.
 - Uploading the artwork to any image distribution or sharing platform for the commercial or non-commercial use by others.

• Musical Enchantment:

- **Enhance Projects with the Charm's Melody:** Use the charm's song in your productions and adaptations, adding a touch of magic to your creations.
- **Limited Licensing:** You may license the song for select **single, one-time use cases**, such as for a movie or a single commercial advertisement. Ongoing or perpetual licensing is **not permitted**, as it could dilute the value for a future Keeper should you decide to pass the torch.
- **Respect the Sacred Tunes:** To preserve the magic for you and future Keepers, the following actions are **prohibited**:
 - Reselling the song for commercial use.
 - Perpetual sublicensing.
 - Embedding the song in other NFTs.
 - Unrestricted licensing.

Shared Commercial Rights with NiftyCharms: NiftyCharms retains its own commercial rights, ensuring the charm's magic flourishes far and wide, enhancing its power and value for everyone.

Treasures for the Keeper's Wielding

Within this mystical folder, the Keeper will discover high-quality original files (AIFF for audio, PSD for images):

- **For All to Marvel:** Everyone may view these treasures, appreciating the depth of the charm's magic.
- **Exclusive Keeper Privileges:** Only the Keeper may use these originals for personal enjoyment and to exercise their exclusive commercial rights.

Transfer Conditions: Safeguarding and Honoring Vows

To ensure the charm's legacy continues to shine brightly:

1. Honoring Royalty Enchantments:

- **Essential for Rights Transfer:**

Transfers must fully comply with the specified royalty obligations for rights to pass to the new Keeper. By engaging in any transaction involving this CharmNFT, all parties acknowledge and agree to uphold these terms and honor the enchantments that safeguard its magic.

- **Consequences of Circumvention:**

Ignoring these sacred duties results in the immediate and permanent forfeiture of all rights held by the seller, including personal and commercial use rights, effective as of the date of the breach. As a result of this breach of trust, the seller shall henceforth be deemed a dishonored Legacy Keeper, irrevocably stripped of any benefits or powers associated with the charm. Furthermore, the seller may face severe financial and legal consequences for failing to uphold their responsibilities, including restitution of unpaid royalties, liability for damages to the buyer and NiftyCharms, and any other costs incurred due to the dishonor of the charm's legacy. Such liabilities are enforceable by law and may persist indefinitely, casting a shadow over the seller's future endeavors in perpetuity.

Remedies for Innocent Buyers:

- **Reinstatement of Keeper Rights:** A buyer who unknowingly acquires a CharmNFT with voided rights may restore their status as the Keeper and reactivate the charm's magical powers by promptly paying any outstanding royalty payments owed to NiftyCharms upon discovering the breach.
- **Right to Reimbursement and Damages:** After reinstating their rights, the buyer is entitled to seek reimbursement of the royalty payment from the seller and may pursue damages from the seller and any intermediaries involved in the sale who contributed to the breach.
- **Liabilities of Intermediaries:**
 - Intermediaries facilitating transactions that circumvent the royalty obligations may be held jointly and severally liable for damages resulting from the breach, including compensatory damages, statutory damages where applicable, legal fees, and costs associated with enforcement.

2. Beware of Breaking the Sacred Bonds:

- **Forbidden Actions:** Any attempt to circumvent royalties—by seller, buyer, or any intermediary (including marketplaces facilitating royalty-free transfers)—constitutes a breach of these terms and an infringement on the charm's magic.
- **Enchanted Remedies:** Such actions may result in the loss of all rights related to the CharmNFT and may expose the parties to claims for damages, including but not limited to statutory damages, legal fees, and injunctive relief to prevent further breaches.

3. Marketplace and Intermediary Accountability:

- **Deemed Knowledge:** By displaying, listing, or facilitating transactions of this CharmNFT, marketplaces and intermediaries are deemed to have read and agreed to these terms as outlined in the NFT's description and linked documents.

- **Liability for Non-Compliance:** If a marketplace or intermediary facilitates a transfer of this CharmNFT without enforcing the royalty requirements, they may be held jointly and severally liable for damages arising from the breach, including compensatory damages, statutory damages where applicable, and all associated legal costs.

4. Notification is Not a Prerequisite:

- **Constructive Notice:** The terms embedded in the NFT's description, metadata, and in any documents or pages linked within the description and metadata, collectively serve as constructive notice to all parties, including marketplaces and intermediaries. Failure to review these terms does not absolve any party of liability or responsibility.
- **Enhancing Legal Standing:** While NiftyCharms reserves the right to notify any marketplace (including OpenSea) of the royalty requirements, such notification is not a prerequisite for enforcing these terms or seeking remedies for breaches by NiftyCharms the buyer or any other party harmed or put at risk of harm by the offending marketplace and intermediaries.
- **Rights to Seek Remedies:** NiftyCharms, the Keeper (buyer), and any other affected parties retain the full right to seek compensation or pursue remedies for any breaches of these terms by offending marketplaces or intermediaries, especially if such breaches result in harm or risk of harm, including financial losses, reputational damage, copyright or intellectual property infringement.
- **Available Legal Remedies:** Affected parties may pursue all available legal remedies, including claims for damages (actual, statutory, and punitive where applicable), injunctive relief, and recovery of legal fees and enforcement costs.

