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## LEGAL

### **APTEAN PAY TERMS OF SERVICE (Final with Comments)**

Aptean Pay Terms of Service - United States

Dated: July 15, 2020

These Aptean Pay Terms of Service apply to Merchant's access to and use of the Aptean payment processing services including but not limited to Aptean software, the website, programs, documentation, applications, tools, internet-based services and component, hosted by or on behalf of Aptean and provided to Merchant by Aptean pursuant to these Terms (the "Services").

In these Terms, "Aptean", "we", "us" and "our" refer to Aptean, Inc. and our affiliates, subsidiaries, successors, and assigns, and "**Merchant**" and "you" refers to the user and licensee of our Services that accepts and agrees to these Terms. Aptean and Merchant are individually referred to in these Terms as a "Party" and collectively as the "Parties."

Aptean provides an online Services through integration with the WePay, Inc. ("WePay") payment processing services. WePay is a third-party payment processor. In order for you to use WePay's payment processing services, you must register directly with Aptean as a "Merchant". WePay provides payment processing services via Aptean to Merchants to facilitate receipt by Merchants of payments by card and bank transfer (as applicable). These transactions are solely between Merchants and persons who pay them ("Purchasers"). The WePay Terms of Service explain that process and are available here: <https://go.wepay.com/terms-of-service-us> and are incorporated herein by reference. The WePay Privacy Policy is available also here: <https://go.wepay.com/privacy-policy>. By accepting these Aptean Pay Terms of Service, you expressly agree that you have also reviewed and accepted the WePay Terms of Service and WePay Privacy Policy for the country in which you are located.

#### 1. **Account Registration**

To register for Aptean Pay Services, a Merchant shall provide information, including email address and a self-selected password, in order to create an account ("Account").

#### A. **Eligibility**

Aptean allows businesses (including sole proprietorships), to register for Aptean if they are located in one of the 50 United States or the District of Columbia, except that non-profit and government organizations, residents of Puerto Rico, U.S. territories (such as Guam), and U.S. military bases are not supported. A Merchant must be a United States citizen, a legal permanent resident of the United States, or a United States business having a physical presence in the United States and authorized to conduct business by the state in which it operates. A user who opens an Account must be eighteen (18) years of age or older. You may open an Account for a business only if it is legitimate and you have the authority to enter into this Agreement on its behalf. Your acceptance of this Agreement constitutes acceptance by the business or nonprofit organization.

**USA PATRIOT ACT:** To help prevent the funding of terrorism and money laundering activities, Federal law and internal policies require us to obtain, verify, and record information that identifies each person who opens an account. In order to comply with these requirements, we will ask for your business name, physical address, and government identification number in order to verify your identity.

#### B. **Verification of Merchant information**

Aptean may ask Merchants for additional information to identify each person that opens an Account, such as street address, telephone number, tax identification number (such as Social

Security Number), date of birth and beneficial ownership information (where applicable). You agree to provide supplemental documentation upon request (including but not limited to: articles of incorporation, passports, driver's license or a business license). You agree that the identity information provided is complete and accurate to the best of your knowledge and authorize Apteian to share identity information with WePay. You further authorize Apteian, directly or through third parties, to make inquiries or verify that this information is accurate (for example, through social media or third party databases). You specifically authorize Apteian to obtain your business credit reports from time to time and use them in connection with establishing and maintaining your Account. You agree to promptly notify Apteian if there are any significant changes to the nature of your business (including changes to any trade name(s)), product lines or services or in the event any person or entity acquires any beneficial ownership interest in you which is twenty-five percent (25%) or more.

## 2. How it Works

Neither Apteian, We Pay, nor Chase Manhattan or its subsidiary or affiliate, is a party to the transactions between Merchants and their Purchasers.

