



Bitcoin Trading Platform Terms & Conditions

Last Revised: June 21, 2022

These Terms and Conditions, together with our [Privacy Policy](#), the [E-Sign Consent](#), and the [Disclosures](#) (these “Terms”), govern your use of our platform for buying, selling and holding bitcoin (the “Service”). “We,” “us,” and “our” mean NYDIG Execution LLC. **PLEASE READ THESE TERMS CAREFULLY. BY ACCEPTING OR BY USING THE SERVICE, YOU AGREE TO BE LEGALLY BOUND BY THESE TERMS, INCLUDING THE SECTION TITLED “DISPUTE RESOLUTION BY BINDING ARBITRATION” (UNLESS YOU OPT OUT AS DESCRIBED BELOW).**

BITCOIN IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION (“FDIC”), THE NATIONAL CREDIT UNION SHARE INSURANCE FUND (“NCUSIF”), THE SECURITIES INVESTOR PROTECTION CORPORATION (“SIPC”) OR ANY OTHER INSURER, INCLUDING AGAINST THEFT. THE VALUE OF BITCOIN IS EXTREMELY VOLATILE AND CAN RESULT IN SIGNIFICANT LOSSES IN A SHORT PERIOD, INCLUDING LOSS OF THE TOTAL VALUE. BUYING AND SELLING BITCOIN IS INHERENTLY RISKY, AND YOU SHOULD CONSIDER THE RISKS BEFORE DECIDING TO BUY OR SELL BITCOIN.

IF YOU HAVE QUESTIONS OR CONCERNS REGARDING THE SERVICE, YOUR NYDIG ACCOUNT OR BALANCE, OR RELATED TRANSACTIONS, PLEASE CONTACT YOUR FINANCIAL PROVIDER’S CUSTOMER SUPPORT TEAM.

How the NYDIG Trading Platform Works

The Service. The Service allows you to buy and sell bitcoin through us and to hold purchased bitcoin in an account maintained with us (your “[NYDIG Account](#)”). Your financial institution or other financial service provider(s) (including its technology and/or financial institution partners as applicable, your “[Financial Provider](#)”) provides the website, mobile application or other internet interface (the “[Interface](#)”) through which you can initiate buy or sell orders or view your bitcoin balances and transactions as further described in “Your Use of the Service” below. The funds you use to purchase bitcoin will be withdrawn from the account you maintain with your Financial Provider (your “[External Account](#)”) that is linked to your NYDIG Account, and proceeds of sold bitcoin will be credited back to your External Account. The Service does not allow the deposit of bitcoin into your NYDIG Account from other sources or the withdrawal or transfer of bitcoin, including to other accounts held in your name with us. The Service is provided exclusively by us with support from your Financial Provider.

Eligibility. To use the Service, you must represent and warrant that you: (a) are at least 18 years old (or at least the age of majority in the state in which you reside); (b) have not been suspended or removed from the Service; (c) are legally allowed to purchase, own, and sell bitcoin and have full power and authority to enter into these Terms and in doing so will not violate any other agreement to which you are a party; (d) do not reside (or, if you are a business, are not headquartered) outside of the U.S. and reside in (or, if you are a business, are headquartered in) a state or territory where the Service is available (a complete list of supported states is available [here](#)); (e) are not identified as a “Specially Designated National” by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“[OFAC](#)”) and are not placed on the Commerce Department’s Denied Persons List; (f) have an External Account in good standing with your Financial Provider; (g) are not subject to backup withholding by the U.S. Internal Revenue Service (“[IRS](#)”) or a state tax authority; and (h)

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agree to receive communications relating to your NYDIG Account electronically (including through the Interface, email, and secure message) in a manner compliant with the E-Sign Consent. In addition, if you are registering to use the Service on behalf of a legal entity, the person accepting these Terms represents and warrants that (x) such legal entity is duly organized and validly existing under the applicable laws of the jurisdiction of its organization; (y) such person is duly authorized by such legal entity to act on its behalf with respect to the Service; and (z) the entity has no legal or corporate constraints preventing the entity from using the Service. At this time, you may not maintain a NYDIG Account jointly with any other person.

Sharing Your Information. To provide the Service, we must coordinate with your Financial Provider. You agree that your Financial Provider may share your personal information (including information about transactions on your accounts with Financial Provider) with us and we may share your personal information (including information about transactions on your accounts with us) with your Financial Provider as necessary to provide the Service. In addition, we may disclose your personal information (including transaction information) to third parties that perform services for us, including our affiliates. In addition, we may disclose your personal information: (a) to comply with applicable law; (b) to comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena, or summons by governmental authorities; or (c) to respond to judicial process or regulatory authorities. We may also use your personal information to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability, for our own institutional risk control and for resolving customer disputes or inquiries, and as otherwise permitted by law or these Terms. Please refer to our [Privacy Policy](#) for more information about how we collect, use, and disclose your personal information.

Communication. We will communicate with you about the Service through your Financial Provider using various electronic methods, including the Interface, email, or secure message, or by phone if you are contacting Customer Support, or non-electronic methods, including physical mail. When we communicate with you electronically, communication sent to your email of record or otherwise delivered in a manner you agreed to with your E-Sign Consent will be treated as delivered to you, unless you revoke your E-Sign Consent. While you can revoke your E-Sign Consent at any time, your consent to electronic records and communications is required to use the Service. This means that we will terminate your access to the Service and close your NYDIG Account if you elect to revoke your E-Sign Consent (see “Consequences of Closing Your NYDIG Account”). Please refer to the [E-Sign Consent](#) for more information.

Your Use of the Service

Buy and Sell Bitcoin. You can use the Service to initiate orders through the Interface to buy bitcoin (“[Buy Orders](#)”) and to sell bitcoin (“[Sell Orders](#)”) (each, an “[Order](#)” and once settled a “[Transaction](#)”). In submitting an Order, you (a) agree to be bound by the Transaction, including the obligation to pay the associated Price and Transaction Fee and/or receive the associated Transaction Proceeds; and (b) accept the risks associated with such Transaction. You cannot cancel the Order once you have confirmed it through the Interface.

