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BTCS Pay Terms

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1. Preliminary Notes

These General Terms of Bitcoin Suisse AG (“**BTCS**”) regarding BTCS Pay (“**BTCS Pay Terms**”) shall govern the rights and obligations between the Client (“**Merchant**”) and BTCS (individually a “**Party**”, collectively the “**Parties**”) with regards to the invoicing, settlement of claims of the Merchants against their clients and the payout of the collected Crypto Assets.

Invoicing and settlement exclusively refer to Crypto Assets which according to the FINMA guidelines, dated February 16th, 2018 for enquiries regarding the regulatory framework for initial coin offerings (ICOs) or their supplement, dated September 11th, 2019 are accepted or are intended to be accepted as a means of payment for the acquisition of goods and services, incl. donations, or serve or are intended to serve as a means of money or value transfer.

These BTCS Pay Terms constitute an integral part of the contractual relationship between the Parties about the provision of the BTCS Pay services (“**Pay Contract**”). The General Terms of BTCS (“**GTC**”) apply as far as neither the Pay Contract nor these BTCS Pay Terms provide for any provisions or any deviating provisions respectively.

2. Purpose and Scope

These BTCS Pay Terms govern the conditions for the debt collection services provided by BTCS in connection to the app- and web-based software for the invoicing by the Merchant and the settlement in pre-defined Crypto Assets based on the blockchain-technology (“**BTCS Pay**”):

- Provision of invoices by all offered means (in particular point of sale, e-commerce, invoice or QR-bill) by the Merchant in the form of a quick response (QR-) code for the payment in Crypto Assets of claims at the Merchant’s initiative;
- Settlement of claims of the Merchant against his clients (“**End-Clients**”) denominated in a currency supported by BTCS and chosen by the Merchant by payment in a Crypto Asset supported by BTCS;
- Provision of a Merchant Hub account for the supervision of the payment flows resulting from the settlement of claims of the Merchant, for the creation of invoices to End-Clients and for the management of the account;
- Exchange of received Crypto Assets into a different, supported currency upon request of the Merchant;
- Payout to the Merchant of the collected amount in the currency agreed upon; and
- Technical support of the Merchant and his Authorized Users regarding the use of the debt collection services provided by BTCS.

BTCS informs the Merchant which Crypto Assets are eligible for the debt collection services of BTCS. BTCS may at all times decide freely on which Crypto Assets are eligible for the debt collection services of BTCS and may cease the support of specific Crypto Assets and/or fiat currencies immediately and without prior notice.

3. Operating Principles

According to these BTCS Pay Terms, BTCS provides to the merchant the technical means for the invoicing in predefined fiat-currencies and settlement in predefined Crypto Assets to the Merchant.

- The Merchant has the possibility to have a QR-code generated via the Merchant Hub (“**point of sale**”); alternatively,
- the Merchant may have generated the QR-code by having the End-Client scan an invoice which has been previously sent to the End-Client by an e-mail including a hyperlink (“**Invoice**”) or a QR-code (“**QR-Bill**”); or,
- at an online-checkout (“**E-Commerce**”), the QR-code will be generated once the End-Client selects Crypto Assets as payment method.

By having the QR-code generated, the Merchant commissions BTCS with the collection of the claim in its own name but on behalf of the Merchant and according to these BTCS Pay Terms and to the Pay Contract. The Merchant has previously fiducially assigned such current and future claims to BTCS for collection.

The amount in the currency chosen for payment (“**Reference Price**”) will be set and shown for each transaction.

The respective amount of Crypto Assets will be automatically exchanged by BTCS, if necessary, into the Crypto Assets or fiat currency chosen for settlement once the respective amount of Crypto Assets has been remitted to BTCS successfully. Subject to different agreements between the Parties, BTCS will subsequently remit the owed amount in the chosen currency to the Merchant.

The Merchant is obligated to monitor the timely inflow of the payments for the claims fiducially assigned to BTCS and to undertake all necessary filings or claims in insolvency or estate administration proceedings on their own with notice to BTCS. Litigation against debtors of fiducially assigned claims shall be undertaken only with the consent of BTCS, with BTCS being entitled to undertake all necessary measures itself. The Merchant is obligated to support BTCS in such measures. Fees and costs (incl. costs for legal representation or courts) incurred in such proceedings are to be borne by the Merchant.

