

# Swyftx – Terms of Use

## Notice to customers

**Please note** that the following clauses in particular contain information significant to your rights and obligations under these terms of use:

Clause 1.3 – provides that these terms can change from time to time (but you may cease using the Platform if you do not agree with the amended terms).

Clause 7.2 – provides that you are responsible for the security of your account, and that if we receive an Instruction from you to carry out a Transaction or Ancillary Transaction, we may process it without verifying that the Instruction is actually from you.

Clause 7.3 – provides that we can refuse to process a Transaction or Ancillary Transaction for any reason.

Clause 7.5 – provides that, subject to any rights you may have under Australian Consumer Law, Transactions and Ancillary Transactions are non-reversible and non-refundable.

Clause 7.10 – provides that we can disclose your personal information to third party payment processors, in accordance with our Privacy Policy.

Clause 8.2 – provides that we can change the Service Fees at any time, with 14 days' notice.

Clause 9 – provides that we can modify or withdraw affiliate credits at any time, or modify or withdraw affiliate programs at any time.

Clause 10 – provides that we can modify or withdraw referral credits at any time, or modify or withdraw referral programs at any time.

Clause 14 – provides that, subject to any rights you may have under Australian Consumer Law, we do not provide any warranties or guarantees about the Services or Platform, and are not liable to you for any losses you may suffer in connection with the Services or Platform.

Clause 15 – provides that, subject to any rights you may have under Australian Consumer Law, you are not able to claim against us for any financial losses you may suffer in connection with your use of the Services or Platform.

Clause 15 – provides that you protect us from financial losses caused by your misuse of the Services or Platform, breach of these terms, or breach of any applicable law.

**Please note** that our Risk Disclosure Statement applies to you. Under clause 3.1 of these Terms of Use, you acknowledge and warrant that you have read our Risk Disclosure Statement. Additionally, clause 3.1 incorporates certain terms of our Risk Disclosure Statement into these Terms of Use.

## 1 Acceptance of Terms of Use

- 1.1 This website, app, platform and any service offered under the name “Swyftx” (“**Platform**”) is operated and owned by Swyftx Pty Ltd (ACN 623 556 730) (“**Company**”) and its related entities or bodies corporate (“**Swyftx**”, “**we**”, “**us**” or “**our**”).
- 1.2 Your use of this Platform is subject to these terms (“**Terms of Use**”). The Terms of Use constitute a binding legal agreement between you and us, and your use of the Platform constitutes your acceptance and acknowledgement of the Terms of Use, our Privacy Policy, and any other policy displayed on the Platform. If you do not agree to the Terms of Use or our policies, you must not use the Platform.
- 1.3 We may amend or modify the Platform, the Terms of Use or Privacy Policy at our sole discretion and at any time. Subject to clause 1.4, any amendments are effective 14 days after publication on the Platform. Your continued use of the Platform indicates your continued acceptance of the Terms of Use as modified. If you do not agree with the amended terms, you may cease using the Platform.
- 1.4 We may amend or modify any of the Platform, the Terms of Use or the Privacy Policy with immediate effect if required to do so in order to comply with any applicable law. Your subsequent or continued use of the Platform will constitute your acceptance of the Terms of Use as modified. If you do not agree with the amended terms, you may cease using the Platform.
- 1.5 Access to and use of the Platform is subject to:
  - a. you being at least 18 years old and having the legal capacity to enter into a binding contract, and by using the Platform you warrant that this is the case; and
  - b. if representing an entity, you disclosing all information to us as requested by us, whether directly or on the Platform.
- 1.6 These Terms of Use will prevail over any other terms or agreement between you and us, unless explicitly stated otherwise in the other agreement.

## 2 Definitions

- 2.1 In these Terms of Use:

**Account Closure Notice** means a written notice given by us to you regarding the closure of your account in accordance with these Terms of Use.

**Affiliate Credit** has the meaning ascribed to the term under clause 9.1.

**Ancillary Transaction** means any deposit, holding, withdrawal, transfer, or any other movement or interactions with an Asset that is not a Transaction.

**Asset** means a Crypto Asset, a Fiat Asset or both.

**Consideration** means, in relation to a Transaction (or where applicable an Ancillary Transaction), the consideration payable and exchanged, whether Crypto Assets or Fiat Assets.

**Content** means any content whatsoever that you upload to the Platform, including but not limited to any: bios; experience; descriptions; reviews; usage data; feedback; comments; chats; and media.

**Converted Customer** has the meaning ascribed to the term under clause 9.1.

**Crypto Asset** means virtual, electronic or cryptographic currency, including tokens or blockchain assets, as may be added to or removed from the Platform by us from time to time in our sole and absolute discretion. For the avoidance of doubt, a Crypto Asset does not include a Fiat Asset.

**Eligible Cryptocurrency** means a Crypto Asset designated by Swyftx from time to time for lending in connection with the Earn Program (as that term is defined in clause 20).

**Fiat Assets** means any accepted fiat currency as may be added to or removed from the Platform by us from time to time in our sole and absolute discretion, and where the context permits includes, to the extent consistent with clause 19, NZ Fiat Clearing Funds.

**Instruction** has the meaning ascribed to the term under clause 7.1 and, where the context permits, includes, to the extent consistent with clause 19, a Direction.