5. Liquidated Damages:

- **Agreed Upon Remedies:** In recognition of the difficulty in precisely calculating actual damages resulting from unauthorized royalty-free transfers, the parties agree that any intermediary or marketplace that facilitates such a transfer shall be liable to NiftyCharms for liquidated damages in the amount of **\$1,000,000 per occurrence**. This amount represents a reasonable pre-estimate of potential damages, considering possible loss of royalties on high-value sales, devaluation of the CharmNFT, harm to NiftyCharms' reputation, and impact on future sales. It is expressly acknowledged that this sum is not intended as a penalty, **and it does not include any potential damages that other parties may seek to recover independently.**
- **Reservation of Rights:** Notwithstanding the liquidated damages specified, NiftyCharms reserves the right to seek additional damages if actual losses exceed the liquidated amount. This clause does not limit NiftyCharms' ability to pursue all available legal remedies, including but not limited to compensatory damages, statutory damages, injunctive relief, and recovery of legal fees.

6. Civil Remedies and Enforcement:

- **Rights Reserved:** NiftyCharms reserves all rights to pursue civil actions against any party that breaches these terms, including claims for breach of contract, tortious interference with contractual relations, and infringement of intellectual property rights.
- **No Waiver of Rights:** Failure by NiftyCharms to enforce any part of these terms shall not constitute a waiver of our rights to enforce these terms at a later date.

Guardianship of the Charm's Magic

In the spirit of unity and fairness, all who engage with this CharmNFT are called upon to honor the enchantments that protect its magic.

1. The Sacred Duty of Royalty Honor:

- **Binding Agreement:** By interacting with this CharmNFT—be it viewing, listing, purchasing, or facilitating a transfer—you acknowledge and agree to uphold the sacred terms that safeguard its magic.
- **Protection Against Dark Arts (Circumvention):** Any attempt to bypass the royalty enchantments is considered a breach of this magical covenant and disrupts the harmony of the charm's legacy.

2. Consequences of Breaking the Magical Covenant:

- **Loss of Enchantment:** Those who disregard these terms risk severing their connection to the charm's magic, forfeiting all rights and privileges granted by its ownership.
- **Invoke of Ancient Remedies:** Breaching parties may face the invocation of powerful remedies, including the requirement to restore the charm's balance through compensation for damages and the casting of protective legal enchantments (actions).

3. The Watchful Eyes of the Council:

- **Shared Responsibility:** Marketplaces and intermediaries are entrusted with the noble role of upholding the charm's enchantments. By hosting or facilitating transactions, they accept this responsibility.
- **Heed the Warnings of the Elders:** Ignorance of these terms offers no sanctuary. The wisdom embedded within this document, the charm's description and lore (metadata), and on NiftyCharms.com serves as everlasting notice to all.

4. Unity in Preserving the Magic:

- **Collective Harmony:** Together, we ensure that the charm's magic endures, its power undiminished, and its legacy unbroken.

Limitation of Liability and Disclaimer of Warranties

Protecting Your Rights and Ours

- **Disclaimer of Warranties:** The CharmNFT, including its art, music, and any associated magic, is provided "**as is**" without warranties of any kind, either express or implied. NiftyCharms disclaims all warranties, including but not limited to implied warranties of merchantability, fitness for a particular purpose, and non-infringement.
- **Against Third Parties:** As the Keeper, you have the right to enforce your granted rights against others who infringe upon them.
- **Regarding NiftyCharms:** You may not enforce these rights against NiftyCharms itself. NiftyCharms disclaims all liability for any indirect, incidental, special,

consequential, or punitive damages, or any loss of profits or revenues, whether incurred directly or indirectly.

- **Extent of Liability:** In any dispute arising from these terms, NiftyCharms' total liability to you shall not exceed the amount NiftyCharms received directly from your transaction relating to the CharmNFT.

A Harmonious Reminder

- **Avoiding Promises of Value Increase:** While the charm's magic grows with collective appreciation, we make no promises or guarantees regarding its financial value or investment potential. The true worth lies in the shared experience and the enchantment we create together.
- **Embracing the Journey:** Together, we embark on a magical adventure. The real enchantment is in the joy, wonder, and connections we forge along the way.

Severability

If any provision of these terms is held to be invalid or unenforceable, that provision shall be enforced to the maximum extent permissible, and the remaining provisions shall remain in full force and effect.

Governing Law and Jurisdiction

These terms shall be governed by and construed in accordance with the laws of **the Philippines**, without regard to its conflict of law provisions. Any disputes arising out of or in connection with these terms shall be exclusively submitted to the courts located in **the Philippines**.

Keeper's Oath

By opening this enchanted treasure chest (folder) and embracing its contents, you agree to uphold these terms, cherishing the charm's magic and ensuring its legacy endures for all who admire it, now and for generations to come.

May the magic of the charm inspire joy and wonder in your life! Together, we keep the enchantment alive.

For more wisdom and guidance, please visit: niftycharms.com/terms-of-use

