



# PAYMENT GATEWAY TERMS AND CONDITIONS

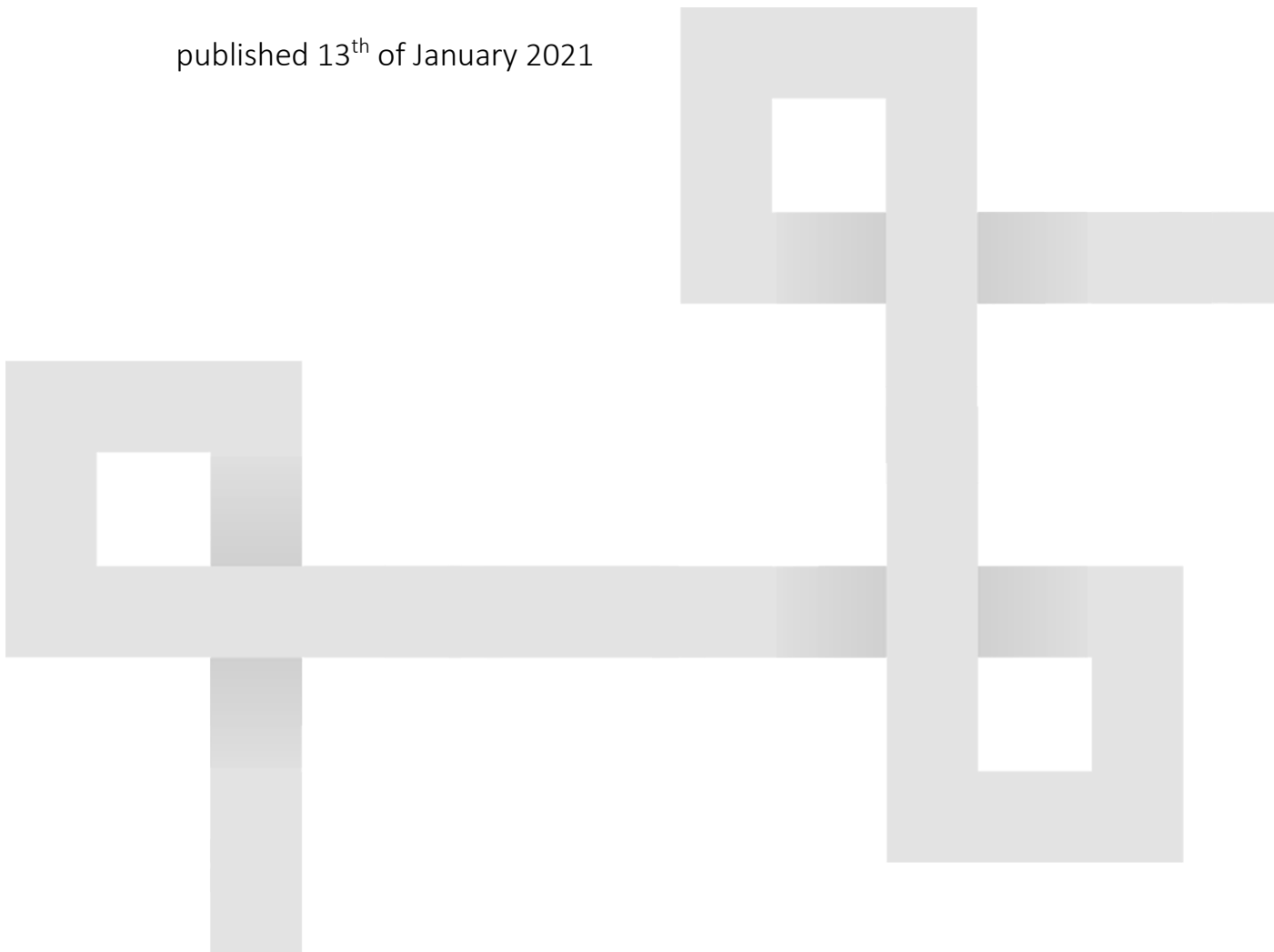
FOR CUSTOMERS FROM SWITZERLAND

(PG-TC)

