

# Obligate.com

## GENERAL TERMS OF USE ("ToU")

Version: August 2023

### SECTION 1: SCOPE OF SERVICES

OBLIGATE AG, Stadthausquai 15, 8001 Zurich, Switzerland, CHE-379.891.298 („**OBLIGATE**") is a platform provider running the Obligate.com platform ("**Platform**"), providing companies, other legal entities, and/or qualified and professional investors registered and approved to use the Platform ("**Users**", "**OBLIGATE**" and the "User" together, the "**Parties**") and a distributed-ledger-technology-based infrastructure to issue, accept, buy, transfer, negotiate and settle electronic debt instruments ("**Protocol**") on public blockchain infrastructures.

These ToU govern access to the Platform and Protocol, use of the electronic instruments, and other related services provided by OBLIGATE (together "**Services**").

These ToU incorporate by reference OBLIGATE's Privacy Policy which can be found on the Platform ("**Privacy Policy**"). By registering, accessing, or using the Services, the User accepts the ToU, which constitutes a legally binding agreement ("**Agreement**") between OBLIGATE and the User ("**Parties**").

### SECTION 2: REGISTRATION

The User must register in accordance with the onboarding and registration procedure ("**Registration**") in order to obtain approval from OBLIGATE to access the Service.

OBLIGATE is conducting a KYC & KYB process.

Only Users approved by OBLIGATE may use the Platform and the Services. OBLIGATE, may grant or deny an approval at its sole and unfettered discretion and without giving reasons to the User.

The User must provide all necessary information regarding the User and any and all of its representatives deemed necessary or desirable by OBLIGATE to open a User account for the use of the Platform and the Services ("**User Account**"), including, but not limited to, the name, address, telephone numbers, email addresses, date of birth, photograph or video-confirmation of a government-issued ID or passport or other proof of identity ("**Registration Information**").

The User herewith authorizes OBLIGATE to conduct - either directly or through a third party - any inquiries or make any requests deemed necessary or desirable by OBLIGATE to verify the Registration Information. The User authorizes OBLIGATE to transfer any and all Registration Information to a provider of Know-Your-Customer-services.

Upon a proper registration and an approval, the User Account will be assigned to the User. The User Account is not transferable.

Using the Services is prohibited in any and all cases where the laws disallow the limitations of Services and exclusions of liability, respectively, as set out in these ToU or where mandatory laws override the ToU or any of its provisions.

### **SECTION 3: ACCESS & USE OF SERVICES**

OBLIGATE will grant the User the right to access and use the Platform and Protocol in accordance with the Agreement.

The Platform serves the Users to conduct transactions regarding electronic debt instruments registered on a blockchain infrastructure ("**eNotes**"). The Users may use the Platform to create, issue, accept, acquire, sell, invalidate, pay, or to transfer control of an eNote, as the case may be (each such action, an "**eNote Transaction**").

The eNote is represented by an authoritative data unit, a token, registered by using the OBLIGATE infrastructure on a public, permissionless blockchain and linked to an identifier of the respective owner ("**eNote Token**").

OBLIGATE undertakes to provide and the User undertakes to use the Platform, Protocol and its services in accordance with the rules defined on the Platform.

To access the Platform and Protocol, the User may be required by OBLIGATE to utilize certain Web3 capabilities, such as MetaMask or another crypto-asset wallet capable of interacting with the User's web browser ("**Web3 Utilities**"). The User shall only use a private key that the User created or has the direct, explicit permission of the party who created the relevant private key. If the User utilizes a Web3 Utility that relies on a username, password, private key, or any other piece of information as part of its security procedures, the User must treat such information as confidential, and the User must not disclose that information to any other person or entity.

The User also acknowledges that any identity linked to its Web3 Utility is personal to the User and agrees not to provide any other person with access to such identity while using this Interface or portions of it using its Web3 Utility. The User also agrees to ensure that it will lock or otherwise prevent its Web3 Utility from unauthorized use on this Interface at the end of each session.

Any individual services offered and rendered to individual Users through the Platform not mentioned in the ToU are not provided by OBLIGATE, but by third-party-providers offering their services on their own behalf and on their own account on the Platform. third-party-providers will be listed at the Website.

