



## Aptum Partner Network Terms and Conditions

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**THESE TERMS AND CONDITIONS** (the “**Partner T&Cs**”) as amended from time to time set out the terms of agreement between the Company identified in paper partner profile form or online partner portal (whichever applies, each the “**Partner Profile Form**”), together with their affiliated group companies (the “**Partner**” or “**Partners**”), pursuant to which the Partner can participate in Aptum' designated partner programs, as more specifically outlined in the applicable “Partner Program Terms” (as updated from time to time) and which are incorporated into these Partner T&Cs by reference and, together with the documents outline in clause 2.3, form the “**Partner Agreement**”. By submitting a Partner Profile Form you are acknowledging and agreeing to the Partner T&Cs.

### 1. Contracting Entities

The Partner Agreement applies between the Partner referring a Qualified Lead or Qualified Sale (as defined within the applicable Partner Program Terms) and the Aptum entity providing the Services in respect of the Qualified Lead or Qualified Sale. Qualification for the Partner Programs, and specifically whether such qualification is determined on a joint Partner and affiliated group basis or solely based on an individual Partner basis shall be specified in the applicable Partner Program Terms.

### 2. Additional Applicable Terms

2.1 Partner Program Terms and eligibility. Each designated Aptum partner program will be subject to the applicable Partner Program Terms as amended from time to time. Eligibility for any Aptum Partner Program shall be as specified in the Partner Program Terms.

2.2 Geographic Terms and Partner location. Notwithstanding any applicable national laws or regulations that apply in respect of the provision of services in the country where the Partner is located, the Geographic Terms shall apply based on the geographic location from which the Services are provided to a Customer following a Qualified Lead (a “**Subscriber**”). By way of example, Services provided in the United States to a Subscriber will be subject to the ‘United States Geographic Terms’. Where Services are provided to a Subscriber from more than one geography, a ‘lead’ geography will be designated by Aptum and such Geographic Terms shall apply.

2.3 Precedence of Terms. The following documents shall form part of this Partner Agreement and, in the case of conflict between terms of the documents, shall apply in the following order of precedence:

- (a) Partner Profile Form
- (b) Partner Program Terms
- (c) Geographic Terms
- (d) These Partner T&Cs

### 3. Term and Termination

3.1 Term. The Partner Agreement shall be valid and apply between the parties until it is terminated by either party in accordance with the provisions of clause 3.2 below.

3.2 Termination. Either party may terminate this Partner Agreement:

- (a) immediately, in the event the other party has committed a breach that is incapable of remedy, or, in the event the breach can be remedied, after 5 working days (Monday to Friday) following the breaching party’s receipt of



a notice from the non-breaching party outlining the nature of the breach and its intention to terminate the Partner Agreement if such breach is not remediated within such 5 working day period. In the event of Aptum terminating the Partner Agreement for breach under this clause 3.3 (a), all benefits (including commission payments, rebates and other payments) pursuant to the Partner Programs shall immediately cease and no longer be payable; or

(b) immediately in the case of the other parties insolvency, petition for bankruptcy, filing for winding up (other than in the case of a solvent amalgamation, merger or reconstruction), arrangement with its creditors, ceasing of business or any analogous event in the jurisdiction in which the Partner or Aptum is based; or

(c) for convenience on 30 days prior written notice given to the other party.

Notwithstanding the foregoing, a Partner Program may be terminated or a Partner may be removed from a Partner Program pursuant to any such provision outlined within the Partner Program Terms.

**3.3 Effect of Termination.** Any provision contained in these Terms and Conditions that, by its nature, is applicable to circumstances arising after the termination of this Agreement will survive such termination and remain in full force and effect.

**3.4 Continuation of Partner Program benefits following termination of the Agreement.** Subject to clause 3.3 (a) (termination for breach), the duration, if any, that Partner Program benefits continue (including commission payments or rebate payments) following termination of the Partner Agreement shall be as specified in the applicable Partner Program Terms.

