

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV 2023-485- 411

Under Part 19 of the High Court Rules and the Trusts Act 2019

In the matter of an application concerning **CRYPTOPIA LIMITED (IN LIQUIDATION)**

And

In the matter of an application by **DAVID IAN RUSCOE** and **MALCOLM RUSSELL MOORE** of **GRANT THORNTON NEW ZEALAND LIMITED**

Applicants

**AFFIDAVIT OF DAVID IAN RUSCOE IN SUPPORT OF
INTERLOCUTORY APPLICATION WITHOUT NOTICE FOR ORDERS AS
TO (1) REPRESENTATION (2) APPOINTING AN AMICUS CURIAE AND
(3) SERVICE**

Dated: 31 July 2023

BUDDLE FINDLAY

Barristers and Solicitors
Wellington

Solicitor Acting: **Scott Barker / Bridie McKinnon**
Email: scott.barker@buddlefindlay.com / bridie.mckinnon@buddlefindlay.com
Tel 64 4 498 7349 Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6011

I, **David Ian Ruscoe**, of Wellington, Chartered Accountant, swear:

1. I am a Chartered Accountant by profession, and I am a partner in the Wellington office of the firm, Grant Thornton. I am also a licensed insolvency practitioner (LIP50). I am authorised to swear this affidavit on behalf of the applicants, David Ian Ruscoe and Malcolm Russell Moore, liquidators of Cryptopia Limited (**Cryptopia** or the **Company**).
2. The applicants have filed an originating application on for directions in respect of distribution of cryptocurrency held on trust (**Cryptocurrency**) by Cryptopia Limited (in liquidation) (**Cryptopia** or the **Company**) on 31 July 2023 (**Application for Distribution**). I have sworn an affidavit in support of the Applicant for Distribution and will refer to evidence in that affidavit by way of background.
3. I make this affidavit in support of an interlocutory application without notice seeking orders to facilitate the determination of the Application for Distribution, which seeks orders as to:
 - (i) Appointment of Jenny Cooper KC as representative counsel for creditors of the Company;
 - (ii) Appointment of Peter Watts KC as amicus curiae to assist the Court in providing arguments for and against the liquidators' preferred approach as to distribution sought in the Application for Distribution;
 - (iii) Payment of both counsel's costs and disbursements in respect of their appointments; and
 - (iv) Service.

(Interlocutory Application)

4. I also wish to refer to the evidence in the following affidavits by way of background to this application:
 - (a) The affidavit I swore on 17 May 2019 in support of an application by the liquidators for orders varying the mode and timing of sending the various Liquidators' Report under ss 255 and 257 of the Companies Act 1993 (CIV 2019-409-247).



- (b) The affidavit I swore on 22 May 2019 seeking variation to the service orders in respect of CIV 2019-409-247.
 - (c) The affidavit I swore on 1 October 2019 in support of an application by the liquidators for orders appointing counsel to represent different classes of parties, that reasonable fees and disbursements of appointed counsel be met from the pool of realised Bitcoin holdings, and that service be effected by making available downloaded copies of proceedings on Cryptopia's website notifying interested parties via email and Cryptopia's twitter account (CIV 2019-409-544).
 - (d) The affidavits I swore in relation to various sale applications:
 - (i) On 28 May 2019 for the sale of 344 Bitcoin (**BTC**) (CIV 2019-409-286).
 - (ii) On 12 February 2021 for the sale of 80 BTC (CIV 2021-409-33).
 - (iii) On 25 January 2022 for the sale of NZD5 million of Dogecoin (**DOGE**) (CIV 2022-485-47).
5. I attached marked **DIR-IL** a paginated bundle of documents to which I refer below.

Background

- 6. A fulsome background to the current applications before the Court can be found in my affidavit in support of the Application for Distribution dated 31 July 2023. The below is relevant to this Interlocutory Application.
- 7. The applicants are the liquidators of Cryptopia appointed pursuant to s 241(2)(a) of the Companies Act 1993 (Act), appointed by special resolution of shareholders on Tuesday 14 May 2019.
- 8. In *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728, [2020] 2 NZLR 809 Justice Gendall found that the Cryptocurrency was held on trust for account holders by way of individual express trusts per coin type. The liquidators are bare trustees of the various trusts.
- 9. Since Justice Gendall released his judgment on 8 April 2020, the liquidators have been working on the following tasks in administration of the trust assets:
 - (a) Reconciliation / rekeying the Cryptocurrencies.

- (b) Building a claims portal for account holders (including identity verification and balance acceptance).
 - (c) Tracing hacked assets.
 - (d) Investigating the affairs of Cryptopia and its directors and officers.
 - (e) Applying to the Court for orders to convert Cryptocurrency into fiat currency to meet the reasonable costs and expenses of and incidental to the protection, preservation, recovery, management and administration of the Cryptocurrencies.¹
10. We have filed the Application for Distribution to seek directions from the Court regarding a distribution process that returns Cryptocurrency held on trust by Cryptopia to account holders as beneficiaries.
11. The parties that will be affected by the outcome of the Application for Distribution are:
- (a) Over two million account holders. Based on our reconciliation of the SWL database, we have identified 960,191 account holders with a positive account balance. These account holders are based in more than 180 countries.
 - (b) Approximately 37 known creditors of Cryptopia.² The Company records as at 15 May 2019 show that the creditors' claims total over NZD12.7 million. At least 24 unsecured creditors have also made claims.

Appointment of representative counsel and an amicus curiae

12. The time and cost of individual parties obtain separate representation could delay the distribution of Cryptocurrency to account holders and result in unnecessary cost to the trusts. It would also cause duplication of effort amongst creditors and account holders who share common interests. We recognise that it is in the interests of all parties to avoid unnecessary delay and litigation costs.
13. We have therefore decided to apply to the Court to appoint experienced counsel:

¹ CIV 2019-409-286, CIV 2021-409-33, and CIV 2022-485-47. There is currently a (contested) sale application before the Court in CIV-2023-485-375.