**NZ Fiat Clearing Facility** has the meaning ascribed to that term in clause 19.2.

**NZ Fiat Clearing Funds** has the meaning ascribed to that term in clause 19.4.

**Platform** has the meaning ascribed to the term under clause 1.1.

**Privacy Policy** means our privacy policy available at <https://swyftx.com/legal/>.

**Referral Credit** has the meaning ascribed to the term under clause 10.1.

**Risk Disclosure Statement** means our risk disclosure statement available at <https://swyftx.com/terms-of-use/>.

**Service Fees** means our fees for providing any aspect of the Service, including without limitation, processing Transactions, Ancillary Transactions, distributions, conversions and Crypto Asset mining.

**Service** or **Services** has the meaning ascribed to the term under clause 6.1(a).

**State** means Queensland, Australia.

**Terms of Use** means these Terms of Use.

**Transaction** means a transaction for the sale or purchase of Crypto Assets (whether or not involving Fiat Assets).

**User** means any user of this Platform whether registered or unregistered.

**Warranties** mean any warranties, conditions, terms, representations, statements and promises of whatever nature, whether express or implied.

**We, we, us, our** or **Swyftx** means Swyftx Pty Ltd (ACN 623 556 730) and its related entities or bodies corporate.

**You, you** or **your** mean anyone who uses this Platform, including any individual or entity that you represent.

### 3 IMPORTANT NOTICES

- 3.1 You acknowledge that buying, selling, trading in or holding Crypto Assets is risky, Crypto Assets may be subject to extreme price volatility, and that Crypto Assets are not recognised legal tender in Australia, New Zealand and other parts of the world. Further risks in relation to Crypto Assets are set out in our Risk Disclosure Statement. You acknowledge and warrant that you have read our Risk Disclosure Statement and, as stated in that document, have taken any appropriate action in relation to your use of our Service. To the extent that our Risk Disclosure Statement purports to create rights and obligations between you and us, and to the extent permitted by law, the terms of that document will be incorporated into and form part of these Terms of Use. You further acknowledge and warrant that you understand the risks associated with Transactions, Ancillary Transactions, the Service, Fiat Assets, Crypto Assets, the NZ Fiat Clearing Facility and any other goods, services or products provided in connection to this Platform.

- 3.2 You acknowledge that it is your responsibility to undertake your own investigations and enquiries and satisfy yourself of the legal status of your use of the Service, Fiat Assets, Crypto Assets, the NZ Fiat Clearing Facility and any other good, service or product in connection to this Platform. You acknowledge and agree that you use the Service, Fiat Assets, Crypto Assets, the NZ Fiat Clearing Facility and any other good, service or product in connection to this Platform at your own risk.
- 3.3 You agree that before acting on, or relying upon, any materials hosted or made available through the Platform, you have undertaken your own investigations and enquiries, and sought, as you feel is necessary, any independent legal, accounting, tax, financial, business, technical and other professional advice from an appropriately qualified professional advisor.
- 3.4 We are registered with AUSTRAC as a digital currency exchange provider under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) in Australia and with the Department of Internal Affairs under the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* in New Zealand. We do not offer regulated financial products or services under the *Corporations Act 2001* (Cth) or the *Financial Markets Conduct Act 2013* and, as such, do not hold or operate under an Australian financial services licence or a New Zealand financial product market licence.
- 3.5 We do not provide any advice, including financial product advice or investment advice. Any recommendations, signals or other market related information distributed on the Platform are general in nature, intended for information purposes only and/or represent the views of customers or third-party information providers. Such information may or may not be consistent with our views or those of our affiliates or employees. The provision of such information does not represent our opinion or have our endorsement.
- 3.6 You are solely responsible for:
- maintaining the security of any Crypto Assets not held in a Swyftx wallet;
  - the security and integrity of any wallets or keys that are not associated with a Swyftx wallet; and
  - the security and integrity of your computers, devices, software and digital interfaces.
- 3.7 It is your responsibility to ensure that the wallet address of the person that is not us and with whom you enter into a Transaction or an Ancillary Transaction is correct and up to date. You understand, acknowledge and agree that we are not able to control or effect the performance of, return or recovery of any Crypto Asset that is sent pursuant to any Transaction or Ancillary Transaction (other than a Transaction or Ancillary Transaction exclusively with us).

## 4 Registration

- 4.1 You may be required to register on the Platform to access certain Platform features.
- 4.2 When you register and activate your account, you will provide us with personal information such as your name, email address, the name of the legal entity you are representing and other details. You must ensure that this information is accurate and current. We will handle all personal information we collect in accordance with our Privacy Policy.
- 4.3 You will create a username and password. You are responsible for keeping this username and password secure and you are responsible for all use and activity carried out under this username. You must not share your account credentials with any third party. We do not authorise anyone to use the Platform on your behalf, and we will not be liable for any loss or damage arising from any kind of activity, unauthorised or otherwise, that takes place under your account in circumstances where such loss or damage is not directly attributable, and caused by, our acts or omissions.

- 4.4 On registration, as you access certain Platform features and as you use the Service, we may ask for any other information which we are required to collect or which we may consider to be reasonably necessary. We may require you to provide evidence and documents confirming certain information. We will handle all documents containing personal information in accordance with our Privacy Policy.
- 4.5 If you provide any information that is untrue, inaccurate, not current, or incomplete, or we have reasonable grounds to suspect that such information is untrue, inaccurate, not current, or incomplete, we have the right to suspend or terminate your account and refuse any and all current or future use of the Platform.
- 4.6 You must not impersonate another individual, business or company. If you attempt to present yourself as another individual or company, your account may be suspended and such activity may be reportable to regulators or law enforcement.
- 4.7 You agree not to create an account or use the Platform if you have been previously removed or suspended by us from the Platform for breaching the Terms of Use or law. This includes any indirect use or creation of indirect accounts, such as through an entity, associate, affiliate or otherwise.

