Bakkt User Agreement

Last updated: January 16, 2024

User Account Agreement

This user account agreement ("User Agreement") is between you and Bakkt Crypto Solutions, LLC (f/k/a Apex Crypto LLC) ("Bakkt Crypto," "we," or "us"), and governs your use of the services provided by us via the Public website and mobile application. By applying to open a cryptocurrency account with Bakkt Crypto, you agree that you have read, understand, and accept all of the terms and conditions contained in this Agreement.

BY REGISTERING AN ACCOUNT WITH BAKKT CRYPTO ("Account"), OR BY ACCESSING OR USING OUR SERVICES, YOU AGREE TO BE LEGALLY BOUND TO THE TERMS AND CONDITIONS CONTAINED IN THIS USER AGREEMENT IN THEIR ENTIRETY, INCLUDING ALL TERMS INCORPORATED BY REFERENCE.

IF YOU DO NOT AGREE TO ANY OF THESE TERMS AND CONDITIONS, INCLUDING THE MANDATORY ARBITRATION PROVISION AND CLASS ACTION WAIVER IN SECTION 19, AND THE MANDATORY INFORMATION SHARING PROVISION IN SECTION 5.1, DO NOT REGISTER AN ACCOUNT OR ACCESS OR USE THE SERVICES.

1. Scope of Services

Using the Public mobile application or Public.com website (the "Public Platform", which is operated by Public Holdings Inc. and/or its affiliates, collectively the "Platform Provider")), a customer located in the United States may apply to open a brokerage account with Open to the Public Investing, Inc. (the "Correspondent"). Correspondent is an SEC registered broker-dealer and a member of FINRA/SIPC, and introduces its customers to Apex Clearing Corporation ("Apex Clearing") on a fully-disclosed basis. When a customer of Correspondent submits an order to buy or sell US-listed stocks or ETFs via the Platform to the Correspondent, those orders are relayed to Apex Clearing for execution, clearance and settlement. Apex Clearing also custodies securities and cash on behalf of customers of Correspondent.

Bakkt Crypto allows you, if you have a brokerage account with Correspondent and meet the eligibility criteria set forth below, to apply on the Platform for an Account with Bakkt Crypto. When you apply for an Account via the Platform, you must agree to this User Agreement. This User Agreement governs your access to and use of our Services, as described herein.

By applying for and registering an Account with Bakkt Crypto, in accordance with the terms and conditions contained in this User Agreement, you will be able to: (i) submit orders to Bakkt Crypto to purchase or sell supported cryptocurrencies on your behalf for personal, non-commercial purposes; (ii) deposit and withdraw supported cryptocurrencies from/to external wallets (deposits/withdrawals and purchases/sales of cryptocurrency are referred to herein, collectively, as "Cryptocurrency Transactions"); (iii) store cryptocurrency in one or more hosted cryptocurrency wallets ("Hosted Wallets"); and (iv) track your Cryptocurrency Transactions and Hosted Wallet balance(s) through the Platform, (collectively, the "Services"). You agree, represent and warrant that the Services constitute financial and investment transactions and that no commercial transactions are contemplated by or permitted under this User Agreement.

2. Relationship between Bakkt Crypto, Correspondent and Apex Clearing

BY APPLYING TO OPEN AN ACCOUNT WITH BAKKT CRYPTO, YOU UNDERSTAND AND ACKNOWLEDGE THAT YOUR CRYPTOCURRENCY ACCOUNT WITH BAKKT CRYPTO IS SEPARATE FROM YOUR BROKERAGE ACCOUNT WITH CORRESPONDENT AND APEX CLEARING. YOU FURTHER ACKNOWLEDGE AND UNDERSTAND THAT YOUR CRYPTOCURRENCY TRADES ARE EXECUTED BY BAKKT CRYPTO, AND YOUR CRYPTOCURRENCY ASSETS ARE HELD IN YOUR BAKKT CRYPTO ACCOUNT.

BAKKT CRYPTO IS NOT A REGISTERED BROKER-DEALER OR A FINRA MEMBER. BAKKT CRYPTO IS A LICENSED VIRTUAL CURRENCY BUSINESS BY THE NEW YORK STATE DEPARTMENT AND A LICENSED MONEY TRANSMITTER.

CORRESPONDENT AND APEX CLEARING DO NOT HANDLE OR EXECUTE YOUR CRYPTOCURRENCY ORDERS. CORRESPONDENT AND APEX CLEARING DO NOT CUSTODY YOUR CRYPTOCURRENCY ASSETS. CORRESPONDENT AND APEX CLEARING ARE NOT AFFILIATES OF BAKKT CRYPTO OR UNDER COMMON CONTROL WITH BAKKT CRYPTO.

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT TO THE CONTRARY, YOU AND BAKKT CRYPTO FURTHER AGREE THAT NONE OF CORRESPONDENT, PLATFORM PROVIDER AND APEX CLEARING HAS ANY RESPONSIBILITY OR LIABILITY TO YOU, WHETHER IN CONTRACT OR TORT, FOR ANY LOSS TO YOUR CRYPTOCURRENCY ACCOUNT OR ARISING FROM YOUR CRYPTOCURRENCY TRADES ON ACCOUNT OF ANY ACT OR OMISSION BAKKT CRYPTO AND YOU WILL NOT COMMENCE ANY ACTION OR BRING ANY CLAIM AGAINST CORRESPONDENT, PLATFORM PROVIDER OR APEX CLEARING FOR ANY SUCH LOSS. ALL EXCULPATION, LIABILITY LIMITATION AND INDEMNIFICATION PROVISIONS IN THIS AGREEMENT IN FAVOR OF CORRESPONDENT, PLATFORM PROVIDER AND APEX CLEARING ARE FOR THEIR INTENDED BENEFIT, ARE IN SATISFACTION OF A PRE-EXISTING OBLIGATION TO THEM, ARE A MATERIAL PART OF YOUR PURPOSE IN ENTERING INTO THIS USER AGREEMENT AND MAY BE RELIED UPON, AND ENFORCED AGAINST YOU AND BAKKT CRYPTO, BY EACH OF THEM AS IF EACH IS A PARTY HERETO, EACH OF THEM BEING EXPRESS THIRD PARTY BENEFICIARIES OF SUCH PROVISIONS.

YOU ACKNOWLEDGE THAT THE CRYPTOCURRENCIES OFFERED BY BAKKT CRYPTO ARE NOT SECURITIES AND ARE NOT FDIC INSURED OR PROTECTED BY SIPC. CRYPTOCURRENCY INVESTING IS SPECULATIVE AND INVOLVES SIGNIFICANT RISKS, INCLUDING LOSS OF PRINCIPAL. YOU SHOULD REVIEW THE **RISK DISCLOSURES** BEFORE INVESTING.

3. Modifications to this User Agreement

We reserve the right to make changes to these Terms at any time and at our sole discretion. If we make changes, we will post the amended User Agreement to https://bakkt.com and update the "Last Updated" date above. We may also attempt to notify you by sending an email notice to the address associated with your Account or by providing notice through the Platform. Using a particular form of notice in some instances does not obligate us to use the same form in other instances. Unless we say otherwise in our notice, the amended User Agreement will be effective immediately and will apply to any then current and subsequent uses of the Services, including any pending Cryptocurrency Transactions. You are responsible for reviewing this User Agreement each time you access or use our Services. Your continued access to and use of your Account and/or the Services after we provide notice will constitute your acceptance of the changes. If you do not agree to any of the amended terms and conditions, you must stop accessing and using the Services and close your Account immediately.

4. Eligibility

4.1 General Requirements

To register for an Account or to designate an Authorized User (defined below) you must be an individual at least 18 years of age and have the legal capacity to enter into this User Agreement. In addition, you must have a brokerage account, in good standing, with Correspondent and Apex Clearing ("Brokerage Account").