- A. For payments by card, WePay initiates the payment process by providing information to Paymentech, LLC, a Delaware limited liability company ("Paymentech"). Paymentech is a subsidiary of Chase which is a member of Visa U.S.A., Inc., Visa International ("Visa"), Mastercard International Incorporated ("MasterCard"), American Express Travel Related Services Company Inc. ("American Express"), or other payment card networks, associations, or companies (collectively, the "Card Networks"). Paymentech in its capacity as an authorized processor of transactions and Chase in its capacity as a member of several Card Networks are referred to collectively as the "Bank". WePay shall pay, or cause the Bank to pay, Merchants under both (a) the provisions of its agreement with Apteian, and (b) the by-laws, operating regulations and all other rules, policies and procedures of the Card Networks as in effect from time to time (the "Card Network Rules"), that make WePay responsible for instructing settlement with you as a Merchant. For payments by bank transfer, WePay initiates the payment process by providing information to Chase through the National Automated Clearing House ("ACH") in accordance with all applicable laws, regulations and The Electronic Payments Association Operating Rules and Guidelines ("ACH Rules"), each as in effect from time to time.
- B. The Service supports most domestic credit, debit, prepaid or gift cards with a Visa, MasterCard, American Express ("Card Networks"). We may add or remove support for certain payment cards at any time without prior notice. We may elect only to process cards that receive an authorization from the applicable issuer. You agree to accept all of the cards issued by Card Networks that the Service supports in accordance with the terms of this Agreement. The Service also supports payments via ACH from U.S.-based Purchasers with a U.S. bank account to U.S.-based Merchants, if supported by Apteian. The Service supports payments via Chase Pay to Merchants in the U.S., if supported by the Apteian. The **Chase Pay through Platform Provider Merchant Terms & Conditions** apply, and Merchant agrees to be bound by them
- C. To enable payment, you must provide accurate and complete information to WePay via Apteian. Specifically, when you register, you must demonstrate that you can receive email at the email address you provide. If you do not confirm your email address, then (a) fourteen (14) days after you accept your first payment, or \$100,000 USD, whichever comes first, you will not be able to accept additional payments, and (b) thirty (30) days after you accept your first payment, the Bank will refund to your Purchasers all of the payments you have accepted. In addition, in order to settle the payments you have accepted to your bank account or other payment instrument, you must provide to Apteian identity and settlement information (such as your bank account details). If you do not provide identity and settlement information, then (a) thirty (30) days after you accept your first payment, you will not be able to accept additional payments, and (b) unless you provide identity and settlement information promptly, the Bank will refund to your Purchasers all of the payments you have accepted. Finally, if at any time Apteian is unable to verify that the identity information you provided is correct and up-to-date, then, unless you provide verifiable information promptly, (a) WePay will disable your Account so that you cannot accept additional payments, and (b) the Bank will refund to your Purchasers all of the payments that you have accepted but not settled. Neither the Bank, WePay nor Apteian have any liability to you for your inability to accept payments or for refunds pursuant to this paragraph.

- D. Neither WePay nor Aptean is a party to any contract between you and a Purchaser and you are solely responsible for choosing Purchasers and negotiating the terms of your relationship with any Purchaser. Neither WePay nor Aptean will have any liability for nonpayment by a Purchaser. Either Aptean or WePay may decline to process transactions that are too large in dollar amount or exceed other risk parameters.

### 3. **Aptean Pay's Merchant Fees**

The fees that Aptean charges Merchants are set forth in the Fee Disclosure found in your Account Information page on the Merchant Portal. The Fee Disclosure is incorporated into this agreement by this reference.

### 4. **Electronic Signature Disclosure and Consent**

#### Electronic Delivery

By accepting this Agreement, you agree and consent to receive electronically all communications, agreements, documents, notices and disclosures (collectively, "Communications") that Aptean provides in connection with your Account and your use of the Service. Communications include but are not limited to:

- a. agreements and policies, such as this Agreement and our Privacy Policy, including updates thereto;
- b. annual disclosures;
- c. transaction receipts or confirmations;
- d. communication in relation to delinquent accounts (which may also be by phone, and may be made by Aptean or by anyone on its behalf, including a third party collection agent);
- e. Account statements and history; and
- f. federal and state tax statements (we may, but are not obligated to, send tax-related information electronically).

Aptean will provide these Communications to you by emailing them to you at the primary email address listed in your Account registration, by texting them to you at the primary telephone number listed in your Account registration, by emailing or texting you a link or instructions how to access them on a website, or (if permitted by law) by posting them on the WePay website ([www.wepay.com](http://www.wepay.com)) and our website. Aptean or WePay may also provide certain Communications (such as federal and state tax statements) by U.S. mail to the street address listed in your Account registration. Communications are considered received by you within 24 hours of the time they are emailed to you, posted to the website, or mailed to you. You further agree that your electronic signature has the same effect as your manual, physical signature. If you withdraw your consent to receive Communications electronically, Aptean may deny your registration for an Account, restrict or close your Account, or charge you additional fees for paper copies.

If, after you consent to receive Communications electronically, you would like a paper copy of a Communication previously sent to you, you may request a copy within 180 days of the date the Communication was provided to you by contacting Customer Support as described above. You understand and agree that Aptean may charge you an exceptions fee for each paper copy of a Communication.