Order Limit. No Buy Orders will be executed through the Service in excess of \$100,000 per Buy Order, or an equivalent amount of bitcoin (“[Order Limit](#)”), unless a different limit is displayed to you on the Interface. We may change the Order Limit at any time, and we may place additional limitations on Orders at any time, subject to any prior notice required by law.

External Account Limits. Your Financial Provider may impose additional limits on your External Account (“[External Account Limits](#)”). External Account Limits may include, for example, limits on dollars that you may transfer or the frequency of such transfers from your External Account to fund your Buy Orders, and such limits may vary from customer to customer. While External Account Limits are not limits we impose and are not limits on Orders or Transactions, they may impact your use of the Service, including your ability to place Orders. Your

Financial Provider is responsible for disclosing External Account Limits to you. We will attempt to notify you in the Interface when a particular Order would exceed an External Account Limit, but we cannot guarantee you will be notified in every case.

No Investment Advice. We may provide you with information about bitcoin and other digital assets, including investment strategies, and our own research and materials prepared by others. This information is designed to be educational in nature and is not investment advice. This information is not personalized or tailored to your individual financial circumstances or goals, and as a result, may not be suitable for you.

Bonuses and Promotions. From time to time, we and/or your Financial Provider may offer bitcoin bonuses or promotions at our discretion. Please see the terms of the offer for details, including eligibility requirements and limitations. Limitations may include restrictions on the ability to sell the bitcoin you received in connection with the bonus or promotion offer for a period of time.

Buying Bitcoin

Transaction Total. When you buy bitcoin, the "Transaction Total" reflects the total U.S. dollar amount you wish to spend. Any applicable Transaction Fee will be deducted from the Transaction Total, and the amount remaining after the Transaction Fee will be used to purchase bitcoin at the applicable Price displayed in the Interface at the time you initiate the Buy Order (see the "Pricing and Fees" section below for details). For example, if you wish to spend \$100 and the Transaction Fee is 2.5%, then \$2.50 will be deducted from such \$100 Transaction Total and \$97.50 will be used to purchase bitcoin. The Transaction Total cannot exceed the funds available in your External Account (in U.S. Dollars).

Placing Buy Orders. You may place Buy Orders through the Interface subject to certain restrictions set forth in these Terms, including the Order Limit. A "buy" Transaction is a sale of bitcoin from us or our affiliates to you. Because the market value of bitcoin fluctuates, the Price presented for your Buy Order is only available for a limited period before expiring. If you still want to complete a Buy Order after the Price expires, we will provide you with an updated Price before you place your Order.

Recurring Buy Orders. We may make available to you the option to schedule recurring Buy Orders (each, a "Recurring Buy Order") to occur on future dates and/or at defined intervals. If we make such functionality available to you, all of the provisions of these Terms relating to "Orders" and "Buy Orders" (including Transaction Fees charged on Buy Orders) will also apply to your Recurring Buy Orders, except as otherwise set forth in this section. The rate at which your Recurring Buy Orders will be executed is the CME CF Bitcoin Reference Rate (BRR) as of 4:00 p.m. London Time (the "Reference Rate") on the day your Recurring Buy Order is scheduled (the "Scheduled Date"). The Reference Rate at which Recurring Buy Orders are executed differs from the Price at which other Buy Orders and Sell Orders are executed. We will not execute a Recurring Buy Order on the Scheduled Date until we receive confirmation from your Financial Provider that sufficient funds are available in your External Account as of a point in time prior to our cutoff time on the Scheduled Date. We will have no liability to you if your Recurring Buy Order fails for any reason, including but not limited to technology failure, suspension or freeze on your External Account, insufficient funds, or delay of confirmation from your Financial Provider. We will also have no liability to you for other losses or liability that may result from our execution or non-execution of a Recurring Buy Order, including but not limited to an overdraft in your External Account. You may request to cancel a Recurring Buy Order, but your request to cancel will not be complete until we have had a reasonable time to act on it.

Execution of Buy Orders. Once the Buy Order is accepted, a Transaction Receipt will be made available to you and your Financial Provider will withdraw (or hold for withdrawal) the Transaction Total in U.S. dollars from your External Account. While we will immediately execute your Buy Order at the applicable Price following

confirmation, settlement of the Buy Order will not occur until we receive the Transaction Total from your Financial Provider.

Pending Buy Orders. You do not own bitcoin associated with the Buy Order prior to settlement of the Transaction. During this period, you are owed bitcoin by us and your NYDIG Account will show a pending amount (“Pending Balance”) of bitcoin. Because your Pending Balance reflects bitcoin you do not yet own, it is not part of your Settled Balance, however it may be reflected in balance amounts shown to you through the Interface. We may allow you to place a Sell Order using your Pending Balance subject to certain limits.

Settlement of Buy Orders. The Transaction will settle when bitcoin has been delivered to your NYDIG Account and your Financial Provider has delivered the Transaction Total from your External Account to us. We will not deliver bitcoin to your NYDIG Account unless your Financial Provider has provided such funds. When the Transaction settles, you will no longer have a Pending Balance for such Transaction and the settled bitcoin will be reflected as part of your Settled Balance. We will use commercially reasonable efforts to settle Buy Orders with your Financial Provider within five (5) business days of your execution of the Buy Order.

Failure to Deliver Transaction Total. If your Financial Provider does not deliver the Transaction Total from your External Account sufficient to settle your Buy Order in a timely manner, we may cancel the Order or reverse the Transaction. If we are not able to do so without cost to us, you authorize us to take any action that we deem necessary to collect payment for the Transaction allowed under applicable law, including, but not limited to, offsetting against your Settled Balance by deducting or selling your bitcoin to collect payment for ourselves (which could have adverse consequences to you, including tax liability).

