Trial Service Ts & Cs

1. ACCESS TO AND USE OF THE ELLIPTIC SERVICE

1.1. Elliptic shall assess every request to access Trial Services in good faith, but shall retain absolute discretion as to whether to permit a Primary User and any Trial Users with access to the Trial Service. Where Elliptic agrees to provide access, it shall provide to the Primary User a copy of the Trial Commercials and Access Protocols for all acceptable Trial Users, at which point this Agreement shall be binding on the Parties.

1.2. Subject to Customer's and the Trial Users' continuing compliance with this Agreement, Elliptic hereby grants Customer a personal, non-exclusive, non-transferable, non-sublicensable, limited and revocable (on termination) right for the Trial Users to: (i) access and use the features and functions of the Trial Service, and (ii) view the Documentation, strictly for the purpose of the Customer's internal analysis of the benefits of the Trial Services for the Trial Period only.

1.3. Customer is solely responsible for all activities that the Trial Users undertake on the Trial Service. Customer shall immediately notify Elliptic of any unauthorised use of any Trial User's Access Protocols. Elliptic will not be liable for any Losses arising from Customer's failure to ensure each Trial User maintains the confidentiality of its Access Protocols.

1.4. The Customer acknowledges and agrees that the Trial Service has not been developed specifically for the Customer and is offered on an "as is" basis only with Elliptic offering no warranties (express or implied) that the Trial Service, the Documentation or the Deliverables shall provide the Customer with the outcome it may seek.

1.5. Elliptic shall retain sole ownership of all right, title and interest, including all Intellectual Property Rights, in and to the Trial Service, the Documentation and the Deliverables. The Customer will not acquire any right, title or interest in or to the Trial Service, the Documentation or the Deliverables except as expressly provided in the Agreement.

2. USE OF DELIVERABLES

2.1. Subject to the Customer's and the Trial Users' continuing compliance with this Agreement, Elliptic hereby grants the Customer a personal, non-exclusive, non-transferable, non-sublicensable limited and revocable (on termination and expiry) right for it to use the Deliverables strictly for the purpose of the Customer's internal analysis of the benefits of the Trial Service and for the Trial Period only. At the end of the Trial Period, the Customer shall delete all Deliverables and shall provide evidence of such deletion to Elliptic on request.

2.2. The Customer agrees to indemnify, defend and hold Elliptic and its officers, directors, employees and agents harmless from and against any and all Losses arising from or in connection with any allegation, claim, demand, proceeding or other action brought against Elliptic that is based upon, or arises directly or indirectly as a result of, the Customer's, or any third party's use of, or reliance upon any Deliverables.

3. RESTRICTIONS

3.1. Except with the express prior written permission of Elliptic or as set out in the Trial Commercials, all Trial Users must be employees of the Customer. Without affecting any other right or remedy available to it, in the event that Elliptic determines (acting reasonably) that any Trial User is employed by or acting on behalf of any third party that Elliptic reasonably deems to be its competitor, it may immediately and without notice:

(a) deactivate the user account of that Trial User and disable any associated Access Protocols; and

(b) permanently and irretrievably destroy the user account of the deactivated Trial User and all Customer Data stored therein.

3.2. The Customer will not, and will not permit others to:

(a) use the Trial Service, the Deliverables or the Documentation (or any part thereof) in any manner or for any purpose that is inconsistent with the Agreement;

(b) create, market or distribute any product or service that is competitive with the Trial Service or any other product or service offered by Elliptic;

(c) introduce to the Trial Service any "back door," "drop dead device," "time bomb," "Trojan horse," "virus," or "worm" (as such terms are commonly understood in the software industry) or any other equivalent code, software routine or instructions designed or intended to disrupt, disable, harm or otherwise impede in any manner the operation of the Trial Service or any device or system owned or controlled by Elliptic or any third party, or which otherwise may damage or destroy any data or file;

(d) modify, copy, resell, rent, lease, sub-licence, load, merge, adapt or translate the whole or any part of the Trial Service;

(e) reverse engineer, decompile, unbundle, disassemble, or create derivative works based on, the whole or any part of the Trial Service;

(f) re-use, disseminate, copy, or otherwise use the Trial Service, the Deliverables or the Documentation (or any part thereof) in a way that infringes, misappropriates, or violates any Intellectual Property Rights or other right of Elliptic or any third party; or

(g) remove, alter, obscure Elliptic's trade mark, copyright notice or any other proprietary notice from the Trial Service, the Deliverables or the Documentation (or any part thereof).

