

## Order Management System Subscription Agreement

Last Updated: 21 February 2022

THIS ORDER MANAGEMENT SYSTEM (OMS) SUBSCRIPTION AGREEMENT, AS MAY BE UPDATED FROM TIME TO TIME IN ACCORDANCE WITH THE TERMS AND CONDITIONS SET FORTH HEREIN, CONSTITUTES A BINDING CONTRACT BETWEEN PONTERA SOLUTIONS INC. (FORMERLY FEEX, INC.), ITS PARENT COMPANY AND ITS AFFILIATES (“**PONTERA**”, “**WE**” OR “**US**”) AND YOU (“**CUSTOMER**” “**YOU**” OR “**YOUR**”). THE ORDER MANAGEMENT SYSTEM ALLOWS YOU OR ONE OR MORE OF YOUR AFFILIATED ASSET MANAGEMENT AND FINANCIAL ADVISORS (“**ADVISORS**”) TO MANAGE, ON BEHALF OF AN ENTITY OR INDIVIDUAL (“**END USER**”) WHO IS THE OWNER, HOLDER OR BENEFICIARY OF FINANCIAL ACCOUNTS WITH CERTAIN THIRD-PARTY FINANCIAL INSTITUTIONS (“**FINANCIAL INSTITUTIONS**”), THE FINANCIAL INSTITUTION ACCOUNTS, INCLUDING HELD AWAY ACCOUNTS OF SUCH END USER (COLLECTIVELY, “**FINANCIAL ACCOUNTS**”). PLEASE READ THESE TERMS CAREFULLY BEFORE YOU OR YOUR ADVISORS CONNECT ANY OF YOUR END USERS’ FINANCIAL ACCOUNTS TO THE PONTERA ORDER MANAGEMENT SYSTEM, INCLUDING THE DESIGNATED WEBSITE AND DESIGNATED PROPRIETARY SOFTWARE-AS-A-SERVICE PLATFORM THAT FACILITATES YOUR PROVISION OF ADVISORY SERVICES REGARDING YOUR END USERS’ FINANCIAL ACCOUNTS (COLLECTIVELY, THE “**PLATFORM**”).

BY ENTERING, CONNECTING TO, ACCESSING, OR USING THE PLATFORM AND RELATED SERVICES (THE “**SERVICES**”) OR BY EXECUTING THE ONLINE SUBSCRIPTION ORDER FORM (THE “**ORDER FORM**”, AND COLLECTIVELY TOGETHER WITH THIS ORDER MANAGEMENT SYSTEM SUBSCRIPTION AGREEMENT, THIS “**AGREEMENT**”), CUSTOMER AGREES TO COMPLY WITH AND TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THE PONTERA PRIVACY POLICY AND ANY APPLICABLE PRIVACY NOTICE THEREOF [[https://public.pontera.com/pontera/legal/Pontera\\_OMS\\_PP.pdf](https://public.pontera.com/pontera/legal/Pontera_OMS_PP.pdf)], AS UPDATED FROM TIME TO TIME, WHICH ARE INCORPORATED HEREIN BY REFERENCE. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY (SUCH AS YOUR EMPLOYER) WHO IS THE CUSTOMER, YOU HEREBY REPRESENT THAT YOU HAVE THE FULL POWER AND AUTHORITY TO LEGALLY BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND, IN SUCH EVENT, “**CUSTOMER**” AS USED IN THIS AGREEMENT SHALL REFER TO SUCH ENTITY.

IF YOU INTEND TO USE THE SERVICES ON BEHALF OF END USERS, YOU ARE SOLELY RESPONSIBLE FOR PROVIDING SUCH END USERS WITH THE [PONTERA END USER \(ACCOUNT OWNER\) TERMS AND CONDITIONS](#) AND THE [END USER PRIVACY POLICY](#) AND ANY APPLICABLE [PRIVACY NOTICE](#) THEREOF [[https://public.pontera.com/pontera/legal/Pontera\\_California\\_Privacy\\_Notice.pdf](https://public.pontera.com/pontera/legal/Pontera_California_Privacy_Notice.pdf)] (COLLECTIVELY, THE “**PONTERA TERMS**”). IF YOUR END USERS OR YOUR AFFILIATED ADVISORS DO NOT AGREE TO THE APPLICABLE PONTERA TERMS, YOU MAY NOT ENTER TO, CONNECT TO, ACCESS OR USE THE SERVICES OR GRANT PONTERA ACCESS TO THE END USER’S DATA.

THE BENEFIT OF THESE SERVICES IS NOT INTENDED FOR ANY PERSONS OUTSIDE THE UNITED STATES OF AMERICA (E.G., PERSONS IN THE EUROPEAN ECONOMIC AREA, AS REFERRED TO UNDER THE EU GENERAL DATA PROTECTION REGULATION (GDPR) OR OTHER APPLICABLE LAW, (COLLECTIVELY “**NON-US PERSONS**”). BY ENTERING TO, CONNECTING TO, ACCESSING OR USING THE SERVICES, OR BY GRANTING PONTERA ACCESS TO ANY END USER DATA (AS DEFINED HEREIN), YOU HEREBY REPRESENTS THAT NEITHER YOU NOR YOUR END USERS (IF APPLICABLE) ARE A NON-US PERSON.