## **4. Relationship**

**4.1 Independent parties.** Aptum and Partner are independent business entities and nothing contained in this Partner Agreement places Aptum and Partner in the relationship of principal and agent, master and servant, partnership, or joint ventures. Neither party has, expressly or by implication, or may represent itself as having, any authority to make contracts or enter into any agreements in the name of the other party, or to obligate or bind the other party in any manner whatsoever.

**4.2 Additional services subject to separate agreement.** Partner and Aptum may, from time to time, each in its sole discretion, agree that Partner will perform additional tasks, such as installation and certain maintenance services, with respect to the Services on Aptum' behalf. Such additional services will only be agreed and performed pursuant to a separate agreement executed by Partner and Aptum.

**4.3 Duty of good faith.** Partner and Aptum shall exercise a duty of good faith and fair dealing between one another during the performance of this Agreement. Aptum will provide information about itself and its business to reasonably enable Partner to make a fair and accurate representation to potential customers, end users or other third parties about Aptum' business. Partner warrants that any information subsequently provided to potential customers, end users, or other third parties about Aptum will be accurate based on information actually received from Aptum.

**4.4 No commitment.** Nothing in this Agreement will require Partner to refer potential customers to Aptum or purchase Services from Aptum or to engage in any activities on behalf of or for the benefit of Aptum, through the Partner Portal or otherwise.



4.5 Non-exclusive relationship. Partner and Aptum are free to enter into similar agreements with other people and entities. Partner and Aptum further agree that no exclusive arrangement is implied or agreed to as a result of Aptum agreement to pay commissions hereunder or to allow Partner to resell, market, promote, or provide the Services to potential customers or end users.

## **5. Partner Requirements and Warranties**

5.1 Partner will complete a Aptum Partner Profile and will provide all information requested by Aptum.

5.2 Partner agrees that Aptum may, in Aptum' sole discretion, publicly refer to Partner, orally and/or in writing. Partner expressly consents to be listed in Aptum' Partner directory and Aptum' online management portal (“**Partner Portal**”) and identified as a “Partner.” Partner grants to Aptum and those acting with Aptum' authority the right to use Partner’s name, trade name, trademark, image, logo and other information provided to Aptum in connection with the Partner Programs.

5.3 Partner hereby represents and warrants to Aptum that:

(a) the information submitted by Partner to Aptum is true and correct in all material respects;

(b) Partner will not make any representations concerning the Services of Aptum except those that have been approved or published by Aptum;

(c) Partner will not distribute any documents or materials describing the Services of Aptum, or make any representations about the same, except that have been approved or published by Aptum (including but not limited to any legal or commercial documentation);

(d) Any information provided to potential customers, end users, or other third parties about Aptum will be accurate and will reflect a legitimate business opportunity for Aptum;

(e) Partner will act in good faith and not make any statement, or take any action, that could reasonably be expected to reflect poorly on Aptum or on the reputation of Aptum or its products and services, and

(f) Partner has obtained from any potential customers, end users, or other third parties any and all approvals and permissions that are necessary for Partner to submit information regarding such potential customers, end users, or other third parties to Aptum.

## **6. Continued Qualification and Audit**

Aptum reserves the right in its sole discretion to audit each Partner on a monthly basis to determine whether such Partner continues to meet the qualifications and requirements of the Partner agreement and the Partner Program. If Partner fails to meet the criteria as a Aptum Partner, then Aptum may reassign or terminate Partner’s status, in which case any future commissions or discounts will be immediately readjusted on a prospective basis.