4.2 Restricted States

You may not register an Account or use the Services if you are a resident of any state in which Bakkt Crypto is not authorized to provide the Services ("Restricted States"). A current list of Restricted States, which is incorporated by reference, is available at https://bakkt.com and is subject to change at any time.

You hereby represent and warrant that you are not a resident of any Restricted State and that you will not register an Account or use the Services even if our methods to prevent you from registering an Account or using the Services are not effective or can be bypassed.

4.3 Restricted Foreign Jurisdictions

You may not register an Account or access or use the Services if you are located in, under the control of, or a citizen or resident of any state, country, territory or other jurisdiction to which the United States has embargoed goods or services, or where your use of the Services would be illegal or otherwise violate any applicable law of such jurisdiction or of the United States ("Restricted Jurisdiction"). We may implement controls to restrict access to the Services from any Restricted Jurisdiction.

You hereby represent and warrant that you are not under the control of, or a citizen or resident of any Restricted Jurisdiction and that you will not access or use any Services while located in any Restricted Jurisdiction, even if our methods to prevent access to and use of the Services from these jurisdictions are not effective or can be bypassed.

4.4 Restricted Persons

You hereby represent and warrant that you have not been identified as a Specially Designated National or placed on any sanctions list by the U.S. Treasury Department's Office of Foreign Assets Control, the U.S. Commerce Department, or the U.S. Department of State; and you will not use our Services to conduct any illegal or illicit activity.

5. Account Registration

5.1 Personal Information

During the Account registration process you must provide us with information and documentation that we request for the purpose of establishing and verifying your identity ("Personal Information"). In addition, as a condition to accessing and using the Services, you must authorize Apex Clearing to share your Personal Information with us pursuant to Section 5.1. Personal Information may include your name, email address, residential address, phone number, date of birth, and taxpayer identification number. Personal Information may also include documentation, such as copies of your government- issued photo identification (for example, your passport, driver's license, or military identification card), account statements, and other documents as we may require. Personal Information will be retained by us at our discretion and in accordance with applicable laws. You agree to provide us accurate, current and complete Personal Information.

5.2 Verification

You hereby authorize us, or a third-party service provider that we designate, to take any measures that we consider necessary to confirm the Personal Information you provide, verify and authenticate your Personal Information, and take any action we deem necessary based on the results. You acknowledge that this process may result in a delay in registering your Account, and that you will not be authorized to access or use the Services until your Account registration has been successfully completed.

5.3 Authorized Users

You may be permitted to designate one of more authorized users on your Account (each an "Authorized User"). You hereby understand and acknowledge that by designating an Authorized User, such Authorized User will be permitted to enter into Cryptocurrency Transactions through the Account on your behalf.

At our sole discretion we may require Authorized Users to provide their Personal Information, as described in Section 5.1, which may be subject to the verification procedures outlined in Section 5.2.

You acknowledge that the terms and conditions of this User Agreement will apply to you and each Authorized User on your Account, and you expressly accept such terms and conditions on behalf of yourself and each such Authorized User. You further hereby agree to and accept full responsibility for any Authorized User's use the Services, including (i) any Cryptocurrency Transactions made by an Authorized User on your Account, including any Cryptocurrency Transactions made by an Authorized User on your Account during the intervening time between your request to remove the Authorized User from your Account and our written confirmation of such removal; (ii) any Cryptocurrency Transaction made by others if an Authorized User allows them to use your Account; (iii) fees and charges resulting from any Cryptocurrency Transaction made by an Authorized User or others if an Authorized User allows them to use your Account; and (iv) any other financial charges and legal liability that an Authorized User may incur in connection with their use of your Account.

You agree to allow us to discuss your Account with an Authorized User, which includes giving them access to your Transaction History (defined below) and Account information. You also agree that an Authorized User may use and receive information about the Account the same way you do.

6. Account Authorizations

6.1 Mandatory Information Sharing

You hereby authorize your Correspondent and Apex Clearing to provide Bakkt Crypto any of your personal information maintained in connection with your Brokerage Account, and to continue sharing such information, and any revisions or additions thereto, with Bakkt Crypto on an ongoing basis until your Account is either closed or terminated in accordance with this User Agreement. You hereby authorize Bakkt Crypto to provide your Correspondent and Apex Clearing any of your Personal Information, and to continue sharing such information, and any revisions or additions thereto, with them on an ongoing basis until your account(s) with your Correspondent or Apex Clearing is closed pursuant to the terms and conditions governing such account(s).

6.2 Authorization to Bakkt Crypto

You understand and acknowledge that your Account is self-directed, and you hereby appoint Bakkt Crypto as your agent for the purpose of carrying out your instructions in accordance with this User Agreement. You hereby authorize Bakkt Crypto to open and close your Account, place and cancel orders to purchase and sell cryptocurrency ("Orders"), collect and offset any fees or other amounts due to Bakk Crypto, and take such other steps as are reasonable to carry out your instructions.

6.3 Authorization to Correspondent and Apex Clearing – Purchase Orders

You understand and acknowledge that when you submit an Order to purchase cryptocurrency to Bakkt Crypto through the Platform, in parallel you submit an instruction to both Correspondent and Apex Clearing to transfer the funds required for the Cryptocurrency Transaction (the "Purchase Price") from your Brokerage Account to either (i) an account held at Apex Clearing in the name of Bakkt Crypto; or (ii) an external bank account in the name of Bakkt Crypto, (each such account, an "Bakkt Crypto Account"). Immediately upon the acceptance of a marketable order to purchase cryptocurrency, your Bakkt Crypto account will be credited the Purchase Price and such credit may not be revoked by Bakkt Crypto absent fraud, or willful misconduct on your part. Bakkt Crypto shall execute the Cryptocurrency Transaction and purchase cryptocurrency on your behalf regardless of whether Apex Clearing actually transmits the Purchase Price.

You further understand and acknowledge that Bakkt Crypto is not under the control of Correspondent or Apex Clearing, that any Entity Account is outside of Correspondent or Apex Clearing's possession and control, and that none of Correspondent, Platform Provider, and Apex Clearing have the ability to monitor or recall the Purchase Price after such funds have been wired or transferred to an Entity Account.

You understand and acknowledge that your Account is provided by Bakkt Crypto and is separate from your Brokerage Account. You further understand and acknowledge that, upon transfer from your Brokerage Account, the Purchase Price will no longer be provided protection under the Federal Deposit Insurance Corporation ("FDIC") or the Securities Investor Protector Corporation ("SIPC").

You agree to hold Correspondent, Platform Provider and Apex Clearing harmless and hereby waive any claims against any of them with respect to Correspondent and Apex Clearing accepting and following your instructions to transfer funds from your Brokerage Account to an Entity Account. You understand that you may revoke this authorization at any time by terminating your Bakkt Crypto Account, but such hold harmless and waiver provision shall remain in full force and effect notwithstanding any such revocation and termination of your Bakkt Crypto Account.

6.4 Authorization to Correspondent and Apex Clearing – Sale Orders

You understand and acknowledge that when you submit an Order to sell cryptocurrency to Bakkt Crypto through the Platform, in parallel you submit an instruction to both Correspondent and Apex Clearing to accept the proceeds from such a sale (the "Proceeds") into your Brokerage Account. The Proceeds may originate from an Entity Account owned by Bakkt Crypto.

You hereby authorize and instruct Correspondent and Apex Clearing to accept all instructions to deposit funds into your Brokerage Account from an Entity Account at the sole instruction of Bakkt Crypto.