4. Technical Means and Access

BTCS shall provide the software («**Merchant Hub**») in the current version to the Merchant at the router output of the computer centre in which the server is located (point of data transfer) for the use of the debt collection services. The software and the memory space, processing power and data processing power necessary for the use of the software are provided by BTCS.

The Merchant is responsible for establishing and maintaining the data connection between the merchant’s IT systems and the point of data transfer. Particularly, the Merchant is responsible for ensuring that the latency period and the bandwidth from the Authorized User’s computer to the point of data transfer. Specific network connectivity required by the Merchant need to be configured and maintained by the Merchant.

BTCS shall provide the Merchant with the login data required for the use of the debt collection services for the identification and authentication of the Authorized Users according to the Pay Contract.

The Merchant may authorize users to access the Merchant Hub (“**Authorized Users**”). In case additional users with full access rights to the Merchant Hub (“**Owner**”) shall be added, BTCS needs to identify and authenticate such Authorized Users beforehand. Owners have the right to change the general settings in the Merchant Hub (e.g. the currencies accepted by the Merchant, etc.) and to add Contributors to the Merchant Hub. Only an identifiable natural person may have the role of an Owner. A generic e-mail address does not meet these requirements. Authorized Users with limited access rights (“**Contributors**”) do not need to be identified, but may only use the invoice-solution in the Merchant Hub. **The Merchant is not allowed to hand over or give access to the login data to third parties. The Merchant is obligated to ensure and confirms that all persons with access to the Merchant Hub and the debt collection services either as Owner or Contributor have their place of residence in the same country as the Merchant.**

The Merchant is responsible for any use and activities in connection with the provided technical means and which are performed with the assigned login data. The Merchant undertakes to inform BTCS immediately if he becomes aware of any unauthorized access to his Merchant Hub account.

The Merchant ensures and confirms that the debt collection services are used only in connection with the payment of the services or goods, incl. donations, offered by the Merchant. In particular, the use of the debt collection services for currency exchange transactions is strictly forbidden.

5. Exchange rate risk

The QR-code generated for the payment of a claim will be updated regularly, i.e., the exchange rate of the chosen Crypto Asset in relation to the Merchant's choice of currency for pay-out is being fixed for a short period of time.

The exchange rate risk for this fixed period of time and for the duration until the potential currency exchange is executed will be borne by BTCS.

6. Currency exchange and pay-out

The amount is transferred by the End-Client in Crypto Assets to a dedicated BTCS-wallet address.

The transfer to the Merchant of the amount collected in Crypto Assets by BTCS on behalf of the Merchant shall follow the following cycle ("Settlement"):

- Daily aggregated transfer (Monday to Friday) to the bank account indicated by the Merchant, or if so agreed, to the Merchant's account with BTCS. Transfers are excluded on weekends and on all public holidays of Switzerland and of the Canton of Zug there.
- Amounts to be paid out in fiat currencies shall be transferred to the Merchant's bank account and amounts to be paid out in Crypto Assets shall be transferred to the Merchant's account with BTCS.
- Any necessary exchange of the amount received in Crypto Assets into the currency agreed for payout shall be made upon receipt of the payment and at the exchange rate fixed at the moment of payment.

The GTC of BTCS as well as any further agreements between the Merchant and BTCS are applicable for Crypto Assets to be transferred to the Merchant's account with BTCS. The Merchant is obligated to cooperate fully upon request of BTCS for ensuring compliance with the applicable legal and regulatory provisions, particularly in connection with the prevention of money laundering and combating terrorism.

7. Duty of Care of the Merchant

The Merchant is obligated to comply with his legal and regulatory duties of care, particularly the duties of care according to par. 8a AMLA (Federal Act on Combating Money Laundering and Terrorist Financing) in connection with every assignment and any other relevant actions.

Furthermore, upon request of BTCS the Merchant is subject to a comprehensive duty of cooperation in connection with the Pay Contract and with regards to his End-Clients.

8. Availability of the Service

BTCS maintains BTCS Pay in technical, organisational and administrative regard. The Merchant does not have a claim to continuous and constant availability or to faultless usability of BTCS Pay at all times. According to state-of-the-art technology, it is not possible to guarantee continuously faultless usability. BTCS is entitled to interrupt the availability of the Service at all times, especially if and as necessary in good faith for the prevention or remediation of faults.

BTCS is entitled to change or cease the debt collection services at all times, in particular in relation to technological advancements. Changes that lead to a significant change of the contractual debt collection services shall be announced to the Merchant at least thirty (30) days in advance.

