

## TERMS OF SERVICE

Date: 04 December 2024

### 1. SCOPE OF APPLICATION

- 1.1 The following provisions ("**Terms of Service**") apply to (i) the provision of Gelato's website <http://gelato.network/> and all associated sites ("**Platform**"), (ii) the provision of Software (as defined below), as made available via the Platform as a cloud-based software-as-a-service (SaaS); (iii) the provision of Rollup-as-a-Service (RaaS) (as defined below); (iv) the provision of Network Deployment Services (as defined below); and (v) all other services related thereto or provided via the Platform; as well as the provision of any other products and/or services of Gelato whose underlying agreement incorporates these Terms of Service (hereinafter referred to as "**Services**"). The underlying agreement in which the Terms of Service, and, an Order Form (as defined below), as applicable, are incorporated is referred to as "**Agreement**".
- 1.2 Only this Agreement shall apply to the Services. Terms and conditions of the User (as defined below) shall not apply; even if Gelato has not expressly objected to their application in individual cases, in particular confirmations of the User with reference to its own terms and conditions.
- 1.3 By using the Services, the User accepts these Terms of Service in a legally binding manner concluding this Agreement and confirms that it has read the Terms of Service and fully agrees to them. Should this not be the case, the use of the Platform and the Services by the User is not permitted.

### 2. DEFINED TERMS

In this Agreement, except where set forth otherwise, the following terms shall have the following meanings:

- 1(a) "**Applicable Laws**" means, in case of the User, all legal, tax, accounting and regulatory requirements that are applicable to the User while using the Services, and in case of Gelato, all Swiss legal, tax, accounting and regulatory requirements applicable to Gelato while providing the Services.
- 1(b) "**Blockchain**" means the blockchain or comparable technology named on the Platform for the Services offered.
- 1(c) "**Business Day**" means any day from Monday through Friday, excluding legal holidays in Zug, Switzerland.
- 1(d) "**Crypto Assets**" means digital assets, representing any kind of digital values that are based on a Blockchain, commonly referred to as tokens or coins.
- 1(e) "**End Users**" means any customers or other users enabled by Subscriber to directly or indirectly use Gelato's Services or parts thereof.
- 1(f) "**Force Majeure Event**" means an event which is beyond the reasonable control of Gelato and which could not have been or should have been

avoided or mitigated by economically reasonable matters; including an event which falls into one or more of the following categories: strike, lock-out or labour dispute (excluding, in all cases, by the employees of Gelato or its sub-contractors or suppliers); act of God, fire, flood and storm; war, military action, riot, civil commotion, terrorism, epidemic or pandemic; explosion or malicious damage; and provided that mere shortage of materials, equipment, labour or supplies shall not constitute a Force Majeure Event unless this shortage is caused by events or circumstances which are themselves a Force Majeure Event.

- 1(g) **"Framework Provider"** means a provider or operator of the layer 2 stack and related source code based on which a Rollup can be deployed and operated.
- 1(h) **"Gelato Smart Contracts"** means Smart Contracts (as defined below), provided by Gelato to a User as part of Software (as defined below) or deployed and run by Gelato as part of the Services.
- 1(i) **"Gelato Transaction"** means the execution of a Gelato Smart Contract by the User via the Services.
- 1(j) **"Middleware Transaction Fees"** means a fee payable to Gelato for a Gelato Transaction.
- 1(k) **"Network Partner"** means an operator or provider of a Blockchain, to whom Gelato provides Network Deployment Services (as defined in section 3.2) under an Order Form (as defined below).
- 1(l) **"Open-Source Software"** means any software product, including any Smart Contracts (as defined below), the license terms of which contain at least one of the following requirements as a condition for the use, modification and/or distribution of the relevant software product and/or other software components that are incorporated into this software product, derived from it or processed with the software product (**"Derived Software Product"**):
  - (i) that the source code of the software product and/or of any Derived Software Products is made available to third parties;
  - (ii) that third parties are granted permission to create derivatives of the software product and/or of any Derived Software Products.

Open-Source Software therefore includes, without limitation, software products that are covered by the following licenses and/or the following distribution models: GNU General Public License (GPL), GNU Lesser or Library GPL (LGPL), Apache Software License, MIT License, BSD Licenses, European Union Public License.
- 1(m) **"Order Form"** means an individual order, order confirmation, statement of work and/or any other document referring to these Terms of Service.
- 1(n) **"Resources"** means all open-source documentation, manuals, documents or other information freely available on the Platform.
- 1(o) **"Rollup"** means a scaling system (commonly referred to as layer 2 or layer 3) for a Blockchain (layer 1 or a layer 2 stack) that aggregates Transaction data and transfers it off a Blockchain. Transactions (as defined below) are

then processed off-chain while Crypto Assets are held in an on-chain Smart Contract. Upon completion of the execution of the Transactions, the Transaction data is sent back to the Blockchain.

- 1(p) “**Partner Vendors**” means providers of Third-Party Services that collaborate with Gelato on the promotion of their Third-Party Services in connection with Gelato’s Services based on a separate agreement.
- 1(q) “**Parties**” means Gelato and a Subscriber together, individually each a “**Party**”.
- 1(r) “**Sequencer**” means the node(s) hosted by Gelato as part of the Services which produce transaction confirmations and state updates, construct and execute layer 2 blocks, and submit layer 2 block data transactions to layer 1.
- 1(s) “**Sequencer Revenue**” means the total amount of fees collected by a Sequencer needed to effect a transaction.
- 1(t) “**Sequencer Service Fee**” means the fee for hosting Sequencers, calculated as a percentage of the Sequencer Revenue after subtracting L1 Gas Fees as indicated in a Subscription and/or an Order Form.
- 1(u) “**Software**” means all applications and software, including all features and functionalities, provided via the Platform, in particular, but not limited to the Software stated in section 3 (Provision and functionalities of Software) and Gelato Smart Contracts.
- 1(v) “**Smart Contracts**” means automated and self-executing computer codes, which hold and transfer Crypto Assets on a Blockchain, and which are neither operated nor controlled by Gelato and executed by the User.
- 1(w) “**Smart Contract Deployment Costs**” means costs for the deployment of Smart Contracts expected to incur for Services under a Subscription and/or an Order Form.
- 1(x) “**Service Fees**” means the fees applicable for the provision of Subscribed Services, as indicated for a Subscription on the Platform or as agreed upon in an Order Form.
- 1(y) “**Subscribed Services**” means the scope and extent of the Services to be provided by Gelato to a Subscriber, either (i) as selected by the Subscriber on the Platform, or (ii) as agreed upon in an Order Form; Subscribed Services may include Additional Support Services (as defined in 7.2).
- 1(z) “**Subscriber**” means a User (as defined below) to whom Gelato provides the Subscribed Services under a Subscription or the additional terms of an Order Form.
- 1(aa) “**Subscription**” means a subscription concluded via the Platform for the provision of individual Software and Services by Gelato under the terms and conditions specified on the Platform (e.g., Service Term (as defined in section 16.1 (Service Term for Subscribed Services), Service Fees).
- 1(bb) “**Third-Party Data**” means any information or other data provided by Partner Vendors or other third parties.