² DIR-IL at 1.

- (a) We understand that Jenny Cooper KC is willing and available to represent the interests of creditors of Cryptopia. While the Application for Distribution focusses on trust law issues and the interests of account holders, there is a possibility that any of our proposed orders will reduce the pool of remaining Company assets available to satisfy creditors' claims. As creditors share a common interest in maximising the Company assets, we believe representative counsel is appropriate. Jenny Cooper KC is an experienced counsel in insolvency and trust law and previously acted as representative counsel for the creditors in CIV 2019-409-554.
- (b) We understand that Peter Watts KC is willing and available to be appointed as amicus curiae to assist the Court in providing arguments for and against our proposed approach as to distribution to account holders. We consider that an amicus role is appropriate (as opposed to representative counsel) as the interests of account holders are not homogenous. As I referred to in my affidavit supporting the Application for Distribution, account holders have a diversity of holdings across a large range of coin types. Account holders' holdings differ by value, number of coins, exposed to hacked losses, volatility, etc. Each order may affect different classes of account holders differently. We have sought to design a distribution process that is in line with trusts law (per Gendall J's judgment) and commercial practicalities. We consider that it is most appropriate for Peter Watts KC, with his experience in trusts law and insolvency, to provide the Court with arguments for and against any of our proposed orders, for the benefit of all account holders. Peter Watts KC previously acted as representative counsel for the account holders in CIV 2019-409-544, and therefore has the appropriate background on this matter.

14. If an individual considers that their interests are not able to be fairly represent by court-appointed counsel, we have requested that leave be reserved for any party to obtain separate representation at their own cost.

15. These orders sought will:

- (a) ensure that all affected interests are represented by experienced counsel;
- (b) ensure that the Court hears full argument on all matters relevant to the Application for Distribution; and

- (c) facilitate the most time and cost-efficient determination of the Application for Distribution.
16. We have sought directions that the reasonable costs and disbursements of Jenny Cooper KC and Peter Watts KC be met from the trust assets. We consider that these costs and disbursements are a necessary and reasonable expense in the administration of the trusts as it is in the interests of all parties affected by the Application for Distribution to have experienced counsel appointed by the Court. The ultimate incidence of these costs is to be determined by the cost model in the Application for Distribution. The Court previously granted similar Orders on 18 October 2019 regarding how to meet the costs of appointing counsel to represent different classes of parties (CIV 2019-409-544).

Service

17. An email address is the only contact information that Cryptopia required for an account to be established, and further contact information was only require when the level of trading of an account exceeded NZD50,000 per day. We have an email address for all account holders who are registered in over 180 countries.
18. It is therefore not possible to carry out personal service, which would be impractical in any event.
19. We have previously applied to this Court for:
- (a) orders varying service requirements under the Companies Act 1993. I refer to paragraphs 17 to 25 of the affidavit I swore on 17 May 2019 in respect of the orders as to service that we are seeking (CIV 2019-409-247).
 - (b) orders varying service requirements to account holders in various sale applications (CIV 2019-409-286 on 29 May 2019; CIV 2021-409-33 on 19 February 2021; CIV 2022-485-47 on 16 February 2022).
20. I add that the method of service sought is consistent with the method of communication and notification between Cryptopia and its account holders per clause 17 of the terms and condition as amended on 7 August 2018.³

³ DIR-IL at 3.

21. We have also been using dedicated webpages and social media (Twitter) for sharing online our statutory and other periodic reports on the liquidation and administration of the trusts. We propose that we post a link to the Court documents both on our Grant Thornton webpage dedicated to the Cryptopia liquidation (<https://www.grantthornton.co.nz/cryptopia-limited/>) and the Twitter account for Cryptopia (@Cryptoia_NZ). We have observed that these are effective media for communication with stakeholders because:
- (a) There are approximately 231,800 followers to the Company's Twitter account, many of which are assumed to be account holders.⁴
 - (b) There has been good engagement with the Company's web page. For example, since the last liquidators' report was released on 12 June 2023, there were 2926 user logins to the claims portal.
22. In June 2023, we realised lost access to the Cryptopia Twitter account after attempting to publicise the liquidators' ninth statutory report. After its change of ownership, Twitter was no longer satisfied that we were the operators of the account. That account has approximately 231,800 followers and has previously been a useful way to engage with account holders. We have previously used the Cryptopia Twitter account to post updates to account holders and other stakeholders, including to serve previous applications filed in the High Court in respect of Cryptopia. The liquidators have obtained recognition in the Southern District of New York, United States as a foreign representative in a foreign main proceeding pursuant to Chapter 15 of the US Bankruptcy Code (based on the UNCITRAL Model Law). Pursuant to a foreign representative's powers under a Chapter 15 recognition order, we intend to file a notice under section 1521 of the Bankruptcy Code requiring Twitter to provide us with information regarding Cryptopia's assets (the Twitter account). Those powers are similar to the powers liquidators have under s 261 of the Companies Act 1993. Until that information is obtained (if it is obtained), social media updates will be posted on Grant Thornton's social media channels and the websites. Updates will be posted on the Cryptopia Twitter once our access is reinstated.

⁴ DIR-IL at 19.

Without notice and *Pickwick* service


23. I believe that it is appropriate for this application to be determined on a without notice basis because:
- (a) personal service on the affected parties will cause unnecessary delay and is not possible in most circumstances;
 - (b) electronic service has been previously ordered and carried out without issue;
 - (c) The application relates to a routine matter, being orders for representation and service in the context of a liquidation that affects a significant number of actual and potential parties.
 - (d) Beneficiaries known to us via their counsel who may wish to be heard on this application will be notified on a *Pickwick* basis and may apply to be heard on this application.
 - (e) in any event, the affected parties retain a right to apply to modify or extinguish the orders we are seeking.
24. In addition, for the reasons discussed above, I consider that it is appropriate for service of this application be effected electronically.
25. Accordingly, we ask the Court to make the orders sought.