Selling Bitcoin

Transaction Proceeds. When you sell bitcoin, the “Transaction Total” reflects the U.S. dollar amount of bitcoin you wish to sell, before the Transaction Fee is deducted. The bitcoin will be sold at the applicable Price displayed in the Interface at the time you initiate the Sell Order, and the applicable Transaction Fee will be deducted from the U.S. dollar proceeds before the remaining proceeds (the “Transaction Proceeds”) are credited by your Financial Provider to your External Account (see the “Pricing and Fees” section below for details). For example, if you wish to sell \$100 worth of bitcoin and the Transaction Fee is 2.5%, then an amount of bitcoin will be sold to generate gross proceeds of \$100, \$2.50 will be deducted from such \$100 Transaction Total and \$97.50 worth of Transaction Proceeds will be credited to your External Account.

Placing Sell Orders. Subject to certain restrictions set forth in these Terms, you may place an Order to sell some or all of the bitcoin associated with your Balance through the Interface. Because the market value of bitcoin fluctuates, the Price presented for your Sell Order is only available for a limited period before expiring. If you still want to complete a Sell Order after the Price expires, we will provide you with an updated Price before you place your Order. If you attempt to place a Sell Order for all or substantially all of the U.S. dollar value of your Balance, we may require you to sell your entire Balance.

Execution of Sell Orders. Once the Sell Order is accepted, a Transaction Receipt will be made available to you. While we will immediately execute your Sell Order following confirmation, you may not receive your Transaction Proceeds immediately.

Pending Sell Orders. You will not receive the Transaction Proceeds associated with the Sell Order until your Financial Provider credits such proceeds to your External Account (which may occur before or after we deliver the funds to your Financial Provider). Until such time, you are owed the Transaction Proceeds and your External Account may or may not show a pending credit. Your Balance will not reflect any bitcoin associated with a Sell Order.

Failure to Deliver Proceeds. We will use commercially reasonable efforts to deliver Transaction Proceeds to your Financial Provider within five (5) business days of execution of a Sell Order. Your Financial Provider is responsible for crediting the Transaction Proceeds to your External Account, which may occur before or after we deliver funds to your Financial Provider. We are not responsible for any failure by your Financial Provider to properly credit Transaction Proceeds to your External Account.

Owners and Authorized Users on your External Account. Because the Service is linked to your External Account, any other owners or authorized users on your External Account will have access to your Transaction Proceeds. If you do not wish for such owners or authorized users to have access to Transaction Proceeds, you should not link such External Account to the Service.

Order Fulfillment, Rejection and Voided Transactions

Order Fulfillment. We may, in our discretion, elect to delay or cancel all or any part of an Order if we determine delay or cancellation is reasonably necessary to comply with applicable law or if we believe the Order to be erroneous or related to a prohibited use as set forth under these Terms.

Order Rejection. We may decline to fulfill your Order for any reason. For example, we may decline to fulfill your Sell Order in the event your External Account is unable to receive Transaction Proceeds such as if your External Account has been frozen by your Financial Provider. We are not liable to you or any third party for any damages resulting from our decision to reject Orders.

Erroneous Orders or Transactions. We reserve the right to adjust, cancel, correct, or take any other appropriate action when we deem that an Order or Transaction was initiated or executed in error ("Erroneous Order or Transaction"). We also have no responsibility for any Order or Transaction that is deemed clearly erroneous by a regulatory body or trading venue. To the extent we determine that an Erroneous Order or Transaction is attributable to us or our error, we are responsible for resolving such error. However, we are not liable for any damages resulting from Erroneous Orders or Transactions that are not attributable to us or our error, or any attempt by us to adjust, cancel, correct, or take action with respect such Erroneous Orders or Transactions.

Voided Transactions. We reserve the right to void an Order or Transaction if (a) it is an Erroneous Order or Transaction, (b) the Order or Transaction results from fraud or suspected fraud, (c) your Financial Provider does not deliver the Transaction Total from your External Account sufficient to settle your Buy Order in a timely manner, (d) you place a Sell Order for some or all of your Pending Balance before your Financial Provider has delivered the Transaction Total for such Pending Balance from your External Account, or (e) for any other reason permitted under applicable law or these Terms. If we void an Order or Transaction, your Balance will be adjusted accordingly based on the amount of bitcoin in the original Order. The dollar value of such bitcoin may have fluctuated from the time the original Order was executed. We are not liable for any damages resulting from an Order or Transaction that is voided in accordance with these Terms.

Pricing and Fees

Price. The "Price" means the price in U.S. dollars presented in the Interface at any given time in connection with a proposed Buy Order or Sell Order. The Price is based on (a) what we believe is the market price of bitcoin at the time, which is typically related to the price of bitcoin on large United States exchanges, plus (b) a "Spread," which is intended to compensate us for price movement and average expected execution costs to us. The Price may be different than any price that you may see on any bitcoin exchange or trading venue. The Spread may differ based on volatility, the amount of time the specific Price is available to trade, and the volume of bitcoin that you are attempting to buy or sell, among other factors. We will not separately calculate or

disclose the Spread we earn on each Transaction. The Spread is separate and distinct from any Transaction Fee.

Transaction Fees. The following “Transaction Fees” will be assessed for the fulfillment of Orders through the Service: (a) 2.5% of the Transaction Total for each Buy Order, which will be deducted from the Transaction Total; and (b) 2.5% of the Transaction Total for each Sell Order, which will be deducted from the Transaction Total. Transaction Fees may be paid to or retained by your Financial Provider, us or our affiliates, or other third parties that assist us in providing the Service. Transaction Fees may be changed at any time, and we will provide you with prior notice of any such change as required by applicable law.

Transaction Receipts. A “Transaction Receipt” will be provided for each Transaction and will include, among other information, a confirmation number, the date, the Price and applicable Transaction Fee.