- 1(cc) "**Third-Party Services**" means products, software, including Third-Party Software (as defined below) and Open-Source Software, applications, infrastructure services or other services that are not provided by Gelato, but may be available or accessible for use in connection with the Services.
- 1(dd) "**Third-Party Service Fee**" means any fees and other remuneration payable by a Subscriber to Gelato for the provision of Third-Party Services by a Partner Vendor.
- 1(ee) "**Third-Party Software**" means software, including Smart Contracts, that is not Open-Source Software, but belongs to third parties.
- 1(ff) "**Transaction**" means the execution of a transaction on a Blockchain.
- 1(gg) "**Gas Fees**" are external transaction fees imposed by a Blockchain and associated with the execution of Transactions and allocation of Crypto Assets on a Blockchain.
- 1(hh) "**Users**" means all users of the Services, including visitors of the Platform, deployers of Software, Network Partners, and Subscribers, as applicable; and "**User**" means the contractual party to this Agreement.
- 1(ii) "**User Data**" means all data uploaded to Software by a User or otherwise provided by a User to Gelato in connection with the Services, including, but not limited to Transaction data.
- 1(jj) "**User Systems**" means any equipment, systems and ancillary services needed and used by the User to connect to, access or otherwise use the Services, including, without limitation, hardware, servers, software, Smart Contracts, operating systems, networks, web browsers and the like.
- 1(kk) "**Wallet**" means a piece of software, a piece of hardware or another system for storing cryptographic keys that can be used to store, manage and/or dispose of Crypto Assets.

### 3. **PROVISION AND FUNCTIONALITIES OF SOFTWARE**

3.1 Via the Platform, Gelato provides access to and use of the most current version of Software, in particular, but not limited to, the following products:

- a software enabling projects to access off-chain data and computation and connecting Smart Contracts to any resource on the internet using Gelato's serverless hosted runtime (Web 3 Functions, "**W3F**");
- a W3F enabling projects to fetch price feeds to set the automated execution of Smart Contracts whereby the underlying Third-Party Data for price feeds is provided by a third-party oracle selected by the User and not part of the Services (Oracle, "**Oracle Function**");
- an API supporting Users to estimate the Gelato Transaction Fee ("**Fee Oracle**");
- an API supporting Users to execute Gelato Transactions ("**Relay**");
- a multi-chain payments system allowing Users to pay for all their Service Fees across networks from a single balance ("**1Balance**"); and

- a software supporting projects to push off-chain randomness beacons to their Smart Contracts using Gelato's serverless hosted runtime (Verifiable Randomness Functions, "**VRF**")

each as a cloud-based software-as-a-service (SaaS) as well as, where applicable, storage space; and

- a software supporting to launch application-specific and tailored Rollups, including the possible connection to other Services provided by Gelato as well as Third-Party Services ("**Rollup Launchpad**") and the technical infrastructure to run the Rollup as a cloud-based rollup-as-a-service (RaaS) ("**Rollup-as-a-Service**"); and
- the running of public and/or private Remote Procedure Call nodes for the Subscriber's Rollup ("**RPC Provision**")

as one or more of Subscribed Services to Subscribers under a Subscription or the additional terms of an Order Form for the duration of this Agreement.

- 3.2 Gelato provides the deployment of one or more Services on specific Blockchains ("**Network Deployment Service**") to Network Partners as a Subscribed Service under the additional terms of an Order Form for the duration of this Agreement.
- 3.3 Further features and functionalities of Subscribed Services and/or other Services provided by Gelato are indicated on the Platform, the Subscription description or an Order Form.
- 3.4 Gelato makes the Software available for use by the User via the Platform. The Software is not delivered to the User, unless otherwise agreed in an Order Form.
- 3.5 Gelato's role is limited to that of a technical service provider. Gelato solely provides the access to and use of Services. Gelato does not assume any responsibility for the Blockchain, the execution of Smart Contracts or deployment of other functionalities of Software by the User, User Data or Third-Party Services (see also section 20 (Risks and Responsibilities)). Furthermore, Gelato does not assume any responsibility for the integration of the Services in the Users' systems as well as the configuration of the Services by the Users.
- 3.6 Users use the Software and/or the Subscribed Services and/or the Services at their own and sole responsibility. Users are strongly advised only to use the Software and/or the Subscribed Services and/or the Services after consultation of the relevant documentation.

#### 4. **AVAILABILITY, MAINTENANCE, MODIFICATIONS**

- 4.1 Gelato endeavours to ensure the greatest possible availability of the Services.
- 4.2 Maintenance work, security and capacity reasons, technical or operational circumstances and events outside Gelato's control may lead to temporary or permanent unavailability of the Services. Gelato reserves the right to temporarily restrict access to the Services or the possibility of using them in whole or in part if this is necessary due to capacity limits or the security or integrity of the servers or in order to carry out technical measures which serve the proper provision of the Services or improvement (e.g. for maintenance work). During the term of the

Agreement, Gelato will render maintenance services and ensure the operational integrity, security, state of the art and economic use of Services.

- 4.3 Gelato reserves the right to update, adapt, improve, expand, change, modify and further develop Software and/or the Services in whole or in part on an ongoing basis to adapt to changed legal situations, technical developments, to improve IT security or the User's experience or for other business purposes. Gelato further reserves the right to discontinue any Services, any feature of the Services or any portion thereof at any time during the term at Gelato's sole and reasonable discretion. Gelato will provide the User with at least one (1) month's prior notice on the Platform of any modification or discontinuation of Services (or portion thereof) that would result in a material diminution of the Services offered to the User, provided that a shorter notice period may be required by law or security reasons. Gelato endeavours to ensure, but in no way warrants, that modifications, updates and upgrades shall, if possible, not (a) negatively affect the security and performance of the Services; (b) reduce the functionality or features of the Services.
- 4.4 Gelato may provide updates or upgrades to the Services and require the Users to install certain software updates for the Services to work optimally in conjunction with the Services. It is the User's responsibility to install and/or deploy these updates on the User Systems used in connection with the Services. Gelato will not be responsible for any use of the Services, to the extent the User Systems used were not updated and will bear no liability for any damage caused due to the inability to use the Services or for any transfer which will not be performed properly, in each case due to the use of User Systems which were not updated. Furthermore, for certain updates (at Gelato's sole discretion), due to security issues, Gelato may deny access to non-updated User Systems. This Terms of Service shall govern any update and upgrade that replaces or supplements the original Services.

## **5. RIGHTS OF USE**

- 5.1 All right, title, and interest evidenced by or embodied in, attached, connected, and/or related to Software and any and all updates, upgrades, versions, improvements and derivative works thereof as well as the entire content of the Services, including but not limited to Gelato's logo and all Resources, designs, texts, graphics, images, user interfaces, visual interfaces, information, data, computer code, sound files, other files as well as their selection and arrangement, are and shall remain owned solely by Gelato; even if they result from requests or reports from the User, and the User has no rights thereto. This Agreement does not convey to the User any interest in or to the Software or the Services other than a limited right to use Software and the Services in accordance with this Agreement.
- 5.2 For the avoidance of doubt: The User does not receive the right to read, receive or edit the source code and/or object code of Software.
- 5.3 Except as expressly provided in these Terms of Service, no part of the Platform and no content indicated therein may be copied, reproduced, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted or

distributed in any way to any other computer, server, website or other medium for publication or distribution for any commercial purpose, without Gelato or the respective third party's express prior written consent.

- 5.4 This Section 5 does not apply to any Open-Source Software or Third-Party Software incorporated in or provided with the Services. Open-Source Software and Third-Party Software are subject to their relevant license terms, as applicable (section 6 (Third-Party Software and Open-Source Software)).