PONTERA IS NOT AN SEC REGISTERED FINANCIAL ADVISOR, A LICENSED FINANCIAL PLANNER, REGISTERED REPRESENTATIVE, BROKER, DEALER OR TAX ADVISOR, NOR DOES IT PRESENT ITSELF AS SUCH. PONTERA’S PLATFORM AND SERVICES PROVIDE TECHNOLOGICAL TOOLS AND METHODS FOR YOU AND YOUR ADVISORS TO (I) FACILITATE THE AGGREGATION OF INFORMATION REGARDING YOUR END USERS’ FINANCIAL ACCOUNTS AND (II) ISSUE FINANCIAL ORDERS (AS DEFINED BELOW) ON BEHALF OF END USERS THROUGH THEIR FINANCIAL ACCOUNTS. PONTERA DOES NOT RENDER ANY OTHER SERVICE UNDER THIS AGREEMENT EXCEPT AS SPECIFICALLY DESCRIBED HEREIN. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PONTERA DOES NOT RENDER FINANCIAL ADVISORY, BROKERAGE OR INVESTMENT ADVISORY SERVICES OR END USER FINANCIAL ACCOUNT MANAGEMENT SERVICES TO ANYONE, INCLUDING TO YOU, YOUR ADVISORS OR YOUR END USERS. THIS AGREEMENT, AND YOUR ACCESS TO THE PLATFORM, ARE NOT INTENDED TO CONFER ON PONTERA OR ITS EMPLOYEES, DIRECTORS, OFFICERS, REPRESENTATIVES, AGENTS, CONTRACTORS OR SERVICE PROVIDERS (COLLECTIVELY, “**PERSONNEL**”) ANY FIDUCIARY, REGULATORY, OR CONTRACTUAL OBLIGATIONS TO ANY END USER, AND PONTERA DOES NOT INTEND TO ASSUME OR UNDERTAKE ANY OF THE FOREGOING BY ENTERING INTO THIS AGREEMENT.

YOU HAVE AND SHALL RETAIN FULL AND SOLE RESPONSIBILITY WITH RESPECT TO YOUR

ENGAGEMENT OR RELATIONSHIP WITH ANY END USER, INCLUDING ANY AND ALL FIDUCIARY DUTIES, PROFESSIONAL RESPONSIBILITY AND ANY OTHER DUTY OR OBLIGATION (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LAW OR LIABILITY) RELATED THERETO AND INCLUDING WITHOUT LIMITATION, FOR ALL PROVISION OF INVESTMENT ADVICE TO THE END USERS, INCLUDING ADVICE DEVELOPED OR GENERATED USING THE SERVICES. YOU ACKNOWLEDGE AND AGREE THAT YOU SHALL BE RESPONSIBLE FOR ANY ACT OR OMISSION OF ANY ADVISOR, END USER OR ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF CUSTOMER, IN CONNECTION WITH THIS AGREEMENT.

## 1. SERVICES

The Platform is designed to allow you and your Advisors to manage your End Users' Financial Accounts without you or your Advisors being considered to have custody over such accounts. It allows you and your Advisors to log into one central user interface, review End User Financial Account data, and issue trade orders ("**Financial Orders**") for your End Users' held away assets. The Platform is primarily used to manage 401(k)s, 403(b)s, 401(a)s, 457s, 529s, Variable Annuities, Health Savings Accounts (HSAs), Thrift Savings Plans (TSPs), Individual Retirement Accounts (IRAs) and Stock Option Plans, which may change from time to time. Pontera's Platform and Services provide technological tools and methods for you and your Advisor to (i) facilitate the receipt of information regarding your End Users' Financial Accounts and (ii) issue Financial Orders on their behalf through the held away Financial Accounts.

## 2. ACCESS CREDENTIALS

Upon executing the Order Form, you shall complete the registration form and create personal access credentials ("**User IDs**") for the use of the Services by you and your Advisors, subject to the terms and conditions of this Agreement. You may only access the Services through the User IDs created based on an applicable Order Form. You (and as applicable your Advisors) must provide accurate and complete information for registering and creating the User ID, shall not misrepresent its identity and agree to keep your information up to date. You are solely responsible for maintaining the confidentiality of the User IDs. Any instruction, action or activity occurring through any such User IDs shall be deemed to be provided or taken by you, including any act or omission of your Advisors and you shall be solely responsible for all activities that occur under such User IDs, including any unauthorized use of such User IDs, any other breach of security, or any related damage or loss. If you wish to either change your User ID or registration information, you can contact Pontera at [support@Pontera.com](mailto:support@Pontera.com).

## 3. SUBSCRIPTION TO THE OMS

Subject to the terms and conditions of this Agreement and your compliance herewith, including payment of the Fees (as defined below) detailed in the Order Form, Pontera hereby grants to you a worldwide, non-exclusive, non-transferable, non-sublicensable, limited right to access and use the Services for the sole purpose of providing your financial services to your End Users, for the applicable subscription period or term ("**Term**") as set forth in the applicable Order Form.

