

# **HAPPYCHARM LTD'S TERMS AND CONDITIONS FOR USE OF THE HAPPYCHARM PLATFORM**

## **PLEASE READ THE TERMS AND CONDITIONS BELOW CAREFULLY.**

This is a legally binding agreement (EULA) between you (User or you) and HAPPYCHARM , Sertus Incorporations (Seychelles) Limited, Sertus Chambers, Second Floor, The Quadrant, Manglier Street, Victoria, Mahe, Republic of Seychelles. (Supplier, us, we or our).

Under this EULA, we are acting as a broker and making available to you the happycharm Platform (Platform) with all the content, material or services accessible within such software platform and all updates and upgrades to them (Platform Services, and Platform Service refers to each Platform Service separately). Alongside the Platform Services we also provide support services, as described in the Support Services Terms: [click here to see Support Services Terms](#) (Support Services).The Platform Services and the Support Services are referred to together in this agreement as the 'Services'.

**You must be at least 18 years old and resident in a country where use of the Platform (and cryptocurrency in general) is legal in order to access and use the Platform Services.**

PLEASE READ THE TERMS OF THIS EULA CAREFULLY. IF YOU CLICK ON THE 'ACCEPT' BUTTON ONCE YOU HAVE COMPLETED READING THESE TERMS, YOU ARE AGREEING TO AND ACCEPTING THE TERMS OF THIS EULA. THIS MEANS THAT THE TERMS AND CONDITIONS PROVIDED IN THIS EULA WILL BE LEGALLY BINDING ON YOU.

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, CLICK ON THE 'REJECT' BUTTON BELOW. THIS WILL MEAN THAT YOU ARE NOT ALLOWED TO ACCESS OR USE THE PLATFORM SERVICES.

YOU MAY PRINT THE WEB PAGE CONTAINING THIS AGREEMENT OR SAVE IT AS A FILE ON YOUR DEVICE.

## **1 LEGAL DOCUMENTS**

- 1.1 The terms and conditions in this EULA alongside any policies referred to in this EULA , together form this **'Agreement'**.
- 1.2 if there is any inconsistency in the rights and obligations set out in this EULA and/or any of the policies or other documents referred to in the EULA, the terms of this EULA shall have priority over any policies or other documents referred to in this EULA.
- 1.3 Without changing the order of priority set out at clause 1.2, later versions of the documents listed at that clause will take priority over earlier versions if there is any conflict or inconsistency between them.

## **2 PLATFORM SERVICES**

- 2.1 You must sign up and create an account on the Platform in order to access the Platform Services. In order to create an account, you will need to use a username and password. Please note that HappyCharm is a distributed platform where all machines are contributed by users. We prioritize machines with high stability, but the HappyCharm platform cannot guarantee the uptime of the machines. In the event of machine downtime, we will fully refund the fees for the day of downtime. When using the machine, please be sure to back up your data in a timely manner to avoid data loss.
  - 2.2.1 where users are able to rent the use of graphic processing units (GPUs) cycles which are made available by other users using the Platform (a Renter) in exchange for paying to us the Charges (as described in clause 3.3 below); and/or
  - 2.2.2 where users are able to contribute GPU cycles to the Platform (a Contributor) in exchange for payment by us (as described in clause 3.4 below).

### **3 CHARGES AND PAYMENT**

- 3.1 You can sign up and create an account on the Platform free of charge.
- 3.2 In consideration of us providing the Platform Services referred to in clause 2.2.1, you must pay our charges (Charges) in accordance with this clause 3.
- 3.3 In order to access and use the Platform Service referred to in clause 2.2.1, a Renter must:
  - 3.3.1 login to your account on the Platform and choose the relevant Platform Service (in this case, to rent GPUs);
  - 3.3.2 when prompted to do so, select the number of GPUs you wish to rent and the duration (which is expressed as a number of hours) for which you wish to rent such GPUs;
  - 3.3.2 when the prompted with the Charges for the number and duration of the GPUs you selected in accordance with clause 3.3.2, you must pay to us the relevant Charges in accordance with this clause 3.
- 3.4 When the Contributor accesses and uses the Platform Service referred to in clause 2.2.2, we will pay to the Contributor the following charges into their crypto wallet which they attached to the Platform when they signed up to the Platform.
- 3.5 We reserve the right to increase (or decrease) the Charges at any time in line with any fluctuations in the market price of GPUs, which will take effect immediately.
- 3.6 As a Renter, payment for the Platform Service described in clause 3.3 is in advance. The Renter must pay the relevant Charges to us when prompted to do so on Platform before you can access the Platform Service, via either:
  - 3.6.1 their crypto wallet which they attached to the Platform when they signed up to the Platform; or
  - 3.6.2 fiat payment by using a debit card or credit card, and payment may be taken from the Renter immediately or otherwise.
- 3.7 We do not send Renters invoices following their payment but all payments made to us by Renters, and made by us to Contributors, can be viewed on the dashboard of your crypto wallet on the Platform.

