



**Personal Touch Financial Services Ltd**

**Financial Services Toolbox Contract**



Personal Touch Financial Services Ltd is authorised and regulated by  
the Financial Services Authority

**BETWEEN:**

**PERSONAL TOUCH FINANCIAL SERVICES LTD (hereinafter called "PTFS")**

**AND:**

**(hereinafter called "the Licensee")**

**OF:**

**Commencement Date of agreement:**

**Signed: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_**  
(BLOCK LETTERS)

For and on behalf of "the Company"

**Signed: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_**  
(BLOCK LETTERS)

For and on behalf of "the Licensee"

## Definitions and interpretation

In these Terms, unless the context otherwise requires, the following expressions have the following meanings:

- 1.1.1 ““PTFS”” means Personal Touch Financial Services Limited, Trinity 3, Trinity Park, Solihull, Birmingham, B37 7ES
- 1.1.2 “Delivery Date” means the date of delivery of the Licensed Program Materials to the Licensee.
- 1.1.3 “Designated Equipment” means computer equipment that provides the minimum operating environment for the Licenced Program as specified in the Program Documentation.
- 1.1.4 “Licence” means the licence granted by “PTFS” to the Licensee under clause 2.1.
- 1.1.5 “Licensed Program” means the software program or programs in object code form known as “Financial Services Toolbox”.
- 1.1.6 “Licensed Program Materials” means the Licensed Program and the Program Documentation.
- 1.1.7 “Licensee” means the person, firm, company or other organisation to whom “PTFS” licences the Licensed Program Materials pursuant to these Terms.
- 1.1.8 “Program Documentation” means any Program Specification, instruction manuals, user guides and other information relating to the Licensed Program supplied by “PTFS” to the Licensee in paper or electronic form. Program Documentation is written in English which shall take precedence and any translation of the Program Documentation into another language which may be supplied for information shall not be regarded as definitive. .
- 1.1.9 “Program Specification” means the technical specifications from time to time published by “PTFS” in respect of the Licensed Program.
- 1.1.10 “Site” means the address for delivery of the Licensed Program Materials specified by the Licensee.

- 1.1.11 "Terms" means the terms and conditions set out in this document and any document referred to herein.
- 1.1.12 "Use" means the copying or transmission of the Licensed Program into the Designated Equipment and the processing of the instructions contained in the Licensed Program.
- 1.2 In the construction of these Terms, (except where the context otherwise requires):
- 1.2.1 *Contents and headings*: contents and headings appear for convenience and do not affect the construction of the whole or any part of these Terms;
- 1.2.2 *English legal terms*: a reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any other legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates in that jurisdiction to the English legal term;
- 1.2.3 *Rights of third parties*: except where expressly stated nothing in these Terms is intended to confer upon any third party any rights whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise;
- 1.2.4 *Statutes and regulations*: a reference to a statute includes any regulation or order made under that statute. Reference to a statute or regulation or order is a reference to the statute or regulation or order as amended or substituted.

## **2 Grant of Licence**

- 2.1 "PTFS" grants to the Licensee a non-exclusive licence to Use the Licensed Program upon the Designated Equipment and to possess and refer to the Program Documentation subject to these Terms. This licence permits an unlimited number of employees and advisors that work for "The Licensee" to have access to the system. The charge for the Licence is as set out in the accompanying order form and terms of business (together "the Terms of Business") relating to the order. In the event of any conflict between this agreement and the Terms of Business then the Terms of Business shall prevail.
- 2.2 "PTFS" reserves the right to review the terms and conditions of this agreement at one months notice
- 2.3 The Licensed Program may not be:
- 2.3.1 the subject of any patent or patent application or any other form of application or registration for intellectual property protection.