## **7. Aptum Intellectual Property**

Aptum' trademarks, tradenames, service marks, logos, other names and marks, and related product and service names, design marks, and slogans are the sole and exclusive property of Aptum. Except as otherwise provided



in these Terms and Conditions, Partner may not use any of the foregoing in any manner without the prior written consent of Aptum. Any feedback, data, information, answers, questions, comments, suggestions, improvements, modifications, ideas, or the like which Partner sends to Aptum relating to any products or services provided by Aptum will be treated as being non-confidential and non-proprietary. Aptum may use, disclose, or publish any ideas, concepts, know-how, or techniques contained in such information for any purpose whatsoever.

## **8. Payment, Invoicing and Tax Status**

8.1 Invoicing. Partner is required to issue Aptum a valid tax invoice in respect of any commissions, rebates or other payments. Aptum reserves the right to notify Partner and/or modify the requirements of what is deemed to be a valid invoice.

8.2 Payment. Payment of commissions, rebates and other payments including discounts shall be in accordance with the applicable Partner Program Terms.

8.3 Local tax requirements. Partner will cooperate and work with Aptum in respect of complying with any applicable local tax requirements of the country in which the Partner is located, including providing any necessary local tax filings or other formalities such as a business taxpayer identification document prior to qualifying for any payments or rebates pursuant to this Partner Agreement. For the avoidance of doubt, any commission or rebate payments quoted pursuant to the Partner Program Terms, unless otherwise stated, are inclusive of applicable withholding, sales or value added tax. Partner will identify any such applicable tax on its invoices to Aptum and indemnify Aptum in respect of any claim by national or other tax authorities for such withholding, sales or value added tax that has not been identified to Aptum at the time of invoicing.

### **8.4 Set-off.**

Aptum shall be entitled to set-off any amount it owes to Partner pursuant to a Partner Program benefit against any other amount owing by Partner to Aptum.

## **9. Disclaimer of Warranties**

Except where expressly provided in Aptum' then-applicable standard terms and conditions located at <http://www.peer1.com/about-us/legal/terms-and-conditions>, Aptum makes no representations or warranties whatsoever to Partner regarding the Services and, to the extent permitted by applicable law, Aptum disclaims any and all other express or implied warranties or conditions not expressly stated herein including, without limitation, any warranties of merchantability, fitness for a particular purpose, and non-infringement.

## **10. Limitation of Liability**

EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THE PARTNER AGREEMENT OR A BREACH OF THE OTHER PARTY'S CONFIDENTIAL INFORMATION, NEITHER PARTY WILL BE LIABLE IN ANY WAY TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY LOST PROFITS OR REVENUES, LOSS OF USE, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, LICENSES OR SERVICES OR SIMILAR ECONOMIC LOSS, OR FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR SIMILAR DAMAGES OF ANY NATURE, WHETHER FORESEEABLE OR NOT, UNDER ANY WARRANTY OR OTHER RIGHT HEREUNDER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF A PROVISION UNDER THE PARTNER AGREEMENT, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES. IN NO EVENT WILL APTUM' LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THESE



TERMS AND CONDITIONS OR RELATED TO THE CHANNEL PARTNER PROGRAM, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO PARTNER UNDER THIS AGREEMENT DURING THE THREE MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

## **11. Indemnification**

11.1 Partner shall defend, indemnify, and hold harmless Aptum, its affiliates, and their respective present, former, and future officers, directors, employees, and agents, and their respective heirs, legal representatives, successors, and assigns (collectively, "**Aptum Indemnitees**") from and against any and all losses, damages, costs, liabilities, and expenses (including, without limitation, amounts paid in settlement and reasonable attorneys' fees) that any of the Aptum Indemnitees may suffer, incur, or sustain resulting from or arising out of (i) Partner's breach of any representation, warranty, or covenant contained in these Terms and Conditions, (ii) services provided by Partner to any Aptum customer, and (iii) claims or actions of third parties alleging unfair or deceptive trade practices or false advertising in connection with statements or claims made by Partner pertaining to Aptum' services.