### **4 RIGHTS OF ACCESS AND USE**

- 4.1 In consideration for the Renter's payment of the relevant Charges as set out in clause 3, and subject to clause 4.3, the Renter may access and use the paid for Platform Services as strictly necessary for their use of the Platform Services, provided they follow all of the rules described in this Agreement.
- 4.2 A Contributor may access and use the Platform Services as strictly necessary for their use of the Platform Services, provided they follow all of the rules described in this Agreement.
- 4.3 You must only use the Platform Services:
  - 4.3.1 personally and for non-business use; and
  - 4.3.2 are at all times subject to our suspension rights as set out at clause 17.
- 4.4 You are not allowed to:
  - 4.4.1 modify the code of the Platform Services in any way, including inserting new code, either directly or through the use of software platform;
  - 4.4.2 deliberately attempt to avoid, manipulate or interfere with any security features included in the Platform Services; or

4.4.3 pretend that the Platform Services are your own or make them available for others to access or use in whatever form (including by way of copying any code of the Platform Services and creating an independent version).

5 SUPPORT AND CONTACT

5.1 If you need to get in touch with us, you can use any of the following methods:

Email	enquiry@happycharm-ai.com
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5.2 If you need to give us notice in accordance with any of the terms of this Agreement, you can only do this by email or by contacting us at the support pages or social media accounts set out in clause 5.1. You cannot give us notice under this Agreement by any other method.

5.3 If you need to get in touch with us about anything else, please feel free to contact us in the way that works best for you. However, please make sure that you provide us with your contact details otherwise we may not be able to respond to your query.

5.4 If we need to get in touch with you, we will usually do so by the email you have provided to us.

5.5 Support Services will be available to you for each Platform Service for as long as you have paid the relevant subscription to the relevant Platform Service.

5.6 We will use our reasonable endeavours to notify you in advance of scheduled maintenance, however, it may not be possible to notify you in advance of any downtime caused by an event or sequence of events beyond our reasonable control, or which is required for emergency maintenance.

6 PRIVACY AND YOUR PERSONAL INFORMATION

Protecting your personal information is important to us. Our latest Privacy Notice from time to time (available at: [Link](#)) explains what personal information we collect from you, how and why we collect, store, use and share such information, your rights in relation to it and how to contact us and supervisory authorities if you have a query or complaint. Note that some personal information is collected automatically by the Platform Services, whereas other personal information is collected by us at the request of you or us. Please read the information set out in our Privacy Notice carefully as it is important.

Privacy Notice link: [https://happycharm.com/pdf/Privacy\\_Policy.pdf](https://happycharm.com/pdf/Privacy_Policy.pdf)

7 COLLECTION OF TECHNICAL INFORMATION

We may collect and use technical data that might include, for example, the specifications of your device and its software platform in order to help us provide updates to the Platform Services, product support, and other services related to the Platform Services. We may also use this information to improve our products or services.

We will only use any such data that is personal information in accordance with our latest Privacy Notice from time to time (see clause 6).

8 ACCESS DETAILS

8.1 To access the Platform Services you will need to use a username and password. These are personal to you only and you warrant and represent that you shall keep confidential and not share with any third party (or with other individuals except those with administration rights at our organisation as necessary for use of the Platform Services) your password or access details for any Platform Service.

## **9 YOUR RESPONSIBILITIES AND ACCEPTABLE USE**

### **9.1 You must at all times comply with:**

- 9.1.1 all applicable laws relating to the use or receipt of the Platform Services; and
- 9.1.2 all other provisions of our Agreement.

### **9.2 You must not use the Platform Services to do any of the following things:**

- 9.2.1 break the law or encourage any unlawful activity;
- 9.2.2 send or upload anything that is (or might be considered to be) defamatory, offensive, obscene or discriminatory;
- 9.2.3 infringe our or anyone else's intellectual property rights;
- 9.2.4 transmit any harmful software platform code such as viruses;
- 9.2.5 try to gain unauthorised access to computers, data, systems, accounts or networks; or
- 9.2.6 deliberately disrupt the operation of anyone's website, app, software platform, server or business.