Account Fees. We will not charge you any fees to open or maintain your NYDIG Account or to hold your Balance. However, your Financial Provider may charge you fees associated with your External Account, which may include fees for use of the Service (“External Account Fees”). External Account Fees are governed by the separate terms you enter into with your Financial Provider, not these Terms, and are therefore not fees attributable to us or our administration of the Service.

Holding Bitcoin

Your Balance. In addition to executing Buy Orders and Sell Orders on your behalf, we will hold bitcoin you own (your “Settled Balance”) on your behalf in your NYDIG Account. Your Pending Balance and Settled Balance are collectively referred to in these Terms as your “Balance”.

Your Ownership Interest. You do not own any specific, identifiable bitcoin, but instead your ownership interest is for a specified amount of bitcoin reflected in your Settled Balance (see “Omnibus Account” below), the price of which may fluctuate. We have no right, interest, or title in or to your Settled Balance or your NYDIG Account. We will not transfer, sell, loan, pledge, or encumber bitcoin associated with your Settled Balance or your NYDIG Account without instruction or consent, except as directed by law enforcement subject to a court order.

Custodial Relationship. We hold your Settled Balance “in trust” and for your benefit. Although we hold your Settled Balance in trust, we are not a trust company and are not acting in a fiduciary capacity or as your broker or advisor. You will remain the legal owner of the Settled Balance at all times. We will use reasonable care to maintain and safeguard your Settled Balance. We may rely on an affiliate that is located in the U.S. and appropriately licensed and regulated as a digital asset custodian as a service provider, including as a sub-custodian, in providing the Services.

Omnibus Account. We will hold your Settled Balance in one or more omnibus accounts on the decentralized peer-to-peer network used to transfer bitcoin (“Bitcoin Network”) together with bitcoin owned by other users of the Service. However, at no time will your Settled Balance be commingled with bitcoin that we own. We will maintain your Settled Balance in cold storage in our proprietary offline storage system while in custody and we will move bitcoin associated with your Settled Balance, in whole or in part, out of our cold storage system to fulfill Sell Orders.

Your Obligations When Using the Service

Secure Credentials. In order to use the Service, you must have or create secure credentials to access the Interface. Only you are authorized to use your secure credentials to access the Service. If you are an entity, only authorized users on your External Account are authorized to use your secure credentials. You are required to maintain and safeguard your secure credentials and ensure that the Service is only used in

accordance with these Terms. You are required to abide by any applicable terms of service and security requirements described on the Interface when accessing the Service.

Personal Information. You must provide any information required when creating a NYDIG Account or when prompted through the Interface or otherwise. You represent and warrant that any information you provide to us or your Financial Provider is accurate and complete. You must keep your name, taxpayer identification number and contact information, such as your current mailing address, email address, and telephone number, up to date on your External Account. If you are an entity, you must keep certain other information updated with your Financial Provider, including any necessary or appropriate resolutions or certifications of authority with respect to your External Account and your NYDIG Account.

Email Address. If any email communication is returned as undeliverable, we retain the right to suspend your access to the Service until you provide and confirm a new and valid email address to your Financial Provider.

Residence or Headquarters. If your contact information changes, you must notify your Financial Provider immediately. If the jurisdiction in which you reside (or, if you are a business, the jurisdiction where you are headquartered) changes, we may in our discretion (a) allow your NYDIG Account to remain open and active; (b) terminate your NYDIG Account (see “Consequences of Closing Your NYDIG Account”); (c) suspend your NYDIG Account for up to thirty (30) days; (d) transition your NYDIG Account to a third-party custodian; or (e) take any combination of these actions we deem necessary or appropriate, in our discretion, to comply with applicable law.

Unauthorized Orders and Transactions. You are responsible for all Orders and Transactions, including related instructions, using your NYDIG Account or the Service, including all authorized or unauthorized access to your NYDIG Account, and related liability due to your actions or negligence, to the maximum extent permitted by law. Orders made using your credentials are treated as authorized by you, unless you immediately provide notification otherwise. If you did not authorize a particular Order or Transaction, suspect fraudulent activity or believe there has been an error with respect to your NYDIG Account, you must immediately contact your Financial Provider’s Customer Support team. We have no liability for unauthorized Orders or Transactions except as may be required by law, and only to the extent you have notified your Financial Provider. We are not responsible for any losses from your External Account.

Receipt of Unpurchased Bitcoin. If your Balance or NYDIG Account reflects the receipt of bitcoin that you (a) did not purchase by submitting a Buy Order or (b) otherwise did not pay for (including if your attempted payment was reversed or declined by your Financial Provider), you may not sell such bitcoin pending resolution of the error. If you sell any bitcoin you did not purchase, we will deny your claim for such sale and may recover any Transaction Proceeds from you.

Prohibited Uses. You are prohibited from using your NYDIG Account, the Service or the Interface for any illegal purpose, including, but not limited to, money laundering, engaging in fraud or attempted fraud, or manipulating the digital currency markets.

Taxes. You may have tax liability that arises from Buy Orders and Sell Orders, including Final Sell Orders, executed by NYDIG on your behalf. We (or your Financial Provider acting on our behalf) will provide you with IRS Forms 1099 in a manner described in “Communication” and we will report any Form 1099 filings to the IRS. It is your responsibility to determine whether, and to what extent, you have tax liability as a result of Transactions conducted in connection with the Service, and to report and remit the correct amounts of taxes to the appropriate tax authorities. If you become subject to backup withholding by the IRS or a state tax authority, you must notify your Financial Provider immediately. If we are informed that you are subject to backup withholding, we may withhold Transaction Proceeds in order to comply with the IRS directive or state equivalent and/or we may freeze, restrict, or terminate your access to the Service and close your NYDIG Account.

Assignment. You may not assign, sub-license, sub-contract, or alter your rights or obligations under these Terms without our prior written consent. We may at any time assign this agreement to another party, including but not limited to a successor or affiliate.

