

## Etherparty Terms of Use

**Last Updated:** June 27, 2018

The following terms of use (the “**Terms of Use**”) govern your access to and use of: (a) our platform that is designed to assist with the creation, use and management of smart contracts for blockchain and distributed ledger technologies, made available as a software-as-a-service (the “**Etherparty Platform**”, and such smart contracts created by you through the use of the Etherparty Platform, the “**Customized Smart Contracts**”); (b) our cryptocurrency wallet made available through the Etherparty Platform for the storage of our ERC20 compliant digital token called ‘Fuel’ (the “**FUEL Token**”); and (c) all other products or services provided by us to you in connection with the foregoing (collectively, the “**Etherparty Solution**”). These Terms of Use form an agreement between **EtherParty Smart Contracts Inc.** (“**EP**”, “**us**”, “**we**”, “**our**”) and you. The term “**you**” refers to the person or entity accessing or otherwise using the Etherparty Solution (“**use**” or “**using**” in these Terms of Use will mean any of the foregoing).

**BY USING THE ETHERPARTY SOLUTION, YOU: (A) REPRESENT AND WARRANT THAT: (I) YOU HAVE REACHED THE AGE OF MAJORITY IN YOUR JURISDICTION, (II) YOU HAVE THE CAPACITY TO ENTER INTO BINDING OBLIGATIONS, AND (III) ALL INFORMATION SUPPLIED BY YOU TO US IS TRUE, ACCURATE, CURRENT AND COMPLETE; AND (B) AGREE TO BE BOUND BY AND COMPLY WITH THESE TERMS OF USE, AS UPDATED FROM TIME TO TIME IN ACCORDANCE WITH SECTION 1. IF YOU ARE USING THE ETHERPARTY SOLUTION ON BEHALF OF ANOTHER PERSON OR A CORPORATE ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND SUCH PERSON OR ENTITY TO THESE TERMS OF USE.**

**IN ORDER TO USE CERTAIN FEATURES AND FUNCTIONALITIES OF THE ETHERPARTY PLATFORM, YOU WILL BE REQUIRED TO SPEND OR TRANSFER FUEL TOKENS TO US. YOU ACKNOWLEDGE AND UNDERSTAND THAT FUEL TOKENS MAY HAVE REAL, MONETARY VALUE. IF YOU WERE A BETA USER OR TESTER OF AN EARLIER VERSION OF OUR ETHERPARTY PLATFORM, THEN WE MAY HAVE MADE AVAILABLE OUR ETHERPARTY PLATFORM TO YOU AT NO COST. YOU ACKNOWLEDGE AND AGREE THAT WHILE THE CURRENT ETHERPARTY SOLUTION MAY BE SUBSTANTIALLY SIMILAR TO THE FREE VERSION, YOU WILL NOW BE REQUIRED TO SPEND OR TRANSFER FUEL TOKENS TO US IN ORDER TO USE CERTAIN FEATURES OR FUNCTIONALITY OF THE ETHERPARTY PLATFORM.**

**PLEASE CAREFULLY READ ALL DISCLAIMERS AND LIMITATIONS OF LIABILITY, PARTICULARLY THE DISCLAIMERS IN SECTIONS 11(b) AND 11(e) RELATED TO CUSTOMIZED SMART CONTRACTS, ORACLES, NAMING OF SMART CONTRACTS AND TOKENS, WALLETS AND PRIVATE KEYS.**

### **1. Changes to these Terms of Use and Etherparty Solution**

Except where prohibited by applicable law, we reserve the right to change these Terms of Use at any time without notice. Your continued access to or use of the Etherparty Solution after any changes to these Terms of Use indicates your acceptance of such changes. It is your responsibility to review these Terms of Use regularly. We reserve the right to change the Etherparty Solution at any time, without notice.