### 5. **Hardware and Software Requirements**

In order to access and retain electronic Communications, you will need the following computer hardware and software:

- a computer or mobile device with an Internet or mobile connection;
- for desktop website-based Communications, a modern web browser that includes 256-bit encryption, such as the current version of Chrome ([www.google.com/chrome](http://www.google.com/chrome)), Internet Explorer ([www.microsoft.com/edge](http://www.microsoft.com/edge)), Mozilla Firefox ([www.mozilla.com](http://www.mozilla.com)), or Apple Safari ([www.apple.com/safari](http://www.apple.com/safari));
- access to your primary email address registered with Aptean; and

- sufficient storage space to save past Communications or an installed printer to print them.

By giving your consent, you are confirming that you have access to the necessary equipment and are able to receive, open, and print or download a copy of any Communications for your records. It is important for you to retain copies of Communications because they may not be accessible in your Account at a later date.

#### 6. Updating Your Contact Information

It is your responsibility to keep your primary email and street address up to date. You understand and agree that if Apteau sends you a Communication but you do not receive it because your primary email or street address on file is incorrect, out of date, blocked by your service provider, or you are otherwise unable to receive electronic Communications, Apteau will be deemed to have provided the Communication to you. Please note that if you use a spam filter that blocks or re-routes emails from senders not listed in your email address book, you must add Apteau to your email address book so that you will be able to receive the Communications we send to you.

If your email address becomes invalid such that electronic Communications sent to you by Apteau are returned, then Apteau may close your Account, and you will not be able to transact any activity using your Account until we receive a valid, functioning primary email address from you.

#### 7. Prohibited Activities

You may not use the Service for:

Impersonating any person or entity or falsely claiming an affiliation with any person or entity;

Collecting, or attempting to collect, personal information about users or third parties without their consent, or using such information except as necessary to use the Service;

Defaming, harassing, abusing, threatening, or defrauding others;

Posting, transmitting, or distributing content that is false, misleading, unlawful, obscene, indecent, lewd, pornographic, hateful, abusive, inflammatory, or that violates the rights of others (including rights of publicity or privacy);

Damaging, disabling, overburdening, or impairing Apteau, including without limitation, using the Service in an automated manner;

Interfering with another user's enjoyment of the Service, by any means, including by uploading or otherwise disseminating viruses, adware, spyware, worms or other malicious code;

Creating an Account that is linked to another Account that has engaged in any of the foregoing activities. Apteau may use evidence other than your Account information to determine whether you control an Account in someone else's name, including but not limited to Internet Protocol addresses, common business names, phone numbers, and mailing addresses.

Any restrictions set forth in the WePay Terms of Service.

If Apteau determines that you have received funds resulting from fraud or a prohibited activity, those funds may be frozen, returned to the Purchaser, or seized.

In addition, if we reasonably suspect that your Account has been used for an unauthorized, illegal, or criminal purpose, you give us express authorization to share information about you, your Account, your access to the Service, and any of your transactions with law enforcement.

#### 8. Your ACH Payment Authorization

If you Merchant or a Purchaser are paying by bank transfer, you authorize Apteau and the Bank to initiate electronic ACH debit and credit entries to each bank account that you set up on the Website and to initiate adjustments for any transactions credited or debited in error. You agree to be bound by the ACH Rules and you agree that all ACH transactions that you initiate will comply with all applicable laws. Your authorization will remain in full force and effect until you notify us that you revoke it by contacting Customer Support or by closing your Account. You understand that Apteau requires a reasonable time to act on your revocation, not to exceed five (5) business days.

#### 9. Reserve

At any time and from time to time, Apteon or WePay may instruct the Bank to temporarily suspend or delay payments to you and/or require a "Reserve" (defined following) to protect Apteon, WePay and the Bank against the risks from you using the Service, including chargebacks, refunds, and Payment Network Liabilities. A "Reserve" is funds the Bank may withhold from you or require you to pay or obtain from any bank account or other funding source associated with any Account you hold with Apteon and which the Bank maintains to protect Apteon and the Bank against a risk that we or the Bank reasonably anticipate. Apteon or WePay will notify you of the amount of any required Reserve, which we, WePay and the Bank will determine in good faith. The Bank will hold and control any required Reserve. The Reserve will not bear interest, and the Bank can commingle the Reserve with other funds. You have no interest in any Reserve other than a contingent right to receive any unused funds. Apteon may periodically instruct the Bank to increase your required Reserve, or return Reserve funds no longer needed to manage your risk. When we and the Bank decide a Reserve is no longer needed, the Bank will return all unused Reserve funds to you. The right to require a Reserve will survive termination of this Agreement. This means that this Section 13 will remain in force even if you or we terminate the Agreement.