Risks You Assume When Using the Service

Bitcoin Network. We do not control the Bitcoin Network and therefore are not responsible for the services provided by the Bitcoin Network, specifically verifying and confirming transactions. We cannot cancel or reverse a transaction request that has been submitted to the Bitcoin Network; once submitted, it cannot be cancelled or modified. Likewise, we have no control over the Bitcoin Network and therefore cannot ensure that any transaction request we submit to the Bitcoin Network will be completed. As a result, you assume the risk associated with any delay or any failure attributable to the Bitcoin Network.

Forks and Airdrops. Your NYDIG Account only supports bitcoin. We are not required to allow you to use the Service in connection with any digital asset that has been created as a result of a “fork” (a change to a network’s protocol which creates a permanent diversion in a digital asset) or received through an “airdrop” (sending a digital asset to a public wallet address, whether or not the owner of the public wallet address is anticipating or interested in accepting the digital asset). We will exercise commercially reasonable judgment to determine which post-fork digital assets are “bitcoin” and likewise whether the Service will support such digital assets as bitcoin. As a result, you assume the risk associated with forks and airdrops, including the risk that you may not be able to sell or withdraw a forked or airdropped bitcoin or other digital asset from your NYDIG Account.

Market Volatility. Particularly during periods of high volume, illiquidity, fast movement, or volatility in the marketplace for bitcoin or U.S. dollars, the Price at which a trade is executed may be different from any prevailing market price. You understand that we are not liable for any such price fluctuations. In the event of a market disruption or unforeseen circumstances (as described in these Terms), we may do one or more of the following: (a) suspend your access to the Service; or (b) prevent you from completing any Orders or other actions via the Interface. Following any such event, when the Service resumes, prevailing market rates and the Price may differ significantly from the rates and Price that were available prior to such event.

Other Trading Activity; Conflicts. We engage in trading of bitcoin for other of our customers and for our own accounts. We may have interests that differ from or conflict with your interests, including the potential risk that immediately before, during or after we have a proposed or actual Order from you we may execute a trade for ourselves, our affiliates or for other clients in the same or opposite direction as you. We have adopted policies and procedures designed to mitigate potential conflicts, but there is no guarantee that we will be able to mitigate all such conflicts.

Service Disruptions. While we strive to provide you with best-in-class service without any disruptions or delays, no service provider can guarantee service without interruption. Access to the Service may be disrupted or unavailable due to circumstances beyond our control, technological failures or due to scheduled or unscheduled maintenance. This could result in the inability to complete Buy Orders and Sell Orders for a period of time and may also contribute to delays in communication with you regarding the Service. The Service being unavailable for a period of time could have consequences to you, particularly if the Price differs significantly from the rates and Price available prior to such event.

Your Control Over Your NYDIG Account

Freezing Your NYDIG Account. You may request to freeze or unfreeze your NYDIG Account by contacting your Financial Provider’s Customer Support team. Your request to freeze or unfreeze your NYDIG Account will not be complete until we have had a reasonable time to act on it. While your NYDIG Account is frozen, your

access to all or part of the Service will be suspended, but your NYDIG Account may still fluctuate in value. We are not liable for any loss in value in your NYDIG Account as a result of those fluctuations while the Service, or your access to your NYDIG Account, is frozen. We may close your NYDIG Account if it is frozen for an extended period of time (60 days or more) upon providing notice to you.

Closing Your NYDIG Account. You may request to close your NYDIG Account at any time by contacting your Financial Provider’s Customer Support team (“[NYDIG Account Closure Request](#)”). You can only close your NYDIG Account if you have sold all bitcoin in your NYDIG Account, meaning you have a Balance of zero (see “Liquidating your NYDIG Account” and “Consequences of Closing Your NYDIG Account”). Your NYDIG Account will not be closed until we have had a reasonable time to act on your request. Closure will not affect any rights or obligations that you had before we closed your NYDIG Account.

Liquidating Your NYDIG Account. We will be unable to process your NYDIG Account Closure Request until you initiate a Sell Order for any remaining Balance you have at that time (“[Final Sell Order](#)”). You acknowledge that the price of bitcoin may decline between the time you submit your initial NYDIG Account Closure Request and the execution of the Final Sell Order; you alone bear the risk of any such price decline. Like all Sell Orders, you are responsible for any Transaction Fee incurred in connection with the Final Sell Order. Please see the “Taxes” section above and the “Consequences of Closing your NYDIG Account” section below for additional information regarding the tax and other implications of liquidating your NYDIG Account.

Consequences of Closing Your NYDIG Account. Any time your NYDIG Account is closed, whether by you voluntarily or as a result of your action (for example, your change of residence to a different state, your withdrawal of your E-Sign Consent, your closure of your External Account) or inaction (for example, account inactivity for a period of two years or longer), or by us as set forth in “Reasons we may Suspend or Terminate your NYDIG Account” below, there could be adverse consequences. For example, the Final Sell Order could result in losses, the Transaction Fee, and/or tax liability as further described in the sections “Liquidating your NYDIG Account” and “Taxes” above.

Status of Your External Account. If you close your NYDIG Account, your Financial Provider may elect to terminate your External Account or convert your External Account to a different account type. Please review the separate terms governing the External Account for more information.

Closing Your External Account. If you close your External Account (“[External Account Closure](#)”), we may treat the External Account Closure as a NYDIG Account Closure Request. You must initiate a Final Sell Order (unless your Balance is zero) before we can process the NYDIG Account Closure Request. If you do not initiate a Final Sell Order within a reasonable time, we may initiate a Final Sell Order on your behalf. We will provide notice to you before initiating a Final Sell Order on your behalf, unless we are unable to do so for legal or regulatory reasons (for example, if we are subject to a court order) or if providing notice is not practical under the circumstances (for example, because the account owner is deceased). In addition, we will be unable to process a Final Sell Order if prohibited by law (for example, because the recipient is sanctioned). See “Liquidating your NYDIG Account” and “Consequences of Closing Your NYDIG Account”. Your Financial Provider is responsible for delivering the Transaction Proceeds to you, and we are not responsible for any failure by your Financial Provider to do so. However, we may, in our sole discretion, allow you to maintain the NYDIG Account and if so, we may request and receive additional information from your Financial Provider or from you directly so that we can continue to provide the Service and otherwise comply with applicable law.