concerning

**Payment Gateway**

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## Preamble

- A. Bitcoin Suisse AG (**BTCS**) is a company limited by shares under Swiss law with its registered office at Grafenauweg 12, 6300 Zug, Switzerland and is registered in the Commercial Register of the canton of Zug under the number CHE-472.481.853. BTCS and the Customer are hereinafter individually referred to as **Party** and together as **Parties**.
- B. The Customer intends to use the Payment Gateway provided by BTCS for payment processing and invoicing in tokens which, according to the guidelines of the Swiss Financial Market Supervisory Authority (**FINMA**) of 16 February 2018 for subordination requests concerning Initial Coin Offerings (**ICOs**) (**FINMA-ICO guidelines**), are actually or according to the intention of the organiser accepted as a means of payment for the purchase of goods or services or are intended to serve the transfer of money and values, whereby they do not convey any claims against an issuer (**crypto-currencies**).
- C. These PG-TC form an integral part of the Payment Gateway Contract (**PG contract**) to be concluded between the Parties.

Now therefore, the Parties agree as follows:

## 1. Subject of the Contract

- 1.1 These PG-TC specify the conditions for the following services (**Services**) provided by BTCS under the name "Payment Gateway":
- Electronic provision of invoices with QR Code for payment in crypto currencies;
  - Provision of a merchant account by BTCS for the receipt of payments from claims against the merchant's Customers (**End Customers**) for which the merchant uses the Payment Gateway;
  - currency exchange for the Customer from crypto currencies to legal tender (**fiat currencies**); and
  - Ongoing support of the Customer and his employees (**Users**) with regard to the use of the payment gateway.
- 1.2 Currently the payment gateway supports the crypto currencies Bitcoin and Ether (**Approved Crypto Currencies**) and the fiat currencies CHF, EUR, USD, GBP as well as SGD, HKD, NOK, DKK. BTCS may at any time at its sole discretion offer other crypto and fiat currencies or limit the existing offer of crypto and fiat currencies.
- 1.3 The Customer defines the Approved Crypto Currency for each Payment Gateway Account in advance, from which an Approved Crypto Currency can be selected for each individual payment. In addition, the Customer must fix on a binding basis in advance into which fiat currency the selected crypto currency is to be changed by BTCS.

## 2. Functionality of Payment Gateway

- 2.1 BTCS provides the Customer with the Payment Gateway for payment processing by means of QR code. Via the Payment Gateway Account, the Customer can create invoices with a QR code for an amount in an Approved Crypto Currency, which in turn can be scanned by End Customers and paid in the required crypto currency by means of a corresponding transfer.
- 2.2 In case of a successful payment of an invoice by the End Customer, the corresponding amount in the Approved Crypto Currency will be automatically exchanged by BTCS into the currency previously agreed with the Customer upon receipt of payment.

## 3. Type and Scope of the Service

- 3.1 BTCS provides the Customer with the agreed version of the Payment Gateway at the router exit of the computer centre where the server with the software is located (**Transfer Point**). The software, the computing power required for use and the required storage and data processing space shall be provided by BTCS.
- 3.2 BTCS is not responsible for establishing and maintaining the data connection between the Customer's IT systems and the Transfer Point. This is the responsibility of the Customer. The Customer is in particular responsible for ensuring that the latency and bandwidth from the user desktops to the router of BTCS meet the performance required by the Customer. If the Customer requires special network connectivity, the Customer shall be responsible for setting it up and for its costs.
- 3.3 BTCS shall transmit to the Customer the access data required for the use of the Payment Gateway for identification and authentication of the **Authorised Users** according to the specification in the **PG Contract**. The Customer shall not be permitted to make these access data available to third parties, except Authorised Users.
- 3.4 If further Users are to be granted access to the Payment Gateway after the Account has been set up, they must be identified and authenticated by BTCS prior to commencement of use in accordance with the PG Contract.
- 3.5 The Customer is responsible for any use and activities in connection with the Payment Gateway that are carried out with the access data assigned to him. The Customer shall inform BTCS immediately if the Customer becomes aware of any unauthorised access to his Payment Gateway Account.
- 3.6 The Service may only be used for the contractually agreed purpose, which is the payment by the End Customer of goods or services provided by the Customer to the End Customer. In particular, using the Service for currency exchange services (this includes the exchange of fiat money into crypto currencies and vice versa) and any transfer of money and assets not serving as payment by the End Customer for goods or services rendered by the Customer to the End Customer is strictly forbidden.