### **3 Confidentiality**

- 3.1 The Licensed Program Materials contain confidential information of "PTFS" and all copyright, trade marks and other intellectual property rights in the Licensed Program Materials are the exclusive property of "PTFS".
- 3.2 The Licensee shall not:
- 3.2.1 except as provided in clause 4 make back-up copies of the Licensed Program Materials;
  - 3.2.2 reverse compile, copy or adapt the whole or any part of the Licensed Program Materials for the purposes of correcting errors in the Licensed Program Materials;
  - 3.2.3 except solely for the purposes expressly permitted by and in accordance with Section 296A(1) or Section 50C(2) Copyright, Designs and Patents Act 1988 copy, adapt or reverse compile the whole or any part of the Licensed Program Materials;
  - 3.2.4 assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Licensed Program Materials or use the Licensed Program Materials on behalf of any third party or make available the same to any third party;
  - 3.2.5 remove or alter any copyright or other proprietary notice on any of the Licensed Program Materials.
- 3.3 The Licensee shall:
- 3.3.1 keep confidential the Licensed Program Materials and limit access to the same to those of its employees, agents and sub-contractors who either have a need to know or who are engaged in the Use of the Licensed Program in accordance with the Licence;
  - 3.3.2 reproduce on any copy (whether machine readable or human readable form) of the Licensed Program Materials "PTFS"'s copyright, trade mark and other proprietary notices;
  - 3.3.3 maintain an up to date written record of the number of copies of the Licensed Program Materials and their location and upon request forthwith produce such record to "PTFS";

3.3.4 notify "PTFS" immediately if the Licensee becomes aware of any loss of or unauthorised use of the whole or any part of the Licensed Program Materials by any third party;

3.3.5 without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the confidential information and intellectual property rights of "PTFS" in the Licensed Program Materials.

3.4 The Licensee shall inform all relevant employees, agents and sub-contractors that the Licensed Program Materials constitute confidential information of "PTFS" and that all intellectual property rights therein are the property of "PTFS" and the Licensee shall take all such steps as shall be necessary to ensure compliance by its employees, agents and sub-contractors with the provisions of this clause 3 and the terms of the Licence.

#### **4 Copying of the Licensed Program Materials**

4.1 The Licensee shall be entitled to make back up copies of the Licensed Program for disaster recovery purposes. Any such copy shall in all respects be subject to these Terms and will be deemed to form part of the Licensed Program.

4.2 The Licensee shall not be entitled to copy in whole or in part the Program Documentation except for the Licensee's personal use only in accordance with the Licence. Further copies of the Program Documentation are available on request from "PTFS" at its then prevailing rates or by accessing the same in electronic format from such electronic media or website as may be notified by "PTFS" from time to time and where downloaded and/or printed any such copies shall be for the Licensee's personal use only in accordance with the Licence.

#### **5 Warranties**

5.1 Subject to the exceptions set out in clause 5.4 and the limitations upon its liability in clause 6 "PTFS" warrants that:

5.1.1 its title to any property in the Licensed Program Materials is free and unencumbered and that it has the right, power and authority to license the same upon these Terms;

5.1.2 the media upon which the Licensed Program Materials are supplied will for a period of 90 days from the Delivery Date be free from defects in materials, design and workmanship;

- 5.1.3 the Licensed Program will for a period of 90 days from the Delivery Date conform to the Program Specification;
- 5.2 The Licensee shall give notice to "PTFS" as soon as it is reasonably able upon becoming aware of a breach of warranty.
- 5.3 Subject to clause 5.4 "PTFS" will use its reasonable endeavours to remedy any breach of the warranties set out in clauses 5.1.2, 5.1.3 and 5.1.4 free of charge by diagnosing the fault and using its reasonable endeavours to rectify the fault (remotely or by attendance on Site as determined by "PTFS"), or of fixes in respect of the Licensed Program and the making of all necessary consequential amendments (if any) to the Program Documentation.
- 5.4 "PTFS" shall have no liability to remedy a breach of warranty where such breach arises as a result of:
  - 5.4.1 the improper use, operation or neglect of either the Licensed Program Materials or the Designated Equipment; or
  - 5.4.2 the modification of the Licensed Program or its merger (in whole or in part) with any other software; or
  - 5.4.3 the use of the Licensed Program on equipment other than the Designated Equipment; or
  - 5.4.4 the failure by the Licensee to implement recommendations in respect of or solutions to faults previously published by "PTFS" on its website; or
  - 5.4.5 any repair, adjustment, alteration or modification of the Licensed Program by any person other than "PTFS" without "PTFS"'s prior written consent; or
  - 5.4.6 any breach by the Licensee of any of its obligations under any maintenance agreement in respect of the Designated Equipment; or
  - 5.4.7 the use of the Licensed Program for a purpose for which they were not designed.
- 5.5 Without prejudice to the foregoing "PTFS" does not warrant that the Use of the Licensed Program will meet the Licensee's data processing requirements or any specific purpose or that the operation of the Licensed Programs will be uninterrupted or error free.