Sworn at)
this 31st day of July 2023)
)



David Ian Ruscoe

Before me:



A Solicitor of the High Court of New Zealand

Clara Elizabeth Sinclair
Solicitor
Wellington

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

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EXHIBIT DIR-IL TO THE AFFIDAVIT OF DAVID IAN RUSCOE IN SUPPORT OF INTERLOCUTORY APPLICATION WITHOUT NOTICE FOR ORDERS AS TO (1) REPRESENTATION (2) APPOINTING AN AMICUS CURIAE AND (3) SERVICE

Dated: 31 July 2023

EXHIBIT NOTE:

This is the exhibit marked "DIR-IL" referred to in the Affidavit of **DAVID IAN RUSCOE**, affirmed at Wellington on *31 July* 2023 before me:

Signature: *Clara Elizabeth Sinclair*

Clara Elizabeth Sinclair
Solicitor
Wellington

A Solicitor of the High Court of New Zealand

BUDDLE FINDLAY

Barristers and Solicitors
Wellington

Solicitor Acting: **Scott Barker / Bridie McKinnon**
Email: scott.barker@buddlefindlay.com / bridie.mckinnon@buddlefindlay.com
Tel 64 4 498 7349 Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6011

DIR-IL exhibit index

| | |
|----|--|
| 1. | Cryptopia creditor claims as at 15 May 2019 |
| 2. | Cryptopia Terms and Conditions as amended on 7 August 2018 |
| 3. | Cryptopia Twitter screenshot – 26 July 2023 |

Company

\$ USD Claim

Records \$NZD

- Canterbury Employers' Chamber of Commerce
- Chillisoft
- Cloudflare, Inc.
- Dell
- Dempster Builders Ltd
- EAP Services Limited
- EnviroWaste Services Ltd
- Hotwire
- HubSpot
- Incapsula
- Initial
- Intranel Consulting Limited
- Junkman
- Just Water New Zealand
- Kearney & Co
- Kordia
- Merquip
- Meridian Energy
- Midland Properties Ltd
- Oasis
- Office Products Depot
- Phoenix NAP
- PowerShop New Zealand Limited
- Promapp Solutions Limited
- Pulse Security
- Resolve Support Services Ltd
- Sandfly Security
- Security Matters Christchurch Limited
- Service Now
- Sparkling Silver Service Ltd
- Swipedon.com
- TDM Electrical
- TradeMe Jobs
- Vision Systems
- Voyager Internet Ltd
- Waste Management
- Xero
- IRD



\$ 12,742,240.67

USD Conversion rate at 14 May 2019 \$1 USD = \$1.52190 NZD per XE.COM

1. Terms and Conditions

2. [Introduction](#)
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1. Introduction

- A. These terms and conditions of use (**Terms**) apply to the Cryptopia website and associated applications (the **Platform**) and the services (**Services**) operated and provided by Cryptopia Limited.
- B. These Terms, the Platform and the Services allow you to:
 - a. buy, sell and exchange supported Coins through the Platform;
 - b. use Fiat Pegged Tokens, when available; and
 - c. store supported Coins in our hosted Wallets.
- C. In these terms **Cryptopia, we, us** or **our** means Cryptopia Limited, and **you** or **your** means the person accessing or interacting with the Platform and/or the Services.
- D. Other capitalised words used in these Terms have the meaning set out in the Glossary.
- E. **Please read these Terms carefully.** By accessing our Platform and/or Services and/or creating an Account with us, you are agreeing to be bound by these Terms. If you do not agree to these Terms, you must immediately stop using the Platform or any Service. In particular, by agreeing to these Terms you are confirming that:

- a. you have read, understood and acknowledge our Cryptopia [Risk Statement](#) (including the risks disclosed) and [Privacy Policy](#);
- b. you have legal capacity and all necessary authority to enter into these Terms; and
- c. you have sufficient knowledge and experience, and understand the risks involved, in Coins, to enable you to evaluate the terms, value and risks associated with any Transactions you enter into through the Platform.

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2. Understanding Your Risks

Trading in Coins is speculative and high risk. You may lose some or all of any money or Coins that you hold or transact using the Platform. You should not trade Coins unless you can afford to lose your investment without hardship. **Please read the Cryptopia [Risk Statement](#) carefully for a summary of some of the risks that you must understand before you use the Platform or Services.**

See [clause 12](#) below for an explanation of how our liability is limited in some cases.

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3. Eligibility

You can use the Platform and our Services only if you meet, and continue to meet, the following criteria:

- a. you are legally entitled to do so under the law of the country you are in, or any other relevant jurisdiction;
- b. if you are an individual, you are 18 years or older;
- c. if you are an entity, you are correctly formed or incorporated and in good standing;
- d. you have the capacity and authority to agree to these Terms; and
- e. you provide all information (including identity information) required by us to open your Account or at any time afterwards that we need to meet our obligations under law or regulation.

If at any time you do not meet these criteria, you must stop using the Platform and the Services. We can close or suspend your Account at any time where you do not meet these criteria (see [clause 4](#) below).

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4. Your Account

4.1 Opening an Account

- a. To use the Platform and our Services, you must open an Account by completing our process through the Platform. We can decline to open an Account or provide a Service, without notice and for any reason.
- b. We will require proof (satisfactory to us) of your identity when you open an account, to enable us to meet our obligations under Applicable Law (in particular any anti-money laundering or countering financing of terrorism requirements). In addition, we may ask for such other information as we consider is necessary or desirable for us to obtain before we open an Account, and by applying for an Account you agree

to provide us with any such information and authorise us to use your personal information to make enquiries to verify your identity either directly or through third parties.