**Offers and acceptances by Users on the Platform will neither be made nor matched nor executed automatically by OBLIGATE. OBLIGATE is neither an issuer, acceptor, validator, maker, seller, buyer, transferor, transferee nor guarantor of any eNote or eNote Transaction conducted on the Platform. It is not liable for the legal validity or enforceability of an eNote offered, sold, purchased, nor for any payment of or in connection with an eNote, nor for the creditworthiness of an issuer or purchaser of an eNote, nor the existence and valuation of any collateral in case if a secured eNote, nor any documentation connected therewith, entered between the parties of an eNote Transaction.**

**OBLIGATE does not deliver any legal or financial advisory or consultancy services, tax services, trust, payment, or collection services and does not hold, receive, pay,**

manage, or otherwise dispose of any monies (including stablecoins or cryptocurrencies), financial instruments, or securities for, from, or on behalf of any User or third-party.

Each potential issuer of an eNote hereby authorizes OBLIGATE to provide information about eNote offerings, such as term sheets, in the name of the issuer and on its behalf to potential investors.

Payments in relation to contractually agreed eNote are not performed by OBLIGATE, but only directly from the wallet of the User.

#### **SECTION 4: FEES**

In consideration for the Services provided by OBLIGATE pursuant to the Agreement, the User shall pay to OBLIGATE the fees as stipulated on the Platform.

The fees shall be deemed to include all taxes, charges, and duties payable by the User in connection with the Agreement (except VAT, if any).

Notwithstanding any other rights of OBLIGATE under the ToU, if the User fails to pay any fees when due, it is no longer entitled to use the Platform as long as such fees and any interest accrued on them are outstanding. During such period, OBLIGATE has the right to implement a suspension of the ability of the User to conduct eNote Transactions on the Platform.

#### **SECTION 5: PROVISION OF SERVICES BY OBLIGATE**

OBLIGATE serves Users as a technical service provider only. In this sole capacity, OBLIGATE provides only an informational and technical service for Users to conduct transactions of eNotes by:

- (i) enabling them to negotiate on a transaction and issue an eNote on a public, permissionless blockchain and
- (ii) further supporting them according to the terms of the Agreement during the transaction processing.

The User acknowledges that during the term of the Agreement, modifications to the Services may be necessary or advisable due to technical or other reasons. OBLIGATE in its sole and unfettered discretion may implement changes to the Platform without prior agreement with the User. OBLIGATE, however, shall duly inform the User of such modifications to the Services.

OBLIGATE may carry out maintenance or improvements to the Services and its infrastructure and the User acknowledges that this may result in temporary delays and interruptions of the Services from time to time. Where reasonably possible, OBLIGATE will inform the User about potential interruptions in advance.

**OBLIGATE may, in whole or in part, and for as long as required for re-establishing the functionality of the Services or OBLIGATE Protocol, temporarily suspend the Services. This may, besides other measures, also involve suspending or cancelling existing transactions. Where reasonably possible, OBLIGATE will inform the User about the suspension of the Services in advance.**

At all times OBLIGATE may request further information from a User where it is deemed necessary, including in the event of any suspicious activity related to the User or any eNote Transaction, including authenticating documents, and may restrain access to its Services to any eNote Transactions that are pending during the review. OBLIGATE may suspend Services

in relation to eNote Transactions that it considers suspicious, which OBLIGATE will determine in its sole and unfettered discretion.

OBLIGATE has the right to cooperate fully with any law enforcement authorities or court order, including, but not limited to, requesting or directing OBLIGATE to disclose the identity or other information of anyone using or accessing the Interface.

OBLIGATE may, at any time, complement the Platform with auxiliary services such as (and not limited to):

- receiving credit information via a third party provider;
- converting stable coins and fiat money via a third party provider;
- requesting additional legal documentation and prospectuses;
- facilitating the enforcement of an eNote.