You agree to hold Correspondent, Platform Provider and Apex Clearing harmless and hereby waive any claims against any of them with respect to Correspondent and Apex Clearing accepting and following your instructions to transfer funds from an Entity Account to your Brokerage Account. You understand that you may revoke this authorization at any time by terminating your Bakkt Crypto Account, but such hold harmless and waiver provision shall remain in full force and effect notwithstanding any such revocation and termination of your Bakkt Crypto Account.

7. Use of Margin is Strictly Prohibited

THE USE OF MARGIN TO PURCHASE CRYPTOCURRENCY IS STRICTLY PROHIBITED. By using the Services, you understand and acknowledge that you are not authorized to use any borrowed, leveraged or margined funds ("Margin"), including any such funds that are provided through your Brokerage Account, to purchase cryptocurrency, and that any order or instruction to transfer Margin from your Brokerage Account to Bakkt Crypto, may be rejected by any Party. You further understand and acknowledge that a failure by any Party to exercise its right to reject such order or instruction shall not operate as a waiver of this provision and at shall not constitute an authorization to use Margin to purchase cryptocurrency. Any such order or instruction to use Margin in violation of this User Agreement may result in suspension or immediate termination of your Account.

8. Account Management

8.1 Account Access

Once you have successfully registered an Account, you will be able to access your Account by logging into the Platform using the username and password associated with the Platform (collectively, "Login Credentials"). You may only access your Account using your Login Credentials, or as may be authorized or required by us and Platform Provider. From time to time, Bakkt Crypto or Platform Provider may require you to change your Login Credentials or re-verify your Personal Information at their discretion and as a condition to your continued access to and use of your Account and the Services.

You hereby represent and warrant that you will not share your Login Credentials with any third-party or permit any third-party to gain access to your Account, and you hereby assume responsibility for any instructions, orders, or actions provided or taken by anyone who has accessed your Account regardless of whether the access was authorized or unauthorized.

Only individuals that have successfully registered an Account ("Users") are authorized to access and use the Services.

8.2 Account Maintenance

You are required to maintain the information associated with your Account ("Account Profile") updated at all times, and you agree to update your account profile immediately of any changes to Personal Information that you previously provided. YOU UNDERSTAND THAT A CHANGE IN YOUR STATE OF RESIDENCE MAY IMPACT YOUR ELIGIBILITY TO ACCESS AND USE THE SERVICES, AND HEREBY AGREE TO NOTIFY US IN ADVANCE OF ANY CHANGE IN YOUR STATE OF RESIDENCE. PLEASE REFER TO OUR LIST OF RESTRICTED STATES, WHICH IS AVAILABLE AT https://bakkt.com.

As part of our legal compliance program ("AML Program"), we will monitor your Account and your use of the Services, and review your Personal Information on an ongoing basis, as may be required by law and/or pursuant to our internal policies and procedures. At any time, we may require you to provide us with additional Personal Information as a condition to your continued access to and use of your Account and the Services. During such time, your access to and use of your Account and the Services may be temporarily restricted.

8.3 Account Security

You are solely responsible for managing and maintaining the security of your Login Credentials and any other forms of authentication, and you understand and acknowledge that we, Platform Provider, Correspondent and Apex Clearing are not responsible (and you will not hold us responsible) for any unauthorized access to and or use of your Login Credentials and/or Account ("Unauthorized Access").

8.4 Unauthorized Account Activity

You are solely responsible for monitoring your Account for unauthorized or suspicious instructions, orders, actions, or transactions ("Unauthorized Activity"), and agree that we, Platform Provider, Correspondent and Apex Clearing are not responsible (and you will not hold us responsible) for any Unauthorized Activity.

You agree to protect your Account from Unauthorized Activity by (i) reviewing, on an ongoing basis, your transaction history and your Account Profile; (ii) reviewing, immediately upon receipt, any Confirmations, confirmations and notices we provide through the Platform, post to your Account or send to the email address associated with your Account; and (iii) verifying that you receive a confirmation from us that an Order or instruction you provide was received, executed or cancelled, as applicable, and (iv) in the event of not having received any such confirmation, notifying us within twenty-four (24) hours of such Order or instruction.

8.5 Potentially Fraudulent Activity

Any actual or suspected Unauthorized Access and/or Unauthorized Activity will be treated by Bakkt Crypto as potentially fraudulent ("Potentially Fraudulent Activity"). You agree to notify us within twenty-four (24) hours if you become aware of or suspect any Potentially Fraudulent Activity, by emailing cryptosupport@bakkt.com. For avoidance of doubt, you are deemed to be aware of Potentially Fraudulent Activity upon receipt of any notice of the occurrence of such activity. Upon receipt of written notice from you any Potentially Fraudulent Activity, we will take reasonable steps to protect your Account, including, for example, by temporarily restricting access to your Account, suspending any pending Cryptocurrency Transactions, and/or requiring you to change your Login Credentials.

You agree to promptly report any Potentially Fraudulent Activity to legal authorities and provide us a copy of any report prepared by such legal authorities. In the event of an investigation of any Potentially Fraudulent Activity, you further agree to (i) cooperate fully with the legal authorities and Bakkt Crypto in such investigation; (ii) complete any required affidavits promptly, accurately and thoroughly; and (iii) allow Bakkt Crypto, or any third-party designated by us, access to your mobile device, computer, and network as may be relevant to such investigation. You understand and acknowledge that any failure to cooperate in any such investigation may cause delays in regaining access to your Account and any cryptocurrency held in your Hosted Wallet(s).

9. Account Closure

9.1 Account Closure

You may close your Account at any time and for any reason unless Bakkt Crypto believes, at our sole discretion, that such closure is being performed in an effort to evade an investigation. Closing an Account will not affect any rights or obligations incurred prior to the date of closure in accordance with this User Agreement. Prior to closing your Account, you must liquidate any cryptocurrency balance(s) maintained in your Hosted Wallet(s), the proceeds of which shall be transferred to your Brokerage Account.

You understand and acknowledge that you are solely responsible for any fees, costs, expenses, charges or obligations (collectively, "Costs") associated with the closing of your Account. In the event any incurred Costs exceed the value of your Account, you understand and acknowledge that you are responsible for reimbursing Bakkt Crypto the value of such Costs and that you will remain liable to Bakkt Crypto for all obligations incurred in your Account, pursuant to this User Agreement, or otherwise, whether arising before or after the closure of your Account or the termination of this User Agreement.

9.2 Account Suspension or Termination

By using the Services, you understand and acknowledge that we have the right, at our sole discretion, to immediately suspend or terminate your Account

By using the Services, you understand and acknowledge that we have the right, at our sole discretion, to immediately suspend or terminate your Account and/or freeze any cryptocurrency balance(s) in your Hosted Wallet(s), without prior notice if (i) we suspect, at our sole discretion, you to be in violation of any provision of this User Agreement, our AML Program, or any applicable laws or regulations; (ii) we are required to do so by law or by any regulatory authority, court order, facially valid subpoena, or binding order of a government authority; (iii) we suspect any suspicious or Unauthorized Activity or any actual or attempted unauthorized access to your Account or Login Credentials; (iv) your account with the Correspondent has been suspended or terminated or you no longer have access to the Platform; or (v) the Account has not been accessed in two years or more. You must notify Bakkt Crypto if you intend to, or actually do, close your account with Correspondent.

If your Account has been suspended or terminated, you will be notified when you attempt to access the Services. We may, at our sole discretion and as permitted by law, provide written notice that your Account has been suspended or terminated. Upon termination of your Account, unless prohibited by law, any remaining cryptocurrency balance(s) in your Hosted Wallet(s) may be liquidated and the proceeds, less any Costs, will be returned to your Brokerage Account, at the discretion of Bakkt Crypto. In the event your Account is terminated, you hereby authorize Bakkt Crypto to sell any such remaining cryptocurrency balance(s) in your Hosted Wallet(s) at the prevailing market price(s), and transfer the proceeds to your Brokerage Account, less any Costs associated with such sale(s), the Account, or its termination.