- c. We can change our Account opening process from time to time and without notice.
- d. You agree that you will provide accurate, complete and truthful information wherever we require you to provide information, including as part of the Account opening process.

4.2 Using Your Account

- a. Your Account comprises your Coin Balances (see [clause 5](#) below) including, where applicable, any Fiat Pegged Tokens that you hold (see [clause 6](#), below), and includes a record of all of your Transactions.
- b. You agree to accept responsibility for all activities that occur under your account or password.
- c. You must maintain the confidentiality and security of any information that can be used to access your Account. For this purpose, you must:
 - i. not share your password, login information, or other security related information with any other person that may allow them to access your Account;
 - ii. not permit any other person to use or access your Account or login information;
 - iii. notify us if there has been, or you suspect there will be, any unauthorised use of your Account; and
 - iv. only create one Account, and not register as a user under multiple names (whether false or not).
- d. Third parties may masquerade as a legitimate Cryptopia site, social media account, telephone support number or App, in order to steal your credentials (phishing). We do not accept any liability, either directly or indirectly, for any loss resulting from accounts that have been compromised via phishing or any other scheme.
 - i. We recommend that all users enable dynamic two factor authentication to prevent unauthorised account use.
 - ii. Cryptopia site passwords should be unique to Cryptopia and should never be stored insecurely on any personal device.
 - iii. You must only access your Account through the official Cryptopia website (www.cryptopia.co.nz).
- e. You understand that anyone accessing your Account will be able to enter into transactions using your Coin Balances and, where applicable, any Fiat Pegged Tokens and we have no obligation to verify or take any steps to verify any instruction received from you or appearing to be sent by you.

4.3 We Can Suspend Your Account

- a. We may suspend, limit or restrict access to your Account, the Platform or any Service, at any time without notice, if:
 - i. you fail to pay any amounts owing under these Terms to us or any other person when they are due;
 - ii. we become aware of a dispute over either the ownership of any Assets in your Account or the operation of your Account;

- iii. we consider it necessary or prudent to clarify the authority of any other person claiming to act on your behalf;
 - iv. you have not provided all information needed for us to comply with any Applicable Law, or we have not been able to verify the information to our satisfaction;
 - v. we receive a serious complaint or multiple complaints about you from any other person;
 - vi. we discover that some or all of the information that you have previously provided to us in order to open or operate the Account is materially inaccurate, and as a result we reasonably consider suspension is necessary or prudent to protect our, or any other person's, legitimate interests;
 - vii. we are unable to reasonably provide the Account or any Services as a result of any resource constraint, technical failures or other difficulties in providing the Platform;
 - viii. we reasonably consider we are required to do so by, or your continued access may result in a breach of, any Applicable Law (including any investigation, litigation or any government or regulatory proceeding relating to any Applicable Law);
 - ix. in our sole discretion, your conduct may bring the Platform, us or any other person into disrepute; or
 - x. we suspect that you have breached, or your continued access might result in a breach, of these Terms.
- b. If we suspend your Account or access to any Service, without giving you notice beforehand, we will give you notice as soon as reasonably practicable afterwards, unless we are unable to do so because of any Applicable Law.
 - c. The suspension will come to an end only when we are reasonably satisfied that the reason for the suspension no longer applies.
 - d. During the suspension, our Terms will continue to apply.

4.4 We Can Close Your Account

- a. In addition to our rights under [clause 4.3](#), we can close your Account at any time and without notice if:
 - i. you have failed to pay any amounts owing under these Terms to us or any other person when they are due, and have failed upon request from us to rectify this failure within a reasonable time period;
 - ii. we are required to do so in order to comply with any Applicable Law, in New Zealand or any other jurisdiction;
 - iii. we reasonably believe that you have acted, or are acting, unlawfully;
 - iv. we reasonably believe that you have been aggressive or threatening to our staff or any other Users;
 - v. you are not eligible for the Account, or any Service, under these Terms;
 - vi. you have not provided all information needed for us to comply with all Applicable Laws, or we have not been able to verify the information to our reasonable satisfaction;
 - vii. some or all of the information that you have previously provided to us in order to open or operate the Account or any Service is materially

- inaccurate, and as a result we reasonably consider closure or cancellation is necessary or prudent to protect the Platform or our or any other person's legitimate interests;
- viii. we have suspended your Account because we have been unable to reasonably provide the Account or any Services as a result of any resource constraint, technical failures or other difficulties in providing the Platform, and we are unable to recommence providing the Account or any Services within a reasonable period of time; or
 - ix. we reasonably suspect the Account or Service is being used or obtained to facilitate fraud, money laundering or other illegal activity.
- b. If we close your Account without giving you notice beforehand, we will give you notice as soon as reasonably practicable afterwards unless we are unable to do so because of any Applicable Law.
- c. Subject to any Applicable Law, if we close your Account:
- i. these Terms will continue to apply to any actions, including any Transactions entered into by you, before the date of cancellation;
 - ii. you remain liable to make payment of any amounts owing to us or any other person, in relation to the use of the Platform, your Account or any Services; and
 - iii. we may at our discretion provide you with access to the Platform solely to the extent necessary to access to your Account for a period of 90 days to allow you to transfer your Coins to a different digital wallet or to redeem any Fiat Pegged Tokens. For the avoidance of doubt, you will not be able to receive the Services or access any other component of the Platform during this period. You acknowledge that after this 90 day period, you may no longer have access to the Platform to access your Coins and we will not have any liability to you for any loss, cost, damage or expense that results from your failure to exercise your right of access during such 90 day period.