## 4. END USER DATA

By providing Pontera and its service providers your End Users' data (the "**End User Data**"), you hereby represent and warrant that you have full authority and consent under applicable law to provide Pontera with such End User Data and that to the best of your knowledge such End User Data is true, current, complete, accurate and up-to-date. You acknowledge that the accuracy of the information and advice provided by you or your Advisors via or in connection with the Services may be dependent on the accuracy of the End User Data that you provide to Pontera. You hereby grant Pontera and its service providers a non-exclusive, royalty-free, [sublicensable (to Pontera's affiliates and service providers) license to use, process, analyze, have processed, have analyzed, store and have stored the End User Data, in order to (i) provide the Services, (ii) to develop, improve and customize any and all services and offering available through any of the Pontera Services, including such Services' accuracy and interfaces; (iii) allow Pontera or its service providers, to the extent permitted by law, to use, transact in or disclose aggregate, non-personally identifiable data; and (iv) to comply with any applicable law.

## 5. ACCOUNT LINKING

In order to enable the Services provided via the Platform with respect to your End Users' Financial Accounts, your End Users must authorize the connection to the Platform of their Financial Accounts maintained or managed online by their Financial Institution by using the "Link Accounts" or "Connect Automatically" option. You or your Advisor will provide your End Users with a personalized link or text message in order to establish such connection ("**Account Linking**"). You hereby warrant and represent that your End Users have consented to such Account Linking for purposes of accessing their End User Data and have authorized you and your Advisors to thereby communicate Financial Orders on their behalf.

None of Pontera or its Personnel are responsible for: (i) any review of the End User Data or the instructions to facilitate the communication of Financial Orders for any purpose, including but not limited to accuracy, coherence, legality or non-

infringement; (ii) the products and services offered or provided by you or your Advisor, including as a financial planner, registered representative, broker, dealer or tax or other advisor, including any related Internet-based or other services and any issued Financial Orders or financial advice; (iii) fees charged by any person, including you or your Advisors or any financial planner, registered representative, broker, dealer or tax or other advisor, including as a result of your using the Services or the Platform; (iv) any technical or other difficulties, which may result in failure or delay to obtain the End User Data from or processing of a Financial Order by an End User's Financial Institution, or loss of data, personalization settings or other service interruptions; or (v) the timeliness, accuracy, deletion, non-delivery or failure to store any End User Data, communications or personalization settings.

## 6. FINANCIAL ORDERS

As part of the Services, you or your Advisor may submit certain instructions to Pontera (directly or indirectly through its service providers) to facilitate the communication of Financial Orders with respect to your End Users' Financial Accounts. Pontera shall facilitate the communication of Financial Orders in accordance with the relevant instructions provided to Pontera, and you and your Advisor are solely responsible for the accuracy of the issued Financial Order and any related instructions submitted to Pontera. Pontera does not review any issued Financial Order instructions for accuracy, clarity, completeness or errors and shall not be liable for any inaccuracy, ambiguity, deficiency or errors in such Financial Order instructions. Pontera shall only be liable for Pontera's errors when facilitating the communication of Financial Orders, where such errors (i) created deviations from your instructions and (ii) resulted from the gross negligence or intentional act or omission of Pontera or its service providers. You acknowledge that the time required or taken by the applicable Financial Institution to implement a Financial Order may vary. Pontera makes no representations or warranties regarding the amount of time required to implement any Financial Orders processed via the Platform and shall not be liable for any results caused by such passage of time. YOU MAY CONTACT THE RELEVANT FINANCIAL INSTITUTION TO REQUEST A CHANGE OR CANCELLATION OF ANY FINANCIAL ORDER IN ACCORDANCE WITH SUCH FINANCIAL INSTITUTION'S POLICIES.

## 7. USE RESTRICTIONS

There is certain conduct which is strictly prohibited when using the Services. Unless prior written authorization is obtained from Pontera or otherwise specified in the applicable Order Form, you, directly or indirectly (and including you Advisors) may not: (i) make any Services available to, or use any Services for the benefit of, anyone other than you or for the benefit of your End Users as permitted under this Agreement and any applicable Order Form; (ii) copy, make a derivative work of, "frame" or "mirror", or reverse engineer the Services or any part, feature, function or user interface thereof; (iii) license, sublicense, sell, resell, transfer or assign, distribute, rent or lease any Services (all except as otherwise permitted under this Agreement), or include any Services in a service bureau or outsourcing offering; (iv) knowingly use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortuous material, including in violation of applicable law with respect to third party privacy rights, or otherwise use the Services for any fraudulent or illegal purposes; (v) knowingly use the Services to store or transmit malicious code; (vi) knowingly or negligently interfere with or disrupt the integrity or performance of the Services or third party data contained therein; (vii) attempt to gain unauthorized access to the Services or its related systems or networks; (viii) conceal, obscure or remove any copyright or proprietary notices contained in the interface of or any materials provided via the Services; (ix) access or use the Services in order to build a competitive product or service, including creating any indices therefrom; (x) permit access to or use of the Services in a way that circumvents a contractual usage limit; or (xi) allow or enable a third party to do any of the aforementioned.