- 5.6 Subject to the foregoing all conditions, warranties, terms and undertakings express or implied statutory or otherwise in respect of the Licensed Program Materials are hereby excluded to the fullest extent permitted by law.

## **6 Limitation and exclusion of liability**

THE LICENSEE'S ATTENTION IS EXPRESSLY DRAWN TO THE PROVISIONS OF THIS CLAUSE 6.

### 6.1 Liability for:

- 6.1.1 death or personal injury caused by negligence; or
  - 6.1.2 liability under Part 1 of the Consumer Protection Act 1987; or
  - 6.1.3 fraudulent misrepresentation;
- is not excluded or limited.

### 6.2 Subject to the following provisions of this clause 6 or to any other express provisions relating to liability contained in these Terms the liability of "PTFS" or that of any members of the same group of companies to which "PTFS" belongs and for its or their employees, agents, distributors or sub-contractors for any act or default in relation to these Terms whether in contract, tort (including negligence), strict liability or otherwise shall be limited to:

- 6.2.1 the amount of single event cover in "PTFS"'s public or product liability insurance (whichever may be applicable) in force at the time the loss or damage occurs for loss or damage to tangible property; or
- 6.2.2 in the case of all other liability the sum of £1000

### 6.3 No liability shall attach for any loss (or associated expenses) in the nature of:

- 6.3.1 loss of profits, loss of revenue, loss of production or loss of use;
- 6.3.2 loss of goodwill or reputation;
- 6.3.3 third party claims;
- 6.3.4 other indirect, special or consequential losses as generally understood under English law;

whether foreseeable or otherwise and whether or not "PTFS" had been made aware of the possibility of the same arising. Subject to the aforesaid and to the limitations in clause 6.2, "PTFS" accepts liability for direct losses as generally understood under English law.

### 6.4 Save in respect of:

- 6.4.1 liabilities described in clause 6.1; or
- 6.4.2 liability for loss or damage to tangible property; or
- 6.4.3 liability under clause 7 (intellectual property rights indemnity);  
no liability for damages shall arise until such time as the Licensee has given “PTFS” written notice to remedy the default in accordance with any particular clause of these Terms and failed to do so or, in any other case, having been given written notice to remedy the default (if remediable) and “PTFS” has failed to do so within a period of thirty (30) days.
- 6.5 **“PTFS” will not be liable to the Licensee for loss arising from or in connection with any representation, agreement, statement or undertaking made before the parties entered into the contract on these Terms other than those representations, agreements, statements or undertakings confirmed by duly authorised representatives of “PTFS” in writing or expressly incorporated or referred to in these Terms. THE LICENSEE EXPRESSLY REPRESENTS THAT IT IS NOT RELYING UPON (AND THEREFORE SHALL HAVE NO REMEDY IN RESPECT OF) ANY SUCH REPRESENTATION, AGREEMENT, STATEMENT OR UNDERTAKING OTHER THAN AS EXPRESSLY SET OUT OR REFERRED TO IN THESE TERMS. These Terms constitute the whole agreement and understanding of the parties as to their subject matter and there are no terms, conditions, warranties or obligations whether oral or written, express or implied, whether by statute or common law, other than those contained in or referred to in these Terms. Nothing in these Terms shall limit “PTFS”’s liability for fraudulent misrepresentation.**
- 6.6 The Licensee accepts that the Licensed Program Materials were not designed and produced to its individual requirements or for any specific purpose or purposes of the Licensee and that it was responsible for their selection and accordingly “PTFS” shall not be liable to the Licensee if the Licensed Program Materials are not fit for the Licensee’s purposes.
- 6.7 Advice or assistance provided by “PTFS” or its group companies, agents or representatives relating to any aspect of the Licensed Program (whether provided before, during or after delivery) including (but not limited to) operational usage or potential applications is given for the Licensee’s sole assessment and decision (if necessary after trial operations by the Licensee) having regard to the Licensee’s own particular circumstances. Accordingly such advice or assistance is given without responsibility or liability.