10. Cryptocurrencies

10.1 Definition

As used herein, "cryptocurrency" (also referred to as "virtual currency," "digital currency," "digital asset," and "digital commodity") means a digital representation of value which is based on a cryptographic protocol that can be digitally traded and functions as: (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status and is not issued or guaranteed by any government. Cryptocurrency is distinguished from "fiat currency" (such as U.S. dollars), which is the coin and paper money of a country that is designated as its legal tender. For more information, please refer to the *FATF Report, Virtual Currencies, Key Definitions and Potential AML/CFT Risks*, FINANCIAL ACTION TASK FORCE (June 2014), available here.

10.2 Supported Cryptocurrencies

A list of cryptocurrencies that Bakkt Crypto currently supports is available via the Platform. Bakkt Crypto may delist a cryptocurrency, at any time and for any reason at our sole discretion, including due to changes in a given cryptocurrency's characteristics after Bakkt Crypto has listed the cryptocurrency or due to a change in the cryptocurrency's regulatory classification.

10.3 Network Control

Bakkt Crypto does not own or control any of the underlying software through which blockchain networks are formed and cryptocurrencies are created and transacted. In general, the underlying software for blockchain networks tends to be open source such that anyone can use, copy, modify, and distribute it. By using the Services, you understand and acknowledge that none of Bakkt Crypto, Platform Provider, Correspondent and Apex Clearing is responsible for operation of the underlying software and networks that support cryptocurrencies and that Bakkt Crypto makes no guarantee of functionality, security, or availability of such software and networks.

10.4 Forks

The underlying protocols are subject to sudden changes in operating rules, and third parties may from time to time create a copy of a cryptocurrency network and implement changes in operating rules or other features ("Forks") that may result in more than one version of a network (each, a "Forked Network") and more than one version of a cryptocurrency ("Forked Assets").

You understand and acknowledge that Forked Networks and the available supply of any Forked Assets are wholly outside of the control of Bakkt Crypto, and you further acknowledge that our ability to deliver Forked Assets resulting from a Forked Network may depend on third-parties that are outside of our control. You understand and acknowledge that Forks may materially affect the value, function, and/or even the name of the cryptocurrencies you store in your Hosted Wallet(s). In the event of a Fork, you understand and acknowledge that Bakkt Crypto may temporarily suspend the Services (with or without advance notice to you) while we determine, at our sole discretion, which Forked Network(s) to support.

YOU ACKNOWLEDGE AND HEREBY AGREE THAT BAKKT CRYPTO MAY DETERMINE, IN OUR SOLE DISCRETION, NOT TO SUPPORT A FORKED NETWORK AND THAT YOU HAVE NO RIGHT, CLAIM, OR OTHER PRIVILEGE TO FORKED ASSETS ON SUCH UNSUPPORTED FORKED NETWORK. YOU HEREBY FURTHER AGREE THAT BAKKT CRYPTO MAY, IN OUR SOLE DISCRETION, DETERMINE THE APPROACH TO SUCH FORKED ASSETS, WHICH MAY INCLUDE ABANDONING OR OTHERWISE ELECTING NOT TO SUPPORT SUCH FORKED ASSETS AS PART OF THE SERVICES. YOU UNDERSTAND AND HEREBY ACKNOWLEDGE THAT BAKKT CRYPTO IS UNLIKELY TO SUPPORT MOST FORKED NETWORKS AND THAT MOST FORKED ASSETS WILL LIKELY NOT BE MADE AVAILABLE TO YOU.

10.5 Risks of Cryptocurrency Trading

There are several risks associated with cryptocurrencies and cryptocurrency trading. By accessing and using the Services, you hereby represent and warrant that you have read our Cryptocurrency Risk Disclosure available at bakkt.com/disclosures, which is incorporated by reference.

11. Cryptocurrency Transactions

11.1 Market Orders

Orders to purchase or sell cryptocurrency at the prevailing market price ("Market Orders") are based on the prevailing market price at the time the Market Order is filled. You understand and acknowledge that the price at which your Market Order is filled may vary from the price displayed at the time your Market Order is placed, and you further understand and acknowledge that Bakkt Crypto may, at its sole discretion, cancel any Market Order if the prevailing market price changes significantly from the time the Market Order was placed. You further understand and acknowledge that Bakkt Crypto may, at its sole discretion, cancel any Market Order. Bakkt Crypto will send you a notification upon the occurrence of a cancellation of any Market Order.

11.2 Order Placement

Orders are placed on the Platform through your Account using your Login Credentials. You understand that all Orders to purchase or sell cryptocurrency will be executed in reliance on your promise that an actual purchase or sale is intended, and that Bakkt Crypto requires full payment in cleared, non- margined funds at the time an Order is filled. You further understand and acknowledge that you are not permitted to place an Order to purchase cryptocurrency unless you have enough non-margined funds available in your Brokerage Account, and that you are not permitted to place an Order to sell cryptocurrency unless you have enough cryptocurrency available in your Bakkt Crypto Account.

You understand and acknowledge that Bakkt Crypto, Platform Provider, Correspondent and Apex Clearing do not guarantee that an Order you place will be filled, and you further understand and acknowledge that Bakkt Crypto reserves the right to cancel any Order or part of an Order, if such Order (i) was placed during a scheduled or unscheduled downtime of Bakkt Crypto, Apex Clearing, or Platform Provider, (ii) violates the terms of this User Agreement, or (iii) is non-marketable.

11.3 Intentionally Omitted

11.4 Source of Funds

Bakkt Crypto only authorizes the purchase of cryptocurrency using non-margined funds maintained in your Brokerage Account. You understand and acknowledge that you are not allowed to use funds that are not owned by you to enter into Cryptocurrency Transactions, and that you are not authorized to enter into Cryptocurrency Transactions on behalf of any third party. You hereby represent and warrant that all funds used by you to enter into Cryptocurrency Transactions (presently and in the future) are owned by you and are not the direct or indirect proceeds of any criminal or fraudulent activity.

11.5 Transaction Limits

You understand and acknowledge that your use of the Services is subject to a limit on volume (in USD terms) that you may transact in a given time period. Such limits may vary, at our sole discretion, depending on a variety of factors, and we may apply higher limits to certain Users at our discretion.

11.6 Transaction Record

When your Order is filled, Bakkt Crypto will send your confirmation (a "Confirmation") through the Platform or to the email address associated with your Account. We may choose, at our sole discretion and without prior notice to you, to periodically consolidate Orders into a single Confirmation. Confirmations contain the following information: (i) Cryptocurrency Transaction date; (ii) Order type; (iii) trading pair; (iv) amount and U.S. dollar value of cryptocurrency purchased or sold (and the corresponding amount credited/debited to your Bakkt Crypto Account, as applicable); (v) price information; (vi) fees; (vii) a unique Order identification number; and (viii) any other information we may elect to include at our sole discretion or as required by law.

A record of your Cryptocurrency Transactions ("Transaction History") conducted during the preceding eighteen (18) months is available through your Account on the Platform. Transaction History that is older than eighteen (18) months may be requested by emailing.

Bakkt Crypto maintains records of all Cryptocurrency Transactions for a period as required by law.

11.7 Right to Offset

In the event that you fail to provide sufficient funds at the time an Order is filled, Bakkt Crypto reserves the right, in our sole discretion, to cancel, reverse or fill such Order in whole or in part. You agree to be responsible for the costs of any such action taken by Bakkt Crypto. You understand and acknowledge that if a failure to provide sufficient funds results in an amount due and owing by you to Bakkt Crypto (a "Negative Balance"), Bakkt Crypto shall have the right to (i) charge a reasonable rate of interest on any such Negative Balance; (ii) offset any such Negative Balance, including any accrued interest and consequential losses, by transferring funds that are or become available in your Brokerage Account to Bakkt Crypto.