## **SECTION 6: TERM & TERMINATION**

The Agreement is concluded for an unlimited period and can be terminated by OBLIGATE at any time with immediate effect. After the termination, the User may not issue, offer, buy or sell any further eNotes on the Platform. Already issued eNotes with a maturity date beyond the termination date will be governed by the rules of the Agreement until they are settled.

OBLIGATE may suspend access of a User to the Services of the Platform and Protocol and terminate the Agreement and all related agreements between OBLIGATE and the respective User at any time by giving a two weeks prior notice to the User via Platform and e-mail. In this case, the User may no longer issue, offer, buy or sell eNotes on the Platform.

In case any eNote issued by the respective User are still outstanding at or after the date so specified, the User remains obliged to honor any and all payment obligations thereunder. In case any eNote owned by the User are still outstanding at or after the date so specified, the User remains entitled to receive any and all monies owed to it thereunder.

## **SECTION 7: GENERAL REPRESENTATIONS & WARRANTIES OF THE USER**

Each User makes the following representations and warranties towards OBLIGATE:

1. If a company or other legal entity, it is duly incorporated or duly established, and validly existing under the laws of the jurisdiction of its incorporation or organisation, and has the power to own its assets and to carry on its business as it is being conducted.
2. It is not a consumer under the laws applicable to it.
3. If acting as investor, it is qualifying as qualified, professional and/or accredited investor.
4. The entry into the Agreement, any and all of its eNote Transactions and its use of the Platform and Protocol do not and will not conflict with its constitutional documents, any law and regulation applicable to it, and is serving legitimate business purposes.
5. It has the power to enter into and perform under and has taken all necessary action to authorise its entry into, delivery and performance under the Agreement, including the Registration and any and all eNote Transactions conducted by it in connection with the Platform and Protocol.

6. Each natural person executing any eNote Transaction will have a legal capacity to do it at the time of execution and that none of its declarations or statements in connection with such execution will be subject to rescission or revocation.
7. Each representative, signatory and assign of it has all necessary powers, authorizations and approvals from it to enter into and execute any eNote Transaction on the Platform.
8. Where necessary, it has obtained all governmental and other consents that are required to have been obtained by it with respect to the ToU, and any and all eNote Transactions conducted by it in connection with the Platform.
9. No corporate action, legal procedure or other procedure or step has been taken or threatened to initiate insolvency proceedings or any other creditors' process with the aim of a rescheduling of its corporate debt or of its debt instruments.
10. All Registration Information and any information in relation to eNote Transactions conducted by the User, is true, complete, and accurate in all respects.
11. Any and all eNote Transactions offered or conducted, or closed by it, comply with the User's declarations on the Platform regarding their full compliance with Regulation S under the US Securities Act when conducting eNote Transactions.
12. It is neither a U.S. person or person controlled by a U.S. person within the meaning of any applicable (state or federal) securities laws of (a state of) the United States of America.
13. It is neither incorporated, nor based nor operating from a territory which is subject to sanctions imposed by Switzerland, the European Union, or the United States of America, it is neither on any of the U.S. Treasury Department's Office of Foreign Asset Control's sanctions lists, the U.S. Commerce Department's Consolidated Screening List; the EU consolidated list of persons, groups or entities subject to EU financial sanctions, nor it acts on behalf of a person sanctioned thereunder or a U.S.-, EU- or UN-sanctioned state, nor it is or acts on behalf of a person sanctioned by any other international body or organization.

Any representation given under the ToU shall be deemed to be repeated towards OBLIGATE by the User on each date on which an eNote Transaction is entered into by it.

## **SECTION 8: UNDERTAKINGS OF THE USER VIS-A-VIS OBLIGATE AND COUNTERPARTIES**

Vis-a-vis OBLIGATE and each and any of its eNote Transaction counterparties, each User undertakes as follows:

1. When entering into and conducting any eNote Transaction and when promising and conducting any transfers of monies in connection therewith it will comply in all respects with all applicable laws, including but not limited to anti-corruption, anti-money-laundering, and anti-gambling, trade and embargo laws and regulations (including international treaties), and any and all requirements spelled out in the Legends.