Our Provision of the Service

Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED TO THE CONTRARY IN A WRITING BY US, THE SERVICE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. WE AND OUR SERVICE PROVIDERS (INCLUDING YOUR FINANCIAL PROVIDER) EXPRESSLY DISCLAIM, AND YOU WAIVE, ALL

WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT AS TO THE SERVICE, INCLUDING THE INFORMATION, CONTENT, AND MATERIALS CONTAINED THEREIN. YOU ACKNOWLEDGE THAT INFORMATION YOU STORE OR TRANSFER THROUGH THE SERVICE MAY BECOME IRRETRIEVABLY LOST OR CORRUPTED OR TEMPORARILY UNAVAILABLE DUE TO A VARIETY OF CAUSES, INCLUDING SOFTWARE FAILURES, PROTOCOL CHANGES BY THIRD-PARTY PROVIDERS, INTERNET OUTAGES, UNFORESEEN CIRCUMSTANCES (FORCE MAJEURE EVENTS) OR OTHER DISASTERS INCLUDING THIRD-PARTY DISTRIBUTED DENIAL-OF-SERVICE ATTACKS, SCHEDULED OR UNSCHEDULED MAINTENANCE, OR OTHER CAUSES EITHER WITHIN OR OUTSIDE OUR CONTROL. YOU ARE SOLELY RESPONSIBLE FOR BACKING UP AND MAINTAINING DUPLICATE COPIES OF ANY INFORMATION YOU STORE OR TRANSFER THROUGH THE SERVICE. Some jurisdictions do not allow the disclaimer of implied terms in contracts with consumers, so some or all of the disclaimers in this subsection may not apply to you.

Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY ANY APPLICABLE LAW, WE AND OUR SERVICE PROVIDERS (INCLUDING YOUR FINANCIAL PROVIDER; AND OUR AND THEIR RESPECTIVE EMPLOYEES, CONTRACTORS, AGENTS, OR REPRESENTATIVES) WILL NOT BE LIABLE TO YOU OR ANYONE ELSE FOR ALL DAMAGES INCLUDING CONSEQUENTIAL, INCIDENTAL, SPECIAL, DIRECT, INDIRECT DAMAGES, LOST PROFITS, TRADING LOSSES OR OTHER DAMAGES THAT RESULT FROM YOUR USE OR LOSS OF USE OF THE INTERFACE OR THE SERVICE OR ANY THIRD-PARTY CONTENT; OUR INABILITY TO RECEIVE ORDERS OR INSTRUCTIONS THROUGH THE INTERFACE OR THE SERVICE; THE LOSS OR CORRUPTION OF DATA THROUGH THE INTERFACE OR THE SERVICE; AND ANY INCONVENIENCE OR DELAY. THIS IS TRUE EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR EVEN IF SUCH LOSSES WERE FORESEEABLE. WE AND OUR SERVICE PROVIDERS WILL NOT BE LIABLE TO YOU OR ANYONE ELSE FOR ANY LOSS RESULTING FROM A CAUSE OVER WHICH WE DO NOT HAVE DIRECT CONTROL (SEE “UNFORESEEN CIRCUMSTANCES” BELOW). IF YOU ARE LOCATED IN A STATE THAT DOES NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SOME OR ALL OF THESE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

Unforeseen Circumstances. We and our service providers (including your Financial Provider) will not be responsible for any failure to perform our duties and will not be liable hereunder for any loss or damage in association with such failure to perform, including but not limited to any loss or damage directly or indirectly attributable to price fluctuation in bitcoin, including as a result of any circumstance or event which is beyond our (or our agent's) reasonable control that adversely affects our ability to provide the Service. Such circumstances include any event caused by, arising out of, or involving: (a) an act of God; (b) accident, fire, water, or wind damage or explosion; (c) any computer, system, or other equipment failure or malfunction caused by any computer virus or other malicious code or the malfunction or failure of any communications medium or any phishing or spoofing or other attack; (d) any interruption of the power supply or other utility service; (e) any strike or other work stoppage, whether partial or total; (f) any disruption of, or suspension of trading in, the digital asset markets; or (g) any other similar event.

Reasons we may Suspend or Terminate your NYDIG Account. We may suspend or terminate your access to the Service and to your NYDIG Account for any reason, including if we determine, in our sole discretion, that: (a) you are no longer eligible to participate in the Service; (b) you have violated these Terms; (c) you have engaged in suspicious or fraudulent activity in connection with the Service or otherwise used the Service in an attempt to defraud us or any person; (d) we are notified of a court order or other legal process (including garnishment, divorce, bankruptcy, or any equivalent processes) relating to you; (e) we receive legal documentation or notice from your Financial Provider confirming your death or otherwise receive information

leading us to believe you have died; (f) you control another account with us that is subject to suspension or closure by us for any reason; (g) your NYDIG Account has remained in an inactive status for a period of two years or longer; or (h) we believe we are required to do so in order to comply with applicable law. In addition, we may, in our sole discretion and without liability to you, with or without prior notice and at any time, modify or discontinue, temporarily or permanently, any portion of the Service.

