
K-Notes: Terms of Service

from **Coinme**

Big Picture vs. Extreme Protection

An inside lawyer could show the benefits of a more balanced and less severe Terms of Service agreement. A more balanced and even-keeled agreement might serve the company well.



Paul Swegle

General Counsel, Secretary CareXM

“If I have to deal with regulators, state attorneys general, the Federal Trade Commission... I just don’t want to throw a document over to a regulator that I know is not going to be well received”

KEY TAKEAWAYS

- **Low Liability**

While other companies like Twitter cap their liability at \$100, for a fintech company, this seems extremely low. If the customer is putting in lots of money, the liability should be higher.

- **Ask if the Indemnification is Too One-Sided**

Many contracts have indemnification clauses where both parties indemnify the other for certain acts or breaches. You want to avoid having only one party indemnify the other.

- **Fair to the User: Error Corrections**

If an error occurs that is not the user’s fault, it’s good business for the company to correct it in some measure. Putting all the risk on the user for things they cannot control will lead to discontent and complaints from users.

- **Distribute Risk Fairly**

Putting the risk all on the user is one-sided and may draw the attention of regulators, or be ruled as unconscionable in court. Drafting liability terms that distribute the risk more fairly can help avoid future issues and in the long run, attract more customers.

“There is absolutely no representation or warranty of any kind, which with a financial service I think is probably overreaching.”