

HOSTED SERVICES TERMS

The following Hosted Services terms and conditions ("Terms and Conditions") shall apply to any Customer receiving hosting services from Apteian, Inc. or any of its subsidiaries or affiliates (collectively, "Apteian").

1. Definitions

- (a) "Agreement" means the license agreement between Customer and Apteian relating to the software being hosted under these Term and Conditions (the "Software"). These Terms and Conditions are incorporated into the Agreement.
- (b) "Concurrent Users" means the number of Users which may access the Software at any one time. Each simultaneous "log on" from a separate PC or terminal device shall be deemed a Concurrent User.
- (c) "Customer" means the party receiving the Software license as set forth in the Agreement.
- (d) "Customer Data" means any data, information or material provided to Apteian or uploaded to the Service by or on behalf of Customer in the course of Customer using the Service.
- (e) "Customer Equipment" means Customer's computer hardware, software and network infrastructure used to access the Service.
- (f) "Customer Error Incident" means any Service unavailability related to Customer's applications, Customer Data, Customer Equipment, or the acts or omissions of any User of the Service.
- (g) "Initial Subscription Term" means the initial period of time during which a specified number of Users are licensed to use the Service set forth in the applicable Order Form.
- (h) "Login" means the username and password assigned by Customer for each User.
- (i) "Malicious Code" means any computer viruses, worms or any other software that is intended to damage or alter a computer system or data.
- (j) "Named User" means any individual for whom there is Login account permitting such individual to access and use a component of the Software.
- (k) "Order Form" means Apteian's order form whereby Apteian agrees to supply the Service.
- (l) "Overage" means the number of Users, transactions, amount of bandwidth or storage or any other specified metric above the committed level for the selected tier, as applicable, as forth in the Order Form.
- (m) "Service" means the hosted, on-demand, web-based service offered by Apteian as described in the Order Form.
- (n) "Subscription Term(s)" means the period(s) of time during which a specified number of Users are licensed to use the Service as set forth in the Order Form, including the Initial Subscription Term.
- (o) "Third Party Products" means certain products and/or services provided by third parties that Apteian provides access to as part of the Services.
- (p) "User" means any individual with an active account.

2. Service.

- (a) Apteian will provide Customer with use of the Service, which may include a browser interface and encrypted login (when required), transmission, access to and storage of Customer Data. Apteian may, in its sole discretion, enhance the Service from time to time, at no cost to Customer. Apteian may grant Customer access to the Service via a dedicated website, VPN access or otherwise. Apteian will configure the Service, and Apteian will host the Service and any Service Deliverables used in conjunction with the Service. Apteian will begin such configuration following an executed statement of work or Order Form by the parties hereto. Except as stated herein, Customer may not customize the Service without Apteian's prior written consent or other than as part of integration services provided

by Apteau.

(b) Customer shall not have the right to transfer or assign rights to access or use the Service. All rights not expressly granted to Customer herein are expressly reserved by Apteau.

(c) Apteau hereby grants Customer a non-exclusive, non-transferable, non-assignable right to access and use the Service, subject to these Terms and Conditions. Customer may only (i) access the Software as stated in the Order Form; and (ii) permit such access by Users.

(d) Each User may be required to have a Login with unique user identification. Apteau reserves the right to require Customer to alter any password if Apteau believes it is no longer secure. Customer shall not permit more than one person to use each Login to access the Service or otherwise share login accounts, user identifications or passwords. Customer shall not deactivate a named individual's access to the Service and assign such access to another named individual without Apteau's prior written consent. Customer is liable for all access to the Service and activities conducted by individuals accessing the Service using the logins, including such individual's compliance with the terms herein.

(e) Except as stated herein, Apteau will maintain the Service at a reputable Internet service provider and hosting facility, where it is subject to commercially reasonable security precautions to prevent unauthorized access to the Service. Customer Data and the maintenance of Customer Data and such procedures shall comply with industry standards for the type of information maintained. However, Customer acknowledges that, notwithstanding such security precautions, use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Service, and Apteau will not be responsible for such acts.