## 8. PROPRIETARY RIGHTS

As between you and Pontera, Pontera owns all rights in and to the Services, the Platform, the Pontera Confidential Information (as defined in Section 12), including data models, architecture, modifications, enhancements, derivatives, substitutes, or emulations of the aforementioned and any intellectual property rights therein, including any item which is the outcome of customization work, design, development and implementation done by Pontera, by or on your behalf or jointly by Pontera and you (or on your behalf), for you, all excluding Customer Data as defined below ("**Pontera IP**"). As between the you and Pontera (the "**Parties**"), the data collected or generated via the Services provided by Pontera shall be deemed Pontera IP. All End User Data which you collect or generate independent of the Services provided by Pontera and provide to Pontera in connection with your use of the Services or any part thereof shall, as between the Parties, be your property ("**Customer Data**"). The Parties acknowledge that the same underlying data points may be collected separately and independently by each of the Parties and in such event the Parties agree that each Party shall retain its separate (and parallel) rights in such underlying data points, as part of the Pontera IP as well as the Customer Data, respectively.

## 9. CUSTOMER WARRANTS AND REPRESENTATIONS

You hereby represent, warrant, and covenant, except as otherwise exempted by applicable law, that: (i) there is no restriction or limitation which may prevent you from fulfilling your obligations under this Agreement; (ii) to the extent required by the Investment Advisers Act of 1940, as amended (the "**Advisers Act**"), you, anyone else using the Services on your behalf or authorization (including your affiliated Advisors), are duly registered as an investment adviser (a "**RIA**")

with the U.S. Securities and Exchange Commission (the “SEC”) with investment adviser notice filings duly filed in each U.S. state where your End Users for which you use the Services are located; (iii) if you (and anyone else using the Services on your behalf or authorization (including your affiliated Advisors, if applicable) are not permitted under the Advisers Act to register with the SEC, you are duly registered as an investment adviser with the securities regulator of each U.S. state where your End Users for which you use the Services are located; (iv) to extent the Services are being used hereunder in connection with effecting transactions or dealing in securities, you are duly registered as a broker-dealer with the SEC and the securities regulator each U.S. state where your End Users for which you use the Services are located; (v) to extent the RIA is a registered broker-dealer, it is a member firm in good standing of the Financial Industry Regulatory Authority (“FINRA”); (vi) you shall provide Pontera with true and accurate information as requested by Pontera including but not limited to your documented evidence of your or your Advisors’ or personnel’s required licenses, qualifications or compliance with subsections (ii) – (v) above (as applicable); (vii) you shall ensure that each of your personnel have and shall have for the duration of the Term all required licenses, qualifications and are in compliance with subsections (ii) – (v) above as applicable; (viii) you shall use the Services to communicate Financial Order instructions only to duly registered broker-dealers or to custodians or administrators that are not required, pursuant to applicable exclusions, exemptions or SEC no-action relief, to be so registered; (ix) in performing your obligations and exercising your rights under this Agreement, you will comply with all applicable laws; and (x) you shall obtain, maintain and receive all necessary consents from End Users as required under applicable law and this Agreement and the Pontera Terms as updated from time to time.

Without limiting any of the foregoing representations, warranties or covenants, you represent, warrant and covenant that you and your personnel have, and shall maintain during the Term all registrations and licenses required by any governmental or other regulatory authority with applicable jurisdiction in connection with all businesses, operations and other activities for which you will use the Services and shall maintain all policies, procedures and internal control required or reasonably designed to comply with all laws, regulations, rules, and regulatory guidance and requirements that apply to you and your personnel’s intended and actual use of the Services and performance under this Agreement.

You shall be solely responsible for all provision of investment advice to your or your Advisor’s End Users, including without limitation all investment advice based on your use of the Services and shall be solely and fully responsible for any loss, injury or damages incurred as a result or in connection with any decision made or action taken or not taken in reliance on such information or analytics made available through the Services. Nothing in this Agreement shall be deemed to delegate or assign to Pontera, or to cause or obligate Pontera to assume, any duty or obligation of yours under any law or regulation (including without limitation the administration of management of the your services established or administered using the Services) or to any of your End Users. Further, you acknowledge and agree that all calculations and comparisons generated through your use of the Services shall depend on the your own projections, assumptions and determinations.

## **10. LIMITATIONS ON PONTERA ACTIVITIES**

The Parties agree that, notwithstanding anything to the contrary, provision by Pontera of the Services shall not entail or require the performance by Pontera of any of the following (without limitation) activities, and that Pontera shall have no obligation or authority under this Agreement to perform such activities:

- advising you (including your Advisors) as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or issuing or promulgating to your analyses or reports concerning securities;
- advising any of the End Users as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or issuing or promulgating to any of the End Users analyses or reports concerning securities;
- entering into any contract or agreement with any of the End Users (other than the terms of use of and policy governing the access to and use of the Services);
- exercising any discretion over investment decisions on behalf of the End Users or otherwise participating in the management of designated holdings or any other assets of End Users;
- holding in its possession, custody or control any money, securities or other assets owned by you or your End Users;
- effecting any transaction in securities other than performing clerical or administrative services relating to the communication of instructions about your investment decisions/orders;
- decisions to broker-dealers, custodians, or administrators with which orders for transactions in End Users’ IRAs or retirement plan accounts are placed;
- generating or issuing to End Users any account statements;
- generating or issuing to End Users any transaction confirmations; or
- accepting compensation that depends directly or indirectly on the occurrence or size of any transaction that you decide to conduct on behalf of End Users.