#### 4. Currency Exchange Process and Exchange Rate Risk

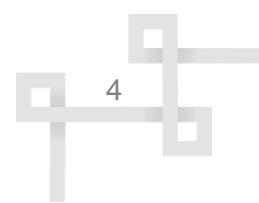
- 4.1 The QR Code generated by the Payment Gateway for the payment of an invoice changes at regular intervals, this means the exchange rate for the amount owed in crypto currency in relation to the fiat currency defined by the Customer is fixed for a short period, usually in the range of a few minutes. The exchange rate risk for this period as well as for the additional period until the currency exchange has been completed by BTCS shall be fully borne by BTCS.
- 4.2 The crypto currency amount is paid by the End Customer to an address of BTCS. The currency transfer by BTCS to the Customer (**settlement**) takes place after the following cycle:
- Summarised transfer of all transactions during a time period selected by the Customer, at the end of the selected time period, to a bank account specified by the Customer;
  - Payment will be made in the currency agreed between the Parties at the time of the account opening;
  - The necessary conversion of the received payment in crypto currency into the agreed fiat currency will be made upon receipt of the payment at the exchange rate fixed at the time of payment.
- 4.3 All data on the Payment Gateway and the Services required in accordance with clauses 4.1-4.2 are specified jointly by the Parties in the PG Contract and may be amended by written agreement of both Parties.

#### 5. Services

- 5.1 BTCS operates the Payment Gateway and provides technical, organisational and administrative support. The Customer has no claim to the constant availability and uninterrupted usability of the Payment Gateway. According to the recognised state of the art it is not possible to guarantee error-free and uninterrupted usability at all times. BTCS shall be entitled to interrupt the operation of the Payment Gateway if in good faith this appears to be indicated, e.g. to remedy malfunctions.
- 5.2 BTCS shall be entitled to change and amend or discontinue the Services including the Payment Gateway within the meaning of this PG Contract, in particular in case of technological developments. In case of further developments leading to a substantial change of the contractual Services BTCS shall inform the Customer at least one month before the change. In this case the Customer shall have an extraordinary right of termination with a notice period of two weeks to the date of change.
- 5.3 The Customer is obliged to report functional failures, malfunctions or impairments of the Payment Gateway to BTCS immediately and as precisely as possible.

#### 6. Operating Hours and Support

- 6.1 Except of the support, the Services in connection with the Payment Gateway are in principle available to the Customer at any time, including outside BTCS office hours, on Saturdays and Sundays and on public holidays.



6.2 A support case is deemed to have occurred if the Payment Gateway does not fulfil the contractual functions.

## 7. Fees and Sosts

7.1 The cost of a currency exchange transaction consists of the collection commission, which is made up of the exchange rate of the amount due (**Reference Price**) and fees (**Customer Fee** and **FX Fee**). The Reference Price is obtained from recognised price suppliers (e.g. ThomsonReuters, CoinMarketCap, crypto exchanges) and disclosed.

7.2 The Customer Fee to be borne by the Customer and the FX Fee to be borne by the End Customer are expressed as a percentage of the Reference Price and specified in the PG Contract.

7.3 BTCS charges the End Customer the Reference Price plus the FX Fee and forwards the Reference Price minus the Customer Fee and subject to the deduction of all other contractually agreed prices, fees and/or costs, to the Customer after receipt of payment and currency exchange.

7.4 The collection commission with the respective Reference Price and the fees for each transaction will be shown separately and electronically to the Customer in his merchant Account.