## 5 Your conduct

- 5.1 You are responsible for your use of the Platform and for any use of the Platform made using your account. You agree not to access, copy, or otherwise use the Platform including our intellectual property and trademarks, except as authorised by these Terms of Use or as otherwise authorised in writing by us.
- 5.2 In circumstances where we reasonably suspect that you have used our Platform or the Service to participate in market manipulation (such as, but not limited to, "pump and dump" schemes), regardless of whether prohibited by law, we reserve the right to close your account. We accept no liability for any losses associated with, or any suspension or closure of your account, in connection with suspected market manipulation.
- 5.3 When using the Platform, the Service or the NZ Fiat Clearing Facility, you agree that you will not:
  - a. act in a way which is otherwise than courteous and polite;
  - b. breach any policy on the Platform or any law which may be applicable to the use of the Platform;
  - c. breach, or cause us to breach, any law, regulation, rule, code or other legal obligation;
  - d. use any automated systems including "robots" and "spiders" other than those permitted through our public API and only use such automated systems in accordance with these Terms of Use;
  - e. interfere with or compromise our Platform's integrity or decipher any server transmissions;
  - f. impose an unreasonably large load on our infrastructure;
  - g. upload viruses, worms, or invalid data to the Platform;
  - h. collect or retain any personally identifiable information contained in the Platform;
  - i. access the Platform by any means other than as authorised in these Terms of Use, including virtual private networks which are expressly forbidden;
  - j. stalk, harass, bully or harm others; or
  - k. impersonate any person or entity.

## 6 Our role in relation to Transactions

- 6.1 You acknowledge and agree that:

- a. you appoint us as your agent to act on your behalf and enter into Transactions and Ancillary Transactions, including those with third party counterparts, and otherwise handle your Assets as we operate the Platform in accordance with these Terms of Use (“**Service**” or “**Services**”).
  - b. neither a Transaction nor Ancillary Transaction will, under any circumstance, create any relationship of employment, partnership or otherwise between us and you, or us and any User or counterpart, except as stated in paragraph 6.1(a);
  - c. we act solely as your agent in all of your Transactions and Ancillary Transactions on the Platform;
  - d. in relation to each Transaction and Ancillary Transaction (where applicable), the counterpart is (if you are the seller), or you are (if you are the buyer), solely liable for any Consideration under the Transaction. We merely act as facilitator and agent for the payment of such Consideration and we will not be liable for the Consideration under any circumstance, except where loss or damage to such Consideration is caused by our direct acts or omissions. You agree that you will not pursue any actions, legal or otherwise, against us for any non-payment of Consideration that is not caused by our direct acts or omissions, and that this provision constitutes a bar to any such actions or proceedings.
- 6.2 We are not liable in any way for anything that occurs outside of our reasonable control in connection with a Transaction or Ancillary Transaction.

## 7 Using the Platform

- 7.1 When you issue commands via the Platform (“**Instructions**”), you appoint us as your agent to provide the Service and enter into Transactions and Ancillary Transactions (on the basis of the Instructions) on your behalf. Subject to clause 19.4(e), you irrevocably authorise us to do anything necessary on your behalf to give effect to your Instructions or a related Transaction or Ancillary Transaction, including applying or deducting any Assets from your account.
- 7.2 You acknowledge and agree that you are exclusively responsible for any Instruction provided to us electronically that is identified with your password and username and for any electronic written instruction provided to us from persons we reasonably believe are authorised by you. Verification of any instruction (via the Platform or otherwise) is at our sole discretion and evidence may be requested to confirm your identity. If you fail the verification process, we may terminate your account by sending you an Account Closure Notice.
- 7.3 We may refuse any Instructions (subject to clauses 19.4(e) and 19.5), or to perform any Transaction or Ancillary Transaction, in our sole and absolute discretion. We will not be liable for any failure to identify a User or enter into a Transaction or Ancillary Transaction.
- 7.4 It is your sole responsibility to enter correct and accurate Instructions, including without limitation any names, addresses, account numbers and amounts.
- 7.5 Subject to clause 14.11, all Transactions and Ancillary Transactions are final, non-reversible and non-refundable unless we agree otherwise in writing (in our sole and absolute discretion).
- 7.6 In the circumstance where you have received, acquired, or accumulated any Assets due to an error, glitch or loophole, we may take reasonable action, including but not limited to restricting access or deducting the relevant Assets from your account, to recover the Assets from your account. We will notify you if such an error has occurred.
- 7.7 It is your responsibility to check your account and monitor the movement of your Crypto Assets, including any pending, lapsed or cancelled movements, through your transaction history and to re-execute any Transactions and Ancillary Transactions which fail.
- 7.8 It is your responsibility to maintain your own records of your Transaction and Ancillary Transaction history.

- 7.9 All deposits and withdrawals of Assets are subject to the limits displayed on our Platform. Subject to clause 1.3, such limits may be changed in our sole and absolute discretion.
- 7.10 All Fiat Asset payments made in the course of your use of the Platform are made using certain third-party payment providers. You acknowledge and agree that in using the Platform, the Services or when making any payment in relation to your use of the Services or a Transaction or Ancillary Transaction, you are subject to the terms and conditions imposed by such payment providers. We may disclose your personal information to such third party payment providers in accordance with our Privacy Policy.
- 7.11 You acknowledge that:
- a. Crypto Assets or Fiat Assets deposited with us in your account are not kept separate from those of other Users in our account (subject to clause 19.4(d); and
  - b. there may be small discrepancies between amounts displayed on the Platform and actual amounts held or transacted. This is usually due to rounding issues and market fluctuations.
- 7.12 Some Crypto Assets may entitle you to additional entitlements including without limitation, air drops, forks or other Crypto Asset entitlements (“**Entitlements**”). Whilst we will make reasonable efforts to support these Entitlements, we do not guarantee or give any warranties in relation to any such Entitlements or support of the Entitlements. We are entitled to charge additional fees in relation to the Entitlements as notified from time to time.