Suspension or Termination by Us. If we notify you of our decision to close your NYDIG Account, you must initiate a Final Sell Order. If you do not initiate a Final Sell Order within a reasonable time, we may initiate a Final Sell Order on your behalf. We will provide notice to you before initiating a Final Sell Order on your behalf, unless we are unable to do so for legal or regulatory reasons (for example, if we are subject to a court order) or if providing notice is not practical under the circumstances (for example, because the account owner is deceased). In addition, we will be unable to process a Final Sell Order if prohibited by law (for example, because the recipient is sanctioned). See “Liquidating your NYDIG Account” and “Consequences of Closing Your NYDIG Account.” If we suspend your NYDIG Account, your access to all or part of the Service will be suspended, but your NYDIG Account may still fluctuate in value. We are not liable for any loss in value in your NYDIG Account as a result of those fluctuations while the Service, or your access to your NYDIG Account, is frozen. See “Reasons we may Suspend or Terminate your NYDIG Account.”

Dispute Resolution by Binding Arbitration

PLEASE READ THIS “DISPUTE RESOLUTION BY BINDING ARBITRATION” SECTION VERY CAREFULLY. IT LIMITS YOUR RIGHTS IN THE EVENT OF A DISPUTE BETWEEN YOU AND US, SUBJECT TO THE TERMS AND OPT-OUT OPTION SET FORTH BELOW.

Scope of “Disputes by Binding Arbitration”. By agreeing to these Terms, you and we agree to resolve any Disputes through final and binding arbitration as discussed herein, except as set forth under “Exceptions to Agreement to Arbitrate” subsection below. You and we agree that any and all past, present and future dispute, claims, or causes of action arising out of or relating to your use of the Service, these Terms, or any other controversies or disputes between you and us or any of our affiliates, licensors, distributors, suppliers or agents, whether arising prior to or after you agreed to the Terms (collectively, “Dispute(s)”), will be determined by arbitration, unless (a) you opt out as provided in the “Opt-Out of Agreement to Arbitrate” subsection below; or (b) your Dispute is subject to an exception to this agreement to arbitrate set forth in the “Exceptions to Agreement to Arbitrate” subsection below. You and we further agree that any arbitration pursuant to this subsection will not proceed as a class, group or representative action.

Informal Dispute Resolution. We want to address your concerns without the need for a formal legal dispute. Before filing a claim against us, you agree to try to resolve the Dispute informally by contacting us at NYDIG, Attn: Legal Department, 510 Madison Avenue, 21st Floor, New York, NY 10022. Similarly, we will undertake reasonable efforts to contact you (if we have contact information for you) to resolve any claim we may possess before taking any formal action. If a Dispute is not resolved within 30 days after the initial notification of the Dispute is sent, you or we may initiate an arbitration proceeding as described below.

Opt-Out of Agreement to Arbitrate. If you do not wish to be subject to “Dispute Resolution by Binding Arbitration,” you may opt out of “Dispute Resolution by Binding Arbitration” by sending a written notice to us at NYDIG, Attn: Legal Department, 510 Madison Avenue, 21st Floor, New York, NY 10022 within thirty (30) days of first accepting these Terms. You must date the written notice, and include your first and last name, your address, your Financial Provider’s name and a clear statement that you do not wish to resolve disputes with us through arbitration. If no written notice is submitted by the 30-day deadline, you will be deemed to have knowingly and intentionally waived your right to litigate any Dispute except with regard to the exceptions set forth in “Exceptions to Agreement To Arbitrate” subsection below. By opting out of the agreement to arbitrate,

you will not be precluded from using the Service, but you and we will not be permitted to invoke the mutual agreement to arbitrate to resolve Disputes under the terms otherwise provided herein.

Judicial Forum for Disputes. Except as otherwise required by applicable law, in the event that this “Dispute Resolution by Binding Arbitration” section is found not to apply, the exclusive jurisdiction and venue of any Dispute (other than small claims actions) will be the state and federal courts located in New York County, New York, and each of the parties hereto waives any objection to jurisdiction and venue in such courts. You and we both further agree to waive our rights to a jury trial.

Arbitration Procedure and Fees. You and we agree that the American Arbitration Association (“AAA”) will administer the arbitration under its Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes in effect at the time arbitration is sought (“AAA Rules”). Those rules are available at www.adr.org or by calling the AAA at 1-800-778-7879. If for any reason the AAA is unable or unwilling to arbitrate the dispute, we may agree on an alternative arbitrator or, if we are unable to agree, we will use another national or regional arbitration group and, in such event the AAA Rules will be applied to any circumstance that is not addressed by the rules of the chosen arbitrator. A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a general Demand for Arbitration.) Arbitration will proceed on an individual basis and will be handled by a sole arbitrator. The single arbitrator will be either a retired judge or an attorney licensed to practice law and will be selected by the parties from the AAA’s roster of arbitrators. If the parties are unable to agree upon an arbitrator within fourteen (14) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules. The arbitrator(s) will be authorized to award any remedies, including injunctive relief, that would be available to you in an individual lawsuit and that are not waivable under applicable law. Notwithstanding any language to the contrary in this subsection, if either you or we seek injunctive relief that would significantly impact other users of the Service as reasonably determined by either you or us, we each agree that such arbitration will proceed on an individual basis but will be handled by a panel of three (3) arbitrators. You and we will each select one arbitrator, and the two party-selected arbitrators will select the third, who will serve as chair of the arbitral panel. That chairperson will be a retired judge or an attorney licensed to practice law and with experience arbitrating or mediating disputes. In the event of disagreement as to whether the threshold for a three-arbitrator panel has been met, the sole arbitrator appointed in accordance with this subsection will make that determination. If the arbitrator determines a three-person panel is appropriate, the arbitrator may – if selected by either you or us or as the chair by the two party-selected arbitrators – participate in the arbitral panel. Except as and to the extent otherwise may be required by law, the arbitration proceeding and any award will be confidential.