4. CUSTOMER DATA

4.1. The Customer warrants and represents on an ongoing basis and undertakes that throughout the Trial Period it shall have the necessary rights, power, consents and authority to input Customer Data into the Trial Service and therefore transmit Customer Data to Elliptic under this Agreement. The Customer will indemnify, defend and hold Elliptic and its officers, directors, employees and agents harmless from and against any and all Losses arising from or in connection with, Customer's breach of this warranty, representation and/or undertaking given.

5. CONFIDENTIAL INFORMATION

5.1. For the purposes of this Agreement, the "**Discloser**" means the party disclosing Confidential Information and the "**Recipient**" means the party to whom such Confidential Information is disclosed.

5.2. In this Agreement, "**Confidential Information**" means: (i) the Trial Service, the Documentation, any Deliverables, any screenshots of the operation of the Trial Service, any of Elliptic or its affiliates' methodologies, any methodologies of the Trial Service, and (ii) any information that is clearly labelled or identified as confidential or ought reasonably be treated as being confidential. Confidential Information excludes any information which:

(a) is or becomes publicly known other than through a breach of this Agreement;

(b) was in the Recipient's lawful possession before the disclosure;

(c) is lawfully disclosed to the Recipient by a third party without restriction on disclosure;

(d) is independently developed by the Recipient and that independent development can be shown by written evidence; or

(e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body, provided that the Discloser is notified of the disclosure obligation in advance of disclosure (unless prohibited by law).

5.3. In consideration of the Discloser disclosing Confidential Information, the Recipient hereby undertakes to:

(a) keep confidential and secret all Confidential Information that it may acquire in any manner from the Discloser;

(b) use such Confidential Information exclusively for the purposes of the Trial and not to use the Confidential Information for the Recipient's own purposes or benefit outside the scope of this Agreement; and

(c) notify the Discloser immediately upon becoming aware of any breach of confidence by anybody to whom the Recipient has disclosed the Confidential Information and give all necessary assistance in connection with any steps which the Discloser may wish to take to prevent, stop or obtain compensation for such breach or threatened breach.

5.4. If the Recipient breaches Clause 5.3, the Parties hereby acknowledge that the Discloser may suffer irreparable harm and, in such circumstances, financial damages may be an inadequate remedy for the Discloser. As a result, the Discloser may seek injunctive relief in response to a breach of Clause 5.3 by the Recipient in addition to any other remedies available to it in law or under this Agreement.

5.5. This Clause 5 will survive termination of this Agreement, but the Parties agree that it may be terminated and replaced with equivalent provisions if the Parties agree to enter into a full agreement for the Customer to use the Trial Service or other products or services offered by Elliptic.

6. DATA PROTECTION

6.1. The Parties agree to comply with their respective obligations as set out in Schedule 2 (Data Processing Addendum) to these Terms.

7. TERM AND TERMINATION

7.1. The term of this Agreement shall commence on the Effective Date and expire at the end of the Trial Period (each as set forth in the Trial Commercials), unless terminated earlier pursuant to the terms outlined in the remainder of this Clause 7.

7.2. Either Party may terminate this Agreement at any time during the Trial Period by providing the other Party with twenty-four (24) hours' written notice.

7.3. Either Party may terminate this Agreement with immediate effect by giving notice to the other Party if the other Party:

(a) commits a material breach of any term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of five (5) days after being notified to do so; or

(b) becomes insolvent or is otherwise unable to pay its debts.