You further acknowledge and agree that this Agreement is not intended to confer on Pontera, and Pontera does not intend by entering into this Agreement to assume, any fiduciary, regulatory, or contractual obligations to any of the End Users.

## 11. PRIVACY POLICY

If you are a California resident, please refer to our [Privacy Notice for California Residents](https://public.pontera.com/pontera/legal/Pontera_California_Privacy_Notice.pdf) [https://public.pontera.com/pontera/legal/Pontera\_California\_Privacy\_Notice.pdf]. Pontera respects your (including your Advisors') and your End Users' privacy and is committed to protecting the information shared with Pontera. Pontera believes that you and your End Users have a right to know Pontera's practices regarding the information Pontera collects when you (including your Advisors) connect to, access or use the Services. Pontera's policy and practices and the type of information collected are described in our [Privacy Policy](#) and applicable [Privacy Notice](#) thereof. If you (or your Advisor) intend to connect to, access or use the Services, you must first read and agree to the [Privacy Policy](#) and [Privacy Notice](#) (if applicable). If you (or your Advisors) intend to connect to, access or use the Services on behalf of any End User, you must first ensure that each such End User has read and agreed to the [End User Privacy Policy](#).

## 12. CONFIDENTIALITY

Each Party agrees to keep confidential and to use only for purposes of performing its obligation under this Agreement, any proprietary or confidential information of the other Party disclosed pursuant to this Agreement ("**Confidential Information**"). The obligation of confidentiality shall not apply to information which: (i) is already known to the receiving Party at the time of disclosure; (ii) is, or, through no act, or failure to act, of the receiving Party, becomes publicly known; (iii) is legally received by receiving Party from a third party without restriction on disclosure; (iv) is independently developed by receiving Party without reference to the Confidential Information of the disclosing Party, as evidenced by written dated documentation; or (v) is approved for release by written authorization of the disclosing Party. Further, the receiving Party may disclose Confidential Information which is required by law, government order or request to be disclosed (provided that the receiving Party shall give written notice to the other Party prior to such disclosure and shall only disclose the exact Confidential Information or portion thereof specifically requested by such order or request). The receiving Party agrees that it shall hold all Confidential Information in confidence and shall safeguard the Confidential Information with at least the same degree of care that it takes to protect its own information of a similar nature, which in no event shall be less than a reasonable standard of care. The obligations of this Section shall survive termination or expiration of this Agreement.

## 13. DISCLAIMER AND WARRANTIES

THIS SECTION CONTAINS DISCLAIMERS OF PONTERA'S WARRANTIES AND LIABILITIES RELATING IN ANY WAY TO THE SERVICES, THE PLATFORM OR THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NOTHING IN THESE TERMS SHALL BE DEEMED AS A WAIVER BY YOU OF ANY NON-WAIVABLE RIGHTS YOU HAVE UNDER APPLICABLE LAW, INCLUDING U.S. FEDERAL OR STATE SECURITIES LAWS OR REGULATIONS.

THE SERVICES, INCLUDING CONTENT GENERATED BY USING THE SERVICES ("**CONTENT**") ARE PROVIDED TO YOU FOR YOUR END USERS' BENEFIT ON AN "AS-IS" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF TITLE, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR IMPLIED WARRANTIES OF USE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. PONTERA AND ITS PERSONNEL (COLLECTIVELY, THE "**PONTERA RELEASED PARTIES**") DISCLAIM AND MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING OR RELATING TO THE USE, THE INABILITY TO USE OR OPERATE, OR THE RESULTS OF THE USE OF THE SERVICES, NOR DOES PONTERA MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE ACCURACY, QUALITY, AVAILABILITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS, OR EFFECTIVENESS OF ANY CONTENT PROVIDED BY OR THROUGH PONTERA OR THE SERVICES.

FOR THE SAKE OF CLARITY AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PONTERA DOES NOT REPRESENT, WARRANT OR COVENANT:

- (a) THAT THE SERVICES OR PLATFORM WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE AT ANY TIME OR FROM ANY PARTICULAR LOCATION;
- (b) THAT THE SERVICES OR PLATFORM WILL BE ACCURATE, SECURE, USEFUL, TIMELY, INFORMATIONAL, UNINTERRUPTED OR ERROR-FREE;
- (c) THAT DEFECTS OR ERRORS IN ANY DATA OR INSTRUCTIONS FOR ISSUED FINANCIAL ORDERS WILL BE IDENTIFIED OR CORRECTED; OR
- (d) THAT THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

THE INFORMATION PROVIDED TO YOU MAY INCLUDE INFORMATION SOURCED FROM THIRD PARTIES (I.E., OTHER THAN THE CONTENT AND OTHER INFORMATION MADE AVAILABLE THROUGH OR GENERATED USING THE SERVICES). PONTERA MAY NOT HAVE ACCESS TO AND, IN ANY EVENT, DOES NOT REVIEW OR ASSUME RESPONSIBILITY TO REVIEW ANY SUCH ADDITIONAL OR SUPPLEMENTAL INFORMATION.