In a Dispute involving \$10,000 or less, the arbitration will be conducted solely on the basis of the documents that you and we submit to the arbitrator(s), unless the arbitrator determines that a telephonic or in-person hearing is necessary. In a Dispute involving more than \$10,000, any hearing will be held via videoconference unless the arbitrator finds good cause to hold an in-person hearing instead. If a hearing is warranted, arbitration will be conducted in the county where you reside or such other location as you and we may agree. If we elect arbitration, we will pay all of the AAA filing costs and administrative fees (other than hearing fees). If you elect arbitration, filing costs and administrative fees (other than hearing fees) will be paid in accordance with the AAA Rules, or in accordance with countervailing law if contrary to the AAA Rules. However, if the value of the relief sought is \$10,000 or less, at your request, we will pay all filing, administration, and arbitrator fees associated with the arbitration, unless the arbitrator(s) finds that either the substance of your claim or the relief sought was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)). In such circumstances, fees will be determined in accordance with the AAA Rules. Both you and we will bear the expense of its own attorneys' fees, except as otherwise required by law. This “Dispute

Resolution by Binding Arbitration” section will be construed under and be subject to the Federal Arbitration Act, notwithstanding any other choice of law set out in these Terms.

Arbitration Will Proceed Individually. You and we both agree that the arbitration of any Dispute will proceed on an individual basis, and neither you nor we may bring a claim as a part of a class, group, collective, coordinated, consolidated or mass arbitration (each, a “Collective Arbitration”). Without limiting the generality of the foregoing, a claim to resolve any Dispute against us will be deemed a Collective Arbitration if (a) two (2) or more similar claims for arbitration are filed concurrently by or on behalf of one or more claimants; and (b) counsel for the claimants are the same, share fees or coordinate across the arbitrations. “Concurrently” for purposes of this provision means that both arbitrations are pending (filed but not yet resolved) at the same time.

Class Action and Collective Arbitration Waiver. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER YOU NOR WE WILL BE ENTITLED TO CONSOLIDATE, JOIN OR COORDINATE DISPUTES BY OR AGAINST OTHER INDIVIDUALS OR ENTITIES, OR ARBITRATE OR LITIGATE ANY DISPUTE IN A REPRESENTATIVE CAPACITY, INCLUDING AS A REPRESENTATIVE MEMBER OF A CLASS OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. IN CONNECTION WITH ANY DISPUTE (AS DEFINED ABOVE), ANY AND ALL SUCH RIGHTS ARE HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVED. ANY CHALLENGE TO THE VALIDITY OF THIS SUBSECTION WILL BE DETERMINED EXCLUSIVELY BY THE ARBITRATOR.

Exceptions to Agreement to Arbitrate. Notwithstanding your and our agreement to arbitrate Disputes, you and we each retain the right (a) to bring an individual action in small claims court; and (b) to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party’s copyrights, trademarks, trade secrets, patents or other intellectual property rights.

Survival and Severability of “Dispute Resolution by Binding Arbitration”. This “Dispute Resolution By Binding Arbitration” section will survive the termination or expiration of these Terms. With the exception of the “Class Action and Collective Arbitration Waiver” subsection above, if a court or arbitrator decides that any part of this “Dispute Resolution By Binding Arbitration” subsection is invalid or unenforceable, then the remaining portions of this “Dispute Resolution By Binding Arbitration” subsection will remain valid and in force. In the event that a court or arbitrator finds that all or any portion of the “Class Action and Collective Arbitration Waiver” subsection to be invalid or unenforceable, then the entirety of this “Dispute Resolution By Arbitration” section will be deemed void and any remaining Dispute must be litigated in court pursuant to the “Judicial Forum for Disputes” subsection.

Miscellaneous

Complaints. If you would like to make a complaint about your use of the Service or your NYDIG Account, please contact your Financial Provider’s Customer Support team. You may also direct your complaint to the attention of the New York State Department of Financial Services, One State Street, New York, NY 10004-1511; +1 (212) 480-6400. Please visit www.dfs.ny.gov for additional information. In addition, you may find regulator contact information for additional states on our Licensing Page [here](#).

Governing Law. These Terms, your NYDIG Account, your use of the Service, and any Order or Transaction pursuant to these Terms, and all other matters arising under it will be governed by the laws of the State of New York, without regard to the conflicts of law provisions thereof.

English Language Controls. Any translation of these Terms, our receipts, our communications, or any other language relating to us or the Service is provided solely for your convenience. The meaning of all such

language is subject to definitions and interpretations in the English language. Any translation provided may not accurately represent the information in the original English.

Amendment. We may revise or supplement these Terms from time to time. The revised version will be effective at the time we post it, unless otherwise noted. If our changes to these Terms reduce your rights or increase your responsibilities, we will provide you with prior notice of such change as required by applicable law. If you do not agree with any changes to these Terms, you must immediately stop using the Service and request closure of your NYDIG Account.

Waiver. No waiver of any provision of these Terms will be deemed to have occurred by the failure or delay by us in exercising any right or remedy provided in these Terms and any exercise of such right or remedy, in whole or in part, by us will not preclude any other or further exercise of any other right or remedy. The rights and remedies provided in these Terms are separate, independent, and cumulative and not exclusive of any rights or remedies to which we are at any time entitled anywhere, whether by operation of law or otherwise.

Severability. If any provision(s) of these Terms is deemed unenforceable or void, that provision(s) will be limited and construed to make it enforceable, or, if such limitation or construction is not possible, that provision(s) will be deemed stricken from these Terms and the remaining Terms in full force and effect.

Third-Party Beneficiaries. A person who is not a party to these Terms has no right to enforce any provision of these Terms, except that (a) your Financial Provider is a third-party beneficiary of the section “Sharing Your Information” and may enforce the language entitling your Financial Provider to share your personal information with us and (b) our service providers (including your Financial Provider) are third-party beneficiaries of the sections “Buy and Sell Bitcoin”, “Order Limit”, “Transaction Fees”, “Secure Credentials”, “Prohibited Uses”, “Assignment”, “Market Volatility”, “Disclaimer of Warranties”, “Limitation of Liability” and “Unforeseen Circumstances” and may enforce those provisions.

Survival. All provisions of these Terms, which by their nature extend beyond the expiration or termination of these Terms, will survive the termination or expiration of these Terms.