## **6. THIRD-PARTY DATA, THIRD-PARTY SOFTWARE AND OPEN-SOURCE SOFTWARE**

- 6.1 **Third-Party Data.** To the extent the Services rely on Third-Party Data or Third-Party Data is provided or otherwise used in connection with the Services, User is aware that Third-Party Data is not provided by Gelato but by a third-party provider. Gelato has no influence on Third-Party Data and is not responsible for Third-Party Data, in particular, but not limited to, its content or its accuracy. The Subscriber may use Third-Party Data only with the Services in accordance with the present Terms of Service. The use of Third-Party Data may be governed by a separate agreement with a third-party provider if the Services on the Platform, the Subscription or an Order Form itself include such an agreement or refer thereto or expressly state that Third-Party Data is provided.
- 6.2 **Third Party Software.** To the extent Software contains Third-Party Software or to the extent Gelato deploys and runs Third-Party Software in connection with or as part of the Service, User may use the Third-Party Software only with the Services in accordance with the present Terms of Service. Notwithstanding the foregoing, use of the Third-Party Software is governed by a separate license agreement if the description of the Services on the Platform, the Subscription or an Order Form itself include such an agreement or refer thereto or expressly state that a Third-Party Software shall be provided.
- 6.3 **Open-Source Software.** The User acknowledges that the Software may contain Open-Source Software or that Gelato deploys and runs Open-Source Software as part of the Services.

## **7. THIRD-PARTY SERVICES**

- 7.1 **Third-Party Services agreements.** The use of Third-Party Services is governed by separate terms provided by Partner Vendors or other providers. Gelato is not a party of any agreements on the provision of Third-Party-Services, including agreements with Partner Vendors, and therefore, neither responsible for the content and validity of such agreements nor for the Third-Party Services provided under it.
- 7.2 **Third-Party Service Fee.** The commercial terms for Third-Party Service Fees are indicated in a Subscription and/or an Order Form and, unless otherwise stated, payment of Third-Party Service Fees shall be made by Subscriber to Gelato in accordance with section 13 (Payments). The Third-Party Services Fees for Third-Party Services of Partner Vendors offered to the Subscriber are contingent upon Gelato's own commitments to Partner Vendors, which may include

prepayment and bulk purchasing of Third-Party Services for discounts. Therefore Gelato determines refunds for Third-Party Services Fees at its sole discretion

## **8. SUPPORT SERVICES**

- 8.1 **Support Services.** Gelato supports the User in using Software and the Services in solving issues arising from such use ("**Support Services**"). Gelato provides the Support Services upon receipt of a support request at support@gelato.digital. Gelato will endeavour, but in no way warrants, to respond to support requests within five (5) Business Days, applying the standards of due care and diligence. Gelato does not owe the success of the processing of a support request, such as a problem solution.
- 8.2 **Additional Support Services.** Additional Support Services (e.g., real-time chats, direct access to core engineers, product an executive team, unlimited support tickets) for the Subscribed Services ("**Additional Support Services**") may be part of a Subscription or agreed upon in an Order Form and are subject to payment of the applicable Service Fee.
- 8.3 **Engineering Support (optional).** Gelato can provide engineering support. The availability and costs of such engineering support will be derived on a case-by-case basis based on the scope of the project and hourly rates. Upon request of the Subscriber, Gelato will provide the Subscriber with a quote for the engineering support in a reasonable amount of time.

## **9. USER OBLIGATIONS**

- 9.1 To access and use the Services, the User is required to have User Systems that correspond to the current state of technology. Furthermore, in order to use the Services, the User must have an internet connection that offers a sufficient data transfer rate and there must be sufficient storage space available on the User's device.
- 9.2 Only the User is responsible for integrating the Services in the Users' systems, for the configuration of the Services by the Users and for any other use of the Services by the User. The User must not use the Services without prior consultation of any available documentation, or, to the extent not available, after consultation with Gelato. User acknowledges, that any use of the Services which is not in line with the documentation or any system requirements may lead to substantial damages.
- 9.3 The User shall obtain and maintain User Systems up to date and consistent with prevailing industry standards and in a manner which minimizes errors and interruptions in the Services. The User shall, in particular, install or deploy any updates or upgrades on its User Systems as required by Gelato pursuant to section 4.4 (Upgrades and updates). The User shall also be responsible for maintaining the security of the User Systems at any time.
- 9.4 To access and use individual Services, the User may be required to connect a Wallet in accordance with section 10 (Wallet) to the Platform and/or the Services.



- 9.5 Except as permitted by Applicable Law or express written agreement of Gelato, the User will not, directly or indirectly,
- 1(a) reverse engineer, decompile, disassemble or otherwise attempt to discover any source code, object code or underlying structures, ideas, know-how or algorithms relevant to the Services, Software, or data associated with the Services, disassemble or otherwise attempt to discover any of its components;
  - 1(b) make any modifications to the Services or Software, create any translations of the Services or Software, or create any derivative works based on the Services or Software;
  - 1(c) distribute, copy, rent, lease, sublicense, assign, transmit, sell or otherwise transfer the Software, or any of the User's or Gelato's rights therein,
  - 1(d) interfere or attempt to interfere with the integrity or proper working of the Software or the Services,
  - 1(e) use the Services or Software for the benefit of any third party in violation of the Agreement;
  - 1(f) upload any User Data to the Software that violates Applicable Law or the rights of third parties or contains viruses or other harmful components;
  - 1(g) take any measures aimed at circumventing technical protection measures of the Software or the Services and to refrain from any form of unauthorized use of the Software or the Services, in particular attempts to overcome or circumvent the security mechanisms of the Software or to disable them in any other way, to use computer programs that enable the automatic reading of data, as well as to use/implement and/or disseminate viruses, scripts, trojan horses, worms, malware, timebombs, brute force attacks, spam, or other harmful components, programs or procedures that are suitable to harm Gelato, the Software and/or other users of the Software;
  - 1(h) engage in or promote or use the Services for illegal activities, in particular money laundering or other fraudulent activities;
  - 1(i) use the Services or the Software improperly or against Applicable Law; or
  - 1(j) use, employ or operate bots or other forms of automation when using the Software
- (all a "**Prohibited Use**").
- 9.6 Any breach of section 9.5 (Prohibited Use) may result in immediate exclusion from access and use of the Services, termination of the Agreement without notice and the initiation of civil and criminal proceedings as well as the assertion of claims for damages by Gelato against the User.
- 9.7 The User shall take all necessary and reasonable steps to prevent or limit any damage caused by the use of the Software and/or the Services. The User shall, in particular, but not limited to
- 1(a) ensure that the use of the Software and/or Services is fit and secure for the intended purpose;

- 1(b) check User Data for viruses or other harmful components before storing them or using them in the Software and shall use state-of-the-art measures (e.g., virus protection programs) for this purpose. The User is responsible for regularly carrying out appropriate data backups for User Data;
- 1(c) check User Data, in particular if provided in connection with Transactions, for accuracy and completeness;
- 1(d) check applicable Gas Fees and Middleware Fees before executing Transactions or Smart Contracts
- 1(e) only use the Services if the User understands the features and limitations of the Services.