2. It will immediately update, correct, or complete the Registration Information and all other information submitted in the registration process upon becoming aware that such information was outdated, incorrect, or incomplete, as the case may be.
3. It will use at all times state-of-the-art hard- and software which is adequately dimensioned and secured, especially, but not limited to, wallet infrastructure.
4. It will not use tools, software, or similar products which enable, facilitate or support automatic trading on the Platform and will not edit, decompile or pass on the access to the Platform to any third parties.
5. It will use its best efforts to protect (i) its log-in, identification and authentication credentials for the Platform.
6. It will not change any parts of the functions and services of the Platform in whole or in part. Especially the further utilization of a customized version is prohibited. Also, embedding any functions or services of the Platform on any websites of the User or third parties is not permitted.
7. It will use the Platform only for the services offered thereon and comply and adhere in all respects to its obligations under the Agreement.
8. It will neither invalidate, dispute, or litigate (whether in arbitration, enforcement or in any other legal proceedings) the validity, enforceability, or applicability to it, of any arbitration clause or choice of law clause, as the case may be, it has signed on the Platform with respect to an eNote, and it will adhere to all provisions generally applicable to it, as stipulated in an arbitration agreement and any of the choice of law clauses, as the case may be.
9. It acknowledges and agrees that for purposes of effective dispute resolution among respective Users, for each eNote entered on the Platform an arbitration clause shall be agreed into with regard to the rights and obligations arising out or in connection with such eNote so that the initial parties to the eNote as well as every future holder of an eNote shall be bound by the terms of this arbitration clause.
10. It acknowledges and agrees to sign eNotes electronically.

## **SECTION 9: UNDERTAKINGS OF OBLIGATE VIS-À-VIS USER**

OBLIGATE herewith undertakes to:

1. use reasonable care, skills, and efforts in providing the Services and that any development of the Services shall be completed in a reasonable period of time.
2. implement and adhere to the applicable specifications set out in the OBLIGATE Protocol.

## **SECTION 10: NATURE AND RISKS OF BLOCKCHAIN**

Blockchains and smart contracts are still emerging technologies that carry a high amount of foreseeable and unforeseeable risk from security, financial, technical, political, social, and personal safety standpoints. The mere access to and interaction with blockchains and smart contracts requires a high degree of skill and knowledge to operate with a relative degree of safety and proficiency. The speed and cost of transacting with cryptographic technologies (such as blockchains) is variable and highly volatile. Moreover, the transparent nature of many

blockchains means that any interactions the User has with the blockchain may be publicly visible and readable in human form.

**The User is informed and accepts that OBLIGATE has no control over the smart contracts settling an eNote Transaction. OBLIGATE is not able to recover funds in a smart contract if the User loses access to its wallet infrastructure.**

By accessing and using the Platform and Protocol, the User acknowledges the foregoing and agrees and represents that it understands such and other risks involved with blockchains and the Protocol.

The User further represents that it has all knowledge sufficient to work, and is informed of all foreseeable risks, and the possibility of unforeseeable risks, associated with blockchains, tokens, Web3 Utilities, smart contracts, and the Protocol.

The User agrees that OBLIGATE is not responsible for any of these (or related) risks, does not control the Protocol, and cannot be held liable for any resulting harms, damages, or losses incurred by or against the User experiences except specifically mentioned in Section 11.

## **SECTION 11: LIABILITY AND INDEMNIFICATION**

In addition to the specifications and limitations of the scope of Services and responsibilities of OBLIGATE defined in these ToU, it is herewith further stipulated:

- 1. In the case of an intentional or grossly negligent violation of the Agreement, OBLIGATE shall be liable for damages of a User resulting thereof. The statutory limitations apply.**
- 2. In all other cases, the liability of OBLIGATE is fully and explicitly excluded. This includes, but is not limited to, constellations in which OBLIGATE cancels existing book building procedures, transactions or eNote issuances for technical, security or regulatory reasons. The exclusion of liability applies also to legal representatives, officers, and agents of OBLIGATE.**
3. The User will indemnify and hold harmless OBLIGATE (including its officers, employees and/or agents) against any claims, actions, and/or costs from whatever source that arise out of or in connection with the User's breaching of any provisions of the ToU, to the fullest extent permitted by law (and notwithstanding the subsequent resignation or replacement of the respective OBLIGATE officers, employees or agents, as the case may be).