## 8 Service Fees and payments

- 8.1 In consideration for the Service and (if provided to you) the NZ Fiat Clearing Facility, you must pay us the Service Fees and any other additional fees as displayed on the Platform from time to time.
- 8.2 We may change the Service Fees and add additional fees from time to time at our discretion, with 14 days’ notice. Changes to Service Fees will apply to services provided from the expiry of the notice period.
- 8.3 Payments made over the thresholds and limits stated on the Platform may be held for increased durations to allow us to comply with our obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) or the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* (in New Zealand).
- 8.4 You acknowledge and agree that where a request for any payment (whether pursuant to a Transaction, Ancillary Transaction or by way of a transfer from your bank account as a credit to your NZ Fiat Clearing Account (within the meaning of clause 19.3(a)) or as part of the Service Fees) is returned or denied, for whatever reason, by your financial institution or is unpaid by you for any other reason, then you are liable for any associated costs, including banking fees and charges.
- 8.5 To the extent permitted by law, and subject to clause 14.11, the Service Fees are strictly non-refundable unless we determine otherwise, which we may do at our sole discretion and on a case-by-case basis.
- 8.6 The Service Fees and any other amount due will be automatically debited from any Transaction, Ancillary Transaction or otherwise from the Assets held in your account.

## 9 Affiliate program

- 9.1 We may run an affiliate program for the Platform from time to time that will allow you to refer non-Users (“**Converted Customer**”) to the Platform in exchange for an affiliate credit (“**Affiliate Credit**”).

- a. The Affiliate Credit will be calculated as a percentage of any fee, or portion of a fee, charged by us for a Transaction (but not on any other charges, fees, levies, etc) carried out by the Converted Customer.
  - b. The percentage used to calculate the Affiliate Credit:
    - i. will be specified on the Platform and may include a base rate and a bonus rate. These rates are subject to change and may be modified or withdrawn by us in our sole discretion; and
    - ii. will be the current percentage set by us for a Transaction carried out by a Converted Customer, regardless of the time they became customers.
- 9.2 Subject to clauses 9.4 and 9.5, you will be eligible to receive the Affiliate Credit and any such Affiliate Credit will accrue to your account for as long as the Converted Customer maintains their account with us, provided such Converted Customers were not created as a result of clause 9.9 below.
- 9.3 If you accumulate more than AUD \$10 in your account as Affiliate Credit and provided your account has been verified in accordance with these Terms of Use, we will automatically make your Affiliate Credit balance available for withdrawal or use on the Platform.
- 9.4 All affiliate programs will be conducted at our sole discretion and may be activated, modified, or withdrawn by us without prior notice. If a new affiliate program is introduced, you will be notified by email about the new affiliate program and our intention to transfer you to the new affiliate program.
- 9.5 Your eligibility to receive the Affiliate Credit is subject to the following requirements (“**Affiliate Eligibility Requirements**”):
- a. you must have completed at least one Transaction on the Platform;
  - b. your account must not be closed; and
  - c. any other Affiliate Eligibility Requirements specified on the Platform from time to time.
- If any of these Affiliate Eligibility Requirements is not met within 60 days of your Affiliate Credit balance first being accumulated, Swyftx may deem you ineligible for the affiliate program and your accumulated Affiliate Credit and bonus may be forfeited.
- 9.6 The Affiliate Credits will be earned only in accordance with the terms and conditions of the current affiliate program made available to you. This includes any new Affiliate Credits accruing from Converted Customers referred before transfer to a new program.
- 9.7 You acknowledge and agree that the Affiliate Credit may vary as a result of any variation in the Service Fees chargeable by us under these Terms of Use.
- 9.8 The affiliate program cannot be used simultaneously with the refer a friend program (clause 10) for the same Converted Customer. In the event that a Converted Customer, during sign-up, uses both the refer a friend program promotion code and the affiliate program link, Swyftx will apply the refer a friend program and exclude the affiliate program.
- 9.9 You agree that you will not use your own affiliate link to create and register an alternate account for yourself. This practice will be considered abuse of the affiliate program and may result in immediate termination of your account(s) and forfeiture of your accumulated Affiliate Credit and bonus.

## 10 Refer a friend program

- 10.1 We may run a refer a friend program from time to time that will allow you to refer a Converted Customer to the Platform in exchange for:
- a. you receiving a referral credit (“**Referral Credit**”); and/or
  - b. that Converted Customer receiving a Referral Credit.



- 10.2 The Referral Credit will be an amount of an Asset, as published on our Platform from time to time. This amount is subject to change and may be modified or withdrawn by us in our sole discretion. If the Referral Credit is offered to both you and the Converted Customer, the Referral Credit for you may be of a different amount to the Referral Credit for the Converted Customer.
- 10.3 The refer a friend program will be conducted at our sole discretion and may be activated, modified or withdrawn by us without prior notice. If a new refer a friend program is introduced, you will be notified by email.
- 10.4 Eligibility to receive the Referral Credit is subject to the following requirements (“**Referral Eligibility Requirements**”):
- a. you and the Converted Customer must be registered on the Swyftx Platform, and both accounts must not be closed;
  - b. you and the Converted Customer must have completed certain levels of verification as published on our Platform from time to time, at our absolute discretion;
  - c. you and the Converted Customer must have made a Fiat Asset deposit to the Platform (above the minimum amount applicable to a Fiat Asset deposit at that time) and must have completed at least one Transaction on the Platform;
  - d. the Converted Customer must have successfully entered the Refer a Friend promotion code; and
  - e. any other requirements specified on the Platform, at our absolute discretion, from time to time.