## 10. **WALLET**

- 10.1 The User may require a Wallet as indicated on the Platform to get access to and to use individual Services. Gelato indicates the supported Wallets on its Platform. The management of Crypto Assets, including the transfer to the Wallet address of the User is not part of the performance of Gelato and is solely the responsibility of the User. The Wallet contains a cryptographic key with which the User can dispose of his digital assets. Gelato has no access to the cryptographic keys or Crypto Assets of the User. The User shall ensure that it treats the Wallet, associated passwords and access data, the cryptographic key and any recovery identifiers (seeds) (together and individually the "**Wallet Access Data**"), confidentially and that the Wallet Access Data, insofar as it has access to it, is secured against access by third parties by means of appropriate technical and organisational measures. The User is aware that it is solely responsible for the control of its Wallet and that the loss of control over the Wallet may result in the loss of Crypto Assets and that Crypto Assets can no longer be disposed of.
- 10.2 The User is aware that the Wallet is not operated by Gelato, but by a third-party provider. Gelato has no influence on the third-party provider or the wallet operation. Gelato only permits the User to use a third-party Wallet on the Platform.

## 11. **CONDITION AND WARRANTY**

- 11.1 Gelato is not responsible for a certain success of the Services and in this respect no warranty rights exist.
- 11.2 To the extent Software contains Third-Party Software and/or Open-Source Software, or to the extent Gelato deploys and runs Third-Party Software and/or Open-Source Software in connection with or as part of the Services, or to the extent the Services otherwise make use of Third-Party Software and/or Open-Source Software (for example via interfaces), the User shall have no warranty rights with respect to defects in Third-Party Software or Open-Source Software. The User accepts that the User uses such Third-Party Software or Open-Source Software at its own risk.
- 11.3 Software and Gelato Smart Contracts include experimental technology under active development. There is no guarantee that Software, Gelato Smart Contracts

and/or the Services function error-free or have a minimum uptime although Gelato endeavours to provide Software, Gelato Smart Contracts and/or the Services in accordance with industry standards. Failures in Software, Gelato Smart Contracts and/or the Services might lead to reduced functioning or no functioning of the Services at all.

- 11.4 Gelato gives no guarantees or warranties with respect to the Software, Gelato Smart Contracts and/or the Services, either expressed or implied. In particular, Gelato neither warrants nor guarantees that Gelato will continue to provide the Services indefinitely or that the Software, Gelato Smart Contracts and/or the Services are error-free. Such promises made by Gelato's employees are invalid.
- 11.5 The condition of the Software is only determined by the Agreement. Warranties regarding the Software in public statements, in particular advertising, or in statements by Gelato's employees do not contain any indication of the condition. Gelato does not give any warranty and does not assume any procurement risk, unless otherwise expressly agreed in an Order Form.
- 11.6 In the event of defects, Gelato does not owe a remedy for the specific defects. Instead, Gelato shall be entitled to make available an updated version of the Software necessary to maintain the contractual condition and to remedy defects.
- 11.7 Claims in connection with downtime of Gelato's servers or Gelato's technical infrastructure or any other Service disruption leading to loss of Crypto Assets or other funds of the User (all a "**Damaging Event**") shall be excluded if
  - 1(a) such Damaging Event is caused by outages or other unavailability or disruption due to causes within the control of third parties, suppliers or telecommunication providers or otherwise beyond Gelato's control, in particular, but not limited to, a Force Majeure Event or due to outages, dysfunctions or updates of a Blockchain;
  - 1(b) the User does not provide User Data in accordance with section 9 (User Obligations);
  - 1(c) the User fails to take any actions upon which Gelato's performance is dependent;
  - 1(d) the User fails to use the Services in accordance with Gelato's requirements, as stated in these Terms of Service and on the Platform;
  - 1(e) the User fails to fulfil its obligations as set forth in section 9 (User Obligations); or
  - 1(f) the User otherwise uses the Software in an improper or inappropriate manner.

## 12. **REMUNERATION**

- 12.1 **Service Fee.** The Subscribed Services may be subject to payment of a Service Fee. The amount of the Service Fees for Subscribed Services shall be determined according to Gelato's price list applicable at the time the respective Services are provided, unless otherwise indicated for a Subscription or agreed in an Order Form.

In case of a Subscription, Service Fees are due and payable upon the execution of the Subscription via the Platform and the payment periods (e.g. monthly) indicated for the Subscription in accordance with section 13.1 (Payment of Fees).

In case of an Order Form, unless otherwise agreed therein, Gelato shall invoice a Subscriber the Service Fee for the first month when the Subscriber executes the Order Form and Gelato shall invoice the Subscriber for any Service Fees for the following months in advance; all Service Fees and Additional Fees and/or other fees agreed in an Order Form are due and payable within thirty (30) days after the date shown on the invoice via the payment method indicated in the invoice in accordance with section 13.1 or 13.2 (Payment of Fees), as applicable.

- 12.2 **Additional Fee.** If the scope of the Subscribed Services (e.g., API requests, storage space, nodes, computing power, number of users, included Gelato Transactions) and/or the scope of Third-Party Services (“**Service Capacity**”) as specified in a Subscription or as agreed in an Order Form is exceeded, the Subscriber shall be obliged to pay additional Service Fees for the respective exceedance of the Service Capacity (“**Additional Fee**”). The amount of Additional Fees for the respective exceedance of the Service Capacity shall be determined according to Gelato's price list applicable at the time the respective Services and/or Third-Party Services are provided.
- 12.3 **Middleware Transaction Fees.** Middleware Transaction Fees incur for any Transactions or other executions of Smart Contracts via the Services and are payable in addition to Gas Fees, unless otherwise indicated in a Subscription or agreed upon in an Order Form. The amount of Middleware Transaction Fees for a Transaction shall be determined according to Gelato's price list applicable at the time the respective Services are provided, unless, in case of an Order Form, otherwise agreed upon.
- 12.4 **Sequencer Service Fee.** In addition to the Service Fee, Gelato charges a Sequencer Service Fee for the hosting of Sequencers for a Rollup. The Sequencer Service Fee is payable in addition to any applicable fees or other charges imposed by any Framework Provider on the Subscriber.
- 12.5 **Smart Contract Deployment Costs.** Gelato will inform a Subscriber on Smart Contract Deployment Costs expected to incur for the Subscribed Services under a Subscription and/or an Order Form. Upon Subscriber's prior written approval of Smart Contract Deployment Cost Gelato will invoice Subscriber for the Smart Contract Deployment Costs. The payment of Smart Contract Deployment Costs is due and payable within three Business Days after the date shown on the invoice.
- 12.6 **Fees for RPC Provision and Rate Limits.** RPC Provision of public RPCs as part of the Subscribed Services, is included in the Service Fee subject to applicable rate limits and usage restrictions as indicated in an Order Form, a Subscription or the Platform. Fees for the RPC Provision of private RPCs are subject to the private RPC plan and applicable rate limits and usage restrictions as indicated in an Order Form, a Subscription or the Platform. If rate limits of public and private RPCs are exceeded, Gelato will charge Additional Service Fees pursuant to section 12.2. If limits of private RPCs are exceeded, the Subscriber may upgrade to a higher tier via the UI on the Platform or discuss a custom RPC plan with Gelato. Deviating from section 12.7, Gelato may change private RPC plans on a month-to-month basis, including adjustments to pricing, usage limits, or tiers. In

case of a change of private RPC plans, a Subscriber may cancel or adjust its private RPC plan via the UI on the Platform.