3. Restrictions.

Except as stated herein, Customer shall use the Service solely for Customer's internal business purposes, in compliance with applicable law, and shall not: (i) sublicense, lease, or otherwise make the Service available to any unauthorized third party; (ii) upload, post, email, send, store or otherwise transmit, distribute publish or disseminate any material that is unlawful, defamatory, tortuous, vulgar, obscene libelous, infringing on any patent, trademark, trade secret, copyright, or other proprietary rights of any party or otherwise violates the legal rights of others; (iii) upload, post, email, send, store or otherwise transmit, distribute publish or disseminate 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; or (v) access the Service for the purpose of building, selling, marketing or otherwise, a competitive product or service or copying the Services features or user interface.

4. Customer's Responsibilities.

(a) Customer agrees to abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. Customer shall: (i) notify Apteau immediately of any unauthorized use of any login or any other known or suspected breach of security; (ii) report to Apteau immediately and use reasonable efforts to stop immediately any copying or distribution of content that is known or suspected by Customer to be infringing or unlawful; and (iii) not impersonate another Apteau customer or provide false identity information to gain access to or use the Service.

(b) Customer shall be responsible for any costs in connection with establishment and maintenance of Internet connectivity to the Service, including (without limitation) telephone, communications, internet service provider costs, computer hardware, modem, fees charged by third parties, insurance, internet access software, or any other costs incurred by Customer in accessing the Service.

(c) Apteau reserves the right to change these Terms and Conditions, at any time, without prior notice. In the event that any changes are made, the revised Terms and Conditions shall be posted at this URL immediately. Customer is responsible for reviewing these Terms and Conditions periodically for any modifications that may affect its rights or obligations hereunder.

5. Service Availability.

(a) Apteau does not control the flow of data to or from Customer's internet hosts and other portions of the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions caused by

these third parties can produce situations in which Customer's connections to the internet (or portions thereof) may be impaired or disrupted ("Internet Disruptions"). Customer hereby agrees that Apteau shall not be liable for any Service delays arising from any Internet Disruptions. Apteau shall make reasonable efforts to provide production environment service availability of ninety-eight (98%) measured on a quarterly basis ("Service Availability") not including: (i) Customer Error Incidents; (ii) Force Majeure (as defined in the Agreement); and (iii) Internet Disruptions. In order to enable Apteau to troubleshoot problems as necessary, Apteau uses an administrator account on each Customer environment and may utilize manual testing to confirm such failure. An interruption in the Service shall not be considered a breach of Apteau's obligations hereunder if: (i) Apteau promptly takes all reasonable steps to restore the Service; or (ii) the interruption in Service results from a Customer Error Incident, Force Majeure or an Internet Disruption.

(b) If Customer engages in activity that is not a legitimate use of the Service, such as security penetration tests, stress tests, spamming activity, or other activity for which the Service is not intended and it affects other Apteau customers, such use will be considered a material breach of these Terms and Conditions and Apteau may shut down Customer's Service until such activity ceases, with such service interruption not being counted against the above availability measure.

6. Customer Data.

(a) Apteau does not own any Customer Data. Customer, not Apteau, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Apteau shall not be responsible or liable for: (i) damages resulting from Apteau's reliance on such Customer Data; and/or (ii) the deletion, correction, destruction, damage, or loss of any data that result from Customer's actions. Apteau is not responsible for restoring lost data or damage to Customer's data that results from Customer's actions. Customer hereby grants to Apteau a non-exclusive, fully-paid and royalty-free license to reproduce, distribute, perform, display and otherwise use the Customer Data solely to provide the Service to Customer. Customer represents and warrants that: (i) Customer owns or otherwise has the right to grant the license set forth in this section for the Customer Data; and (ii) the Customer Data does not violate the privacy rights, publicity rights, copyright rights, or other rights of any person or entity. Apteau has the right (but not the obligation) to review any Customer Data and delete any Customer Data that in the sole judgment of Apteau violates these Terms and Conditions, is prohibited content, is illegal, violates the rights, harms, or threatens the safety of any User or any other person, or creates liability for Apteau, its suppliers, or any user on five (5) days' written notice specifying the alleged default or violation if the default or violation is not remedied within the notice period. Apteau reserves the right (but has no obligation) to investigate and take action in its sole discretion against Customer if Customer violates this provision or any other provision of these Terms and Conditions, including, without limitation, removing Customer Data from the Service, terminating these Terms and Conditions, reporting Customer to law enforcement authorities, and/or taking legal action against Customer.