11.2 Aptum shall defend, indemnify, and hold harmless Partner, its affiliates, and their respective present, former, and future officers, directors, employees, and agents, and their respective heirs, legal representatives, successors, and assigns (collectively, "**Partner Indemnitees**") from and against any and all losses, damages, costs, liabilities, and expenses (including, without limitation, amounts paid in settlement and reasonable attorneys' fees) that any of the Partner Indemnitees may suffer, incur, or sustain arising out of any third party claim alleging that the Services as provided by Aptum infringe any third party's intellectual property rights.

## **12. Confidentiality**

12.1 "Confidential Information" means all technical, business and other information of a party that is not generally known to the public, that derives value, economic or otherwise, from not being generally known to the public or to other persons who can obtain value from its disclosure or use, and which information is subject to efforts that are reasonable under the circumstances to maintain the secrecy thereof.

12.2 Each party will not, without the prior written consent of the other party, use or disclose to any Person any Confidential Information of the other party disclosed or made available to it, except for use of such Confidential Information as required in connection with the performance of its obligations or use of the Services hereunder. Each party will treat the Confidential Information of the other party as secret and confidential, limit access to the Confidential Information of the party to those of its employees who require it in order to effectuate the purposes of these Terms and Conditions, and not disclose the Confidential Information of the other party to any other Person without the prior written consent of the other party. Each party acknowledges that disclosure of any aspect of the Confidential Information of the other party will immediately give rise to continuing irreparable injury to the other party inadequately compensable in damages at law, and, without prejudice to any other remedy available to the other party, will entitle the other party to injunctive or other equitable relief.

12.3 The following will not be considered Confidential Information:

(a) any information that the receiving party can demonstrate by written documentation was within its legitimate possession prior to the time of disclosure by the disclosing party,



(b) any information that was in the public domain prior to disclosure by the disclosing party as evidenced by documents that were published prior to such disclosure,

(c) any information that, after disclosure by the disclosing party, comes into the public domain through no fault of the receiving party,

(d) any information that is disclosed to the receiving party without restriction by a third party who has legitimate possession thereof and the legal right to make such disclosure, or

(e) any information that, two years after the exchange of such the Confidential Information, does not constitute a trade secret under applicable law.

### **13. Miscellaneous**

13.1 Governing Law. Notwithstanding any applicable local laws and regulations applicable to the payment of commissions, rebates and other payments, the governing law applicable to the Partner Agreement shall be as specified in the Geographic Terms.

13.2 Dispute Escalation. The parties shall use reasonable efforts to resolve any breach relating to this Agreement through good faith negotiations and dispute escalation prior to either party taking any legal action with respect to such breach, except that either party may seek immediate injunctive relief or any alleged or perceived violation of the other party's obligations with respect to Confidential Information. Such dispute escalation will involve senior representatives nominated by each party and, if reasonably required, ultimately include the executive management of each party if necessary. Only if such aforementioned dispute cannot be resolved through such dispute escalation within thirty (30) days from the expiration of the applicable cure period, would legal action be taken by either party to enforce its rights hereunder.

13.2 Force Majeure. Neither party will be liable for any failure or delay in performance under this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its reasonable control including, without limitation, acts of God, government restrictions (including, without limitation, the denial or cancellation of any export or other necessary license), wars, insurrections, or acts of terrorism.

13.3 Headings. The headings herein are for convenience only and are not part of these Terms and Conditions.

13.4 Notices. All notices and demands required or contemplated hereunder by one party to the other will be in writing and will be deemed to have been duly made and given upon date of delivery if delivered in person or by an overnight delivery or postal service, upon receipt if delivered by facsimile the receipt of which is confirmed by the recipient, or upon the expiration of five days after the date of posting if mailed by certified mail, postage prepaid, to the addresses or facsimile numbers (i) for Partner, the address listed on the Partner Application Form, and (ii) for Aptum, as designated on Aptum' web site for the giving of notices. Either party may change its address or facsimile number for purposes of these Terms and Conditions by notice in writing to the other party as provided herein.