11.8 Cancellations

Orders may not be cancelled after they are filled.

11.9 Errors

You are solely responsible for reviewing your Confirmations and for monitoring your Transaction History for any errors (or any Potentially Fraudulent Activity, as outlined in Section 8.5). You understand and acknowledge that if you have not received a Confirmation or an Order cancellation notice, you are responsible for notifying us via email at cryptosupport@bakkt.com within twenty-four (24) hours of placing the Order. You further understand and acknowledge that you are solely responsible for reviewing your Confirmations for accuracy and for notifying us of any suspected errors via email at cryptosupport@bakkt.com within twenty-four (24) hours of the time of any suc Confirmation was sent.

You hereby waive your right to dispute any Cryptocurrency Transaction unless you notify us of any objections within twenty-four (24) hours of the time in which the applicable Confirmation was sent.

You understand and acknowledge that Bakkt Crypto reserves the right, but has no obligation, to declare null and void a Cryptocurrency Transaction that Bakkt Crypto considers to be erroneous. A Cryptocurrency Transaction may be deemed erroneous when its price is substantially inconsistent with the prevailing price at the time the Order is filled (each, an "Erroneous Transaction"). You understand and acknowledge that you are responsible for ensuring that the appropriate price and Order type is submitted when you place an Order to purchase or sell cryptocurrency with Bakkt Crypto, and that a simple assertion by you that a mistake was made in entering an Order, or that you failed to pay attention to or update an Order, shall not be sufficient to establish it as an Erroneous Transaction. You further understand and acknowledge that if Bakkt Crypto determines that a given Cryptocurrency Transaction is an Erroneous Transaction, Bakkt Crypto may, at our sole discretion, declare it null and void, in whole and in part, even if you do not agree to cancel or modify it, in which case you shall return the cryptocurrency or funds received in the Erroneous Transaction.

11.10 Downtime

Bakkt Crypto and Platform Provider use commercially reasonable efforts to provide the Services in a reliable and secure manner. From time to time, interruptions, errors, delays, or other deficiencies in providing the Services may occur due to a variety of factors, some of which are outside of Bakkt Crypto's control, and some which may require or result in scheduled maintenance or unscheduled downtime of the Platform or the Services (collectively, "Downtime").

You understand and acknowledge that part or all of the Platform or Services may be unavailable during any such period of Downtime, and you acknowledge that none of Bakkt Crypto, Platform Provider, Correspondent and Apex Clearing is liable or responsible to you for any inconvenience or losses to you as a result of Downtime. Following Downtime, you further understand and acknowledge that the prevailing market prices of cryptocurrency may differ significantly from the prices prior to such downtime.

12, Hosted Wallets

Cryptocurrencies that you purchase from Bakkt Crypto shall be stored as part of the Services in one or more omnibus Hosted Wallets. Bakkt Crypto shall track the balance and ownership of cryptocurrencies purchased through the Services and stored in Hosted Wallets, and you understand that you can view the balance of cryptocurrencies in your Account through the Platform.

13. Application of Article 8 of the Uniform Commercial Code

The cryptocurrencies held in your Account are held by Bakkt Crypto as custodian on your behalf are considered your property under Article 8 of the Uniform Commercial Code (the "Code"). Specifically, you agree that (i) the Cryptocurrency reflected in your Account and held by Bakkt crypto as custodian are "financial assets" (as defined in Section 8-102(a)(9) of the Code); (ii) Bakkt Crypto is acting as a "securities intermediary" (as defined in Section 8-102(a)(14) of the Code) with respect to such financial assets; (iii) neither Correspondent nor Platform Provider is acting as a "securities intermediary" (as defined in Section 8-102(a)(14) of the Code) with respect to such financial assets; (iv) you are an "entitlement holder" (as defined in Section 8-102(a)(7) of the Code) with respect to such financial assets; (v) you have a "security entitlement" (as defined in Section 8-102(a)(17) of the Code) with respect to such financial assets; and (vi) your Account is a "securities account" (as defined in Section 8-501(a) of the Code). Under Section 8-503(a) of the Code, "all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary." For the purpose of clarity, the above references, including to "securities intermediary" and "securities account," are referring to the terms as defined in the Code and such use does not imply that the "financial assets" held in your Account qualify as "securities" under federal or state securities laws.

14. General Terms of Service

14.1 Fees

A schedule of our fees is accessible by logging into the Platform. Fees are subject to change, at our sole discretion, and you understand and acknowledge that you are solely responsible for accessing the fee schedule prior to placing an Order. You hereby acknowledge that your placement of an Order will constitute your acceptance of the fee published at the time the Order is placed.

14.2 Self-Directed Account

You understand and acknowledge that your Account is self-directed, you are solely responsible for any and all Orders placed through your Account, and all Orders entered by you are unsolicited and based on your own investment decisions. You understand and acknowledge that you have not received and do not expect to receive any investment advice from Bakkt Crypto or any its Affiliates in connection with your Orders. Notwithstanding anything in this User Agreement, you understand and acknowledge that Bakkt Crypto, Platform Provider, Correspondent and Apex Clearing accepts no responsibility whatsoever for, and shall in no circumstances be liable to you in connection with, your decisions. You further understand and acknowledge that under no circumstances will your use of the Services be deemed to create a relationship that includes the provision or tendering of investment advice. You acknowledge that neither Bakkt Crypto, nor any of our Affiliates, nor any of our or our Affiliates' employees, agents, principals, or representatives (i) provide investment advice in connection with this Account, (ii) recommend any cryptocurrencies, Cryptocurrency Transactions, or Orders, or (iii) solicit Orders. To the extent research materials or similar information are available through the Platform, you understand that these materials are intended for informational and educational purposes only and they do not constitute a recommendation to enter into any Cryptocurrency Transactions or to engage in any investment strategies.

14.3 Communications

You understand and acknowledge that all notices and communication with you will be through the Platform, your Account, or via an email sent by us to the email address associated with your Account. To ensure that you receive all of our communications, you agree to keep your email address up-to-date and immediately notify us if there are any changes.

Delivery of any communication to the email address associated with your Account is considered valid. If any email communication is returned as undeliverable, we retain the right to block your access to your Account until you provide and confirm a new and valid email address.

14.4 Taxes

You understand and acknowledge that Bakkt Crypto, Platform Provider, Correspondent and Apex Clearing do not provide tax or legal advice. You further understand and acknowledge that Bakkt Crypto will report Cryptocurrency Transactions and the proceeds from cryptocurrency sales to the Internal Revenue Service to the extent and manner in which so required by law.

14.4.1 U.S. Persons

This subsection is applicable if you are a U.S. person (including a U.S. resident alien) as such term is defined in section 7701(a) of the Internal Revenue Code of 1986, as amended ("U.S. Person"). Under penalties of perjury, you hereby certify that the taxpayer identification number that you have provided or will provide to Bakkt Crypto in connection with your Account (including any taxpayer identification number on any Form W-9 that you have provided or will provide) is your correct taxpayer identification number.

14.4.2 Non-U.S. Persons

This subsection is applicable if you are not a U.S. Person. You hereby certify that you fully understand all the information on any Form W-8BEN that you have submitted or will submit to Bakkt Crypto in connection with your Account. Under penalties of perjury, you declare that (i) you have examined all the information on any Form W-8BEN that you have submitted or will submit to Bakkt Crypto and (ii) to the best of your knowledge and belief all such information is true, correct, and complete.