7.5 BTCS sets the specific charges. BTCS may unilaterally change the fees at any time at its own discretion with 30 days' notice. The Customer shall be notified of any such change, whereupon the Customer shall have an extraordinary right of termination with two weeks' notice to the end of the 30-day period.

## 8. Rights of Use and Copyright

8.1 For the term of this PG Contract BTCS grants the Customer the simple, time-limited, non-exclusive, non-sub-licensable and non-transferable right to load the user interface of the Payment Gateway for display on the screen of the terminal equipment required for this purpose and to use it for the contractual purposes. Rights that are not expressly mentioned in this PG Contract or its appendices are expressly not granted.

8.2 The Payment Gateway is a copyrighted work and may only be used for its intended purpose. The Customer expressly acknowledges the existing protection of intellectual property rights and the ownership of BTCS of these rights.

8.3 No rights shall pass to the Customer even if BTCS makes modifications to the Payment Gateway upon request or on the basis of information and feedback from the Customer.

8.4 The Customer authorises BTCS to include and display the Customer's business name (legal entity), the Customer's address, the Customer's logo and/or brand in the Payment Gateway, on End Customer invoices and in the payment process.

8.5 Finally, the Customer is obliged not to grant access to the Payment Gateway to any persons other than the Authorised Users.



## 9. Data Protection

- 9.1 Data within the meaning of this PG Contract is in particular information that is made available, entered or uploaded by the Customer during or for the use of the Payment Gateway or is otherwise processed in connection with the fulfilment of this Agreement.
- 9.2 BTCS does not obtain any rights to the data. BTCS is, however, permitted to generate aggregated statistical data on an anonymous basis regarding the use by the Customer and the functionality of its system.
- 9.3 BTCS stores contents and data of the Customer, which the Customer enters and stores or makes available for retrieval when using the Payment Gateway. This is necessary to be able to carry out the transactions. The Customer undertakes vis-à-vis BTCS not to post any contents and data which constitute a criminal offence by law or are otherwise absolutely or in relation to individual third parties unlawful and not to use any programmes containing viruses or other malicious software in connection with the Payment Gateway.
- 9.4 For the purpose of the execution of the Contract the Customer grants BTCS the right to duplicate the data to be stored by BTCS for the Customer in connection with the use of the Payment Gateway, as far as this is necessary for the provision of the Services. BTCS is in particular also entitled to store the data in a failure system or separate failure computer centre. In order to eliminate failures BTCS is also entitled to make changes to the structure of the data or the data format.
- 9.5 The Customer confirms that he has read the Bitcoin Suisse Data Protection Policy in connection with the use of the Payment Gateway and is aware that all data will be processed in accordance with this Data Protection Policy. The current version of Bitcoin Suisse's Date Protection Policy in connection with the use of the Payment Gateway is made available to the Customer in his merchant account.
- 9.6 The Customer confirms that he complies with all applicable data protection regulations and is entitled to transfer the data to BTCS and to allow BTCS to process and use the data.

## 10. Warranty of Quality

- 10.1 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.
- 10.2 The agreed quality of the Payment Gateway 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.
- 10.3 BTCS does not guarantee that the Payment Gateway can be used without interruption and without errors, nor that the correction of a programme error will prevent the occurrence of further programme errors.

## **11. Warranty of Rights**

- 11.1 BTCS warrants that the valid, unmodified version of the Payment Gateway does not infringe any intellectual property rights, in particular copyrights of third parties and that the use for the intended purpose, unmodified Payment Gateway does not constitute unfair competition.
- 11.2 If intellectual property rights of third parties have been infringed, BTCS has the choice either to procure the right of further use for the Customer, to exchange the Payment Gateway or to modify it in such a way that an infringement of intellectual property rights no longer exists. If the foregoing is not within the scope of reasonable possibilities or cannot be accomplished within a period of 30 days from notification of defects, BTCS shall take back the Payment Gateway and refund to the Customer the remuneration paid by the Customer, deducting reasonable compensation for the use made.
- 11.3 The Customer is obliged to inform BTCS immediately of any possible or warned infringements of intellectual property rights. If necessary and legally possible, the Customer must grant BTCS the rights of defence which BTCS needs to defend itself against corresponding claims of third parties. The Customer is obliged to leave the defence to BTCS and may not himself take action without the prior consent of BTCS. The Customer is obliged to support BTCS in the defence against claims of third parties.