13.5 Waiver. No failure or delay by any party hereto to exercise any right or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy by any party preclude any other or further exercise thereof or the exercise of any other right or remedy. No express waiver or assent by any party hereto to any breach of or default in any term or condition of these Terms and Conditions will constitute a waiver of or an assent to any succeeding breach of or default in the same or any other term or condition hereof.

13.6 Assignment. Partner may not assign or transfer its right or obligations under these Terms and Conditions without the prior written consent of Aptum. Any attempted assignment in violation of the foregoing provision will be null and void and of no force or effect whatsoever. Aptum may assign its rights and obligations under these Terms and Conditions, and may engage subcontractors or agents in performing its duties and exercising its rights hereunder, without the consent of Partner. These Terms and Conditions will be binding upon and will inure to the benefit of the parties hereto and their respective successors and permitted assigns.

13.7 No Third Party Beneficiaries. Except as expressly stated herein, nothing in these Terms and Conditions will confer any rights upon any person other than the parties hereto and their respective successors and permitted assigns.

13.8 Limitation of Actions. No action, regardless of form, arising by reason of or in connection with these Terms and Conditions may be brought by either party more than two years after the cause of action has arisen.

13.9 Entire Agreement; Severability. These Terms and Conditions set forth the entire agreement and understanding between the parties as to the subject matter contained herein and supersede all prior discussions, agreements, or understandings, and is not intended to confer upon any other person other than the parties any rights or remedies hereunder. If any provision contained herein is deemed unenforceable, the remainder will not be affected and will be enforced to the greatest extent permitted by law.

13.10 Aptum may update the terms of its partner programs or these Partner T&Cs on a prospective basis from time to time by posting the changes to this website or otherwise by notice. You acknowledge that by continuing to participate in any Aptum partner program you accept any such changes.

## **Geographic Terms**

### **1. Canadian Geographic Terms**

1.1 For the purposes of establishing the Aptum contracting entity pursuant to the Partner Agreement, where the Aptum services are provided to the Subscriber from, or the majority is provided from, Canada, then the Aptum contracting party shall be, dependent on the entity providing the Subscriber the Aptum services:

1.1.1 Aptum Managed Services (Canada), Inc. whose registered place of business is 191 The West Mall, 2<sup>nd</sup> Flr., Toronto ON M9C 5K8 Canada.

1.2 The Partner Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws Canada applicable therein, and all disputes arising out of or related to this Agreement will be brought exclusively in the courts located in the Province of Ontario; provided however that neither Party will be prevented from enforcing any related judgment against the other Party in any other jurisdiction.



## 2. United States Geographic Terms

2.1 For the purposes of establishing the Aptum contracting entity pursuant to the Partner Agreement, where the Aptum services are provided to the Subscriber from the United States then the Aptum contracting party shall be Aptum Technologies (USA), Inc. whose primary place of business is 250 East Grayson Street, San Antonio, Texas USA.

2.2 The Partner Agreement will be governed by, and construed in accordance with, the laws of the state of Washington, and all disputes arising out of or related to this Agreement will be brought exclusively in the courts located in the State of Washington; provided, however that neither Party will be prevented from enforcing any related judgment against the other Party in any other jurisdiction.

## 3. United Kingdom and European Union Geographic Terms

3.1 For the purposes of establishing the Aptum contracting entity pursuant to the Partner Agreement, where the Aptum services are provided to the Subscriber from the United Kingdom or otherwise in the European Union then the Aptum contracting party shall be Aptum Technologies (UK) Limited whose registered office is 30/31 Town Quay, Southampton UK.

3.2 The Partner Agreement will be governed by, and construed in accordance with, the laws of England and Wales, and all disputes arising out of or related to this Agreement will be brought exclusively in the courts located in England; provided, however, that neither Party will be prevented from enforcing any related judgment against the other Party in any other jurisdiction.