(b) Apteau reserves the right to access and disclose Customer Data as necessary to comply with applicable laws and government requests, to operate or maintain the Services, to protect itself or its customers (including virus scanning), and to evaluate and improve the performance and implementation of the Services. Apteau reserves the right to perform statistical analyses of user behavior and characteristics and to provide aggregated or statistical analyses of data derived from the Services to third parties, provided that the information is presented in a manner which does not disclose the identity of the Customer. Except as (i) specifically stated in this provision; (ii) set forth in any supplemental terms; or (iii) upon instruction from Customer, Apteau will not disclose to third parties any Customer identifiable data in the course of providing the Services under these Terms and Conditions. Apteau will not sell or otherwise transfer Customer identifiable data to third parties without Customer's prior written approval.

(c) Apteau will maintain the Customer Data on server(s) at Apteau's designated site and provide backups to Customer's Data as follows in accordance with Apteau's then-current data backup policies. Apteau will use commercially reasonable efforts to perform restorations to the Service in the event of a service failure. Apteau reserves the right to withhold Customer Data without notice for any breach, including, without limitation, Customer's non-payment.

(d) Apteau hereby grants Customer a limited, non-sub-licensable license to reproduce and display the Customer Data (excluding any software code) solely for Customer's personal use in connection with using the Service. These Terms and Conditions do not constitute a sale and do not convey to Customer any rights of ownership in or related to the Service or the intellectual property rights owned by Apteau and its suppliers.

7. Charges and Fees.

(a) Apteian will invoice Customer for the Initial Subscription Term upon execution of the Order Form. Apteian will invoice Customer at least thirty (30) days prior to each anniversary date for any renewal terms. Other fees associated with Customer's actual usage will be charged in arrears.

(b) Customer may add Users at any time via an Order Form executed by the parties. Access to the Service for any such added Users shall be coterminous with the then-current Subscription Term and Users added in the middle of a billing month will be charged in full for that billing month. Customer will pay for any increase in Users upon execution of the Order Form setting forth the additional Users. Customer may only reduce the number of Users set forth in the applicable Order Form at the end of each Subscription Term.

(c) Apteian shall have the right to verify the number of Users under these Terms and Conditions at the end of each month at any time of the day.

8. Term and Termination.

(a) The Initial Subscription Term will be as indicated in the Order Form. Upon the expiration of the Initial Subscription Term, the term for Services will automatically renew for successive one-year terms unless Customer provides Apteian with thirty (30) days' prior written notice from the renewal date of non-renewal. Apteian shall have the right to immediately disable and deny access to the Service without notice in the event Customer materially breaches any of these Terms and Conditions or the Agreement.

(b) Notwithstanding the foregoing, either party may terminate the Services at any time with at least thirty (30) days' prior written notice thereof to the other. Upon such termination by Customer, other than due to a material breach by Apteian, Customer shall be responsible for payment of hosting fees for the remainder of the Subscription Term, which in no event shall exceed nine and one-half percent (9.5%) of the license fee for the Software related to the Services.

(c) Upon expiration of the Subscription Term or upon Customer's termination of the Services, as set forth in Section 8(b) of these Terms and Conditions, Apteian shall deliver the Software to Customer in accordance with the terms of the Agreement.

(d) Upon expiration of the Subscription Term or upon Customer's termination of the Services, as set forth in Section 8(b) of these Terms and Conditions, Apteian will, within thirty (30) days of Customer's request, make available to Customer an electronic copy of the Customer Data for an additional fee. Apteian will not provide Customer Data unless all amounts due and owing for the Services have been paid by Customer. After such 30-day period, Apteian shall have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.

9. Case Agent Roles.

In the event Customer licenses Apteian's Respond software, this Section 9 shall be incorporated into these Terms and Conditions and shall apply to the Service.

"Case Agent Roles" means user licenses (either Named User or Concurrent User) that exclusively access the "Case Agent" application provided under Apteian's Respond software only.

Customer acknowledges and agrees as follows

(a) If the Subscription Term is for one (1) year, Customer will receive Case Agent Roles equal to no more than fifty percent (50%) of the total number of Named User or Concurrent User licenses granted under the Agreement during each year.

(b) If the Subscription Term is for two (2) or more years, Customer will receive Case Agent Roles equal to no more than sixty percent (60%) of the total number of Named User or Concurrent User licenses granted under the Agreement during each year.