#### 10. Apteon Support, Maintenance, Availability, and Training

A. We may need to carry out routine or urgent maintenance for the Services from time to time. We will use commercially reasonable efforts to inform Merchant of any downtime that we anticipate will affect the Services and to restore the Services as soon as reasonably practicable; provided, however, that we will not be liable if any or all of the Services is unavailable at any time or for a period of time for any reason.

B. We (Apteon) will send out an email with the details of the successful transaction with a payment reference number to the Purchaser and the successful payment status will be confirmed and displayed in our Apteon Merchant portal

C. Merchant acknowledges and agrees that Apteon: (a) is not a financial institution and does not provide banking or payment processing services; (b) is not a party to the payment transactions performed by Merchant and Purchasers using the Apteon's Service; (c) does not hold or transmit any funds belonging to Purchasers or Merchants; (d) is not liable for delays in delivery of Purchasers' payments for any reason, including, but not limited to, as a result of the actions or inactions any banks, processors, card networks, or other third parties; (e) is not liable for any Purchasers' payments that are not completed because: (i) a Purchaser's payment account does not contain sufficient funds to complete the transaction or the transaction would exceed the credit limit or overdraft protection of Purchaser's payment account; (ii) a Purchaser has not provided us with correct or updated payment account information; or (iii) a Purchaser's payment account has expired.

D. The amount of a payment may be charged back to you if (a) it is disputed by a Purchaser, (b) it is reversed for any reason, (c) it was not authorized or we have any reason to believe that the transaction was not authorized, or (d) it is unlawful, suspicious, or in violation of the terms of this Agreement. You are responsible for all chargebacks, whether or not the chargeback complies with the Card Network Rules. You are also responsible if a Purchaser reverses a payment by bank transfer, whether or not the reversal complies with the ACH Rules. We will use commercially reasonable efforts to assist Merchant in disputing and resolving any chargebacks or reversals of Purchasers' payments.

#### 11. Cardholder Data Security

"Cardholder Data" is information associated with a payment card, such as account number, expiration date, and CVV2. Apteon will require WePay to comply with the Payment Card Industry Data Security Standards ("PCI DSS") to the extent WePay possesses or otherwise stores, processes, or transmits Cardholder Data on your behalf.

If you handle, transmit, or store any Cardholder Data in connection with your use of the Service or the Apteon API, you agree to comply at all times with PCI DSS. Further, you agree to certify such compliance and provide documentation in accordance with Card Network Rules, or when asked by Apteon to do so. You also agree that you will use only PCI DSS compliant service providers in connection with the storage, processing, or transmission of Cardholder Data.

You are fully responsible for the security of data (including but not limited to Cardholder Data) on your website, in your invoice or otherwise in your possession or control and Apteau and WePay will not be liable for the security of any such data including information contained within your invoices. You will need to provide adequate security such as password protecting any invoice that may have sensitive information. You agree to comply with all applicable laws, Card Network Rules and ACH Rules in connection with your collection, security and dissemination of any personal, financial, or transaction information.

#### 12. Taxes

You are responsible for determining any and all taxes assessed, incurred, or required to be collected, paid, or withheld, in connection with your use of the Service. You are solely responsible for collecting, withholding, reporting and remitting any taxes to the appropriate tax authority. Apteau is not obligated to, and will not, determine whether taxes apply, or calculate, collect, report or remit any taxes to any tax authority arising from your use of the Service.

#### 13. Customer Service Provided by Merchants

You are solely responsible for all customer service issues relating to your goods or services, including pricing, order fulfillment, order cancellation by you or the Purchaser, returns, refunds and adjustments, rebates, functionality and warranty, technical support and feedback concerning experiences with your personnel, policies or processes. In performing customer service, you will always present yourself as a separate entity from Apteau.

#### 14. Refunds and Returns Provided by Merchants

You agree to process returns of, and provide refunds and adjustments for goods or services through your Account in accordance with this Agreement, the Card Network Rules and the ACH Rules. The Card Network Rules require that you will (a) maintain a fair return, cancellation or adjustment policy, (b) disclose your return or cancellation policy to Purchasers at the time of purchase, (c) not give cash refunds to a Purchaser in connection with a payment card sale, unless required by law, and (d) not accept cash or any other item of value for preparing a payment card sale refund. Your refund policies must be the same for all payment methods. If your Purchaser is dissatisfied with your refund policy, the Purchaser may chargeback the payment.