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5. Your Coin Balances

- B. Your Coin Balances form part of your Account, and allow you to send, receive and store supported Coins (see [clause 9](#)), in accordance with instructions provided by you through the Platform.
- C. You must not attempt to send, receive or store unsupported Coins in your Account. Any such actions may result in the loss of the unsupported Coins, or.
- D. You must not send Coins to a wallet address for a different Coin than the currency you are sending. This is commonly known as cross-chain deposit. In recoverable instances, an appropriate recovery fee will be charged for Cryptopia executing a cross-chain recovery.
- E. Your Coin Balances are operated by us, and represent entries in your name on the general ledger of ownership of Coins maintained and held by us. This means the Coins in your deposit wallets may be pooled in our internal accounts with other Users' Coins at any time.
- F. Each User's entry in the general ledger of ownership of Coins is held by us, on trust, for that User.

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6. Fiat Pegged Tokens

- A. Where we are able to do so (for example, where we can access appropriate banking facilities), we may offer Fiat Pegged Tokens to enable you to upload fiat dollars to your Account in exchange for the equivalent Fiat Pegged Tokens which are tradeable on our Platform.
- B. There will be an individual Fiat Pegged Token for each fiat currency we offer (for example, NZDT is a Fiat Pegged Token for New Zealand Dollars).
- C. Each Fiat Pegged Token is equivalent to one fiat dollar of the respective fiat currency.
- D. Fiat Pegged Tokens allow you to send, receive and store fiat currencies.
- E. Fiat Pegged Tokens are not financial products in themselves and do not give you any rights or carry any obligations. They are a digital representation of fiat dollars held on trust for you in the Custodial Account. Under these Terms, you hold the beneficial interest in those fiat dollars and can instruct us as trustee to deliver them to you at any time, subject to these Terms (including the risks set out in the Cryptopia [Risk Statement](#)). We do not promise to pay you any amount in relation to Fiat Pegged Tokens out of our own funds.
- F. In order to obtain Fiat Pegged Tokens from the equivalent fiat currency you must provide us with details of a Nominated Account held with a bank registered to the country of the fiat currency you wish to use. When we are able to offer Fiat Pegged Tokens supported by Cryptopia, you can transfer fiat dollars from your Nominated Account to our Custodial Account. We will hold an amount equal to your deposit in the Custodial Account on trust for you. For each fiat dollar we hold in the Custodial Account on your behalf we will issue and credit one equivalent Fiat Pegged Token to your Coin Wallet.
- G. If you transfer or trade a Fiat Pegged Token with another person through our Platform, you instruct us to hold one fiat dollar in the Custodial Account on a new trust for the transferee.
- H. You may request a withdrawal of Fiat Pegged Tokens supported by Cryptopia through the Platform and, subject to these Terms, we will pay the equivalent amount in the respective fiat currency from the Custodial Account to your Nominated Account held with a registered bank, subject to any minimum and maximum withdrawal amounts in place, and less any withdrawal fee and deductions required by Applicable Law.
- I. We will try to action any issue of new Fiat Pegged Tokens or your withdrawal request as soon as we are reasonably able to do so. However, there may be a delay as a result of events outside of our control, including as a result of a sudden increase in Transaction volumes, regulatory changes, blockchain issues, or as a result of a request coming through outside of normal banking hours.
- J. You will not receive any interest earned on fiat dollars stored in the Custodial Account. Any interest earned on the Custodial Account will be paid to Cryptopia as a fee.
- K. We will not use the fiat dollars held on trust in the Custodial Account for any purpose other than to meet our obligations to you in respect of your Fiat Pegged Tokens, nor can we charge or otherwise encumber them.
- L. Fiat Pegged Tokens are available at our discretion. For regulatory, commercial or other reasons we may give notice to Users that we have decided to suspend or to cease offering one or more of our Fiat Pegged Tokens. If we cease offering a Fiat Pegged Token we will, where possible, give affected Users notice of a timeframe within which they must withdraw, or exchange for Coins, the Fiat Pegged Tokens in their Wallets. Any remaining Fiat Pegged Tokens will, after this time, be withdrawn and the matching fiat dollar amount paid to the relevant User's Nominated Account. If this is unavailable or difficult Cryptopia may instead chose to remove the tokens from your account and replace them with the equivalent value of BTC or another major currency at an appropriate market rate of exchange.

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7. Trading on the Platform

7.1 Your Obligations and Acknowledgements in Relation to Transactions

- a. In respect of Transactions you submit into the Platform, you acknowledge and agree that:
 - i. we do not own or control any of the underlying blockchains, software protocols or networks in respect of Coins, and make no warranties or representations regarding their security, effectiveness or proper functioning;
 - ii. we may impose such restrictions as we reasonably think fit for the efficient processing of Transactions and in order to reduce the risk of theft and fraud. These restrictions may include maximum or minimum individual Transaction limits and maximum daily limits, in relation to a Coin, type or group of Coins, User or group of Users or type or types of Transactions;
 - iii. you will only use the Platform and the Services to undertake Transactions on your own behalf, and not on behalf of anyone else;
 - iv. while we will use reasonable endeavours to process Transactions as quickly as possible, Cryptopia gives no guarantee or warranty regarding the timing of completion of any Transaction. Transaction completion may be delayed for a significant period of time, or indefinitely, for a number of reasons including those set out in the **Cryptopia [Risk Statement](#)**;
 - v. we will act on the instructions sent from your Account and we have no obligation to verify any instruction received from, or appearing to be sent from, your Account.
- b. You agree only to use our Services for lawful and permitted purposes. This includes, but is not limited to, prohibiting the use of our Services for the purposes of:
 - i. illegal purchases;
 - ii. money laundering;
 - iii. financing of terrorism;
 - iv. trading with countries embargoed by your government;
 - v. engaging in deceptive, fraudulent or malicious activity;
 - vi. wire transfer money orders;
 - vii. as a means to transfer funds between bank accounts;
 - viii. to carry out any act that is illegal in New Zealand or in the jurisdiction where the person carrying out the activity is resident, domiciled or located; or
 - ix. commercial purposes which are competitive to the Platform or our business or which would otherwise be detrimental or prejudicial to our interests or the interests of any User, in any way.