15. Privacy Policy

Please refer to Platform Provider's Privacy Policy for information about how Platform Provider collects, uses and discloses information about you when you engage with the Platform.

Please refer to Bakkt Crypto's Privacy Policy at bakkt.com/privacy-policy for information about how we collect, use and disclose information about you when you visit our website.

16. Remedies for Breach; Remedies in General

In the event that you or your officers, managers, partners, directors, Affiliates, employees, independent agents or contractors breach any of your representations, warranties, agreements or covenants set forth in this Agreement or otherwise fail to comply with the requirements of this Agreement, any policies of Bakkt Crypto or the terms of service set forth on our website, including without limitation, giving Bakkt Crypto inaccurate or incomplete information for any reason, Bakkt Crypto will have the right to terminate this Agreement and to close your Account. Bakkt Crypto will also have the right to restrict your transactions by refusing to either accept or execute any transactions for your Account. You are liable for all damages suffered by Bakkt Crypto and its Affiliates, Platform Provider, Correspondent and Apex Clearing resulting from any such breach by you or your officers, managers, partners, directors, Affiliates, employees, independent agents or contractors. Further, in the event of such breach, Bakkt Crypto will have the rights of a secured creditor under all applicable laws with respect to your Account and can (i) recover all damages incurred by Bakkt Crypto and its Affiliates by selling any or all of the cryptocurrencies held in your hosted wallet. Bakkt Crypto has sole discretion over what actions, if any, it takes in the event of such breach and may take action without prior notice to you. If a breach by you or your officers, managers, partners, directors, Affiliates, employees, independent agents or contractors involves participation by other parties with accounts at Bakkt Crypto, you and such parties will be jointly and severally liable for all resulting damages to Bakkt Crypto and its Affiliates.

The enumeration in this Agreement of specific remedies shall not be exclusive of any other remedies that may be available at law or in equity. Any delay or failure by any party to this Agreement to exercise any right, power, remedy or privilege herein contained, or now or hereafter existing under any applicable statute or law, shall not be construed to be a waiver of such right, power, remedy or privilege, nor to limit the exercise of such right, power, remedy or privilege, nor shall it preclude the further exercise thereof or the exercise of any other right, power, remedy or privilege.

17. Indemnification

17.1 Indemnification by You

In addition to any other obligations you may have under other provisions of this Agreement, you agree to indemnify, defend, pay, reimburse and hold harmless Bakkt Crypto, Correspondent, Platform Provider, Apex Clearing, each of their Affiliates and all of their officers, directors, managers, partners, employees, independent contractors, or agents, (collectively, the "Crypto Indemnified Persons") from and against all claims, demands, proceedings, suits and actions and all liabilities, losses, expenses, costs (including reasonable legal and accounting fees and expenses), damages, penalties, fines, taxes or amounts due of any kind (collectively, "Losses") arising out of, in connection with or relating to (A) you or your officers, managers, partners, directors, Affiliates, employees, independent agents or contractors, for any reason, fraudulent or otherwise, failing to perform or comply with any obligation, agreement or covenant under this Agreement, the Services or your use of the Services or any other services provided in connection with your Account, the Platform or your use of the Platform, (B) a breach by you or your officers, managers, partners, directors, Affiliates, employees, independent agents or contractors, of any representation or warranty made by you under this Agreement or your provision of any inaccurate or incomplete information to any of the Crypto Indemnified Persons for any reason in connection with this Agreement, the Services, any other services provided in connection with your Account or the Platform, (C) any negligent, dishonest, fraudulent, or criminal act or omission by your or any of your officers, managers, partners, directors, Affiliates, employees, or independent agents or contractors, (D) any claim or dispute between you and your Correspondent or Platform Provider and (E) any failure by you or your officers, managers, partners, directors, Affiliates, employees, independent agents or contractors to comply with any laws, rules or regulations applicable to you or them. Notwithstanding the foregoing, an Crypto Indemnified Person shall not be entitled under this paragraph to receive indemnification for that portion, if any, of any liabilities and costs which is solely caused by its own individual gross negligence, willful misconduct or fraud, as determined by arbitration in accordance with Section 19 below.

17.2 Indemnification Procedures

Upon receipt by any Crypto Indemnified Person(s) under this Section 17 of notice of the commencement of any action, and if a claim is to be made against you under this Section 17, the Crypto Indemnified Person(s) will promptly notify you; *provided, however*, that no delay on the part of the Crypto Indemnified Person(s) in notifying you shall relieve you from any obligation hereunder unless (and then solely to the extent) you thereby are prejudiced. Further, the omission to promptly notify you will not relieve you from any liability that you may have to any Crypto Indemnified Person(s) otherwise than under this Section 17. In any such action brought against any Crypto Indemnified Person(s), you will be entitled to participate in and, to the extent that you may wish, to assume the defense thereof, subject to the provisions herein stated, with counsel reasonably satisfactory to such Crypto Indemnified Person(s). After notice from you to such Crypto Indemnified Person(s) of your election to assume the defense thereof, you will not be liable to such Crypto Indemnified Person(s) under this Section 17 for any legal or other expense subsequently incurred by such Crypto Indemnified Person(s) in connection with the defense thereof other than reasonable costs of investigation or in the case of an actual or potential conflict of interest between you and any Crypto Indemnified Person(s), identified in writing by counsel to the Crypto Indemnified Person(s). You shall keep the Crypto Indemnified Person(s) informed of the status of the defense of such claims, and you will not agree to any settlement without consent of the Crypto Indemnified Person(s), which consent will not be unreasonably withheld. The Crypto Indemnified Person(s) shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall not, other than in the case of an actual or potential conflict of interest between you and Crypto Indemnified Person(s), be at your expense if you have assumed the defense of the action with counsel satisfactory to the Crypto Indemnified Person(s). In the event that the Crypto Indemnified Person(s) reasonably believes that you are not adequately defending a claim, the Crypto Indemnified Person(s) will have the right to assume the defense of such claims at your sole expense. You will not settle any action unless such settlement completely and finally releases the Crypto Indemnified Person(s) from any and all liability and otherwise is acceptable to the Crypto Indemnified Person(s). Except with your prior written consent, the Crypto Indemnified Person(s), you may not confess any claim or make any compromise in any case in which you may be required to provide indemnification.

18. Limitation of Liability

YOUR ACCOUNT AT BAKKT CRYPTO, THE SERVICES, YOUR USE OF THE ACCOUNT, THE PLATFORM, YOUR USE OF THE PLATFORM AND ANY OTHER SERVICES PROVIDED TO YOU IN CONNECTION THEREWITH ARE PROVIDED BY BAKKT CRYPTO, ITS AFFILIATES, CORRESPONDENT, PLATFORM PROVIDER, AND ANY OTHER SERVICE PROVIDERS ON AN "AS IS" AND "AS AVAILABLE" BASIS AND WITHOUT WARRANTY OF ANY KIND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. BAKKT CRYPTO, CORRESPONDENT AND PLATFORM PROVIDER DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THERE IS NO WARRANTY THAT ANY OF THE SERVICES OR THE PLATFORM, OR ANY DATA OR OTHER INFORMATION PROVIDED TO YOU BY BAKKT CRYPTO OR ITS AFFILIATES OR THROUGH CORRESPONDENT OR THE PLATFORM WILL FULFILL ANY PARTICULAR PURPOSES OR NEEDS. THERE IS NO WARRANTY THAT THE SERVICES PROVIDED HEREUNDER OR THE PLATFORM WILL BE ERROR FREE, UNINTERRUPTED, TIMELY, RELIABLE, COMPLETE OR ACCURATE.