#### 15. How Apteau Handle Chargebacks

You agree to assist us when requested, at your expense, to investigate any of your transactions processed through the Service. To that end, you permit us to share information about a chargeback or reversal with the Purchaser, the Purchaser's financial institution, and your financial institution in order to investigate and/or mediate a chargeback or reversal. We will request necessary information from you to contest the chargeback or reversal.

You acknowledge that your failure to assist us and the Platform in a timely manner when investigating a transaction, including providing necessary documentation within seven (7) days of a request, may result in an irreversible chargeback or reversal. We reserve the right, upon notice to you, to charge a fee for mediating and/or investigating chargeback and reversal disputes.

#### 16. Statements and Errors

Apteau will provide a report of activities, including transactions and fees, relating to the Service ("Statement"), which is available for you to download from on our online Merchant Portal. Apteau is responsible for you relying on balance, transaction or related information that is updated or corrected, or the accuracy or timeliness of information supplied by any third party. You agree that the Statements are sufficient for you to inspect and review activity and to identify errors and unauthorized or altered transactions. You will promptly examine your entire Statement once it is available. You will promptly, and no later than 60 calendar days after the Statement date, reconcile your Statement with your bank statements and other receipts from the same period, and notify Apteau or the Platform of any: (a) unauthorized transactions, including any claims of such activity or requested adjustments, (b) alterations, errors, discrepancies and irregularities, or

(c) discrepancies you identify when reconciling with your bank statements and other receipts. If you do not act in the timeframes above, you agree that you cannot: (i) assert you exercised reasonable care and promptness in reviewing your Statement and identifying errors, (ii) be reimbursed for a "Claim" (as defined in Section 26 below) refused as a result, and (iii) make a Claim or otherwise act against us for a subsequent loss that was preventable or caused by the same wrongdoer's repeated act. You should make archival copies of your Statement data regularly. Except as required by law, you are solely responsible for (a) compiling and retaining permanent records of all transactions and other data, and (b) reconciling all transaction information that is associated with your Account.

The Service is not a real-time system. You acknowledge that there may be a lag in the information presented depending on when the data was last refreshed and/or the connection status. We make no commitment that the Service, or the access thereof, will be uninterrupted, available at all times, or error-free.

#### 17. **Privacy**

By accepting and execution of this Agreement, you confirm that you have read, understood and accepted our Privacy Policy: <https://www.aptean.com/policy/privacy-policy>.

#### 18. **Purchaser Data**

Merchants acknowledges and agree that in the course of providing the Services, we will capture certain transaction and user information (collectively, the "Purchaser Data"). We do not own Purchaser Data. You have the sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use all the Purchaser Data, and We shall not be responsible or liable for: (i) damages resulting from our reliance on such Purchaser Data and/or (ii) the deletion, correction, destruction, damage, or loss of any data that result from Merchant's actions. We are not responsible for restoring lost data or damage to Purchaser's data that results from Merchant's actions. You represent and warrant that you have provided notice to, and obtained consent from, any third party individuals whose personal data you supply to us as part of our Services with regard to (i) the purpose for which such third party's personal data has been collected (ii) the intended recipients or categories of recipient of the third party's personal data and (iii) the Purchaser Data does not violate the privacy rights, publicity rights, copyright rights, or other rights of any person or entity. We have the right (but not the obligation) to review any Purchaser Data and delete any Purchaser Data that in the sole judgment of us violates this Agreement, is prohibited content, is illegal, violates the rights, harms, or threatens the safety of any user or any other person, or creates liability for us, our suppliers, or any user on five (5) days' written notice to Purchaser specifying the alleged default or violation. We reserves the right (but has no obligation) to investigate and take action in its sole discretion against Purchaser if Purchaser violates this provision or any other provision of this Agreement, including without limitation, removing Purchaser Data from the Service, terminating the Agreement, reporting Purchaser to law enforcement authorities, and taking legal action against Purchaser .

#### 19. **Security**

We have implemented technical and organizational measures designed to secure your personal information from accidental loss and from unauthorized access, use, alteration or disclosure. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures or use your personal information for improper purposes.