THE PONTERA RELEASED PARTIES DO NOT, EITHER EXPRESSLY OR IMPLIEDLY, ENDORSE, RECOMMEND, WARRANT OR IN ANY MANNER ASSUME ANY RESPONSIBILITY OR LIABILITY FOR ANY DECISION MADE OR ACTION TAKEN OR NOT TAKEN IN RELIANCE ON THE CONTENT OR INFORMATION RECEIVED OR DERIVED FROM THE USE OF, OR GENERATED BY, THE SERVICES, NOR DO PONTERA OR ITS SERVICE PROVIDERS ASSUME ANY RESPONSIBILITY FOR ANY LOSS, INJURY OR DAMAGES OF ANY KIND OR CHARACTER INCURRED AS A RESULT OF, IN CONNECTION WITH, OR IN ANY WAY RELATING TO YOUR OR YOUR ADVISORS' USE OF THE SERVICES, OR ANY DECISION MADE OR ACTION TAKEN OR NOT TAKEN IN RELIANCE ON THE SERVICES OR ANY CONTENT OR OTHER INFORMATION RECEIVED OR DERIVED FROM, OR GENERATED BY, YOUR OR YOUR ADVISORS' USE OF THE SERVICES. PONTERA AND ITS SERVICE PROVIDERS DO NOT REPRESENT OR WARRANT THAT THE OPERATION OF THE SERVICES IS OR WILL BE SECURE, ACCURATE, COMPLETE, UNINTERRUPTED, WITHOUT ERROR, OR FREE OF VIRUSES, WORMS OR OTHER HARMFUL COMPONENTS.

YOU AGREE AND ACKNOWLEDGE THAT, AS BETWEEN YOU AND PONTERA, YOU (INCLUDING THROUGH YOUR ADVISORS) HAVE THE SOLE AND ULTIMATE RESPONSIBILITY FOR DECISIONS (INCLUDING ANY FINANCIAL OR TAX DECISIONS) OR ACTIONS TAKEN AS A RESULT, THROUGH, OR IN CONJUNCTION WITH, OR RELATING TO THE USE IN ANY WAY OF THE SERVICES FOR YOUR END USERS' BENEFIT. YOU ACKNOWLEDGE AND AGREE THAT PONTERA DOES NOT EVALUATE NOR ASSESS THE QUALITY OR PROSPECTS OF YOUR OR YOUR ADVISORS', OR ANY OTHER PERSON'S, INVESTMENT CHOICES AND THAT PONTERA DOES NOT HAVE DISCRETION OVER, OR SUPERVISION OR MANAGEMENT OF, YOUR END USERS' ASSETS OR FINANCIAL ACCOUNTS, OR OF THE FINANCIAL ORDERS ISSUED BY YOU OR YOUR ADVISOR ON THEIR BEHALF OR THE USE OF THE SERVICES BY YOU OR YOUR ADVISOR OR ANY RESPONSIBILITY FOR THE SELECTION OF ANY INVESTMENT IN CONNECTION WITH YOUR OR YOUR ADVISOR'S USE OF THE SERVICES. THE PERFORMANCE OF ANY FINANCIAL ORDER AND YOUR USE OF THE SERVICES IS ENTIRELY AT YOUR OWN RISK.

YOU AGREE AND ACKNOWLEDGE THAT, AS BETWEEN YOU AND PONTERA, YOU HAVE THE SOLE RESPONSIBILITY FOR ALL PROVISION OF INVESTMENT ADVICE BY YOU OR BY YOUR ADVISORS OR OTHERWISE TO YOUR END USERS, INCLUDING WITHOUT LIMITATION ALL INVESTMENT ADVICE BASED ON YOUR USE OF THE SERVICES.

#### **14. LIMITATION OF LIABILITY**

THIS SECTION 14 CONTAINS LIMITATIONS OF PONTERA'S LIABILITY RELATING TO OR UNDER THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, INCLUDING ANYTHING TO THE CONTRARY IN THE LIMITATIONS IN THIS SECTION 14, NOTHING IN THIS AGREEMENT SHALL BE DEEMED A WAIVER BY YOU OF ANY NON-WAIVABLE RIGHTS THAT YOU HAVE