## **10 INTELLECTUAL PROPERTY RIGHTS**

- 10.1 All intellectual property rights in or to the Platform Services, wherever arising, are owned by us or the relevant third party owner. Any payments that you make or have made only allow you to access and use the Platform Services in accordance with the terms set out in this Agreement.
- 10.2 If ownership of any intellectual property rights in any part of the Platform Services does pass to you, you must transfer ownership of such intellectual property (including by way of present transfer of ownership of future intellectual property rights) to us or a third party as we instruct. You must ensure that any such transfer of ownership is carried out with full authority and that the intellectual property rights being assigned are free from any charges and third party rights. You must sign all documents and do all things necessary to transfer ownership as described in this clause 10.2.
- 10.3 You may be able to store or transmit Customer Data (as defined in clause 11.1 below) using one or more Platform Services and the Platform Services may interact with your software platform or systems (referred to together as Your Systems). You grant us (and each of our direct and indirect sub-contractors) a royalty-free, non-transferable, non-exclusive licence to use, copy, access and otherwise utilise Customer Data and Your Systems to the extent necessary to perform or provide the Platform Services or to exercise or perform our rights, remedies and obligations under this Agreement.
- 10.4 Except for the rights expressly granted in our Agreement, you will not acquire in any way any title, rights of ownership, or intellectual property rights of whatever nature in the Platform Services (or any part) and no intellectual property rights of you or us are transferred or licensed as a result of our Agreement.
- 10.5 This clause 10 will remain binding on you and us following the end of our Agreement.

## **11 CUSTOMER DATA**

- 11.1 In this Agreement, data (in any form) that you provide to us or upload to any part of the Platform Services and any data that is generated as a result of your use of your data in the Platform Services (excluding any usage data or aggregated data which belongs to us), is referred to as Customer Data. Customer Data will always belong to you.

Privacy Notice Link: [https://happycharm.com/pdf/Privacy\\_Policy.pdf](https://happycharm.com/pdf/Privacy_Policy.pdf)

11.2 Except to the extent we are required under data protection laws:

11.2.1 we have no control over any of the Customer Data we host as part of the Platform Services; and

11.2.2 we do not actively monitor or have access to the content of the Customer Data.

You are solely responsible for ensuring the accuracy, quality, integrity and legality of the Customer Data and for ensuring that its use (including in connection with the Platform Services) complies with all applicable laws and does not infringe any other person's intellectual property rights.

11.3 If we become aware that the Customer Data (or any part of it) may not comply with any part of our Agreement, we can:

11.3.1 permanently delete or otherwise remove the relevant Customer Data from the Platform Services;

11.3.2 suspend your access to the relevant Customer Data in accordance with clause 17; and/or

11.3.3 disclose the relevant Customer Data to law enforcement authorities (in each case without the need to consult you).

However, where reasonably practicable and lawful, we shall notify you before taking such action.

11.4 Unless otherwise stated in our Agreement, we are not required to help you extract, transfer or recover any data whether during or after the Subscription Period. You are responsible for maintaining safe backups and copies of the Customer Data. We strongly recommend that you back up all Customer Data regularly and extract it from each Platform Service before this Agreement ends or before any Platform Services are stopped or suspended.

11.5 Unless otherwise set out in this Agreement or subsequently agreed by the parties in writing, you hereby instruct us to, within sixty (60) days of the end of the provision of the Platform Services (or any part) relating to the processing of Customer Data, securely dispose of any Customer Data processed in relation to the Platform Services (or any part) which have ended (and all existing copies of it) except to the extent that any applicable laws require us to store such data. We will have no liability (howsoever arising, including in negligence) for any deletion or destruction of any of Customer Data undertaken in accordance with our Agreement.

## 12 CONFIDENTIALITY AND SECURITY OF CUSTOMER DATA

12.1 We will keep Customer Data confidential and will not disclose or copy it other than:

12.1.1 with your written consent;

12.1.2 in accordance with our Agreement;

12.1.3 as necessary for the performance of the Platform Services or our express rights and obligations under the Agreement.

12.2 We will implement technical and organisational security measures in accordance with our Information Security Policy (available here: [link](#)).