6.8 The Licensee accepts that the Licensed Program is supplied as a tool which is constantly being developed and that the Licensee is solely responsible for the way in which the Licensed Program Materials are used and for any product data design or other output resulting from the Licensee's Use of the Licensed Program Materials including their Use and the consequences of such Use in conjunction with any other software or equipment or product. Without prejudice to the foregoing obligation in accordance with best industry practice the Licensee shall at each stage verify data which is input into and produced from the Licensed Program Materials.

## **7 Intellectual Property Rights indemnity**

7.1 "PTFS" will indemnify and hold harmless the Licensee against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation, possession or use of the Licensed Program Materials by the Licensee infringes the patent, copyright, registered design or trade mark rights of the said third party (an "Intellectual Property Infringement"), provided that the Licensee:

7.1.1 gives notice to "PTFS" of any Intellectual Property Infringement immediately upon becoming aware of it; and

7.1.2 gives "PTFS" the sole conduct of the defence to any claim or action in respect of any Intellectual Property Infringement and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the claim or action except upon the express instructions of "PTFS"; and

7.1.3 acts in accordance with the reasonable instructions of "PTFS" and gives to "PTFS" such assistance as it reasonably requires in respect of the conduct of the defence.

7.2 "PTFS" will reimburse the Licensee its reasonable costs incurred in complying with the provisions of clause 7.1 above.

7.3 "PTFS" will have no liability to the Licensee in respect of an Intellectual Property Infringement if it results from any breach of the Licensee's obligations under these Terms.

7.4 In the event of an Intellectual Property Infringement "PTFS" will be entitled at its own expense and option either to:

- 7.4.1 procure the right for the Licensee to continue using the Licensed Program Materials; or
  - 7.4.2 make such alteration, modification or adjustment to the Licensed Program Materials so that they become non-infringing without incurring a material diminution in function; or
  - 7.4.3 replace the Licensed Program Materials with non-infringing substitutes provided that the substitutes do not entail a material diminution in function.
- 7.5 The limitation of liability in clause 6.3 shall not apply to this indemnity.

## **8 Risk in the Licensed Program Materials**

Risk in the Licensed Program Materials will pass to the Licensee following delivery. If subsequently the Licensed Program Materials are destroyed, damaged, lost or stolen, "PTFS" will upon request as soon as reasonably practicable replace them subject to the Licensee paying its then prevailing charges.

- 8.2 Without prejudice to the provisions of clause 8.1, the Licensee shall take such steps as may be necessary in respect of any matters arising out of or relating to its possession and Use of the Licensed Program to the extent at least to which "PTFS" excludes or limits its liability in respect of the same pursuant to these Terms including where appropriate obtaining insurance cover.

## **9 Indemnity by Licensee**

The Licensee shall indemnify and keep "PTFS" indemnified from and against any liability of any kind to any third party howsoever arising (whether in contract, tort or otherwise and including, but not limited to, liability arising from the negligence of "PTFS" or from the negligence of any person for whom "PTFS" is vicariously liable) in respect of or in connection with:

- 9.1 any defect in the Licensed Program Materials; and/or
- 9.2 any loss, injury or damage of any kind (whether direct, indirect or otherwise and including but not limited to any loss of profit and/or any incidental, consequential or special loss or damage of any description) arising out of in respect of or in connection with the installation or supply of the Licensed Program Materials or their Use;

except to the extent that "PTFS" has expressly assumed liability under these Terms for the loss, injury or damage concerned.