- 12.7 **Service Fee Changes.** Gelato reserves the right to change any Service Fees or other compensation and to establish new Service Fees and compensations at the end of each Service Term (as defined in section 16.1 (Service term for Subscribed Services)) or Renewal Service Term (as defined in section 16.1 (Service term for Subscribed Services)). In case of a change of Service Fees by Gelato, a Subscriber may either partially terminate the Agreement regarding the affected Subscribed Service(s) or terminate the whole Agreement.
- 12.8 All outlined costs are excluding VAT.
- 12.9 Unless otherwise agreed upon or stated on the Platform, the use of all other Services is provided free of charge to Users and Subscribers.

### 13. PAYMENTS

- 13.1 Unless another payment method is indicated for a Subscription and or agreed in an Order Form, payments for Service Fees, Smart Contract Deployment Costs, Middleware Transaction Fees, Additional Fees, Third-Party Services Fees, and/or any other fees and/or remuneration as agreed in an Order Form and/or indicated in a Subscription (together the "**Fees**") shall be made in a crypto currency as applicable for respective Fee through Gelato's Service 1Balance. This requires the Subscriber to connect a Wallet with sufficient funds in Crypto Assets to pay the applicable Fees and, as applicable, Gas Fees. The Subscriber must ensure that it holds sufficient funds in Crypto Assets in its Wallet to cover all Fees due and payable.
- 13.2 Insofar as Gelato and the Subscriber agree in an Order Form on a payment of Fees in fiat currency, the Subscriber shall pay the invoiced Service Fees and/or Additional Fee by bank wire transfer to Gelato's bank account as indicated in the invoice.
- 13.3 Insofar as a Subscription or an Order Form indicates a credit card payment of Fees in fiat currency, the Subscriber shall pay the applicable Fees via an external payment provider (e.g., stripe) as indicated on the Platform and/or an Order Form.
- 13.4 **Conversion.** Any conversion of Fees shall be determined by the exchange rate (i) of an exchange (Börse), (ii) (if not listed by an exchange) of a centralized exchange (e.g. Kraken, Coinbase, Bitpanda etc.) or (iii) (if not listed on a centralized exchange) published by a web-based list (e.g. [www.coinmarketcap.com](http://www.coinmarketcap.com)) at the end of the previous day (24:00h CET) before the day on the date shown on an invoice.
- 13.5 **Default of Payment .** While a Subscriber is in default with any payment due and payable under this Agreement, Gelato shall have the right to suspend access to the respective Subscribed Service or all Subscribed Services provided to the Subscriber, until payment has been made or sufficient funds are provided to execute a Transaction and/or to terminate this Agreement; unless this would be unreasonable, for instance if the outstanding amount is relatively small. The Subscriber's obligation to pay any Fees for suspended Subscribed Services shall remain unaffected.

- 13.6 **Interest.** In the case of insufficient funds of Crypto Assets and default in payment by the Subscriber, Gelato may charge interest at a rate of nine (9) percentage points per annum above the applicable base interest rate, unless Gelato shows greater damage. Gelato's further rights shall remain unaffected thereby.

14. **SEQUENCER COSTS AND SEQUENCER FUNDING**

- 14.1 **Sequencer Transaction Costs and Sequencer Funding.** To ensure the continuous operation of Gelato's Sequencer for a Rollup, the Subscriber is required to transfer funds into Gelato's Sequencer accounts as an advance payment ("**Sequencer Funding**") to cover the costs for Sequencer Transactions ("**Sequencer Transaction Costs**"). Gelato will provide Subscriber with a written request of Sequencer Funding reflecting reasonable calculations aiming to prevent Sequencer downtime in the thirty (30) days (sliding time window) following such written request. Gelato is entitled to use Sequencer Funding to cover past or future Sequencer Transaction Costs. To mitigate time pressure risks, Gelato offers to issue monthly fixed-date requests for Sequencer Funding with an estimate of the amount needed for the following month; it being understood that Gelato is entitled to request additional Sequencer Funding, if Sequencer Funding available in the Sequencer account is expected to be insufficient to cover Sequencer Transaction Costs for such monthly period. Additionally, Gelato advises that the Subscriber establishes an efficient internal protocol for quick Sequencer Funding transfers, which Subscriber shall make available to Gelato. The Subscriber should also provide Gelato with a clear outline of this protocol's operation, enabling Gelato to issue prompt Sequencer Funding requests and execution of expedited transfers in time-sensitive situations. Gelato will make reasonable efforts to assist the Subscriber in implementing such a protocol.
- 14.2 **Payments of Sequencer Funding and/or Sequencer Transaction Costs.** The payment of Sequencer Funding (with the exception of Emergency Sequencer Funding (as defined below)) and/or the payment of the Sequencer Transaction Costs is due and payable within three Business Days after the date shown in Gelato's written request and/or invoice. Payments for Sequencer Funding shall be transferred to the blockchain network address for the Sequencer account as indicated by Gelato in the written request. Payments for Sequencer Transaction Costs shall be transferred to the blockchain network address as indicated by Gelato in the invoice - for the avoidance of doubt the latter refers to refunds to Gelato in case it chose to cover Sequencer Transaction Costs for Subscriber in the aforementioned emergency situation. Unless otherwise indicated by Gelato in the written request and/or an invoice, the payments shall be made in the native currency of the blockchain network that the Sequencer Transaction Costs are denominated in, for example ETH on Ethereum.
- 14.3 **Sequencer Funding.** The Subscriber is obliged to transfer the Sequencer Funding in accordance with the sections above. Sequencer Funding is necessary to cover Sequencer Transaction Costs. If the Subscriber fails to transfer Sequencer Funding in accordance with the sections above, the Subscriber shall not be entitled to any form of compensation or other remedy for service interruptions related thereto from Gelato and/or its Partner Vendors. The Subscriber shall reimburse Gelato fully for any direct and indirect damages related to such failure of transfer i.e. in

the situation where there is no Sequencer Funding left to cover Sequencer Transaction Costs. Gelato's further rights related to a failure of transfer of Sequencer Funding shall remain unaffected thereby.

- 14.4 **Emergency Sequencer Funding.** Gelato and the Subscriber shall mutually establish and document a specific balance threshold of Sequencer Funding available in the Sequencer account for emergency situations ("**Emergency Threshold**"). Upon reaching the Emergency Threshold, Gelato will issue a corresponding high-alert notification to the Subscriber through designated, shared emergency communication channels. Following the issuance of this high-alert notification, the Subscriber is obliged to immediately transfer either the amount requested by Gelato or another reasonable sum, to prevent impending downtime to the Sequencer account ("**Emergency Sequencer Funding**"). Payment for such Emergency Sequencer Funding shall be made in the native currency of the blockchain network that the Sequencer Transaction Costs are denominated in, for example ETH on Ethereum.
- 14.5 **Coverage of Sequencer Transaction Costs by Gelato.** In case of an emergency situation, Gelato may, but neither is obliged to, nor warrants or guarantees to, temporarily cover Sequencer Transaction Costs to prevent Sequencer downtime. If Gelato temporarily covers Sequencer Transaction Costs, Gelato will send a corresponding invoice for such Sequencer Transaction Costs to the Subscriber.
- 14.6 **Interest Rate.** In addition to section 13.6 (Interest), in case of default in payment by the Subscriber under this section 14, Gelato may charge an additional interest rate of 20% per annum above the applicable base interest rate, calculated on the outstanding invoice amount, unless Gelato shows greater damage. Gelato's further rights shall remain unaffected thereby.