If you discover a security-related issue, including any unauthorized use of your access credentials or Account, you will inform us of the issue immediately by contacting the Aptean Security Team at [security@aptean.com](mailto:security@aptean.com) and [snehalkumar.kamble@aptean.com](mailto:snehalkumar.kamble@aptean.com). You also agree not to disclose the issue until WePay and Aptean have addressed it unless otherwise required by law.

#### 20. **Your Right to Terminate**

You may terminate this Agreement by closing your Account at any time. When you close your Account, any pending transactions will be cancelled.

## 21. Our Right to Terminate

Aptean may terminate this Agreement and close your Account for any reason or no reason at any time upon notice to you. Aptean may also suspend the Service and instruct the Bank to suspend access to your Account (including the funds in your Account) if you (a) have violated the terms of Aptean Pay's policies, Aptean's policies, or this Agreement, (b) pose an unacceptable credit or fraud risk, or (c) provide any false, incomplete, inaccurate, or misleading information or otherwise engage in fraudulent or illegal conduct.

## 22. Effect of Termination

If your Account is terminated for any reason or no reason, you agree: (a) to continue to be bound by this Agreement, (b) to immediately stop using the Service, (c) that the license provided under this Agreement shall end, (d) that WePay and Aptean have the right to delete all of your information and Account data in accordance with our record-keeping policies and applicable law, and (e) that neither WePay nor Aptean shall be liable to you or any third party for any of the foregoing actions. Neither WePay nor Aptean will be liable to you for compensation, reimbursement, or damages in connection with any termination or suspension of Service. Any termination of this Agreement does not relieve you of any obligations to pay any fees or costs accrued prior to the termination and any other amounts owed by you to us or the Platform as provided in this Agreement. After termination of this Agreement, you continue to be liable for all chargebacks, refunds, fees, Payment Network Liabilities, and adjustment resulting from or relating to transactions processed pursuant to this Agreement. If you submit transactions to us after the date of termination, we may, but are not required to, process such transactions. All transactions we process will be in accordance with and subject to all the terms of this Agreement. This Section 28 will survive termination of this Agreement.

## 23. Our Intellectual Property Rights

We grant you a personal, limited, non-exclusive, revocable, non-transferable license, without the right to sublicense, to electronically access and use the Service solely to accept and receive payments and to manage the funds you so receive.

Except as stated herein, Merchant shall use the Service solely for Merchant's internal business purposes, in compliance with applicable law, and shall not: (i) sublicense, lease, or otherwise make the Service or Software available to any unauthorized third party; (ii) send or store infringing, unlawful, defamatory or libelous material; (iii) send or store any Malicious Code; (iv) access the Service by any means other than the Login or otherwise attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Service or the data contained therein; (v) modify, copy or create derivative works based on the Service; (vi) reverse engineer the Service or Software; (vii) access the Service or Software for the purpose of building, selling, marketing or otherwise, a competitive product or service or copying the Software or Service's features or user interface; or (viii) remove the copyright, trademark, or any other proprietary rights or notices included within the Service or Software and on and in any documentation or training materials. Merchant shall not make any attempt to overwhelm the server resources of the Service or otherwise induce a denial-of-service attack on the Service through some combination of search requests.

## 24. Your Representations and Warranties

You represent and warrant to us that: (a) you are eligible to register and use the Service and have the right, power, and ability to enter into and perform this Agreement; (b) the name identified by you when you registered is your name or business name under which you sell goods and services; (c) any sales transaction submitted by you will represent a bona fide sale by you; (d) any sales transactions submitted by you will accurately describe the goods and/or services sold and delivered to a Purchaser; (e) you will fulfill all of your obligations to each Purchaser for which you submit a transaction and will resolve any consumer dispute or complaint directly with the Purchaser; (f) you and all transactions initiated by you will comply with all federal, state, and local laws, rules, and regulations applicable to your business, including any applicable tax laws and regulations; (g) except in the ordinary course of business, no transaction submitted by you through the Service will represent a sale to any principal, partner, proprietor, or owner of your entity; (h) you will not use the Service, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the use of the Service; (i) you shall comply with all applicable privacy and data protection laws in effect from time to time to the extent of applicable to this Agreement and the access and use of the Service.



25. **Waiving Special Damages**

Aptean shall not be liable for any "Special Damages," defined following, regardless of the form of action and even if advised of a possibility of Special Damages. "Special Damages" means indirect, special, incident, speculative, remote, exemplary, punitive or consequential damages, lost profits, loss of business or goodwill, tax or late payment penalties and damages, including any related to system or equipment issues, access to any online service, service providers, and problems or delays using the Services.