7.4. On expiry or termination of this Agreement:

(a) any and all licences, permissions and authorisations granted to the Customer and/or the Trial Users by Elliptic under this Agreement will terminate automatically;

(b) each Party will promptly return all Confidential Information received from the other Party, together with all copies, or certify in writing that all such Confidential Information and copies thereof have been destroyed; and

(c) any provision of this Agreement that either expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

7.5. Any obligation to return, destroy or permanently erase Confidential Information outlined in Clause 7.4(b) shall not apply:

(a) in respect of one (1) copy of the Customer Data, that Elliptic may be entitled to retain as necessary to comply with any legal, regulatory, judicial, audit, or compliance requirements; and

(b) to any Confidential Information or Customer Data that is retained by Elliptic on electronic back-up media made in the ordinary course of business and from which it cannot readily be isolated from other information and deleted,

provided that, in each case, the applicable provisions of this Agreement relating to data security and Confidential Information shall continue to apply to any such Confidential Information and/or Customer Data.

8.   LIMITATION OF LIABILITY

8.1.   Nothing in this Agreement limits or excludes the liability of either Party for:

(a)   death or personal injury caused by its negligence;

(b)   fraud or fraudulent misrepresentation; or

(c)   any other act, omission, or liability which may not be limited or excluded by applicable law.

8.2.   Subject to Clause 8.1, Elliptic shall not in any circumstances be liable to Customer whether in contract, tort (including for negligence), breach of statutory duty (howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise for any Losses under this Agreement howsoever caused. If Elliptic shall be declared liable for any Losses under this Agreement by a court or regulator of competent jurisdiction, Elliptic's total aggregate liability howsoever arising out of this Agreement shall not exceed fifty pounds sterling (£50).

8.3.   Except as expressly and specifically provided in this Agreement, Elliptic disclaims all warranties and conditions express or implied, including, but not limited to, implied warranties of satisfactory quality and fitness for a particular purpose, in relation to the Trial Service and any other products or services offered by Elliptic, their use and the results of such use.

9.   GENERAL

9.1.   Customer acknowledges and agrees that this Agreement does not grant any rights or obligations in respect of any third party content or open source software and Elliptic is not responsible for the Customer's use of third party content or open source software.

9.2.   The Customer will not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement, without the prior written consent of Elliptic. Elliptic may engage any third party to perform its obligations under this Agreement.

9.3.   No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

9.4.   A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

9.5.   If any provision or part-provision of this Agreement shall be held to be invalid, illegal, void or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.

9.6.   A person who is not a Party to these Terms shall not be entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

9.7.   This Agreement and all matters arising from it (including any dispute relating to the existence, validity or termination of this Agreement or any contractual or non-contractual obligation) shall be governed by, and construed in accordance with the laws of England and Wales.

9.8.   Any dispute under this Agreement shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules, which are deemed to be incorporated by reference into this Clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitral proceedings shall be English. The governing law of the contract shall be the substantive law of England and Wales.

Schedule 1 – Definitions

"**Access Protocols**" means the log-in credentials, together with the network link required to enable Trial Users to set their password, necessary to access the Trial Service.

"**Agreement**" means these Terms together with the Trial Commercials.

"**AML**" means the software systems and interfaces owned, operated and/or licensed by Elliptic, which are used to examine the provenance of Cryptocurrency for the purposes of assessing the risk of a Cryptocurrency transaction being associated with illicit activity, together with any data owned by (or licensed to) Elliptic comprised therein or accessed thereby.

"**Cryptocurrency**" means any peer-to-peer electronic money or payment network which uses cryptography to secure transactions, for example Bitcoin.

"**Customer Data**" means any data, media, information or other content that is inputted by Customer or Trial Users in using the Trial Service.

"**Data Controller**" and "**Data Processor**" shall have the meaning ascribed to them in the Data Protection Legislation.

"**Data Protection Legislation**" means the EU General Data Protection Regulation 2016/679 (the "GDPR") and the UK Data Protection Act 2018 (in each case, as and if applicable).

"**Deliverables**" means the results of any use of the Trial Service.

"**Discovery**" means the software systems and interfaces owned, operated and/or licensed by Elliptic, which are used for the purposes of assessing the risk of a Cryptocurrency participant being associated with illicit activity, together with any data owned by (or licensed to) Elliptic comprised therein or accessed thereby.