## 15. SEQUENCER REVENUE SETTINGS

- 15.1 To facilitate Subscriber's management of its Sequencer Revenue share, subject to the Sequencer Service Fees, Subscriber may choose to collaborate with Gelato to establish Sequencer Revenue Settings. To clarify, references to Sequencer Revenue Settings do not include the setting of Sequencer Transaction Costs, which cannot be set by Subscriber.
- 15.2 Sequencer Revenue settings endeavor to target certain Sequencer profitability or loss ratios, but their use does not guarantee the exact profitability or loss outcomes regarding the Sequencer Transaction Costs, to be borne by Subscriber, versus the Sequencer Revenue share, to be collected by Subscriber, due to factors outside of Gelato's control. Examples of such factors include in particular, but are not limited to:
- Third-party software or services configurations used by Gelato to operate the Services, which may influence the Subscriber's Sequencer Transaction Costs and Revenue share.
  - Non-revenue generating Sequencer Transaction Costs.
  - Volatility of network fees, such as the Ethereum gas price market.
  - Other potential Sequencer Revenue share obligations by Framework Provider which may be subject to change.

- The Subscriber's preferences in establishing its own targeted Sequencer Revenue share profitability margins, particularly in scenarios involving low-margin thresholds.
- 15.3 Gelato does not assume any responsibility, warranties or guarantees for the Subscriber's use of Sequencer Revenue Settings.

16. **TERM AND TERMINATION**

16.1 **Service Term for Subscribed Services.** The Agreement with a Subscriber on the provision of the Subscribed Services shall have the initial service term as indicated on the Platform for the Subscription or agreed in an Order Form ("**Initial Service Term**"). At the expiry of the Initial Service Term and any subsequent Renewal Terms (as defined below), the Agreement shall be automatically renewed for one additional renewal term at a time (each a "**Renewal Service Term**"). Gelato or the Subscriber may terminate the Agreement giving no less than one (1) months prior written notice of termination to the end of the Service Term or Renewal Service Term.

16.2 **Termination for cause.** The right of both, Gelato and the Subscriber, to extraordinary termination for good cause shall remain unaffected. Good cause shall be deemed to exist in particular

- 1(a) for Gelato in a case of section 9.5 (Prohibited Use);
- 1(b) for the Subscriber in a case of section 12.6 (Service Fee Changes by Gelato);
- 1(c) for Gelato in a case of section 13.5 (Default of Payment);
- 1(d) for the Subscriber in a case of section 23 (Non-performance due to a Force Majeure Event);
- 1(e) for Gelato, if Gelato must terminate the provision of the Subscribed Services, for example because a supervision authority or another authority or a court demand Gelato to terminate the provision of the Subscribed Services;
- 1(f) for Gelato, if Gelato is unable to continue to operate the Subscribed Services for an extended period of time for reasons beyond Gelato's control; or
- 1(g) for Gelato, if the provision of the Subscribed Services becomes otherwise impossible or economically unreasonable for legal or factual, in particular technical, reasons;
- 1(h) for Gelato, if the contractual relationship between Framework Provider and Gelato regarding the collaboration for the layer 2 stack ends for whatever reason and as a result, the provision of the Services becomes impossible or economically unreasonable for Gelato;
- 1(i) for either Party, in case of the opening of insolvency proceedings over the assets of the other Party, the refusal of the opening of such proceedings due to lack of assets or the filing of an application for the opening of insolvency proceedings over the assets of the other Party by the other Party; or



- 1(j) for either Party, if the shareholders of the other Party resolve the liquidation of the other Party; or
  - 1(k) for either Party, if Gelato or Subscriber cease to be or becomes, in Switzerland, prohibited by Applicable Laws or any order from any regulatory body or a governmental authority from, providing or undertaking its business to the extent related to the Services.
- 16.3 With regard to all other Services, the term of this Agreement shall be unlimited and may be terminated by Gelato at any time by suspending the Services and by Users at any time by suspending the use of the Services.

17. **CONSEQUENCES OF TERMINATION**

- 17.1 **Refund Policy.** In case of termination of this Agreement for any reason whatsoever, Gelato endeavors, but neither warrants nor guarantees, to provide a pro rata refund for the unused portion of the Service Term (or Renewal Service Term) which is subject to existing commitments with suppliers.
- 17.2 **Survival.** All provisions of this Agreement which may reasonably be interpreted or construed as surviving the termination of the Agreement. This includes in particular, but is not limited to: Sections 1 (Defined Terms); 3.4 sentence 2 (Software is not delivered); 5.1 and 5.2 (Rights of use); 11 (Condition and warranty); 12 (Remuneration); 16 (Term and termination); 17 (Consequences of termination); 18 (Chain Wind Down, Chain Wind Down Process and Migration); 19 (End User Relationship); 20 (Responsibilities and Risks); 24 (Liability); 25 (Indemnification); 28 (Miscellaneous).

18. **CHAIN WIND DOWN, WIND DOWN PROCESS AND MIGRATION**

- 18.1 **Chain Wind Down.** Gelato will cease to provide the Services and wind down any Rollups of the Subscriber under this Agreement ("**Chain Wind Down**") at the end of this Agreement, for whatever reason, unless otherwise agreed between the Parties. As a result of the Chain Wind Down, (a) Subscriber's Rollups, (b) any Crypto Assets of the Subscriber, End Users (as defined below) and/or other third parties on the Rollup, (c) any developments, apps, processes and/or other activities deployed by the Subscriber, End Users (as defined below) and/or other third parties on the Rollup, and/or (d) any User Data, including Transaction data, as well as any other data stored on or related to the Subscriber's Rollups ((a) to (d) being collectively the "**Chain Data**") are no longer available to and/or accessible for the Subscriber, End Users and/or other third parties. The Subscriber acknowledges and is aware that a Chain Wind Down and/or deletion of Chain Data leads to a loss of Crypto Assets of End Users on the respective Rollup that are not migrated or withdrawn before the Chain Wind Down and to a discontinuation of any developments, apps, processes and/or other activities deployed by the Subscriber, End Users and/or other third parties on the Rollup which negatively impacts any business operations or similar relying on such activities. After a Chain Wind Down, Gelato is neither able to nor obliged to recover or otherwise restore Rollups, Crypto Assets and/or Chain Data and will, unless the Parties agree on Chain Data Storage (as defined below), delete all Chain Data at the date this Agreement ends, insofar as this is legally permissible,

i.e. in particular insofar as no statutory retention periods under Applicable Law conflict with this. Gelato assumes no responsibility or liability whatsoever with regard to Crypto Assets or Chain Data being lost due to the Chain Wind Down. It is the sole responsibility of the Subscriber to ensure the migration or withdrawal of any Crypto Assets on the Rollup and to back-up Chain-Data before the Chain Wind Down and Subscriber shall bear all costs incurred by the Subscriber as a result of the Chain Wind Down.