Information Security Policy link:

[https://www.happycharm.com/pdf/Information\\_Security\\_Policy.pdf](https://www.happycharm.com/pdf/Information_Security_Policy.pdf)

12.3 We:

12.3.1 undertake to only disclose Customer Data to those of our officers, employees, agents, contractors and direct and indirect sub-contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under our Agreement or as otherwise reasonably necessary for the provision or receipt of the Platform Services; and

- 12.3.2 will be responsible to you for anything any of the persons referred to in clause 12.3.1 did, or failed to do, in respect of the confidentiality and security of Customer Data as if their act or omission was our own.
- 12.4 The requirements set out in this clause 12 will not apply to information which:
- 12.4.1 is or becomes public through no fault of us, our officers, employees, agents or contractors;
- 12.4.2 is lawfully received by us from a third party free of any confidentiality obligations at the time of its disclosure;
- 12.4.3 is independently developed by us (or any of our affiliates or any person acting on our or their behalf), without access to or use of such Customer Data; or
- 12.4.4 is required by law, by court or governmental or regulatory order to be disclosed, provided that clauses 12.4.1 to 12.4.3 (inclusive) shall not apply to personal data that is subject to our Privacy Notice.
- 12.5 This clause 12 will remain binding on you and us following the end of our Agreement for a period of five (5) years.
- 12.6 To the extent that any Customer Data is personal data that is subject to our Privacy Notice, we will ensure that such data may be disclosed or used only to the extent such disclosure or use does not conflict with any of our obligations under the Privacy Notice (see clause 6). Clauses 12.1 to 12.5 (inclusive) are subject to this clause 12.6.

## **13 CHANGES TO THIS AGREEMENT**

- 13.1 We may, at our discretion, make changes to this EULA or any other documents referred to in any part of this Agreement (excluding in each case the payment terms at clause 3) from time to time by notifying you of such update by notification on your account on the Platform or by any other reasonable means which we choose] (Update).
- 13.2 Any Updates will take effect within 24 hours after you received notice of the Update, unless we specify a later date.
- 13.3 If you reasonably believe that any Update seriously impacts you negatively, you can end our Agreement in respect of the impacted Platform Services, provided that you notify us of your wish to do this before the Update takes effect. Your notice must set out the negative impact which has caused you to exercise this right and you may be entitled to a refund under the Payment Terms.

## **14 UPDATES TO THE SERVICES**

- 14.1 We may modify the features and functionality of the Platform Services. If the required Technical Specifications (as set out at the beginning of this EULA) change as a result of a modification that we make, we will notify you of such changes.
- 14.2 We may, without limitation to the generality of clause 14.1, establish new limits on the Platform Services (or any part), including limiting the volume of data which may be used, stored or transmitted in connection with the Platform Services, remove or restrict application programming interfaces or make alterations to data retention periods, provided such changes are introduced by Update to the relevant impacted contractual documents.

## **15 OUR RESPONSIBILITY TO YOU**

- 15.1 If we breach this Agreement or are negligent, we are liable to you for foreseeable loss or damage that you suffer as a result. By 'foreseeable' we mean that, at the time you clicked to accept this Agreement, either it was clear that such loss or damage would occur or you and we both knew that it might reasonably occur, as a result of something we did (or failed to do).

- 15.2 We are not liable to you for any loss or damage that was not foreseeable, any loss or damage not caused by our breach or negligence, or any business loss or damage, for example, loss of business opportunity, business interruption, or loss of profits.
- 15.3 The Platform Services are provided in the same form to all our users. It is your responsibility to make sure the Platform Services meet your individual needs, whether or not these have been discussed with us, and to ensure that the Platform Services will be compatible with any other software platform or service or any hardware or equipment.
- 15.4 If the Platform Services or any updates provided by us damage your device or any software platform installed on it as a result of our failure to use reasonable care and skill, please let us know. If we can, we will repair the damage. If that is not possible, we will compensate you. We may ask you for information (including photographs) about what has happened so that we can understand the nature of the problem.
- 15.5 To the maximum extent permitted by law, we shall not be liable (under any legal theory, including negligence) for any breach, delay or default in the performance of our Agreement to the extent the same (or the circumstances giving rise to the same) arises or was contributed to by:
- 15.5.1 a breach of our Agreement by you; or
- 15.5.2 an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under our Agreement (not including an inability to pay).
- 15.6 Nothing in these terms excludes or limits our liability for any death or personal injury caused by our, or any of our employees', agents' or subcontractors', negligence, liability for fraud or fraudulent misrepresentation, compensation you are entitled to under applicable binding laws relating to the protection of your personal information or any other liability that the law does not allow us to exclude or limit.