The Merchant is obligated to inform BTCS about faults, malfunctions, or impairments of the Service promptly and as precisely as possible. Such notice may first be orally, but then shall be put in writing that same day. Such notice shall comprise the error indication as precisely as possible (if possible substantiated with screenshots), in order to allow BTCS to comprehend and remedy the error as soon as possible.

9. Business Hours

The Merchant can use the debt collection Services of BTCS without time restriction, in particular also outside the business hours of BTCS and on weekends and holidays. Enquires of the Merchant shall be answered only within the business hours of BTCS according to the BTCS's GTC.

10. Remuneration and Fees

The Merchant owes BTCS a compensation for the provision of the debt collection services. This compensation ("**Merchant Fee**") is calculated based on the amount collected.

On behalf of the Merchant, BTCS charges the End-Client the Reference Price and transfers the Reference Price less the Merchant Fee and subject to further contractually agreed fees and costs and after any potentially necessary currency exchange.

For each transaction the Reference Price, the Merchant Fee and any other applicable fees or costs will be disclosed to the Merchant in the Merchant Hub Account.

BTCS reserves the right to change any fees unilaterally at all times at its own discretion with a notice period of thirty (30) days.

11. Right of Use and Copyright

For the duration of this contract, the Merchant is granted a single, in time unlimited, non-exclusive, non-sublicensable and non-transferrable right to use BTCS Pay incl. The Merchant Hub for the purpose defined in the Pay Contract and accepts all forms of protection of the intellectual property of BTCS Pay according to applicable legal and regulatory provisions. Rights not mentioned in the Pay Contract (incl. annexes) shall expressly not be granted to the Merchant. The Merchant has no right to sell, license, sub-license or otherwise dispose over the rights or the property of BTCS Pay.

There is expressly no transfer of any rights to the Merchant if BTCS changes or modifies BTCS Pay or the Merchant Hub upon suggestion or feedback of the Merchant.

Upon termination of the Pay Contract all user rights for BTCS Pay of the Merchant shall expire. The Merchant has to return, deinstall or delete all licensed products and documentation incl. copies thereof and incl. parts of BTCS Pay combined with other programs or data systems. The Merchant shall confirm such return, deinstallment or deletion in writing.

The Merchant allows BTCS to use the Merchant's name, firm, address, logo and/or brand for use and display in the Merchant Hub, on the terminal and within the payment process.

12. Confidentiality

The Merchant agrees not to disclose the content of the Pay Contract to third parties without prior consent of BTCS, except the Merchant is obliged to do so by applicable laws and regulations. The existence of the business relationship is not considered confidential.

All business activities between the Parties are confidential. Both Parties are in particular bound by confidentiality with regards to client data of the other party. Client data may only be used for the services provided. Disclosure of client data is strictly forbidden.

13. Data Protection

Data within the meaning of the Pay Contract means in particular all information provided, entered or uploaded by the Merchant during or for the use of BTCS Pay or are otherwise necessary for the performance of the debt collection services.

BTCS does not claim any right on such data. BTCS is however entitled to generate aggregated statistical data on an anonymous basis regarding the usage by the Merchant and the functionality of the systems of BTCS.

BTCS saves content and data of the Merchant provided by the Merchant by using the service as is necessary to execute the transaction. The Merchant is obligated not to enter any illegal, criminal or otherwise unlawful data and not to enter or use any programs containing viruses or other malware in connection with BTCS Pay.

The Merchant grants BTCS for the performance of this Pay contract the right to copy the data received from the Merchant as far as is necessary for the provision of the debt collection services. BTCS is in particular allowed to store the data in a separate mirror server system. BTCS is also allowed to make changes to the structure of the data or to change the date format in order to remedy faults in the system.

The Merchant confirms to have read the BTCS Pay Data Protection Policy and to be aware that all data may be processed according to this Policy. The current version of said Policy shall be made available in the Merchant Hub account.

The Merchant confirms that he complies with all applicable data protection laws and regulations and that is authorized to provide his data to BTCS and to allow BTCS to process such data.

14. Warranty of Quality and Fitness

According to the recognised state of the art, it is not possible to develop complex software products that are completely free of errors and work error-free at all times in all applications and combinations, especially with different hardware components.

The agreed quality of BTCS Pay is not designed to ensure that no program errors whatsoever may occur or that the payment gateway can be used for every conceivable application, but only that it does not contain any program errors that significantly impair its intended use.