If any of these Referral Eligibility Requirements is not met within 30 days of your Converted Customer’s sign-up to the Platform, there will be no entitlement to receive the Referral Credit for that Converted Customer.

- 10.5 If, under this clause 10, you are entitled to a Referral Credit, the Referral Credit will be sent to your Swyftx “Trade” wallet after the Referral Eligibility Requirements are met.
- 10.6 You agree that you will not use your own promotion code to create and register an alternate account for yourself. This practice will be considered abuse of the program and may result in immediate termination of your account(s) and forfeiture of your Referral Credit(s).

## 11 Intellectual property rights

- 11.1 Except for any Content, or where otherwise indicated or implied by context, we are the sole owners or licensees of all intellectual property comprised in the Platform (including all intellectual property comprised in the Platform content), and nothing in these Terms of Use constitutes a transfer of any intellectual property rights in or related to the Platform or Platform content.
- 11.2 You agree to comply with and maintain all copyright notices and other restrictions on Platform content accessed on or via the Platform.
- 11.3 You must not do anything which breaches or otherwise interferes with our intellectual property rights or the intellectual property rights of any of our third-party licensors. You may not distribute, reproduce, publish, alter, modify or create derivative works from the Platform or Platform content without our prior written permission and, if applicable, the relevant third-party licence or exploit such content for commercial benefit.
- 11.4 You acknowledge and agree that damages may not be an adequate remedy for a breach of this clause 11 and that equitable or injunctive relief may be necessary.

## 12 Third Party Service Providers

- 12.1 We may use third parties to process Transactions, Ancillary Transactions or payments, to conduct risk analysis or offer Crypto Assets, as applicable for the requested Transaction, Ancillary Transaction and/or payment method (“**Third Party Service Providers**”). Third Party Service Providers may include, without limitation, exchange platforms. We reserve the right to change and replace any Third Party Service Provider at our sole and absolute discretion. Services provided by Third Party Service Providers are governed exclusively by the terms of use of such Third Party Service Providers, and we have no responsibility or liability with respect to any of their acts or omissions and any result thereof. We do not accept any responsibility for any delay, error, act or omission of a Third Party Service Provider.

## 13 Third party links

- 13.1 The Platform may contain links to (and integrations with) websites that are owned and operated by third parties. This may include other suppliers and service providers who provide goods or services in connection with the Services. We have no control over these external websites, which are governed by terms and conditions and privacy policies independent of us.
- 13.2 You acknowledge and agree that when you access a third-party website available via a link contained on the Platform:
- you do so at your own risk and understand that you should review the privacy policy and terms and conditions of that website;
  - we are not liable for the content, accuracy, lawfulness, appropriateness, or any other aspect of that third-party website; and
  - you acknowledge and agree that to the full extent permitted by applicable law, we will not be liable for any loss or damage suffered by you or any other person as a result of or in connection with your access or use of any third-party website available via a link on the Platform.

## 14 Disclaimer and limitation of liability

- 14.1 SUBJECT TO CLAUSE 14.11 AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE EXCLUDE ALL WARRANTIES WHATSOEVER UNLESS EXPRESSLY STATED, INCLUDING BUT NOT LIMITED TO IN RELATION TO ANY USE OF THE PLATFORM, ANY USER OR ANY SERVICES OFFERED.
- 14.2 SUBJECT TO CLAUSE 14.11, WE DO NOT GUARANTEE OR GIVE ANY WARRANTIES THAT ANY ORDER PLACED BY YOU WILL BE EXECUTED AT THE PRICE SHOWN TO YOU OR REQUESTED BY YOU. WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE SUFFERED BY YOU IN THE EVENT YOUR ORDER EXECUTES AT A LESS FAVOURABLE PRICE FOR ANY REASON, INCLUDING BY REASON OF ORDER EXECUTION DURING PERIODS OF ILLIQUIDITY OR HIGHER VOLATILITY.
- 14.3 You acknowledge that when you use the Platform, enter into a Transaction or Ancillary Transaction, receive Services, and use the NZ Fiat Clearing Facility (including as beneficiary of the trust of the NZ Fiat Clearing Funds) you do so entirely at your own risk and relying on your own enquiries and judgement.
- 14.4 We do not endorse or recommend any particular User, Third Party Service Providers or any rating information displayed (if any) on the Platform.