## 2. **Access to the Etherparty Platform**

We will use commercially reasonable efforts to make available the Etherparty Platform to you in accordance with these Terms of Use. Notwithstanding the foregoing, we retain the right, at our sole discretion, to deny you access to the Etherparty Platform, at any time and for any reason, including for violation of these Terms of Use, for scheduled maintenance or to address any emergency security concerns.

## 3. **License to Customized Smart Contracts**

Subject to these Terms of Use (including the restrictions set out in Section 6), we grant you a worldwide, non-exclusive, non-transferable, non-sublicensable and revocable license during the Term to use the Customized Smart Contracts.

## 4. **Data You Upload To Us**

You grant to us an irrevocable, worldwide, non-exclusive, royalty-free, fully paid-up, royalty-free, transferable and sublicensable license during the Term to access, collect, store and use any data, information, records and files that: (a) you load, transmit to or enter into the Etherparty Solution; or (b) that we collect from your usage of the Etherparty Solution ((a) and (b), collectively, the “**User Data**”), to: (i) develop, enhance and make available the Etherparty Solution; and (ii) to produce data, information or other materials that are not identified as relating to a particular individual or company (such data, information and materials, the “**Aggregated Statistical Information**”). We are free to create, use and disclose Aggregated Statistical Information for any purpose and without obligations of any kind.

## 5. **Ownership**

All rights, title and interest, including intellectual property rights, in the Etherparty Solution, Aggregated Statistical Information and all other materials provided by us hereunder, and any update, adaptation, translation, customization or derivative work thereof, will remain with us (or our third party suppliers, if applicable). The Etherparty Solution and all materials provided by us hereunder are licensed and not “sold” to you. All rights not expressly granted to you in these Terms of Use are reserved.

## 6. **No Unlawful or Prohibited Use**

Without limiting the generality of the foregoing, you will not (and will not attempt to), as applicable:

- (i) send, upload, collect, transmit, store, use, post, publish, or otherwise communicate on the Etherparty Solution any data, information, pictures, videos, music, or other materials or content that:
  - (A) contains any computer viruses, worms, malicious code, or any software intended to damage or alter a computer system or data;

- (B) you do not have the lawful right to send, upload, collect, transmit, store, use, publish or otherwise communicate;
  - (C) is false, intentionally misleading or impersonates any other person;
  - (D) is bullying, harassing, abusive, threatening, vulgar, obscene, or offensive, or that contains pornography, nudity, or graphic or gratuitous violence, or that promotes violence, racism, discrimination, bigotry, hatred, or physical harm of any kind against any group or individual;
  - (E) is harmful to minors in any way or targeted at minors;
  - (F) violates any applicable laws, or infringes, violates or otherwise misappropriates the intellectual property or other rights of any third party (including any moral right, privacy right or right of publicity); or
  - (G) encourages any conduct that may violate any applicable laws or would give rise to civil or criminal liability;
- (ii) disable, overly burden, impair, or otherwise interfere with servers or networks connected to the Etherparty Solution (e.g., a denial of service attack);
  - (iii) attempt to gain unauthorized access to the Etherparty Solution;
  - (iv) use any data mining, robots, or similar data gathering or extraction methods, or copy, modify, reverse engineer, reverse assemble, disassemble, or decompile the Etherparty Solution or any part thereof or otherwise attempt to discover any source code;
  - (v) use the Etherparty Solution for the purpose of building a similar or competitive product or service;
  - (vi) use the Etherparty Solution other than as permitted by these Terms of Use.