"**Documentation**" means the manuals, product literature, instructions, schematics, and drawings prepared or published by Elliptic that describe or relate to the Trial Service and its installation, use, operation, features, functionality, capabilities and maintenance.

"**Forensics**" means the software systems and interfaces owned, operated and/or licensed by Elliptic, which are used to enable the re-identification of pseudonymous Cryptocurrency users and map chains of Cryptocurrency transactions.

"**Intellectual Property Rights**" means all copyright and related rights, patents, rights to inventions, utility models, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"**Losses**" means all losses, liabilities, damages, costs, claims, charges, demands, actions, proceedings and expenses (including legal and professional fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).

"**Model Clauses**" means the standard contractual clauses for the transfer of personal data from the EEA to third countries.

"**Parties**" means the parties set out in the Trial Commercials.

"**Primary User**" means the individual as identified in the Trial Commercials.

"**Subprocessor**" means any third party appointed by or on behalf of Elliptic to process Customer Data.

"**Terms**" means these trial terms and conditions.

"**Trial Commercials**" means the commercial elements of the Trial sent to the Customer together with the Access Protocols.

"**Trial Service**" means the Elliptic service for the trial as identified in the Trial Commercials.

"**Trial Users**" means those employees of the Customer (and where agreed with Elliptic other individuals) who are authorised to access the Trial Service pursuant to Clause 1.1, including for the avoidance of doubt the Primary User.

Schedule 2 – Data Processing Addendum ("DPA")

The Parties hereby acknowledge that they may receive personal data from the other Party when performing their obligations and exercising their rights under the Agreement. In respect of personal data received by Elliptic in order to set out the Access Protocols, the Customer shall be a Data Controller and Elliptic shall be a Data Processor. In respect of any personal data contained within the Customer Data input into the Trial Service, the Customer shall be a Data Controller and Elliptic shall be a Data Controller. In respect of any personal data contained within the Deliverables, Elliptic shall be a Data Controller and the Customer shall be a Data Controller.

Where Elliptic acts as a Data Processor, Elliptic shall:

a) act only on instructions from Customer in relation to the processing;
b) comply with its obligations as a data processor under the Data Protection Legislation;
c) take reasonable steps to ensure Elliptic staff maintain confidentiality in the personal data;
d) implement and maintain, at its cost and expense, appropriate technical and organisational measures in relation to the processing and security of the personal data in accordance with Data Protection Legislation;
e) appoint any Subprocessor under a written contract including terms which offer at least an equivalent level of protection for personal data as those set out in this DPA;
f) provide reasonable assistance to the Customer in respect of any requests for data subjects, data impact assessments and prior consultations with the ICO (or equivalent regulator);
g) notify Customer without undue delay of a breach relating to the personal data;
h) subject to anything to the contrary in the Agreement or under law, delete or return the personal data at the Customer's request when the Agreement expires or is terminated; and
i) permit the Customer to make reasonable enquiries in respect of Elliptic's continued compliance with the Data Protection Legislation.

In respect of any personal data provided to Elliptic by the Customer whether via use of the Trial Service or otherwise, the Customer warrants and undertakes on an ongoing basis that: (i) it has complied, and undertakes that it shall comply, with its obligations as a Data Controller of the personal data under the Data Protection Legislation (including ensuring Elliptic has a valid legal basis(es) for its processing of personal data as envisaged by this Agreement); and (ii) the personal data does not contain any special categories of personal data as defined in the Data Protection Legislation.

Where the Customer and Elliptic are both acting as Data Controllers, the relevant Party shall:

a) notify the other Party without undue delay of any actual (and not simply suspected or potential) personal data breach and give the other reasonable assistance in the other's handling of any such personal data breach;
b) provide reasonable assistance to the other Party in respect of any requests for data subjects;
c) comply with its transparency and notice obligations toward data subjects in accordance with the Data Protection Legislation and provide reasonable assistance to the other Party in respect of the same.

The Parties agree that they shall only transfer personal data outside of the EEA in reliance of an adequacy decision, with an appropriate safeguard in place or otherwise are permitted by the Data Protection Legislation. In that regard, the Customer hereby authorises Elliptic to enter into the relevant Model Clauses on its behalf for the purposes of any such transfer of personal data.