YOU HEREBY WAIVE AND RELEASE CORRESPONDANT, PLATFORM PROVIDER, AND ANY OF ITS AGENTS, AFFILIATES, OR THIRD PARTY PROVIDERS FROM LIABILITY, EXCEPT FOR LIABILITY ARISING FROM CORRESPONDENT'S OR PLATFORM PROVIDER'S GROSS NEGLIGENCE OR RECKLESS CONDUCT, TO YOU FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THE SERVICES, INCLUDING ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR ANY OTHER DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOST OPPORTUNITY, TRADING LOSSES, DAMAGES RESULTING FROM INCONVENIENCE OR LOSS OF USE OF A WEB SITE), EVEN IF YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

This User Agreement is an agreement between you and Bakkt Crypto, and not with Correspondent, Platform Provider or Apex Clearing. The Services are provided to you, subject to the terms and conditions of this Agreement, by Bakkt Crypto and not by Correspondent, Platform Provider or Apex Clearing. Your Account is held at Bakkt Crypto and not with Correspondent or Apex Clearing. This Agreement does not give rise to any rights to you against Correspondent, Platform Provider or Apex Clearing with respect to the Services or your Account. If you have a complaint or dispute relating to the Services or your Account, your sole recourse is to Bakkt Crypto and not Correspondent, Platform Provider or Apex Clearing.

Neither Bakkt Crypto, any of its Affiliates nor any of their officers, directors, managers, partners, employees or independent agents or contractors will be liable to you or any of your Affiliates for any losses, expenses (including legal fees and costs), liabilities, damages, costs, demands, obligations, penalties, charges, causes of action, claims, fines, taxes or amounts due of any kind (both known and unknown, absolute or contingent, liquidated or unliquidated, direct or indirect, payable now or payable in the future, accrued or not accrued) (collectively, "Losses") arising out of, related to or resulting from your Account, the Services or your use of the Services, including without limitation any trading or other activities conducted in the Account, the Platform or your use of the Platform, including without limitation, your sending orders for the purchase and sale of cryptocurrencies to Bakkt Crypto and directing the transfer of funds to Bakkt Crypto, and the storage of your cryptocurrencies, except to the extent and only to the extent that your Losses are actual and have been finally determined by a court of competent jurisdiction or arbitration panel to have resulted solely from the gross negligence, intentional misconduct or fraud of Bakkt Crypto, any of its Affiliates or any of their officers, directors, managers, partners, employees or independent agents or contractors.

You will not be held liable for such actual Losses that have been finally determined to have resulted solely from the gross negligence, intentional misconduct or fraud of Bakkt Crypto, Apex Clearing, any of their Affiliates or any of their officers, directors, managers, partners, employees or independent agents or contractors.

Further, notwithstanding any other provision contained in this Agreement to the contrary, none of Correspondent, Platform Provider, any of their Affiliates nor any of their officers, directors, managers, partners, employees or independent agents or contractors will be liable to you or any of your Affiliates for any "Losses" arising out of, related to or resulting from your Account, the Services or your use of the Services, including without limitation any trading or other activities conducted in the Account, and the storage of your cryptocurrencies.

Further, none of Bakkt Crypto, Apex Clearing, Correspondent, Platform Provider, any of their Affiliates or any of their officers, directors, managers, partners, employees or agents will have responsibility for Losses or have any other liability to you (i) arising out of or resulting from any actions or inactions or performance of services by any third party or actions of other participants in the markets with respect to your Account or the activities conducted through your Account or (ii) arising out of or resulting from system failures, outages, unauthorized access to the Account, conversion of property, errors of any kind, government actions, force majeure events, trading suspensions, or any other causes over which Bakkt Crypto does not have direct control. Further, none of Bakkt Crypto, Apex Clearing, Correspondent, Platform Provider, any of their Affiliates or any of their officers, directors, managers, partners, employees or agents shall be liable for any Losses that are not direct damages, including without limitation, indirect, special, incidental, punitive, consequential or exemplary damages, which includes trading losses, lost profits and other lost business opportunities relating to the Account, the Services and your use of the Services, the Platform and your use of the Platform, including without limitation for sending orders for the purchase and sale of cryptocurrencies to Bakkt Crypto, directing the transfer of funds to Bakkt Crypto and the storage of your cryptocurrencies.

19. Dispute Resolution

In the event of a dispute between the parties, such dispute shall be settled by arbitration before one arbitrator sitting in Atlanta, Georgia, unless the amount in dispute exceeds $1,000,000, in which case the arbitration shall be before three independent arbitrators sitting in Atlanta, Georgia.

19.1 ARBITRATION DISCLOSURE.

1. ARBITRATION IS FINAL AND BINDING ON THE PARTIES.
2. THE PARTIES ARE WAIVING THEIR RIGHT TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO JURY TRIAL; PROVIDED, HOWEVER, THAT THE PARTIES RESERVE THE RIGHT TO SEEK PURELY INTERIM OR EQUITABLE RELIEF IN A COURT OF COMPETENT JURISDICTION AS SET FORTH BELOW.
3. PRE-ARBITRATION DISCOVERY IS GENERALLY MORE LIMITED THAN AND DIFFERENT FROM COURT PROCEEDINGS.
4. THE ARBITRATOR OR ARBITRATION PANEL SHALL ISSUE A REASONED AWARD.

19.2 ARBITRATION AGREEMENT.

EACH PARTY AGREES TO ADVISE THE OTHER PARTY PROMPTLY IN THE EVENT A DISPUTE ARISES BETWEEN THEM (OR ANY OF THEIR AFFILIATES, IT BEING UNDERSTOOD THAT AFFILIATES ARE BOUND BY THIS USER AGREEMENT). THE PARTIES AGREE TO ATTEMPT TO RESOLVE ANY SUCH DISPUTE INFORMALLY BEFORE FILING A FORMAL ACTION. IF A DISPUTE CANNOT BE RESOLVED INFORMALLY WITHIN THIRTY (30) DAYS, AND MEDIATION (DESCRIBED BELOW) FAILS TO RESOLVE THE DISPUTE, EITHER PARTY MAY FILE AN ARBITRATION DEMAND. NOTWITHSTANDING THE FOREGOING, EITHER PARTY MAY FILE AN ARBITRATION DEMAND PRIOR TO SUCH TIME TO COMPLY WITH ANY STATUTE OF LIMITATION OR TIMING REQUIREMENTS TO PRESERVE ITS CLAIMS.