UNDER APPLICABLE LAW, INCLUDING U.S. FEDERAL OR STATE SECURITIES LAWS OR REGULATIONS. IN NO EVENT SHALL THE PONTERA RELEASED PARTIES BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, LOSS OF GOODWILL, COMPUTER FAILURE OR MALFUNCTION, LOSS OF DATA OR BUSINESS INFORMATION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES) ARISING IN CONNECTION WITH THIS AGREEMENT OR RESULTING FROM OR ARISING OUT OF YOUR (OR YOUR ADVISORS') USE OF THE SERVICES OR THE CONTENT AVAILABLE THEREIN, ANY DECISION MADE OR ACTION TAKEN OR NOT TAKEN IN RELIANCE ON THE CONTENT AND ANY AND ALL INFORMATION WHICH DERIVES FROM THE USE OF THE SERVICES, FAILURE OF THE SERVICES TO PERFORM AS REPRESENTED OR EXPECTED, THE PERFORMANCE OR FAILURE OF PONTERA TO PERFORM UNDER THIS AGREEMENT, ANY OTHER ACT OR OMISSION OF PONTERA OR ITS SERVICE PROVIDERS BY ANY OTHER CAUSE WHATSOEVER, OR BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, REGARDLESS OF WHETHER PONTERA OR ITS SERVICE PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE MAXIMUM AGGREGATE LIABILITY OF THE PONTERA RELEASED PARTIES FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION, WHETHER IN CONTRACT, NEGLIGENCE, OTHER TORTIOUS ACTIONS, STATUTORY ACTIONS OR OTHERWISE, RELATED TO YOUR OR YOUR ADVISORS' USE OR OTHER EXPLOITATION OF

THE SERVICES EXCEED: (1) IN THE CASE OF A CLAIM PERTAINING TO A TRADING ERROR, TO THE SPECIFIC END USER'S DIRECT LOSS IN CONNECTION WITH SUCH TRADING ERROR; OR (2) IN CASE OF A CLAIM PERTAINING TO THIS AGREEMENT AS A WHOLE, TO THE TOTAL FEES PAID TO PONTERA IN THE SIX (6) MONTHS PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE FOREGOING LIMITATIONS OF THIS SECTION 14 (*LIMITATION OF LIABILITY*) WILL NOT APPLY TO LIABILITY CAUSED BY PONTERA'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 12 (*CONFIDENTIALITY*) OR PONTERA'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

## **15. WAIVER OF CALIFORNIA CIVIL CODE § 1542 AND SIMILAR PROVISIONS**

You acknowledge and agree that you are familiar with, understand, and do waive any rights and benefits of the provisions of Section 1542 of the California Civil Code, and any similar provisions of New York or other jurisdictions, which provides that:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

## **16. INDEMNIFICATION**

To the maximum extent permitted by applicable law, you agree to and shall defend, indemnify and hold Pontera and its Personnel, successors, and assigns (the "**Pontera Indemnified Parties**") harmless from and against any and all damages, losses, fines, penalties, costs, and other amounts (including reasonable attorney's fees and expenses) (collectively, "**Losses**") arising from or in connection with any actual or threatened claims, demands, investigations, and causes of actions by third parties (each a "**Claim**") to the extent such Claim is based on or arises from or relates to: (i) any breach or default by you or your Advisors of any provision of this Agreement; (ii) negligent or intentional acts or omissions caused by you, your advisors or your affiliates and their respective officers, directors, employees, agents, contractors, successors and assigns; (iii) your or your Advisor's violation of applicable law; (iv) any Claims for financial or other kind of damages arising out of any decision made or action taken or not taken by you, your Advisors or End Users in reliance on the use of the Services; (v) your failure to meet your obligations relating to End User Data, including any third party claim that the End User Data provided to Pontera under this Agreement, or Pontera's access or possession thereof pursuant to this Agreement, infringes or violates such third party's rights; or (vi) the financial services you provide to your End Users. The foregoing indemnification obligations will survive any expiration or termination of these Terms and your use of the Services.

Pontera shall inform you in writing following receipt of a Claim and shall enable you to control the defense of such Claim, provided that any settlement arrangement as well as any declaration or obligation on Pontera's behalf are subject to Pontera's prior written approval, which approval will not be unreasonably withheld or delayed.

## **17. AVAILABILITY**

The Services availability and functionality depend on various factors. Pontera does not warrant or guarantee that the Services will operate or be available at all times without disruption or interruption, or that it will be error-free. Pontera shall make commercially reasonable efforts to provide and make available the Services during your standard business hours and shall make reasonable efforts to provide you and your Advisor(s) with prior notice with respect to any anticipated unavailability of the Services.

## **18. FEES AND PAYMENT TERMS**

Unless you have received or purchased the Services from one of Pontera's authorized resellers or distributors, the following payment terms shall apply. In consideration for the Services, you shall pay Pontera the amounts set forth on the applicable Order Form ("**Fees**"). All Fees are stated and payable in US Dollars and are exclusive of any applicable taxes such as Sales Tax (State or Federal), Value Added Tax (VAT). You will bear and pay all taxes related to or arising from this Agreement, except for those taxes based on Pontera's income. You may not withhold or set off any Fees due to Pontera hereunder.

You shall be billed automatically in accordance with the schedule indicated in the Order Form. If applicable, Pontera shall charge you via an automatic credit card payment (for an additional fee) or an ACH payment and shall provide you with a relevant invoice by email. You are solely responsible for ensuring that your credit card or bank account (as relevant) details provided by you to Pontera are accurate and up to date. In the event you cancel your subscription to the Services during a billing period, you will be billed on a pro-rated basis for the Fees for the relevant billing period in which such cancellation occurs.