## 7. Privacy

Please click [here](https://etherparty.com/media/EP_Privacy_Policy.pdf) to review our current Privacy Policy, which contains important information about our practices in collecting, storing, using and disclosing information about identifiable individuals (“**Personal Information**”), and which is hereby incorporated into and forms a part of these Terms of Use: [https://etherparty.com/media/EP\\_Privacy\\_Policy.pdf](https://etherparty.com/media/EP_Privacy_Policy.pdf)

## 8. Fees

- (a) Fees. You will pay the amount of FUEL Tokens described on the Etherparty Platform when using certain functionalities and features (e.g., to create, use or manage smart contracts), including any transaction fees or applicable taxes (such fees, the “Fees”).
- (b) Changes to the Fees. While we may provide you with advance prior notice, we reserve the right to change the Fees and institute new charges any time.
- (c) Transactions Are Final / No Refunds. Cryptocurrency transactions are final. Accordingly, you acknowledge and agree that once you initiate a FUEL Token transaction, such transaction cannot be reversed and we will not issue any refunds to you.
- (d) Incorrect Payments. If you attempt to initiate a transfer of FUEL Tokens in an amount that is different from the exact cost of the FUEL Tokens described on the Etherparty Platform, you may be required to re-submit payment for the correct amount in order to complete the purchase.

## 9. **Communications Not Confidential**

We do not guarantee the confidentiality of any communications made by you through the Etherparty Solution. We do not guarantee the security of data transmitted over the Internet or public networks in connection with your use of the Etherparty Solution.

## 10. **Warranty**

You represent and warrant to, and covenant with us that all User Data will only contain Personal Information in respect of which you have obtained all applicable third party consents and permissions and otherwise has all authority, in each case as required by applicable laws, to enable us to provide the Etherparty Solution and exercise our rights under these Terms of Use.

## 11. **Disclaimers**

THE LAWS OF CERTAIN JURISDICTIONS, INCLUDING QUEBEC, DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LEGAL WARRANTIES, CONDITIONS OR REPRESENTATIONS. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE EXCLUSIONS OR LIMITATIONS IN THESE TERMS OF USE (INCLUDING THE FOLLOWING DISCLAIMERS) MAY NOT APPLY AND YOU MAY HAVE ADDITIONAL RIGHTS. WITHOUT LIMITING THE FOREGOING, YOU ACKNOWLEDGE, UNDERSTAND, AND AGREE THAT:

- (a) GENERAL DISCLAIMER. THE ETHERPARTY SOLUTION IS PROVIDED “AS IS” AND “AS AVAILABLE”, WITH ALL FAULTS AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS OF ANY KIND WITH RESPECT TO THE ETHERPARTY SOLUTION WHETHER EXPRESS, IMPLIED, STATUTORY OR COLLATERAL, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES AND CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, COMPATIBILITY, TITLE, SECURITY, RELIABILITY, COMPLETENESS, QUIET

ENJOYMENT, ACCURACY, RELIABILITY, CURRENCY, TIMELINESS, QUALITY, INTEGRATION, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, OR ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE, OR THAT THE ETHERPARTY SOLUTION IS OR WILL BE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION.