- 18.2 **Wind Down Process and Wind Down Services.** Upon written request of the Subscriber, Gelato may, at its sole discretion, delay the Chain Wind Down and continue to provide the Services on a monthly basis or as otherwise agreed between the Parties against further payment of the Service Fees (such time period following the date this Agreement ends until the Chain Wind Down being the “**Wind Down Period**”). Gelato and the Subscriber will coordinate and agree in writing on the implementation of actions and processes related to the Chain Wind Down (“**Wind Down Process**”) and Gelato may, at its sole discretion, provide additional services, such as assistance and information to the Subscriber and/or a third-party provider designated by the Subscriber, for the Wind Down Process (“**Wind Down Services**”), against additional remuneration as agreed between the Parties. Gelato will provide the Subscriber with a reasonable cost estimate for the Wind Down Process and the Subscriber shall reimburse Gelato for all reasonable costs and other expenses related to the Wind Down Process. The Parties will agree on the scope of and remuneration for the Wind Down Services in a separate agreement.
- 18.3 **Chain Data Provision or Chain Data Storage.** Upon written request of the Subscriber to Gelato prior to the date this Agreement ends, Gelato may, at its sole discretion, offer to (a) provide to the Subscriber a copy of the Chain Data in a formatting of Gelato's discretion against additional remuneration (“**Chain Data Provision**”), and/or (b) store a copy of the Chain Data in a formatting of Gelato's discretion for a time period and against additional remuneration as agreed in between the Parties in writing in a separate agreement (“**Chain Data Storage**”). The Parties will agree on the details of and the remuneration of Chain Data Provision and/or Chain Data Storage in a separate agreement
- 18.4 **Chain Migration.** (a) Upon request of the Subscriber (i) during the term of this Agreement or (ii) in the event this Agreement ends for any reason whatsoever, and/or (b) in the event of security or other technical issues with the underlying Blockchain, Gelato may, at its sole discretion, offer to carry out or assist in the migration of one or more of the Subscriber's Rollups to another Blockchain (all services related to such migration are referred to as “**Migration Services**”) against additional remuneration. The Migration Services include the Chain Wind Down of the Subscriber's Rollups deployed on the Blockchain. Gelato will provide the Subscriber with a reasonable cost estimate for the Migration Services. The Parties will agree on the scope of and remuneration for the Migration Services, and/or the provision of services of Gelato related to a new Rollup on another Blockchain in a separate agreement.
- 18.5 **Smart Contract Light Client Sequencer Transfer Protocol.** If the Subscriber's Rollup utilizes smart contract light clients (e.g., OP Stack Ethereum L2s), upon Subscriber's written request at least thirty days prior to the end of the Initial

Service Term and/or any Renewal Service Term, Gelato may initiate the transfer of Sequencer ownership in the Rollup's smart contract light client allowing the Subscriber to designate a new sequencer to manage the smart contract light client ("**Transfer of Sequencer Ownership**") within two weeks after the end of the Agreement. Gelato may refuse Transfer of Sequencer Ownership for good reason, e.g., if smart contract light client functionality is unavailable or if the transfer of Sequencer ownership is beyond Gelato's control (e.g., light clients owned by the superchain security council). Upon the initiation of Transfer of Sequencer Ownership by Gelato, Gelato's obligations with regard to such transfer shall be fulfilled and the Subscriber is solely responsible for the further transfer or any sequencers used for its Rollup. Gelato shall not be liable for any direct or indirect losses or other damages resulting from Transfer of Sequencer Ownership.

18.6 **Indemnification.** The Subscriber shall indemnify Gelato in full from any and all claims or damages of a third party, in particular any End Users or other third parties using the Rollups concerned, arising out of or occurring in connection with (a) a Chain Wind Down, and/or (b) the deletion of Chain Data after a Chain Wind Down, and/or (c) the continued provision of the Services during a Wind Down Period, Wind Down Services, Chain Data Provision, Chain Data Storage and/or Migration Services and/or (d) the Transfer of Sequencer Ownership.

18.7 **Applicability of the terms of this Agreement.** Unless otherwise expressly agreed between the Parties in a separate agreement, the terms of this Agreement shall apply to the continued provision of the Services during a Wind Down Period, Wind Down Services, Chain Data Provision, Chain Data Storage and/or Migration Services and/or the Transfer of Sequencer Ownership, notwithstanding the fact that the Agreement would otherwise have terminated or expired, until the completion of the Chain Wind Down and/or the completion, termination or expiry of the aforementioned services.

## 19. **END USER RELATIONSHIP**

19.1 Gelato does not assume any responsibility with regard to End Users and this Agreement does not establish any contractual relationship between Gelato and such End User. Subscriber's End Users are not entitled to any rights or claims arising out of or in connection with this Agreement and/or the provision of the Services by Gelato. Should End Users use additional services from Gelato, such additional services between Gelato and the End Users are governed by an agreement different from this Agreement.

## 20. **RESPONSIBILITIES AND RISKS**

20.1 **Blockchain.** The User acknowledges that the functioning of individual Services is dependent on a Blockchain other than the centralized Blockchain components as provided as part of the Services, which Gelato cannot influence (e.g., the Ethereum Blockchain which is operated on a public, decentralised network). In the absence of control and influence, Gelato is therefore not responsible for the existence, security or maintenance of such Blockchain. Such Blockchain, on which Smart Contracts and therefore Software are based, may include coding errors or otherwise not function as intended.

The User is aware that such Blockchain can be changed and updated without Gelato being able to intervene. Updates to such Blockchain may have unintended adverse effects on the use of the Services and Crypto Assets. Updates can change the way in which such Blockchain works and thus the way in which Smart Contracts and therefore the Software and the Services work.

In addition, the network, and thus such Blockchain, may split (hard fork). A hard fork means that some of the computers on the network have installed the update and some of the computers do not accept the update. After such a hard fork, the network splits to create two versions of such Blockchain. Then the Crypto Asset's owners essentially own it on both the original and the updated version of such Blockchain. Updates can thus have an impact on a Crypto Asset's price performance and lead to the assets invested by the User being partially or completely lost.

- 20.2 **Smart Contracts.** The execution of Smart Contracts on the Blockchain does not take place within an environment provided, operated or monitored by Gelato. Gelato has no influence over whether the Blockchain or any Smart Contracts and systems built upon it will function without errors or failures or will continue to exist in their current form, which may negatively affect the use of the Services.

The execution of any Smart Contracts is not part of the Services under this Agreement. In particular with regard to Rollup-as-a-Service, Gelato solely provides the Rollup Launchpad to enable the User to launch and use a tailored Rollup and the technical infrastructure to run such Rollup, based on which the User can execute Transactions. The Transactions are dependent on the tailoring of the individual Rollup by the User, User Data, the Blockchain, Third-Party Data, other Services and Third-Party Services connected and other third parties. Therefore, Gelato is not responsible for the suitability of individual Rollups for the User's intended purpose or for successful or error free Transactions.

In the event of a faulty Transaction executed by the User, Gelato cannot make any corrections or influence the Blockchain or return Crypto Assets to the User.

- 20.3 **Gas Fees.** Gas Fees can fluctuate considerably and may be incurred for any Smart Contracts executed by the User. Paying a higher or lower Gas Fee can affect the speed of the Transaction. This may temporarily or permanently limit the possibility of Transactions, resulting in a loss of the Crypto Assets invested.

- 20.4 **Theft and hacking.** The Services, in particular Software and Gelato Smart Contracts provided and servers or other technical infrastructure used by Gelato as part of the Services, or the Blockchain may become the target of malicious cyberattacks or may contain exploitable flaws in their underlying code, which may result in security breaches. If the Services' or the Blockchain's security is compromised or if the Services or the Blockchain are subjected to attacks that frustrate or thwart Users' ability to access and use the Services, Users may cut back on or stop using the Services altogether. The User's Crypto Assets may be subject to expropriation and/or theft. Hackers or other malicious groups or organizations may attempt to interfere with the Services or with Crypto Assets in a variety of ways, including but not limited to malware attacks, denial of service attacks, consensus-based attacks, Sybil attacks, smurfing and spoofing.