## **19. CHANGES TO THE SERVICES & TERMINATION**

Pontera reserves the right to modify, correct, amend, enhance, improve, make any other changes to the Services (or any part thereof) without notice, at any time. In the event Pontera decides to discontinue the Services, Pontera will provide you with reasonable prior notice. Pontera also reserves the right to designate any feature, service or any other part of the Services as premium and subject to additional cost. You agree that Pontera shall not be liable to you or to any third party for any such modification, suspension, or discontinuance of the Services (including without limitation any loss of any data).

At any time, without assuming any liability, Pontera may temporarily suspend or terminate your access to the Services, for any reason, at its sole discretion, in addition to any other remedies that may be available to Pontera under any applicable law. For example, such actions by Pontera may be taken (i) if Pontera, in its sole discretion, believes that you or your Advisor have breached any provision of this Agreement, (ii) at the request of law enforcement or other government agencies, (iii) if the Services are discontinued or materially modified, or (iv) upon the occurrence of any technical or security issues or problems. In addition, Pontera may terminate individual Pontera accounts due to inactivity.

In the event of any expiration or termination of this Agreement (including any Order Form), any provisions hereof which expressly or by their nature are required to survive such expiration or termination in order to achieve their purpose, shall survive the expiration or termination of this Agreement.

Pontera may change the terms of this Agreement from time to time, at our sole discretion and without any notice. Pontera will notify you regarding material changes of the terms of this Agreement by notice on the Pontera website or by sending you an e-mail regarding such changes to the e-mail address that you provided in the registration form. Such material changes will take effect seven (7) days after such notice is provided on Pontera's website or sent by email. Otherwise, all other changes to this Agreement are effective as of the stated "Last Revised" date and your continued use of the Services after the Last Revised date will constitute acceptance of, and agreement to be bound by, those changes. **TO THE EXTENT YOUR END USER HAS NOT REGISTERED WITH US DIRECTLY THROUGH THE PLATFORM, YOU AGREE YOU ARE SOLELY RESPONSIBLE FOR ENSURING THAT SUCH END USER RECEIVES NOTICE OF, AND AGREES TO, ANY CHANGES TO THE PONTERA TERMS.**

## **20. GENERAL**

The Parties are independent contractors; this Agreement does not, and shall not be construed to create any partnership, joint venture, employer-employee, agency, or franchisor-franchisee relationship between the parties hereto. Any claim relating to this Agreement or the Services will be governed by and interpreted in accordance with the laws of the State of New York, United States, without reference to its conflict-of-laws principles. Any dispute arising out of or related to your use of the Services will be brought in, and you hereby consent to exclusive jurisdiction and venue in, the competent courts of the State of New York, United States. You may not assign, sublicense or otherwise transfer any or all of your rights or obligations under this Agreement without Pontera's prior express written consent. Pontera may assign its rights and obligations under this Agreement without restriction. No waiver by either Party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default. Any heading, caption or section title contained herein is inserted only as a matter of convenience, and in no way defines or explains any section or provision hereof. This Agreement including the relevant Order Form is the entire agreement between you and Pontera relating to the subject matter herein and supersedes any and all prior or contemporaneous written or oral agreements or understandings between the Parties. Other than changes to this Agreement made in accordance with Section 19, this Agreement may be amended, modified or supplemented only in a writing duly executed by an authorized representative of each of the Parties. If any of the provisions of this Agreement are declared to be invalid or unenforceable by a court of competent jurisdiction, such provisions shall be ineffective to the extent of such invalidity or unenforceability while the other provisions hereof shall remain in full force and effect. Notices under this Agreement may be made via email or regular mail. Without limitation, you agree that a printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

In the case of conflicts or inconsistencies between the terms of this Agreement and any Order Form hereto, the terms of this Agreement will prevail, except as specifically stated otherwise. Unless designated as replacing a specific outstanding Order Form, a new Order Form will be considered to be in addition to then-outstanding Orders Forms.

The Services and any derivatives thereof, may be subject to export laws of the United States and other jurisdictions. Each Party represents that it is not named on any US Department of Commerce Denied-Party List. You will not permit any End User to access or use any Services in any U.S. embargoed countries (currently Venezuela, Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

## **21. INTERPRETATION**

For purposes of this Agreement:

- (i) the words "include," "includes" and "including" shall be deemed to be followed by the words



“without limitation”;

- (ii) the word “or” is not exclusive;
- (iii) the word “any” means “any and all”;
- (iv) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole;
- (v) the headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement;
- (vi) when a reference is made to a Section, such reference shall be to a Section of this Agreement; and
- (vii) unless the context requires otherwise, words using the singular or plural number also include the plural or singular number, respectively, and references to a “person” includes both individuals and entities and their permitted successors and assigns.

## **22. CONTACT US**

In the event you have any questions (or comments) concerning this Agreement, you are welcome to send Pontera an email at the following address: [support@Pontera.com](mailto:support@Pontera.com)