- (b) CUSTOMIZED SMART CONTRACT – GENERAL. YOU ACKNOWLEDGE AND AGREE THAT WE CANNOT GUARANTEE THAT THE CUSTOMIZED SMART CONTRACTS WILL BE FREE FROM CODING DEFECTS, ERRORS, OR BUGS, OR MEET YOUR PARTICULAR REQUIREMENTS. WHILE THE ETHERPARTY PLATFORM ASSISTS YOU WITH THE CREATION OF SMART CONTRACTS, YOU ARE RESPONSIBLE FOR TESTING AND ENSURING THE CUSTOMIZED SMART CONTRACTS MEETS YOUR REQUIREMENTS AND USE CASES.
- (c) CUSTOMIZED SMART CONTRACTS – ORACLE. THE CUSTOMIZED SMART CONTRACTS MAY BE DESIGNED TO INTERACT WITH AGENTS AND SERVICES OUTSIDE OF THE BLOCKCHAIN ON WHICH THE CUSTOMIZED SMART RESIDES (“**ORACLES**”). YOU ACKNOWLEDGE AND AGREE THAT ORACLES ARE NOT PART OF THE ETHERPARTY PLATFORM AND THAT WE ARE NOT RESPONSIBLE FOR THE ACCURACY, RELIABILITY, TIMELINESS, QUALITY, PERFORMANCE OR THE ACTS OR OMISSIONS OF ANY ORACLES.
- (d) CUSTOMIZED SMART CONTRACTS – NAMING OF SMART CONTRACT AND ICO TOKENS. WHILE THE ETHERPARTY PLATFORM PERMITS YOU TO NAME YOUR CUSTOMIZED SMART CONTRACTS AND THE TOKENS YOU CREATE THROUGH THE USE OF CUSTOMIZED SMART CONTRACTS, YOU ACKNOWLEDGE AND AGREE THAT: (1) SUCH NAMES MAY ALREADY BE IN USE AND MAY CAUSE CONFUSION WITH YOUR CUSTOMIZED SMART CONTRACT OR TOKEN; AND (2) YOU WILL ENSURE SUCH NAMES DO NOT VIOLATE ANY APPLICABLE LAW OR THE RIGHTS (INCLUDING INTELLECTUAL PROPERTY RIGHTS) OF ANY PERSON.
- (e) PRIVATE KEYS AND WALLET DISCLAIMER. YOU ACKNOWLEDGE AND AGREE THAT IT IS YOUR RESPONSIBILITY TO PROTECT THE PRIVATE KEYS TO YOUR FUEL TOKENS AND ENSURE ITS SAFETY AND SECURITY. IF YOU LOSE YOUR PRIVATE KEYS, IT WILL NOT BE POSSIBLE FOR US TO RECOVER IT ON YOUR BEHALF. IF WE MAKE AVAILABLE OUR DIGITAL WALLET FOR THE STORAGE OF FUEL TOKENS TO YOU, WE DO SO OUT OF CONVENIENCE ONLY AND ASSUME NO RESPONSIBILITY OR LIABILITY IN CONNECTION WITH YOUR USE OF OUR WALLET.
- (f) USE OF CORRECT ADDRESS FOR TOKEN TRANSACTIONS. YOU ACKNOWLEDGE THAT BLOCKCHAIN TOKEN TRANSACTIONS (WHICH INCLUDE ANY FUEL TOKEN TRANSACTIONS) ARE TECHNICALLY IRREVERSIBLE AND THAT IT IS YOUR SOLE RESPONSIBILITY TO ENSURE THE CORRECT ADDRESS IS USED FOR ANY BLOCKCHAIN TOKEN TRANSACTIONS THROUGH THE ETHERPARTY PLATFORM. WE CANNOT REVERSE ANY BLOCKCHAIN TOKEN TRANSACTIONS AND,

ACCORDINGLY, WILL NOT REIMBURSE OR REFUND YOU FOR ANY SUCH TRANSACTIONS.

## 12. **Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE BE LIABLE, WHETHER BASED ON WARRANTY, CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, FOR ANY DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, LOST PROFITS, LOSS OF USE, LOSS OF DATA, PERSONAL INJURY, FINES, FEES, PENALTIES OR OTHER LIABILITIES), WHETHER OR NOT WE WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, RESULTING FROM OR RELATED TO THESE TERMS OF USE.

TO THE EXTENT THAT THE FOREGOING LIMITATION IS NOT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL OUR TOTAL AGGREGATE LIABILITY IN CONNECTION WITH OR UNDER THESE TERMS OF USE, OR YOUR USE OF, OR INABILITY TO MAKE USE OF, THE ETHERPARTY SOLUTION EXCEED **[THE VALUE IN USD, AT THE TIME OF RECEIPT, OF ALL FUEL TOKENS RECEIVED BY US FROM YOU IN DIRECT CONNECTION TO THE SPECIFIC CLAIM IN THE IMMEDIATE 12 MONTH PERIOD]** PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. FOR GREATER CERTAINTY, THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THESE TERMS OF USE WILL NOT INCREASE THIS MAXIMUM LIABILITY AMOUNT.