ANY CONTROVERSY, DEMAND, CAUSE OF ACTION, WHETHER IN TORT, CONTRACT, BY STATUTE OR OTHERWISE, BETWEEN YOU AND BAKKT CRYPTO (OR ITS AFFILIATES) INCLUDING THOSE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ACCOUNT, ANY ACTIVITIES IN THE ACCOUNT, INCLUDING WITHOUT LIMITATION, ANY USE OF THE SERVICES, USE OF THE PLATFORM, THIRD PARTY SERVICES, SENDING ORDERS FOR THE PURCHASE OR SALE OF CRYPTOCURRENCIES, AND THE STORAGE OF YOUR CRYPTOCURRENCIES, SHALL BE EXCLUSIVELY, FULLY AND FINALLY RESOLVED BY BINDING ARBITRATION PURSUANT TO THE JAMS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES (INCLUDING THE EXPEDITED PROCEDURES FOR SUCH RULES IF THE MATTER IS ARBITRATED BY A SINGLE ARBITRATOR). THE ARBITRATION WILL BE HELD IN ATLANTA, GEORGIA, UNLESS SUCH LOCATION IS NOT CONVENIENT, THE ARBITRATION WILL BE HELD IN THE COUNTY OF YOUR RESIDENCE. ARBITRATION MUST BE COMMENCED BY SERVICE UPON THE OTHER PARTY OF A WRITTEN DEMAND FOR ARBITRATION OR A WRITTEN NOTICE OF INTENTION TO ARBITRATE. THE MATTER SHALL BE DECIDED BY ONE INDEPENDENT ARBITRATOR, UNLESS THE AMOUNT IN DISPUTE IS IN EXCESS OF $1,000,000, THEN THE ARBITRATION SHALL BE DECIDED BY A PANEL OF THREE INDEPENDENT ARBITRATORS, ONE CHOSEN BY BAKKT CRYPTO, ONE CHOSEN BY YOU AND THE THIRD CHOSEN BY THE FIRST TWO ARBITRATORS. THE ARBITRATOR(S) SHALL HAVE INDUSTRY RELATED EXPERIENCE. THE ARBITRATOR(S) SHALL APPLY THE SUBSTANTIVE LAW OF THE STATE OF DELAWARE WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAWS PRINCIPLES THAT MAY APPLY. THE ARBITRATION ITSELF SHALL BE GOVERNED BY FEDERAL ARBITRATION ACT 9 USC §1 ET. SEQ. AND JUDGMENT UPON THE AWARD MAY BE ENTERED BY ANY COURT HAVING COMPETENT JURISDICTION. THE ARBITRATOR OR PANEL SHALL ISSUE A REASONED AWARD. BAKKT CRYPTO SHALL BE RESPONSIBLE FOR THE COSTS OF THE ARBITRATION AND THE PARTIES OWN LEGAL FEES AND COSTS, UNLESS BAKKT CRYPTO IS THE PREVAILING PARTY, IN WHICH CASE YOU WILL PAY ONE-HALF OF THE COSTS OF THE ARBITRATION AND YOUR LEGAL FEES AND COSTS. THE ARBITRATORS SHALL BE SPECIFICALLY AUTHORIZED TO AWARD LEGAL FEES AND COSTS OF ARBITRATION TO THE PREVAILING PARTY. THE DUTY TO ARBITRATE DESCRIBED HEREIN SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT. THE PARTIES HEREBY WAIVE TRIAL IN A COURT OF LAW OR BY JURY. ALL ARBITRATION CLAIMS WILL BE BROUGHT ON AN INDIVIDUAL BASIS AND YOU WAIVE ANY RIGHTS YOU HAVE TO PARTICIPATE IN A CLASS ACTION RELATING TO ANY MATTERS DESCRIBED IN THIS DISPUTE RESOLUTION SECTION.

ANY DISPUTE REQUIRING INJUNCTIVE OR OTHER EMERGENCY EQUITABLE RELIEF MAY BE BROUGHT DIRECTLY TO A COURT OF COMPETENT JURISDICTION. THE PARTIES SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE STATE OR FEDERAL COURT LOCATED IN ATLANTA, GEORGIA OR WILMINGTON, DELAWARE FOR ANY SUIT SEEKING INTERIM OR INJUNCTIVE RELIEF OR TO CONFIRM AND EXECUTE UPON THE AWARD. YOU HEREBY AGREE TO SUCH EXCLUSIVE JURISDICTION AND VENUE AND WAIVE ANY RIGHTS YOU MAY HAVE TO CLAIM THAT THE FORUM IS NOT CONVENIENT AND OTHER CLAIMS TO INVALIDATE SUCH JURISDICTION.

BEFORE COMMENCING AN ACTION IN ARBITRATION, THE PARTIES SHALL PROMPTLY SUBMIT ANY DISPUTE THAT THEY HAVE FAILED TO PROMPTLY RESOLVE TO MEDIATION BEFORE JAMS IN ATLANTA, GEORGIA OR AT A LOCATION AGREED TO BY THE PARTIES, THE PARTIES SHALL JOINTLY SELECT THE MEDIATOR, OR IF THE PARTIES ARE UNABLE TO AGREE UPON A MEDIATOR, THEN THE DISPUTE SHALL BE SUBMITTED TO NON-BINDING MEDIATION BEFORE JAMS. THE COST OF THE MEDIATION SHALL BE PAID BY BAKKT CRYPTO. IF THE PARTIES ARE UNABLE TO ACHIEVE A MUTUALLY AGREEABLE RESOLUTION OF THE DISPUTE THROUGH MEDIATION WITHIN 60 DAYS AFTER COMMENCEMENT OF MEDIATION PROCEEDINGS, THE PARTIES HEREBY AGREE TO SUBMIT THEIR DISPUTE TO BINDING ARBITRATION DESCRIBED ABOVE. NOTWITHSTANDING THE FOREGOING, EITHER PARTY MAY FILE AN ARBITRATION DEMAND AT ANY TIME TO COMPLY WITH ANY STATUTE OF LIMITATION OR TIMING REQUIREMENTS TO PRESERVE ITS CLAIMS.

20. Governing Law and Venue

This Agreement shall be governed by the internal laws of the State of Delaware applicable to agreements made and to be performed entirely within the State of Delaware, without regard to the conflicts of law principles that would apply the laws of any other jurisdiction.

21. Legal

21.1 Regulation

Bakkt Crypto is registered with the U.S. Department of Treasury Financial Crimes Enforcement Network ("FinCEN") as a money services business ("MSB"). As a registered MSB, Bakkt Crypto is subject to the Bank Secrecy Act and its implementing regulations (collectively, the "BSA") which set out the requirements imposed upon financial institutions to implement policies and procedures reasonably designed to detect and prevent money laundering and terrorist financing. You understand and acknowledge that your access to and use of the Services is subject to compliance with Bakkt Crypto's AML Program. You understand and acknowledge that Bakkt Crypto is not a registered broker-dealer and is not a member of the Financial Industry Regulatory Authority or the SIPC. You further understand and acknowledge that your cryptocurrency holdings are not protected by the FDIC or SIPC, or any other insurance.

21.2 Compliance with Applicable Laws

Cryptocurrency Transactions are subject to applicable laws, regulations, and rules of federal and state governmental and regulatory authorities (collectively, "Applicable Laws"). You understand that compliance with Applicable Laws may include compliance with any guidance or direction of any regulatory authority or government agency, any writ of attachment, lien, levy, subpoena, warrant, or other legal order (collectively, "Legal Orders").

You understand and acknowledge that in no event will Bakkt Crypto be obligated to affect any Cryptocurrency Transaction it believes would violate any Applicable Law. You further understand and acknowledge that Bakkt Crypto is not responsible for any losses, whether direct or indirect, that you may incur as a result of Bakkt Crypto's good faith efforts to comply with any Applicable Law, including any Legal Order.

21.3 State Licenses and Disclosures

Bakkt Crypto maintains licenses to engage in money transmission activities in certain states, and these licenses may impact our provision and your use of certain Services depending on where you live. Bakkt Crypto's licenses and corresponding required disclosures can be found at bakkt.com/disclosures, which is incorporated by reference.

21.4 Authorizing Apex Clearing to Share Your Information

In this User Agreement, you agree and authorize Platform Provider, Correspondent and Apex Clearing Corporation to provide all information provided to Platform Provider, Correspondent and Apex Clearing Corporation in my new account application to Bakkt Crypto Solutions LLC for purposes of opening and maintaining an Bakkt Crypto Solutions LLC account.

Disclosure: Bakkt Crypto Solutions LLC is not a broker-dealer and is a separate company from each of Correspondent, Platform Provider and Apex Clearing Corporation. Assets held at Bakkt Crypto Solutions LLC are held away from Correspondent and Apex Clearing Corporation and are not protected by SIPC or the FDIC. Purchasing cryptocurrencies comes with a number of risks, including volatile market price swings or flash crashes, fraud, market manipulation, and cybersecurity risks. Please review your account agreement with Bakkt Crypto Solutions LLC for further elaboration on these risks.

These terms were last updated January 16, 2024.

Copyright 2024 © Bakkt. All rights reserved.