BTCS does not guarantee that BTCS Pay can be used without interruption and without errors, nor that the correction of a programme error will prevent the occurrence of further program errors.

15. Warranty of Title and Indemnity

BTCS ensures that all licenced products are free from rights of third parties and that there are no rules or third parties' rights that restrict or disallow the intended use of BTCS Pay.

If property rights of third parties have been infringed upon, BTCS has the right to choose between either t procuring the right of continued use for the Merchant or modifying BTCS Pay in order to remedy said infringement. If either cannot be completed with reasonable effort or within 30 days as of the complaint, BTCS is obliged to take back BTCS Pay and repay to the Merchant the remuneration paid to BTCS less a reasonable compensation for the benefit already had.

The Merchant shall inform BTCS immediately about admonished or possible infringements of property rights. The Merchant shall grant BTCS, as far as necessary and legally possible, all rights necessary for the defence against such third party claims. The Merchant shall leave the defence against such third party claims to BTCS and may not act on his own without prior consent of BTCS. The Merchant is obligated to support BTCS in the defence against such third party claims.

16. Liability

BTCS shall provide the BTCS Pay services to the Merchant with customary duty of care.

BTCS shall only be liable for intentional or gross negligent behavior and excludes all liability for any damages to the extent permitted by law. Any liability of BTCS for indirect or consequential damages, including loss of profit, is excluded.

BTCS shall not be liable for any damages or the materialization of risks due to events outside of BTCS' control nor for damages caused by the Merchant, in particular due to any failure on the part of the Merchant to take measures to avoid or mitigate such damages.

BTCS excludes all liability for any damages caused by its auxiliary persons caused by slight or gross negligence or intent to the extent permitted by law.

The debt collection services might be unavailable for several reasons, including routine maintenance. The Merchant accepts that for reasons outside the control of BTCS the Service might be unavailable, suspended or terminated. BTCS is expressly not liable for any damages based on such circumstances outside its control.

In particular, BTCS is not liable for damages caused by delayed or not performed transactions or instructions, by transmitting Crypto Assets to not communicated blockchain addresses or for transactions delayed or blocked due to Proof-of-Ownership-Processes.

17. Term and Termination

BTCS shall, subject to legal and regulatory duties of documentation, in case of a termination of this Pay contract for whatever reason return all data of the Merchant including copies without delay, or, if return is not possible, shall destroy such data and copies thereof. Such destruction shall be confirmed to the Merchant in writing.

The Merchant shall, in case of a termination of this Pay contract for whatever reason, return to BTCS all documentation and confidential information received for the use of the service, and cease the use of the debt collection service.

All rights and obligations derived from this Pay contract which are of a post-contractual nature shall survive the termination of this contract.

18. Risk Disclosure

The Merchant acknowledges and accepts that using the BTCS Pay debt collection service is notably associated with the following, risks:

- BTCS Pay might not support the blockchain protocol used by the End-Client, which might lead to BTCS Pay not recognizing or processing the payment;
- The End-Client might use a defective mobile wallet;
- Blockchain fees might change depending on the date and time of a payment;
- The crediting on the bank account of the Merchant might be delayed;
- The terminal might not be available due to faulty data connections;
- BTCS Pay might sometimes or permanently be unable to process certain crypto currencies due to technical reasons, e.g. faulty nodes or faulty pricing feeds.

Unchanged by the use of BTCS Pay, the Merchant remains solely responsible for any possible risk disclosure obligations, documentation obligations or duties to clarify vis-à-vis the End-Clients.

19. Amendments

BTCS reserves the right to unilaterally amend these BTCS Pay Terms at any time with 30 days notice. All changes shall be announced in the Merchant Hub Account as well as on the BTCS website.

20. Severability

Whenever possible, each provision of this Pay contract will be interpreted in such manner as to be effective and valid under applicable law. If any significant provision of this Pay contract is held to be invalid, illegal or unenforceable in any respect under any applicable law or regulation, such invalidity, illegality or unenforceability will not effect any other provision, but this Pay contract will be interpreted as if such invalid, illegal or unenforceable provision had been replaced with an economically and legally equivalent provision. The same principle applies to contractual gaps.

21. Non-Assignment

The Parties are not allowed to assign the Pay Contract or rights or obligations from the Pay Contract in part or in its entirety to third parties without prior written agreement from the other Party. All assignment without such prior agreement shall be null and void.