- 14.5 To the extent that any law restricts our right to exclude Warranties under these Terms of Use, these Terms of Use must be read subject to those provisions and nothing in these Terms of Use is intended to alter or restrict the operation of such provisions. If those statutory provisions apply, notwithstanding any other provision of these Terms of Use, to the extent that we are entitled to do so and subject to clause 14.11, we limit our liability pursuant to such provisions to:
- a. the supply of the Services again; or
  - b. the payment of the cost of having the Services supplied again.
- 14.6 Subject to clause 14.11 and to the maximum extent permitted by law, our maximum liability to you (whether in contract, tort (including without limitation negligence) or otherwise) arising in connection with these Terms of Use or the Platform is limited as follows:
- a. we exclude all liability for consequential, special, indirect or remote loss, including loss of opportunity or business;
  - b. we exclude all liability for any loss or damage caused as trustee of your NZ Fiat Clearing Funds and otherwise in connection with the NZ Fiat Clearing Facility, other than loss or damage caused by our own mistake, fraud, negligence or wilful misconduct;
  - c. our total maximum liability for all claims arising in connection with these Terms of Use, the Platform and or Services, the NZ Clearing Facility and trust of the NZ Clearing Funds pursuant to clause 19 is capped to the total amount of any Service Fees paid by you and relevant to the particular matter (subject to clause 19.9 in relation to NZ Fiat Clearing Funds). This limitation does not apply to any Crypto Assets, funds deposited with us or NZ Fiat Clearing Funds that you are rightfully entitled to in accordance with the Terms of Use;
  - d. our liability is excluded to the extent that you contributed to the liability; and
  - e. our liability is subject to your duty to mitigate your loss.
- 14.7 We are not responsible for any loss or damage caused, directly or indirectly, by any events, actions or omissions beyond our reasonable control including, without limitation, loss or damage resulting, directly or indirectly, from any delays or inaccuracies in the transmission of orders or information due to breakdown or failure of transmission or communication facilities, or electrical power outage.
- 14.8 Subject to clause 14.10, we provide the Platform on an “as is” and on an “as available” basis without any warranties as to continuous, uninterrupted or secure access to the Platform, that its servers are free of computer viruses, bugs or other harmful components, that defects will be corrected, or that you will not have disruption or other difficulties in using the Platform.
- 14.9 All subclauses of this clause 14 are cumulative to one another.
- 14.10 If you are an Australian User, our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service (as defined under the Australian Consumer Law), you are entitled to:
- a. the supply of the services again;
  - b. the payment of the cost of having the services supplied again; or
  - c. cancel your contract with us and a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the service rectified in a reasonable time and supply of the services again or, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

- 14.11 If you are an Australian user, your rights under these terms do not go beyond your entitlements at law. We do not provide any additional warranties, guarantees, or representations other than as required to be provided by law.

## 15 Release and indemnity

- 15.1 Subject to clause 14.10 and to the maximum extent permitted by law, you agree to release the Released Parties from all Loss or Claims arising out of or in any way connected with any Relevant Matter except for any amount that arises from our mistake, fraud, negligence or wilful misconduct. To the extent permitted by law, you further waive any and all rights and benefits otherwise conferred by any statutory or non-statutory law of any jurisdiction that would purport to limit the scope of a release or waiver.
- 15.2 Subject to clause 14.10, you agree to indemnify, defend and hold harmless the Released Parties from any Loss or Claims arising out of:
- a. any illegal, fraudulent, deceptive or dishonest conduct by you in connection with your Transactions, Ancillary Transactions, use of the Platform and/or Services, the NZ Clearing Facility and trust of the NZ Clearing Funds pursuant to clause 19;
  - b. your breach of the Terms of Use; and
  - c. any damage to property, personal injury or death caused by you.
- 15.3 In this clause:
- a. **Claim** means a claim, action, proceeding or demand made against a person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
  - b. **Loss** means a damage, loss, cost, expense or liability incurred by the person concerned however arising, including without limitation penalties, fines, and interest and including those which are prospective or contingent and the amount of which for the time being is not ascertained or ascertainable.
  - c. **Released Parties** means us and our officers, directors, shareholders, agents, employees, consultants, associates, affiliates, subsidiaries, sponsors, and other third-party partners.
  - d. **Relevant Matter** means anything in relation to or in connection with:
    - i. your Transactions and Ancillary Transactions;
    - ii. your use, misuse, or abuse of the Platform, Services and/or the NZ Fiat Clearing Facility and the trust of the NZ Fiat Clearing Funds pursuant to clause 19;
    - iii. any damage to property, personal injury or death;
    - iv. your breach of these Terms of Use;
    - v. any matter for which we have purported to disclaim liability under these Terms of Use;
    - vi. any Third Party Service Providers (within the meaning of clause 12) or payment providers (as described in clause 7.10); and
    - vii. your breach or failure to observe any applicable law, including taxation laws.

## 16 Termination

- 16.1 You acknowledge and agree that:
- a. we may terminate these Terms of Use immediately by notice to you in writing if you have breached these Terms of Use in any way; and
  - b. termination of these Terms of Use or your access to the Platform does not release you from any of your obligations and liabilities that may have arisen or been incurred prior to the date of such termination.

## 17 Force Majeure

- 17.1 In this clause, **Force Majeure** means a circumstance beyond our reasonable control which occurs without our fault or negligence, and includes without limitation an act of God, inevitable accident, storm, flood, fire, earthquake, peril of navigation, epidemic, pandemic, quarantine restrictions, strike, lock-out, boycott or other industrial dispute, hostility, war (declared or undeclared), riot, insurrection, act of terrorism, executive or administrative order or act of either general or particular application of a government (whether de jure or de facto) or of any official purporting to act under the authority of such a government, prohibition or restriction by domestic or foreign laws, regulations or policies and quarantine or customs restrictions.
- 17.2 Any of our obligations to you will be suspended during the time and to the extent that we are prevented from or delayed in complying with that obligation due to a Force Majeure.
- 17.3 We exclude all liability, loss or claims to the extent that they were caused or contributed to by a Force Majeure.