## **16 FAILURES OF NETWORKS OR HARDWARE**

The Platform Services rely on a number of things working properly to enable you to enjoy all of their features. Many of these, such as your internet connection and your device, are entirely outside of our control. Although we will do everything we reasonably can to resolve issues, we are not responsible to you for any delays, interruptions, errors or other problems resulting from use of the internet or electronic communications network, faulty components in your device (such as a faulty camera), or anything else that it would not be reasonable to expect us to control.

## **17 SUSPENSION**

- 17.1 We may suspend your access to the Platform Services (or any part):
- 17.1.1 if we suspect that you have misused the Platform Services or have breached this Agreement, in which case (without prejudice to our rights to end our Agreement) we will take steps to investigate the issue following which we may restore or continue to suspend access;
- 17.1.2 if you fail to pay any sums due by the payment date, in which case we will restore access to the Platform Services promptly after we receive payment in full and cleared funds; or
- 17.1.3 if required by law, or by court, governmental or regulatory order.
- 17.2 You are required to continue to pay the Charges during any period of suspension, even though you may not have access to all or part of the Platform Services.

## **18 ENDING THIS AGREEMENT**

- 18.1 By choice. Both you and us have the right to end this agreement at any time by giving the other written notice.
- 18.2 Remediable breach. If you breach this Agreement in a serious way, or persistently breach this Agreement, and such breach is able to be remedied, we will provide you with written notice of your breach and require you to remedy it within 14 days. If you do not remedy the breach within the 14 days notified to you, then we can immediately end this Agreement by giving you notice in writing. 'Serious' in this clause 18 means that you are causing harm (or attempting to cause harm) to other users, interfering with the operation of the Platform Services or doing anything else that we think presents a big enough risk to justify us ending the Agreement quickly. For example, we consider any breach by you of clauses 8 or 9 to be a serious breach of this Agreement which is not remediable.
- 18.3 Non-remediable breach. If you breach this Agreement in a serious way, or persistently breach this Agreement, and such breach is not able to be remedied, we can immediately end this Agreement either without advance notice to you or by giving you notice in writing. For the avoidance of doubt, a non-remediable breach includes (a) hacking of the Platform or Platform Services in any way whatsoever, (b) using the Platform, the Platform Services or the GPUs for any type of mining whatsoever; or (c) breach of any applicable laws.
- 18.4 If you breach this Agreement in any other way than as set out in clauses 18.2 and 18.3 above, we have a right to end this Agreement and will give you a reasonable amount of notice before the Agreement ends.
- 18.5 The consequences of the Agreement ending are as follows:
- 18.5.1 you will no longer be allowed to access or use the Platform Services;
  - 18.5.2 we may delete or suspend access to any accounts that you hold with us;
  - 18.5.3 you are not entitled to a refund or other payment, except as otherwise stated in this Agreement; and
  - 18.5.4 Customer Data will be treated in accordance with clause 11.5.
- 18.6 Our Agreement coming to an end will not affect any accrued rights and liabilities of either you or us at any time up to the date that our Agreement ends. Any clause in our Agreement that is (either stated in writing to be or is by implication) intended to continue to be binding following the end of the Agreement shall continue to do so.

## **19 THIRD PARTIES**

No one other than us or you (or if applicable, people who have been validly assigned the rights under this Agreement) has any right to enforce any term of this Agreement.

## **20 ENTIRE AGREEMENT**

- 20.1 This Agreement sets out the complete agreement between you and us and supersedes any previous agreements, understandings or arrangements that we may have had, whether these were in writing or discussed.
- 20.2 We both agree that neither of us have entered into our Agreement in reliance on (and shall have no remedies in respect of) any representation or warranty that is not written in our Agreement.
- 20.3 Nothing in this Agreement will limit or exclude any liability for fraud.



## **21 SEVERANCE**

If any of the clauses in this Agreement are found to be unlawful, this will not affect the validity and effectiveness of the remaining terms and conditions of this Agreement. This means that if one Document1 10 clause or sub-clause is found to be unlawful, it will not apply, but the rest of the Agreement will continue to be in full force and effect.

## **22 TRANSFERRING THIS AGREEMENT**

We may transfer our rights under this Agreement to another business without your consent, but we will notify you of the transfer and make sure that you are not adversely affected as a result.

## **23 GOVERNING LAW AND JURISDICTION**

- 23.1 The laws of Seychelles apply to this Agreement, although if you are resident elsewhere you will retain the benefit of any mandatory protections given to you by the laws of that country.
- 23.2 Any disputes will be subject to the non-exclusive jurisdiction of the courts of Seychelles. This means that you can choose whether to bring a claim in the courts of Seychelles or in the courts of the country in which you live.