26. **Timely Filing of Claims**

As used in this Agreement, "Claim" means an actual or potential action, loss, claim, dispute, controversy, damage, demand, liability, garnishment, lien, levy or other order, cost or expense, including Special Damages (as defined in Section 25 above), attorney fees and dispute resolution costs. You must file a Claim in connection with the Service with a tribunal or court of competent jurisdiction within two years of the event that gave rise to the Claim. Failure to do so will mean you have waived that Claim against us.

27. **Indemnification and Holding Harmless**

Merchant shall, at Merchant's expense, defend and/or settle any claim, suit or proceeding brought by a third party ("Claims") against Aptean its affiliates, and their respective members, partners, owners, officers, directors, employees, Aptean's agents and representatives and arising out of or related to: (i) your breach of privacy and data protection laws; and (ii) Merchant's unauthorized use of the Services. (iii) breach of this Agreement (iv) you claiming against a Card Network or payment network relating to the WePay Service or a transaction (v) you, us incurring fees, fines or penalties arising from you breaching legal requirements, Card Network Rules or ACH Rules, (vi) you or anyone else using the Service with your access credentials

This indemnification does not apply to any Claims to the extent it is directly caused by our negligence, recklessness or willful misconduct.

Indemnity obligations in this Agreement remain in force after your Account closes or this Agreement or the Service terminates.

28. **Disclaimers of Warranties.**

A. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED TO MERCHANT HEREUNDER STRICTLY ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTY OF ANY KIND, AND APTEAN, WEPAY AND THE BANK HEREBY DISCLAIM ANY AND ALL CONDITIONS, REPRESENTATIONS, AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, ACCURACY OF DATA. NON-INFRINGEMENT. NON-INTERFERENCE. AND FITNESS FOR A PARTICULAR PURPOSE. WHERE LEGAL REQUIREMENTS IMPOSE AN IMPLIED WARRANTY BY US OR THE BANK, SUCH WARRANTY ENDS 30 DAYS FROM THE DATE THE SERVICE IS FIRST AVAILABLE TO YOU.

APTEAN. WEPAY AND THE BANK DO NOT WARRANT. ENDORSE. GUARANTEE. OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A MERCHANT OR OTHER THIRD PARTY THROUGH THE SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE. OR FEATURED IN ANY BANNER OR OTHER ADVERTISING. NEITHER APTEAN. WEPAY NOR THE BANK WILL BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

B. WITHOUT LIMITING THE FOREGOING, NEITHER APTEAN, WEPAY OR THE BANK MAKES NO WARRANTY THAT (A) THE SERVICES WILL MEET MERCHANT'S REQUIREMENTS; (B) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (C) THE RESULTS THAT MAY BE OBTAINED FROM ACCESS TO OR USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE; OR (D) ANY ERRORS IN THE SERVICES WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY APTEAN OR ANY OF OUR AUTHORIZED REPRESENTATIVES WILL CREATE ANY WARRANTY.

29. **Limitation of Liability.**

- A. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL APTEAN, WEPAY OR THE BANK, THEIR AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS, OR AGENTS BE LIABLE TO MERCHANT OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, OR FOR DAMAGES OR COSTS INCURRED AS A RESULT OF A LOSS OF TIME, SAVINGS, PROPERTY, PROFITS, BUSINESS, CONTRACTS, REVENUE, ANTICIPATED SAVINGS, DATA, OR GOODWILL, OTHER COMMERCIAL OR ECONOMIC LOSS ARISING OUT OF OR RELATED TO APTEAN PAY TERMS OF SERVICE OR THE SERVICES, EVEN IF APTEAN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR EVEN IF ANY CLAIM FOR FORSEEABLE END USER LOSS OR PAYMENT BRAND LIABILITIES FOR THE USE OF INTEGRATED SERVICES WITH WEPAY. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY WHETHER OR NOT THE ALLEGED BREACH IS A FUNDAMENTAL BREACH, OR WHETHER ANY WARRANTY FAILS OF ITS ESSENTIAL PURPOSE.
- B. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, APTEAN'S, WEPAY'S AND THE BANK'S AGGREGATE LIABILITY TO MERCHANT FOR ANY CLAIM WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION WILL BE LIMITED TO THE GREATER OF THE TOTAL AMOUNT OF FEES (IF ANY) ACTUALLY PAID BY MERCHANT UNDER THESE TERMS FOR THE 12-MONTH PERIOD PRIOR TO WHEN THE CLAIM WAS BROUGHT
- C. MERCHANT HEREBY RELEASES APTEAN, WEPAY AND THE BANK (AND OUR EMPLOYEES, OFFICERS, DIRECTORS, AND AGENTS) FROM ALL CLAIMS, DEMANDS, AND DAMAGES OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY DISPUTE BETWEEN MERCHANT AND A CUSTOMER.
- D. THE PARTIES AGREE THAT THE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS IN THESE TERMS ARE ESSENTIAL ELEMENTS OF THESE TERMS AND REPRESENT A REASONABLE ALLOCATION OF RISK BETWEEN THE PARTIES. IN PARTICULAR, MERCHANT UNDERSTANDS THAT WE WOULD BE UNABLE TO PROVIDE THE SERVICES TO MERCHANT EXCEPT ON THESE TERMS AND AGREES THAT THESE TERMS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THESE TERMS IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE.