## **12. Liability**

- 12.1 BTCS carries out the Service with reasonable care.
- 12.2 BTCS excludes any liability to the extent permitted by law for all damages, subject to intent or gross negligence. In the event of damage due to intent or gross negligence on the part of BTCS, BTCS shall only be liable for direct damage. Any liability for indirect damage or consequential damage including loss of profit is excluded.
- 12.3 BTCS is not liable for damage caused by events or risks beyond the control of BTCS. BTCS shall not be liable for damage caused by the Customer, in particular due to the Customer's failure to take measures to avoid or reduce damage.
- 12.4 BTCS assumes no liability for auxiliary persons. BTCS expressly excludes any liability caused by its auxiliary persons in the exercise of their work through slight negligence, as far as legally permissible.
- 12.5 The Service may be unavailable for various reasons, including routine maintenance. The Customer accepts that due to circumstances within or outside the control of BTCS the use of the Service may be interrupted, suspended or terminated. BTCS expressly excludes any liability for damages due to such circumstances.
- 12.6 In particular, BTCS shall not be liable for damages resulting from delayed or non-executed processing of orders or instructions, from transfers of crypto-currencies on non-notified block chain addresses or from delayed or non-executed deposits or withdrawals due to the "proof of ownership" process.



### **13. Duration and Termination of Contract**

- 13.1 This PG Contract can be terminated at any time for important reasons.
- 13.2 BTCS undertakes, subject to its documentation obligations, to comply with its obligations upon termination of this PG Contract for any reason whatsoever,
- a. Immediately to return all customer data of the Customer and copies thereof and, if this is not possible
  - b. to destroy this customer data and copies thereof and to confirm in writing to the Customer that it has done so.
- 13.3 The Customer undertakes, upon termination of this PG contract for whatever reason,
- a. to return all documentation and confidential information received for the use of the Payment Gateway to BTCS, and
  - b. to immediately and permanently discontinue the use of the Payment Gateway.
- 13.4 Any obligation arising from this PG Contract which by its nature has post-contractual effect (in particular confidentiality, cf. section 14) shall continue to apply after termination of this PG Contract.

### **14. Confidentiality**

The Parties agree not to disclose the content of this PG Contract and undertake to inform third parties about the content of the PG Contract only after mutual agreement. The existence of the business relationship is excluded from the obligation of confidentiality.

All business transactions between the two Parties are subject to mutual confidentiality. In particular, both Parties are obliged to maintain absolute confidentiality regarding customer data of the respective other Party. Customer data may only be used for the activities required within the scope of the business relationship. The disclosure of customer data and information is strictly prohibited.

This is without prejudice to statutory and supervisory or regulatory disclosure requirements as well as disclosure for the purpose of enforcing claims arising from or in connection with this PG Contract.

### **15. Changes and Amendments**

BTCS reserves the right to adapt this PG-TC at any time with 30 days' notice. All changes shall be published in the merchant account, whereupon the Customer shall have an extraordinary right of termination with a notice period of two weeks to the end of the 30-day period.



**16. Severability Clause**

Each provision of this PG-TC and the PG Contract must be interpreted in such a way that it is valid and enforceable under the applicable law. If any material provision of this PG-TC or of the PG Contract is unenforceable or invalid under applicable law, it shall be deemed to be invalid or unenforceable only to the extent of its unenforceability or invalidity and shall be replaced by a valid and enforceable provision that reflects as closely as possible the legal and economic meaning of the invalid provision. The remaining provisions of this PG Contract shall remain binding and in force. The same applies to contractual gaps.

**17. Prohibition of Assignment**

The Parties are prohibited from assigning or transferring the PG Contract or rights and obligations under the PG Contract in whole or in part to third parties without the prior written consent of the other Party. Any assignment or transfer that takes place without prior written consent is void.