Furthermore, if Software or Software components may be released as open-source software, hackers or other individuals may uncover and exploit intentional or unintentional bugs or weaknesses, which may negatively affect the Services, the Blockchain or the Crypto Assets.

Hackers or other malicious groups of organizations may also attempt to get access to the User's Wallet or its Wallet Access Data, which would result in the loss of Crypto Assets or the loss of the User's ability to access or control the Crypto Assets.

- 20.5 **User Data.** Each User is responsible for the User Data provided by it. The entering of incomplete or faulty User Data may lead to faulty Transactions which cannot be corrected or reversed.
- 20.6 **Third-Party Services and Third-Party Data.** Gelato is not responsible for any Third-Party Services used by the User in connection with the Services, in particular not their compatibility with the Blockchain or the Services (see sections 7 (Third-Party Services) and 22 (Links to other platforms, Third-Party Services). Sentence 1 shall also apply to the extent that Software contains Third-Party Software and/or Open-Source Software, or to the extent Gelato deploys and runs Third-Party Software and/or Open-Source Software in connection with or as part of the Services, or to the extent Third-Party Data is provided or otherwise used in connection with the Services.
- 20.7 **Compliance with Applicable Law.** Gelato does not assume any responsibility for the use of the Services by the User, in particular not for its compliance with Applicable Laws. The User is responsible for compliance with Applicable Law concerning its use of the Services and any User Data provided by it. Changes in regulatory requirements may result in access to a Blockchain, Crypto Assets or the Services being restricted. These and other restrictions may – as Gelato cannot yet be aware of them – mean that Users are no longer able to gain access to the Crypto Asset; as a result, the latter might lose financial value or suffer a complete loss of value.
- 20.8 **Integration.** Gelato does not assume any responsibility for the integration of the Services in the User Systems as well as the configuration of the Services by the User. Only the User is responsible for integrating the Services in the Users' systems, for the configuration of the Services by the Users and for any other use of the Services by the User. The User shall apply utmost care when using the Services and the User acknowledges that any erroneous use of the Services may lead to significant damages.

## 21. RESOURCES

Resources available on the Platform or provided with the Services are for informational purposes only and provided only as a convenience. Gelato does not provide for technical, legal, fiscal, trading, economical and/or any other kind of advice or recommendation that may be relied upon. The User is strongly recommended to seek advice in those areas. It cannot be ruled out that Resources from the Platform contain errors, mistakes, malpresentations or failures. The User is responsible for the deployment, implementation and other use of Resources. The User will therefore act at its own risk in accessing or in any way relying on

Resources and the User is therefore solely responsible for any consequences thereof.

**22. LINKS TO OTHER PLATFORMS, THIRD-PARTY SERVICES**

Users use all links provided on the Platform to visit third-party websites as well as Third-Party Services at their own risk. When a User leaves the Platform, the information it views is not provided by Gelato. These Terms of Service do not govern the use of third-party websites and Third-Party Services. Gelato does not monitor or have any control over and makes no claim or representation regarding these websites and Third-Party Services. To the extent such links are provided on the Platform or the connection to Third-Party Services is enabled via the Software, they are provided only as a convenience. Links to another website or possible connection to a Third-Party Service do not imply Gelato's endorsement, adoption or sponsorship of, or affiliation with, such websites and/or Third-Party Services.

**23. FORCE MAJEURE**

- 23.1 Gelato shall be released from any performance of its obligations under this Agreement and shall not be liable to the User for delay or non-performance of its obligations under this Agreement where this is caused by a Force Majeure Event.
- 23.2 If any Force Majeure Event prevents Gelato from fulfilling its material obligations under the Agreement for a continuous period of more than one (1) month the Subscriber may terminate this Agreement in accordance with section 16.2 (b) (Termination for cause).

**24. LIABILITY**

- 24.1 Gelato shall be liable for intent and gross negligence. Gelato's liability for indirect damages is excluded.
- 24.2 Gelato and the User undertake in the event of damage occurring or having already occurred to make all necessary efforts or to arrange for such efforts to be made without delay in order to limit the damage and its effects to a minimum.
- 24.3 The above limitations of liability also apply in the case of the fault of a vicarious agent of Gelato as well as for the personal liability of the organs, employees and representatives of Gelato.

**25. INDEMNIFICATION**

- 25.1 Any User undertakes to indemnify Gelato in full against any claims by third parties based on an infringement of intellectual property rights attributable to the User, unless the User proves that it is not responsible for the breach of duty causing the damage.
- 25.2 Any Subscriber undertakes to indemnify Gelato in full against any and all losses, and other damages, including reasonable attorneys' fees (hourly rates), relating to any claim of Framework Providers, End Users, Partner Vendors or of another

third-party arising out of or occurring in connection with the Subscriber's use of Gelato's Services, unless such damages are the direct result of intentional or grossly negligent breaches of duty on the part of Gelato.

26. **ANTI-MONEY LAUNDERING**

26.1 The User warrants,

- a) that the Services will not be used in any manner for any illegal or unethical purpose, including acts related to money laundering, terrorist financing or other acts that violate Applicable Law;
- b) that the User will not use any proceeds of criminal or illegal acts; and
- c) that no transactions in connection with the Services will be used to facilitate or engage in criminal or illegal acts, including acts related to money laundering, terrorist financing or other acts that violate Applicable Law.

26.2 The User represents and warrants that, as of the date of entering this Agreement, no criminal or regulatory investigation is pending against User, any affiliate of User, any officer or shareholder of User in connection with User's business activities.

26.3 The User warrants that, upon conclusion of the Agreement,

- a) it is not included on a sanctions list of the United Nations, the European Union or the Federal Republic of Switzerland;
- b) it is not acting indirectly (e.g., as a deputy or messenger) for a person who is on one of the sanctions lists referred to in section 26.3 a).

26.4 Should any of the events referred to in this section occur after the conclusion of the Agreement, the User undertakes to notify the Gelato immediately and to immediately suspend all transactions in connection with the Services.

26.5 The User confirms that it is acting exclusively in its own economic interest.

27. **PRIVACY**

Gelato's privacy policy can be found at [link](#); it is not subject to this Agreement.

28. **MISCELLANEOUS**

28.1 Each Order Form referring to these Terms of Service is governed by and incorporates these Terms of Service. In the event of any conflict between an Order Form and the Terms of Service, the Order Form shall prevail.

28.2 Subscriber and Gelato may agree on any changes with regard to the scope of Subscribed Services and/or Third-Party Services and/or changes of mainnet and/or testnet launch dates by (a) covering such changes in a subsequent Order Form referring to this Agreement or (b) by explicit agreement on such changes, including applicable Fees, by both Parties in a dedicated chat (e.g., slack).

- 28.3 Where the Terms of Service or an Order Form, as applicable, require the written form, simple e-mail or similar (e.g., messages in online platforms) shall suffice, unless otherwise stipulated.
- 28.4 These Terms of Service and, if applicable, an Offer and their interpretation are subject to Swiss substantive law. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 28.5 Exclusive place of jurisdiction for all disputes regarding rights and duties under this Agreement, including its validity shall be Zug, Switzerland.
- 28.6 Should one or more provisions of this Agreement be or become invalid or unenforceable, this shall not affect the validity and enforceability of the remaining provisions of this Agreement. The same shall apply if the Agreement does not contain an essential provision. In place of the invalid or unenforceable provision, or to fill a contractual lacuna, such valid and enforceable provision shall apply which reflects as closely as possible the commercial intention of the Parties as regards the invalid, unenforceable or missing provision.

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