7.2 Reversals, Cancellations

- a. You cannot cancel, reverse, or change any Transaction once it is submitted.
- b. We have the right to refuse to process, or to cancel or reverse, any submitted Transaction for any reason, including:

- i. where in our opinion completing the Transaction could result in a breach or potential breach of any Applicable Law;
- ii. if we reasonably consider the Transaction is erroneous; or
- iii. where we reasonably consider the Transaction has the potential to bring into disrepute us, the Platform or any User.

7.3 Agent

You appoint Cryptopia, and Cryptopia accepts the appointment, as your agent for any Transaction in Coins that you have entered into through your Account on the Platform, in accordance with these Terms.

7.4 Location of Transactions

All Transactions through the Platform are deemed to take place in New Zealand. On completion of the Transaction, you are deemed to take possession of your Account, and the Assets in your Account, in New Zealand.

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8 Platform Change and Business Disruptions

- A. We will use reasonable care in operating our Platform, so as to limit disruptions to the Platform, User Accounts and our Services. However, you accept that our Platform will not necessarily be available uninterrupted or error-free, and it may also be inaccessible from time to time while undergoing maintenance or upgrade work. If we are not able to provide advance notice of any interruption, we will give notice as soon as reasonably practicable afterwards.
- B. We may, in our discretion, make changes to the Platform with or without notice, and we make no representation that any Services will continue to be provided in the same manner as they are currently provided.

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9. Supported Coins

9.1 Supported Coins

- a. We will from time to time publish a list of Coins supported on our Platform.
- b. It is your responsibility to determine whether you should acquire, exchange or sell any Coin, and you should seek professional advice before doing so. By supporting a Coin on our Platform, we make no representations, and give no warranties:
 - i. whether you should purchase, sell, or hold any Coin, or in relation to the performance, value of or benefits associated with that Coin;
 - ii. as to any rights or obligations you may have as a holder of that Coin;
 - iii. as to whether the terms of the Coin have been accurately represented by the issuer or any promoter of that Coin;
 - iv. the success of any business or project related to any Coin; or
 - v. that the issuer has complied with any or all Applicable Laws in relation to that Coin, or that it has received any required regulatory approvals, licences, or registrations to enable it to issue or offer the Coin.

- c. Cryptopia, its officers, employees, agents and contractors do not provide any advice in relation to Transactions. You must not rely on anything we say as intended to:
 - i. pass judgement on the merits of any particular Coin;
 - ii. endorse, sponsor or recommend any Coin supported on the Platform;
 - iii. make any recommendation regarding the advisability of investing in any Coin for any particular individual.
- d. The Coins supported on the Platform may change from time to time without notice to any User, for any reason, including as a result of any Applicable Laws, any change to the underlying rules of a Coin, or any technological issue outside of our reasonable control.
- e. It is your responsibility to confirm that any Coin is a supported Coin. You will be responsible for any loss incurred as a result of sending, depositing or returning any Coins that are not supported by us.

9.2 Coins in Maintenance

- a. From time to time, as part of the risks of trading in Coins, a Coin supported on the Platform may be placed in maintenance. During maintenance, you cannot deposit or withdraw the affected Coin.
- b. Circumstances in which we may put a Coin into maintenance include:
 - i. developer requests;
 - ii. the Coin is out of sync with its blockchain;
 - iii. routine maintenance;
 - iv. mandatory updates; and
 - v. other blockchain related issues.
- c. We do not accept any liability, either directly or indirectly, for any loss caused by placing a Coin into maintenance.

9.3 Delisting Coins

- a. From time to time, we may delist Coins from the Platform (meaning they can no longer be traded) for technical, legal or any other reason at our discretion.
- b. Generally, the procedure in which we will delist a specific Coin is as follows:
 - i. the market for the Coin is closed and from that point you will not be able to buy or sell the Coin; and
 - ii. we will give at least a 30 day notice on the removal of the Coin. At that time, the status of the Coin becomes "delisting".
- c. During the 30 day notice period, you must ensure that you withdraw the specific Coin from the Platform, to an external wallet, and cancel any outstanding Transactions. If you do not withdraw your balance of the Coin from the Platform you may lose the balance of the Coin at the time it is removed.
- d. After the notice period and once the Coin is delisted, the Coin will no longer be able to be deposited, withdrawn, bought or sold on the platform. If possible, any un-processed Transactions in respect of the Coin will not be processed and any related Coin or amount will be returned to the User.
- e. You acknowledge that we may immediately delist a Coin, without following the process set out above, where the removal is urgently required for compliance with

any Applicable Law or where we consider the continued support of the Coin may result in a serious risk of harm or legal liability to us, the Platform, the Services or any User.

- f. You acknowledge that some Coins may be delisted without the option to withdraw the Coin from the Platform during the 30 day notice period. This will occur when the Coin is unable to be withdrawn due to technical, legal or any other reason at our discretion.
- g. Cryptopia does not accept any liability, either directly or indirectly, with any loss caused by delisting a Coin.

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10. Payments

10.1 Mistaken Payments

If you make a payment from your Account in error, it may not be possible to stop or reverse the payment once it has been made. You may only be able to recover such a payment made in error through court action or with the consent of the Account holder who received it. If you ask us to recover a payment from your Account, we will use reasonable efforts to do so, and we may charge you our reasonable costs to do this.

10.2 We can Decline Payments

We can decline payments from your Account if:

- a. you have not provided all information needed for us to process the payment or comply with any Applicable Law, or we have not been able to verify the information to our reasonable satisfaction, or we reasonably consider that the information is materially inaccurate;
- b. we are required to do so by any Applicable Law;
- c. we reasonably suspect the payment is being used to facilitate fraud, money laundering or other illegal activity;
- d. we reasonably consider it necessary or prudent to protect one or all of the parties to the account, our legitimate interests, or the legitimate interest of a third party; or
- e. we reasonably suspect that the payment is unauthorised.