## **10 Termination**

- 10.1 The Licence will continue until terminated in accordance with the provisions of clause 10.2 below.
- 10.2 The Licence may be terminated:
- 10.2.1 by the Licensee upon giving not less than 30 days' notice in writing to "PTFS";
- 10.2.2 forthwith by either party if the other commits any material breach of any of these Terms and which (in the case of a breach capable of being remedied) shall not have been remedied within 14 days of a written request to remedy it;
- 10.2.3 forthwith by either party if the other convenes a meeting of its creditors or if a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purposes of an amalgamation or reconstruction).
- 10.3 Any termination of the Licence will be without prejudice to any other rights or remedies to which a party may be entitled under these Terms or at law and will not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 10.4 Within 10 days of the termination of the Licence (irrespective of the reason for termination), the Licensee will at "PTFS"'s sole option either return all copies of the Licensed Program Materials in its possession or control or destroy all copies of the Licensed Program Materials in its possession or control and a duly authorised officer of the Licensee shall certify in writing to "PTFS" that the Licensee has complied with its obligation under this clause 10.4.

## **11 Force majeure**

- 11.1 Neither party will be liable for any breach of its obligations under these Terms resulting from causes beyond its reasonable control (an "Event of Force Majeure").
- 11.2 Each of the parties agrees to give notice to the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 11.3 If a default due to an Event of Force Majeure continues for more than 4 weeks, then the party not in default will be entitled to terminate the Licence. Without prejudice to the provisions of clauses 10.3 and 10.4 neither party will have any liability to the other in respect of the termination of the Licence as a result of an Event of Force Majeure.

## **12 Waiver**

The waiver by either party of a breach or default of any of these Terms by the other party will not be construed as a waiver of any succeeding breach of the same or any other provision nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have under these Terms operate as a waiver of any breach or default by the other party.

## **13 Notices**

Any notice, request, instruction or other document to be given under these Terms will be delivered in person or by first class registered post (airmail if overseas) or by facsimile transmission to the address or to the facsimile number of the other party and any such notice or other document will be deemed to have been served (if delivered personally) at the time of delivery, (if sent by post) upon the expiration of 2 business days after posting (5 business days if overseas) and (if sent by facsimile transmission) upon the expiration of 2 hours after receipt of a report of satisfactory transmission if before 3.00pm on a business day (local time to the addressee) otherwise at 10.00am on the next business day (local time to the addressee). For the purposes of this clause 13 a "business day" shall exclude Saturdays, Sundays and public holidays. Service by facsimile shall only be valid if a confirmatory letter is despatched no later than the next available business day in the place of transmission.

## **14 Invalidity and severability**

If any provision of these Terms is found by any court or administrative body to be invalid or unenforceable, the invalidity or unenforceability of such provision will not affect the other provisions of these Terms and all provisions not affected by such invalidity or unenforceability will remain in full force and effect. The parties agree to attempt to substitute for any invalid or

unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

## **15 Assignment and sub licensing**

The Licensee shall not be entitled to assign or otherwise transfer these Terms nor any of its rights and obligations under these Terms nor sub-license the use (in whole or in part) of the Licensed Program Materials without the prior written consent of "PTFS".

## **16 Law and jurisdiction**

16.1 These Terms will be governed by and construed in accordance with English law and the parties agree subject to clause 16.2 to submit to the exclusive jurisdiction of the English courts. The Licensee hereby irrevocably waives any right to claim the application of any alternative law or jurisdiction.

16.2 The submission by "PTFS" and the Licensee to such jurisdiction shall not however limit the right of "PTFS" to commence any proceedings arising out of these Terms in any other jurisdiction it may consider appropriate.