## 13. **Indemnification**

You will defend, indemnify and hold harmless us and all of our officers, directors, employees and agents from and against any claims, causes of action, demands, recoveries, losses, damages, fines, penalties, or other costs or expenses of any kind or nature including reasonable legal and accounting fees arising out of or in connection with:

- (a) your breach of your warranties described hereunder;
- (b) your violation of any applicable law or the rights of a third party (including intellectual property rights); or
- (c) your use of the Etherparty Solution contrary to these Terms of Use or other instructional manuals, guidelines or documentation made available by us to you.

## 14. **Term and Termination; Survival**

- (a) These Terms of Use will commence on the day you first use the Etherparty Solution and will continue into force until terminated by either party (the "**Term**"). Either party may terminate these Terms of Use as follows: (a) we may terminate these Terms of Use at any time and with immediate effect by giving notice to you, at our discretion, by email (at your current email address on file with us) or through the Etherparty Solution; (b) you may terminate these Terms of Use at any time and with immediate effect by requesting (by email or through

any then-available interfaces on the Etherparty Solution) that your account with us be deleted.

- (b) The following Sections, together with any other provision of these Terms of Use which expressly or by its nature survives termination or expiration, or which contemplates performance or observance subsequent to termination or expiration of these Terms of Use, will survive expiration or termination of these Terms of Use for any reason: Sections 3 (License to Customized Smart Contracts), 5 (Ownership), 7 (Privacy), 8 (Communications Not Confidential), 11 (Disclaimers), 12 (Limitation of Liability), 13 (Indemnification), 14(b) (Terms and Termination; Survival), and 15 (General Provisions).

## 15. **General Provisions**

- (a) Choice of Law. Except as restricted by applicable law, these Terms of Use will be governed by the laws of the Province of British Columbia and the federal laws of Canada applicable therein and such laws apply to your access to or use of the Etherparty Solution, notwithstanding your domicile, residency or physical location. You will only use the Etherparty Solution in jurisdictions where the Etherparty Solution may lawfully be used. Except as restricted by applicable law, you hereby consent to the exclusive jurisdiction and venue of courts in Vancouver, British Columbia, Canada in all disputes arising out of or relating to the use of the Etherparty Solution.
- (b) Class Action Waiver. Except as restricted by applicable law, you acknowledge and agree that you may bring claims against us only in your individual capacity and not as a plaintiff or class member in any class or representative action. Accordingly, you hereby waive all rights to assert any claims against us as a representative or member of any class or representative action.
- (c) Entire Agreement. These Terms of Use constitute the entire agreement between you and us pertaining to the subject matter hereof and supersede all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and us with respect to the Etherparty Solution. A printed version of these Terms of Use and of any notice given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to these Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.
- (d) Waiver. Our failure to insist upon or enforce strict performance of any provision of these Terms of Use will not be construed as a waiver of any provision or right. A waiver of any provision of these Terms of Use must be in writing and a waiver in one instance will not preclude enforcement of such provision on other occasions.
- (e) Severable. If any of the provisions contained in these Terms of Use are determined to be void, invalid or otherwise unenforceable by a court of

competent jurisdiction, such provision will be severed from these Terms of Use and all other provisions of these Terms of Use will remain in full force and effect.

- (f) Assignment. You will not assign these Terms of Use to any third party without our prior written consent. We may assign these Terms of Use or any rights under these Terms of Use to any third party without your consent. Any assignment in violation of this Section will be void. The terms of these Terms of Use will be binding upon permitted assignees. These Terms of Use will inure to the benefit of and be binding upon the parties, their permitted successors and permitted assignees.
- (g) Force Majeure. We will not be liable for delays caused by any event or circumstances beyond EP's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labour problems, Internet service failures or delays.
- (h) English Language. It is the express wish of the parties that these Terms of Use and all related documents be drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.