## 18 General

- 18.1 All notices must be in writing and must be made through the Platform or by email. You must send all of your email notices through, and we will send all of your email notices to, the email address used for your registered account. All email notices to us must be sent to [legalnotices@swyftx.com.au](mailto:legalnotices@swyftx.com.au), and we will send you all email notices from an email address ending with @swyftx.com.au. Notices are taken to be read on the day they are received, unless they are received after 5 PM or not on a business day in the State, in which case they are deemed to be received on the next business day in the State.
- 18.2 You must not assign, sublicense or otherwise deal in any other way with any of your rights under these Terms of Use. Where permitted by law, we may assign our rights under these Terms of Use at our sole discretion.
- 18.3 If a provision of these Terms of Use is invalid or unenforceable it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
- 18.4 These Terms of Use, the trust of the NZ Fiat Clearing Funds under clause 19 and the administration of such trust are governed by the laws of the State and each party submits to the exclusive jurisdiction of the courts of the State and all courts of appeal from there.
- 18.5 Any waiver of any term on these Terms of Use by us can only be done in express writing. Any failure on our part to enforce a term does not constitute a waiver and we reserve the right in relation to all breaches unless expressly stated otherwise.
- 18.6 These Terms of Use constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of these Terms of Use, whether orally or in writing. However, nothing in these Terms of Use limits any liability any party may have in connection with any representations or other communications (either oral or written) made prior to or during the term of the agreement, where such liability cannot be excluded.
- 18.7 A provision of these Terms of Use which can and is intended to operate after its conclusion will remain in full force and effect – including all indemnities and releases.

## 19 New Zealand users' specific terms

- 19.1 This section 19 applies only if you are located in New Zealand.

- 19.2 We may (at our sole discretion) provide you with a facility (“**NZ Fiat Account Clearing Facility**”) under which we will hold fiat currency for you and apply that fiat currency as directed by you in connection with your activities via the Platform, on and subject to the terms set out in this clause 19.
- 19.3 An NZ Fiat Clearing Facility will operate as follows, and offer the following functionality:
- a. we will open a fiat currency account (“**Fiat Clearing Account**”) for you in our books.
  - b. you may from time to time transfer an amount of fiat currency from your bank account to us, as a credit to your NZ Fiat Clearing Account.
  - c. where you enter into a Transaction for which the Consideration is payable in fiat currency:
    - i. where you are the buyer under the Transaction, you direct us to pay that Consideration, as a debit to your NZ Fiat Clearing Account; and
    - ii. where you are the seller under the Transaction, you direct us to receive that Consideration, as a credit to your NZ Fiat Clearing Account.
  - d. you can from time to time direct us to transfer an amount of fiat currency from your NZ Fiat Clearing Account to your bank account.
- 19.4 Fiat currency (“**NZ Fiat Clearing Funds**” and “**your NZ Fiat Clearing Funds**”) received by us in cleared funds will be receipted to your NZ Fiat Clearing Account on the following terms, subject to clause 19.5:
- a. We will hold your NZ Fiat Clearing Funds as bare trustee for your benefit, on and subject to the terms of this clause 19 and (to the extent not inconsistent with this clause 19) the remaining provisions of these Terms of Use.
  - b. We will promptly on receipt deposit your NZ Fiat Clearing Funds in, or transfer it to, a segregated account (“**NZ Bank Trust Account**”) that we maintain with a bank in New Zealand, Australia or elsewhere. We may hold your Fiat Clearing Funds across different NZ Bank Trust Accounts.
  - c. An NZ Bank Trust Account may contain both your NZ Fiat Clearing Funds and funds that we hold on trust for other New Zealand Users.
  - d. Your NZ Fiat Clearing Funds will be used only in accordance with:
    - i. your directions given to us (either generally or specifically) via the Platform or in writing (including electronically/by email) (“**Directions**”); and for this purpose, a direction under clause 19.3 to use the NZ Fiat Clearing Account in relation to a Transaction will constitute a Direction by you to pay the Consideration to the relevant seller out of your NZ Fiat Clearing Funds or receive the Consideration from the relevant buyer as an accretion to your NZ Fiat Clearing Funds (as the case may be); or
    - ii. as authorised or permitted by this clause 19.
  - e. We will pay your NZ Fiat Clearing Funds (or such part of your NZ Fiat Clearing Funds as you may from time specify in the relevant Direction) to you upon your Direction, by transfer to your nominated bank account.
  - f. You irrevocably authorise us to comply with all Directions given via the Platform that are identified with your password and username or given in writing (including electronically or by email) from persons we reasonably believe are authorised by you.
  - g. We will comply with your Directions as soon as reasonably practicable, subject to clause 19.3.
  - h. No interest accrues on your Fiat Clearing Funds.
  - i. You irrevocably authorise us to settle any amount that you owe us out of your NZ Fiat Clearing Funds, by transferring a sum of money equal to that amount from the NZ Bank Trust Account (as a deduction from your NZ Fiat Clearing Funds and debit to your NZ Fiat Clearing Account) to ourselves for our own benefit. To avoid doubt, we will not be beneficially entitled to such sum of money until after its transfer out of the NZ Bank Trust Account has been completed.