## **SECTION 12: DATA PROTECTION**

The Parties undertake to comply with the provisions of all applicable data protection legislation. The Parties further undertake to take reasonable precautions to ensure that data arising under the Agreement are protected against unauthorized knowledge by third parties.

For the purposes of providing the Services and compliance with applicable laws, OBLIGATE may transfer, share and store Registration Information and any other information about the User in accordance with its privacy policy.

OBLIGATE shall implement and maintain adequate processes and procedures to protect the security and integrity of all Registration Information and other personal information submitted and received in connection with the Agreement.

### **SECTION 13: RIGHTS OF USE; BRANDS LOGOS, AND IMAGES**

The content and structure of OBLIGATE's internet presence, including but not limited to, brands and logos, is protected by copyright. The use or duplication of information or data, in particular, the use of texts, parts of texts, brands, logos, or images requires OBLIGATE's prior written consent. The User may only use the contents within the scope of the functionalities offered. The User does not acquire any rights to the contents or programs. If a software is offered for download, the User's right of use is limited to use within the scope as outlined under the ToU. Links to the Platform are only permitted with the prior written consent of OBLIGATE. OBLIGATE assumes no responsibility for representations, content, or any connection to its Platform in third-party websites. The data and information contained on the Platform may not be changed, reproduced or transmitted to third parties without the prior written consent of OBLIGATE.

### **SECTION 14: TEXT FORM**

All declarations or notices contemplated by the ToU shall be in text form.

### **SECTION 15: MODIFICATION, AMENDMENT, SUPPLEMENT AND WAIVER**

OBLIGATE reserves the right to amend and supplement these ToU and any other terms and conditions referred to therein, in particular the terms and conditions of payment and remuneration, at any time. Changes will be communicated to the respective User via the Platform and via e-mail and shall be deemed accepted if no objection is raised in writing within a period of two weeks, in which latter case the use of the Platform will no longer be available. Provisions that deviate from the ToU or conflicting general terms and conditions of Users are only valid insofar as they have been expressly accepted by OBLIGATE in writing.

At no time shall any failure or delay by either Party in enforcing any provisions, exercising any right or requiring performance of any provisions be construed to be a waiver of the same.

### **SECTION 16: SEVERABILITY**

If any provision of the ToU becomes legally invalid or unenforceable for any reason, this shall not affect the validity or enforceability of the other provisions of the ToU. The invalid or unenforceable provision shall be deemed to be replaced by a provision that corresponds as closely as possible with the spirit and purpose of the invalid or unenforceable provision and that of the whole agreement, taking into account the principle of good faith.

### **SECTION 17: ENTIRE AGREEMENT**

With the exception mentioned below, the Agreement contains the whole agreement between the User and OBLIGATE concerning the subject matter hereof and supersedes all previous agreements, promises, proposals, representations, understanding, and negotiations, whether written or oral, between the User and OBLIGATE relating thereto.

The privacy policy of OBLIGATE as displayed on the Website and to be acknowledged by the User remains unaffected by this Agreement.

## **SECTION 18: SURVIVAL**

The provisions on confidential information, liability, indemnification, and scope and limitation of Services, and on the interpretation and choice of law and exclusive jurisdiction of the ToU (and their severability) shall survive any rescission, expiration, or termination of it.

## **SECTION 19: PLACE OF PERFORMANCE, INTERPRETATION AND CHOICE OF LAW, EXCLUSIVE JURISDICTION**

The principal offices of OBLIGATE in Switzerland shall be deemed to be the place of performance of all obligations towards OBLIGATE arising under or in connection with the Agreement.

The Agreement shall be construed in accordance with and governed by Swiss law (excluding any conflict of law rules).

Any dispute, controversy or claim arising out of or in connection with the Agreement, including any question regarding its existence, validity, invalidity, enforceability or any breach or termination thereof, shall be settled by the competent courts of the City of Zurich. The Parties agree that such choice of jurisdiction shall be exclusive.