10.3 We Can Reverse Payments

We can reverse payment paid into your Account, without your consent and without giving notice, if:

- a. we have made an error;
- b. the person or organisation making the payment has made an error;
- c. we are required to do so by any Applicable Law;
- d. we reasonably suspect the payment is being used to facilitate fraud, money laundering, or other illegal activity; or
- e. we reasonably suspect the payment was unauthorised, or that you are not legally entitled to retain it.

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11. Other Services and Content

11.1 Third Party Content

We may display Third-Party Content on the Platform or through our Services. We do not control or endorse any Third-Party Content and make no representations or warranties regarding such content, including (without limitation) regarding the accuracy or completeness of any content. Your interaction with Third-Party Content and the third-party services are governed by any agreement made between you and the third-party, and we do not accept liability for any loss, damage or expense incurred as a result of any interaction with Third-Party Content.

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12. Liability, Indemnities and Force Majeure

12.1 Our Liability

- a. Subject to clause 12.1(c), to the maximum extent permitted by all Applicable Laws, we are not, under any circumstances, liable in any way for any loss or damage, whether direct, indirect, consequential or incidental, whether in tort, contract or otherwise arising out of use of our Platform or Services. This includes:
 - i. any losses arising as result of us acting in accordance with these Terms or any other applicable terms and conditions;
 - ii. losses caused by you, or anyone acting on your behalf (including any Anticipated Person), providing incorrect information;
 - iii. corruption or loss of data or any information;
 - iv. malware or any other damage that may be caused to your computer or system as a result of use of the Platform or transmission of any information from us or any other person to you;
 - v. interruptions, suspensions, delays or discontinuance of the Platform or any Services;
 - vi. the tax liability of you or any other User, nor for collecting, reporting, withholding or remitting any taxes arising from any use of our Services or Platform;
 - vii. losses caused by any User error by you or anyone acting on your behalf;
 - viii. losses arising out of unauthorised access or fraud in relation to your accounts or Services committed by you, your employee, officer or agent;
 - ix. losses caused by circumstances beyond our control, including any machine or system failure;
 - x. losses arising from your use or inability to access our platform at any time, inaccurate content or information in any service we provide; or
 - xi. losses arising from faults in, or malfunction of, any equipment (including telecommunication equipment) which supports our website; and
 - xii. any loss relating to the content or omission of content from our site.
- b. Subject to clause 12.1(c), we give no express warranties and disclaim and exclude all implied conditions or warranties, as to the Platform and the Services. Without limiting the foregoing, we do not:

- i. guarantee that the content is reliable, accurate or complete; and
 - ii. warrant that any of the functions in our site will be uninterrupted or error free.
- c. Nothing in these Terms is intended to limit any rights or remedies a User may have under the Fair Trading Act 1986 or the Consumer Guarantees Act 1993.
- d. Notwithstanding clause 12.1(a), (b), and (c), if we are found to be liable for any loss, cost, damage or expense, our maximum aggregate liability to you will be limited to \$5,000.

12.2 Indemnity

To the maximum extent permitted by law, you agree to indemnify us from, and hold us harmless from, and against all claims, damages, costs and expenses (including reasonable solicitor/client fees) that arise out of or relate to:

- a. your access and use of Platform and/or Services;
- b. your breach of the Terms or any other Platform policy; and
- c. any information you may provide.

12.3 Force Majeure

We do not accept liability, either directly or indirectly, for any loss, expense or cost incurred as result of any lack of performance, unavailability of the Platform and/or the Services, or a failure to comply with these Terms as a result of circumstances outside of our control including, but not limited to, changes of law or an event of force majeure.

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13. Fees and Expenses

13.1 You Agree to Pay Our Fees

You agree to pay all fees and expenses associated with or incurred by you in relation to your use of our Services or Platform, which are published on our Platform.

13.2 Our Fees Can Change

- a. We may change, modify, or increase fees and expenses associated with our Services and Platform, from time to time.
- b. By using our Services or Platform following any update to our rates you accept and agree to pay the fees or expenses as published.

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14. Taxes

By using our Platform, you accept that it is up to you to understand whether and to what extent, any taxes apply to any Transactions you conduct through our Services or Platform. We accept no responsibility for, nor make any representation in respect of, your tax liability.

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15. Intellectual Property

- A. All logos, content, materials, information, software, graphics, text, copyrighted material, and trademarks on the Platform (**Intellectual Property**) are owned by us (and/or our Related Entities, suppliers or licensors), except where expressly stated.
- B. When using the Platform and the Services we grant you a limited, non-exclusive, non-transferable, revocable licence to access the Intellectual Property. You may download and print content from this Platform for your own personal use.
- C. Subject to clause 15(b), you are not authorised to reproduce, amend, store, publish adapt, or use any of the Intellectual Property, or otherwise infringe our intellectual property rights, without our prior written consent.

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16. Your Privacy

Your privacy is important to us. Our detailed privacy policy is available [here](#). We will only use or disclose your information in accordance with our privacy policy.

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17. Notices and Communication

17.1 Communicating with You

- a. You consent to receive electronically all communications, agreements, documents and disclosures (**Communications**) that we may or must provide in connection with your Account, the Platform or any Services.
- b. You will be taken to have received any notice that we publish on the Platform, or that is sent to the most recent contact address (including email address) that we have on file for your Account.
- c. You are responsible for telling us if there are any changes to your contact details, including your email address. Failure to do so may impact your rights under these Terms and any other applicable terms and conditions.
- d. When we give notice under these Terms we can do so in one or more of the following ways:
 - i. by email;
 - ii. by other forms of direct communication; and
 - iii. by displaying a notice on the Platform.