30. **Governing Law and Venue**

The internal laws of Georgia (without reference to its conflict of laws rules) apply to this Agreement, subject to any modifying "Legal Requirements," defined following. "Legal Requirements" means each applicable law, ordinance, decree, requirement, order, judgment, rule, regulation, directive, circular, interpretive letter, guidance or other official release (or a related interpretation) of a government authority or a regulatory (including self-regulatory) organization to which a party and/or its affiliates is subject, including (a) all applicable anti-money laundering laws, rules and regulations, (b) "Know-Your-Customer" and sanctions laws, rules and regulations, (c) Federal Reserve Board regulations, and (d) tax regulations. All rights and remedies relating to this Agreement, Legal Requirements, the ACH Rules and the Card Network Rules are cumulative and do not exclude any other rights or remedies. The maximum amount of pre- and post-judgment interest in connection with any Claim will be the lower of the prime rate and the rate set by the Laws of Georgia.

Disputes relating to the Service will be resolved by a court of competent jurisdiction in the State of Georgia and you agree to submit to this jurisdiction.

This Section 31 does not prevent us from starting proceedings in a court of any state with jurisdiction, including concurrently in any number of states.

31. **Assigning this Agreement; Change of Control**

We must agree in writing before you transfer or assign this Agreement (including by operation of law or merger). Without our consent, such transfer or assignment is void and may result in us immediately terminating the Agreement. Where we do agree, an assignee or transferee is subject to this Agreement and the obligations and liabilities you owed to us before the date it is transferred or assigned.

We must agree in writing before an assignee can continue, assume or assign this Agreement for the benefit of a creditor, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or court officer, or a person taking charge of your assets or business.

We or the Bank can at any time assign or transfer this Agreement, in whole or in part, or any or all of our respective rights and obligations under this Agreement.

You will give us notice at least 60 calendar days before you sell all or substantially all of your assets, or a person becomes a beneficial owner with more than 50 percent of the combined voting power of your ownership interests, or acquires voting control. You will give us information we request about a major asset sale or ownership change.

32. **Third Party Services and Links to Other Websites**

You may be offered services, products and promotions provided by third parties and not by Apteau. If you decide to use these third party services, you will be responsible for reviewing and understanding the terms and conditions associated with them. You agree that Apteau is not responsible for the performance of these services. The Website may contain links to third party websites. The inclusion of any website link does not imply an approval, endorsement, or recommendation by Apteau. You agree that you access any such website at your own risk, and that the site is not governed by the terms and conditions contained in this Agreement. Apteau expressly disclaims any liability for these websites. Please remember that when you use a link to go from the Website to another website, our Privacy Policy is no longer in effect. Your browsing and interaction on any other website, including those that have a link on our Website, is subject to that website's own rules and policies.

33. **Amendment of Agreement**

We have the right to change the terms of this Agreement at any time with notice that we in our sole discretion deem to be reasonable in the circumstances, including posting the revised Agreement on our Website. Any use of the Service after such notice or posting shall constitute your acceptance of this Agreement as modified.

34. **Force Majeure**

Neither Apteau nor Merchant are liable for not carrying out, or delaying performance of, any actions caused by an act of God, a government authority, any Card Network, the ACH, a catastrophe, war or terrorism, civil or labor disturbance, fire, flood, other natural disaster, or any other cause beyond our reasonable control.

35. **Survival**

Any provision that is reasonably necessary to accomplish or enforce the purpose of this Agreement shall survive and remain in effect in accordance with its terms upon the termination of this Agreement.