- j. We may make any deductions or withholdings from your NZ Fiat Clearing Funds that are from time to time required by law or are permitted under these Terms of Use (including under clauses 19.4(i) and 19.4(j)) (collectively, “**Authorised Deductions**”).
  - k. We will account to you for your NZ Fiat Clearing Funds. The accounts for your NZ Fiat Clearing Account will be the same as the accounts for your NZ Fiat Clearing Funds.
  - l. If you close your NZ Fiat Clearing Account or we terminate your access to the Platform, we will promptly (subject to clause 8.3 as relevant) transfer your NZ Fiat Clearing Funds, net of any Authorised Deductions, to your nominated bank account (or if you have not previously nominated a bank account for this purpose, then to the most recent bank account from or to which fiat currency was transferred by or to you under this clause 19); and you irrevocably authorise us to make such transfer.
- 19.5 Notwithstanding any other provisions of this clause 19, we are not required to accept any funds as a credit to your NZ Fiat Clearing Account and accretion to your NZ Fiat Clearing Funds, or to comply with any Direction, where (or in our sole discretion, to the extent that):
- a. to do so would cause the balance of your NZ Fiat Clearing Account and NZ Fiat Clearing Funds to:
    - i. reduce to less than zero; or
    - ii. reduce to an amount that is less than the total of all amounts required to complete all Directions you have previously given us (to the extent not yet completed) and cover all Authorised Deductions (to the extent yet to be made);
  - b. we have determined not to enter into or perform the relevant Transaction as your agent, pursuant to clause 7.3;
  - c. a third party asserts an interest in or claim to your NZ Fiat Clearing Funds, unless (and then only to the extent that) a court of competent jurisdiction orders otherwise;
  - d. to do so would in our reasonable opinion likely breach or contravene an applicable legal or regulatory requirement or restriction; or
  - e. we do not provide the NZ Fiat Clearing Facility in relation to the relevant fiat currency (in our sole discretion) at the relevant time.
- 19.6 You represent and warrant to us, on a continuing basis, that no third party has any right, interest, claim or title in or to any funds paid or transferred to us as a credit to your NZ Fiat Clearing Facility or forming part of your NZ Fiat Clearing Funds, and that you are lawfully entitled to give us each Direction which you in fact give us.
- 19.7 You may close your NZ Fiat Clearing Account and terminate your use of the NZ Fiat Clearing Facility by giving us an Instruction to that effect. We may further at any time in our sole discretion close your NZ Fiat Clearing Account and terminate your access to the NZ Fiat Clearing Facility (and you release us from all liability, loss, or claims suffered by you as result of or arising out of such closure and termination). Any such closure and termination (whether by you or by us) does not release you from any of your obligations and liabilities that may have arisen or been incurred prior to the date of termination.
- 19.8 To avoid doubt, all other clauses of these Terms of Use apply to the matters provided for in this clause 19, to the extent not inconsistent with the specific provisions of this clause 19.
- 19.9 Nothing in clause 14.6(c) limits our liability to repay your NZ Fiat Clearing Funds (net of Authorised Deductions) on and subject to the terms of clause 19.

## 20 Terms related to Earn

- 20.1 This clause 20 sets out the conditions upon which we will make a lending program (“**Earn Program**”) available to you in respect of the Eligible Cryptocurrencies listed on our website from time to time. By participating in the Earn Program, you agree that you have read, understood and accepted the terms of this clause 20.

- 20.2 The Earn Program allows you to, in exchange for entering into a loan of your Eligible Cryptocurrencies to Swyftx under the terms of this clause 20, earn a financing fee from Swyftx (“**Earn Rewards**”) in the form of in-kind Eligible Cryptocurrencies (the “**Earn Credit Contract**”). Earn Rewards accrue daily, at the relevant rate published by Swyftx on the Platform, and are automatically added to the principal of your loan (such that the relevant rate is applied each day to the principal plus the amount accrued to that date).
- 20.3 By lending your Eligible Cryptocurrencies to Swyftx, you agree to grant Swyftx all rights and title to such Eligible Cryptocurrencies, for Swyftx to use in its sole discretion during the term of the Earn Credit Contract.
- 20.4 The loan of your Eligible Cryptocurrencies to Swyftx is open-ended, such that you may terminate the loan at any time (a “Flexible Earn Credit Contract”). Swyftx may vary the rate from time to time at its sole discretion after providing you with a reasonable period of prior notice of such variation.
- 20.5 The balance of Eligible Cryptocurrencies loaned by you to Swyftx, and any Earn Rewards gained as a result, are visible in your Swyftx account. Upon termination of your Earn Credit Contract, Swyftx will return the borrowed Eligible Cryptocurrencies and deliver any Earn Rewards accrued under your Earn Credit Contract, in each case by transferring such Eligible Cryptocurrencies and Earn Rewards from your Swyftx “Earn” wallet to your Swyftx “Trade” wallet, within your Swyftx account. The Earn Rewards will be, at least, the total Earn Rewards accrued as at the date one day prior to the date of termination.
- 20.6 The Earn Program is neither a financial product (as that term is defined in the *Corporations Act 2001* (Cth)), an investment program nor a speculative tool. Rather, you are earning Earn Rewards as a financing fee on the loan of Eligible Cryptocurrencies you have transferred to Swyftx, pursuant to the Earn Credit Contract and in accordance with the rates published by Swyftx from time to time, in accordance with these Terms of Use.
- 20.7 By agreeing to these Terms of Use and transferring any Eligible Cryptocurrencies to your Swyftx “Earn” wallet provided by the Swyftx Platform (which, for the avoidance of doubt, shall be deemed as completed only upon the receipt of such Eligible Cryptocurrencies in the applicable Swyftx “Earn” wallet controlled by Swyftx), you agree to lend such Eligible Cryptocurrencies to Swyftx in accordance with these Terms of Use.
- 20.8 The Earn program, and Earn Rewards paid and the rate at which Earn Rewards are calculated, are subject to all applicable laws and regulation, and to the extent we are limited or restricted from providing the Earn Program or paying an amount as Earn Rewards for any reason by applicable law and/or regulation, we will comply and will attempt to notify you as soon as practicable.

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