17.2 Communicating with Us

- a. You can communicate with us by lodging a support ticket through your Account or by email. You can also communicate with us by Facebook or Twitter, but communications through these media will not constitute notice for the purpose of these Terms.
- b. We will typically process communications in the order we receive them. We will try to answer your concerns as soon as possible with the resources available to us. **However, from time to time, and due to the fluctuations of demand, responses may be delayed. See the Cryptopia [Risk Statement](#) for more information.**

17.3 Providing Information

You agree to provide all information to us which we require in order to manage our anti-money-laundering and countering the financing of terrorism obligations, to manage economic trade sanctions risks, or to comply with any Applicable Law in New Zealand or any other country. If you fail to provide this information, or provide incomplete, inaccurate, or false information, you agree that we may refuse to establish a business relationship with you, may be required to delay, defer, stop or refuse to process any Transaction, or may terminate our business relationship with you and close your Account at any time without notice.

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18. General

18.1 Amendments to these Terms

We reserve the right to add, vary or withdraw any term of these Terms (including to increase, reduce or vary any fees or charges payable in respect of any Service or Platform) at any time. Examples of when we may exercise these rights include:

- a. if we are required to make legal or regulatory changes;
- b. if we are required to respond to market changes;
- c. if we are required to make improvements to our Services; or
- d. if we are required to make changes to counter and protect against cyber security threats.

18.2 Assignment, Transfer and Subcontract

- a. We may assign, transfer and/or subcontract any of our rights and obligations under these Terms to any Related Entity.
- b. You may not assign, transfer and/or subcontract any of your rights or obligations under these Terms.

18.3 Complaints and Dispute Resolution

- a. If you would like to make a complaint, you can contact us in accordance with [clause 17.2](#).
- b. We are a member of the Financial Dispute Resolution Scheme, an independent approved dispute resolution scheme. This service is free of charge and can be accessed at:

Online:

<https://fdrs.org.nz/>

Free phone:

0508 337 337

Physical address:

Level 9, 109 Featherston Street
Wellington 6011

18.4 Governing Law

- a. You agree to use our service in accordance with the law in New Zealand and the applicable law in your jurisdiction. Where any of these Terms does not meet the

minimum requirement of the law, those terms and conditions are deemed to be amended to the extent of compliance.

- b. The site can be accessed from countries other than New Zealand and may contain functions that are not promoted or permitted in those countries.
- c. We do not represent that information or the site is appropriate or available for use in other countries, use of the site is on the understanding and acceptance that doing so is on your own initiative and you are solely responsible for compliance with local laws.

18.5 Severability

Any clause of these Terms, or part or any clause, declared invalid is deemed severable and does not affect the validity or enforceability of the remaining clauses.

18.6 No Waiver

If we do not exercise or enforce any rights available to us under these Terms that does not constitute a waiver of those rights.

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19 Glossary and Interpretation

Glossary

In these Terms:

Account means an account established by a User, and operated, in accordance with these Terms.

Applicable Law means all Acts, regulations, rules, bylaws, orders in Council, proclamations, notices, warrants, instruments, orders of any court or tribunal, regulatory guidance or instructions and relevant industry codes of practice, including any common law and equity, that are applicable to these Terms, or our or your conduct in relation to these Terms, the Platform, and the Services.

Business Day means a day trading banks are open for business in Christchurch, New Zealand.

Coin means any blockchain-based, or digital representation of an, asset, token or digital currency, such as BitCoin, Ethereum, LiteCoin or any other digital, virtual or crypto currency.

Coin Balance(s) means any record of Cryptopia holding funds on the Cryptopia Platform on your behalf.

Cryptopia, us, we, our or ours means Cryptopia Limited.

Cryptopia [Risk Statement](#) means the Cryptopia risk statement published from time to time on the Platform.

Custodial Account means the bank account held by Cryptopia on behalf of Users for the purpose of receiving and transmitting fiat dollar funds matched to Fiat Pegged Tokens.

Fiat Pegged Tokens are digital representations of a fiat currency. There will be an individual Fiat Pegged Token for each fiat currency we offer. Each Fiat Pegged Token is equivalent to one fiat dollar of the respective fiat currency.

Nominated Account means a User's account with a registered bank.

Platform means the Cryptopia website and trading platform accessible at www.cryptopia.co.nz and any associated Accounts, applications, or websites.

Related Entity means an "associated person" of Cryptopia within the meaning of section 12 of the FMCA.

Services means any services provided by us to you or any other User, whether through the Platform or outside of it, including the purchase, sale and exchange of Coins, and the provision of the Platform, your Account (including any Fiat Pegged Tokens), and any Coin Wallet.

Terms means these Terms and Conditions, as updated from time to time.

Third-Party Content means content, advertisements, links, promotions, logos and other materials from a non-Related Entity.

Transactions means any Transaction undertaken through the Platform including any buy, sell or exchange transaction, or transfer of fiat dollars or Coin from an Account.

User means any person who is eligible to use the Platform and our Services and who holds an Account.

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20 Interpretation

In these Terms, headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting these Terms, except where the context makes it clear that a rule is not intended to apply.

- G. A reference to:
- a. a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - b. a document (including these Terms) or agreement, or a provision of a document (including these Terms) or agreement, is to that document agreement or provision as amended, supplemented, replaced or novated;
 - c. a party to these Terms or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - d. a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - e. anything (including a right, obligation or concept) includes each part of it.
- H. A singular word includes the plural, and vice versa.
- I. A word which suggests one gender includes the other genders.
- J. If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- K. If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- L. The word **agreement** includes an undertaking or other, binding arrangement or understanding, whether or not in writing.

- M. A reference to something being **written** or in **writing** includes that thing being represented or reproduced in any mode in a visible form.
- N. A reference to **dollars** or **\$** is to an amount in a fiat currency.
- O. A power to do something includes a power, exercisable in like circumstances, to revoke or undo it.
- P. A reference to a **power** is also a reference to authority or discretion.
- Q. A reference to a time of day is a reference to New Zealand time.



Cryptopia Exchange

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