

**WILSON
SONSINI**

**FINTECH AND
FINANCIAL SERVICES**

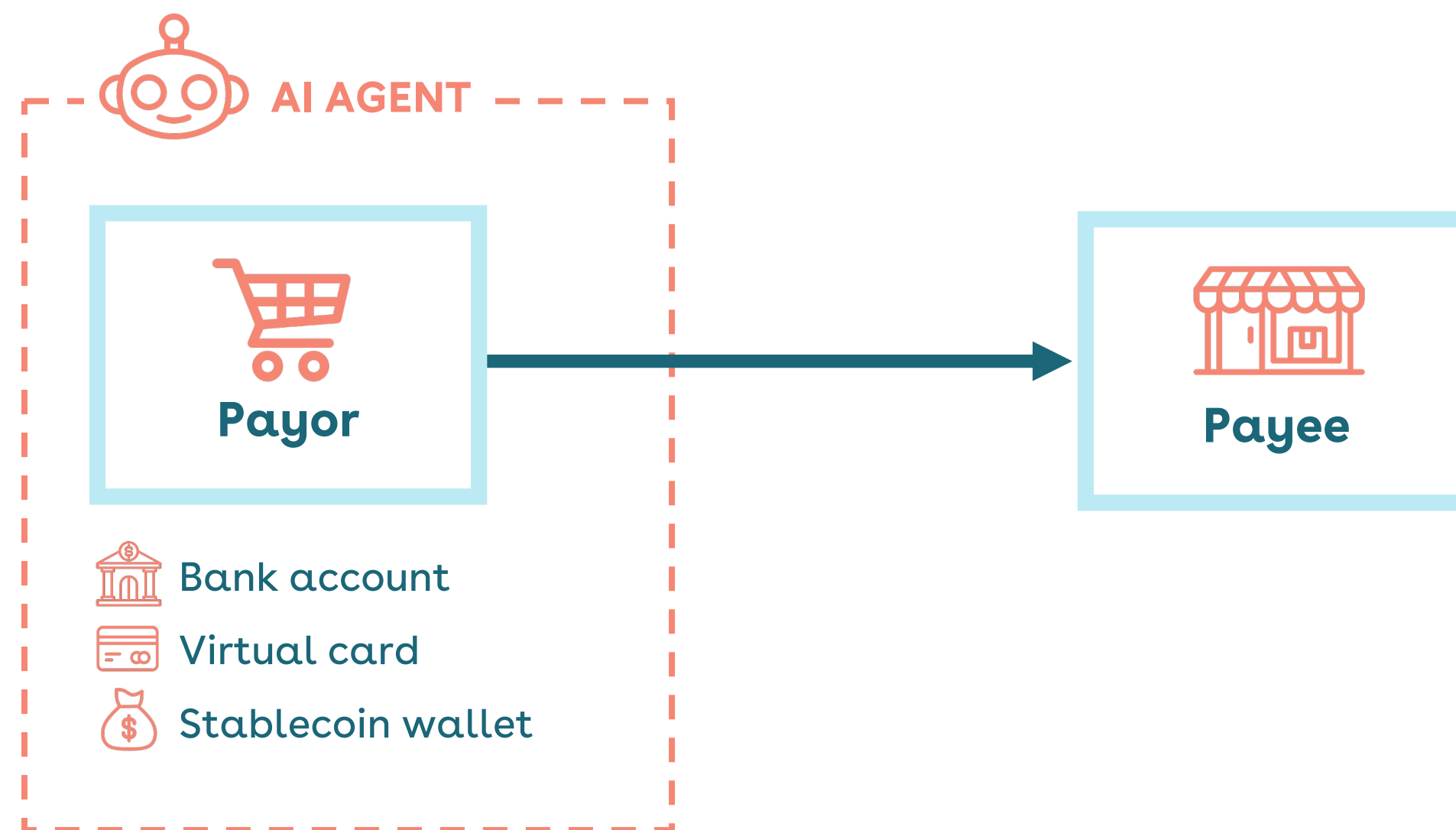
AGENTIC PAYMENTS PLAYBOOK



Payments
Playbook Series

Agentic payments are rapidly emerging as the next frontier in e-commerce, leveraging advancements in artificial intelligence and digital payments.

In this paradigm of digital commerce, **AI agents** are empowered to autonomously participate in transactions—including **making purchasing decisions** and **executing payments**—on behalf of a user, often with minimal or no real-time human involvement.



This technology-driven change in how payments are initiated raises new questions about **where a payment transaction begins** and ushers in a new form of **intent-driven payments**.

Payment technology providers can integrate agentic payments as an **overlay** to existing payment systems, leveraging their **connectivity** and **scale**.

A **cohesive legal strategy**—one that clearly maps how the agentic payments solution fits within existing payments laws and regulatory frameworks—is essential to the solution’s viability and long-term success.

This Agentic Payments Playbook helps developers of agentic AI navigate the regulatory and legal complexities by laying out the key considerations that are critical to success in the payments space.

User
Authorization

Attribution
of Agent
Behavior

Fairness &
Adequate
Disclosures

Product
Guardrails

USER AUTHORIZATION

A threshold consideration is whether a payment initiated by an AI agent is legally authorized by the user payor. Consider the following legal frameworks:

- The Electronic Fund Transfer Act (EFTA) and Regulation E, which apply to electronic fund transfers (EFTs) to or from consumer accounts, and in particular provisions addressing unauthorized EFTs and obligations of non-account-holding EFT service providers
- The Truth in Lending Act (TILA) and Regulation Z, which apply to consumer credit such as credit cards, and in particular provisions addressing unauthorized use
- Article 4A of the Uniform Commercial Code (UCC), which applies to wholesale wire transfers and certain instant payments, and in particular UCC provisions regarding authorized and verified payment orders and the incorporation of general agency principles and equitable doctrines
- Common law of agency, particularly with respect to how a principal may authorize an agent to act on their behalf through actual or implied authority



ATTRIBUTION OF AGENT BEHAVIOR

Also consider the degree to which other parties in the payment chain can attribute the actions of an AI agent in a particular transaction to the user payor. The following legal frameworks can provide the foundation for assessing attribution:

- Consumer protection laws, such as EFTA and Regulation E and TILA and Regulation Z, particularly provisions that address unauthorized transactions and instances where an agent exceeds the authority granted by the consumer
- The provisions of Article 4A of the UCC that address authorization and the binding effect of agreed-upon security procedures
- Agency law, which attributes an agent's actions to the principal when the agent acts with actual, apparent, or implied authority
- The Uniform Electronic Transactions Act, particularly the provisions which address automated transactions, an electronic agent's ability to form contracts on behalf of a person, and the effect of an error made by an individual in dealing with the electronic agent of another person
- Card network rules (e.g., Visa, Mastercard, Amex, Discover), which govern authorization, chargebacks, fraud liability, and dispute resolution for credit and debit card transactions



FAIRNESS AND ADEQUATE DISCLOSURES

Ensuring clear, transparent disclosures and fair treatment of users is critical to maintaining trust in the AI agent and withstanding any regulatory scrutiny, particularly in the following areas:

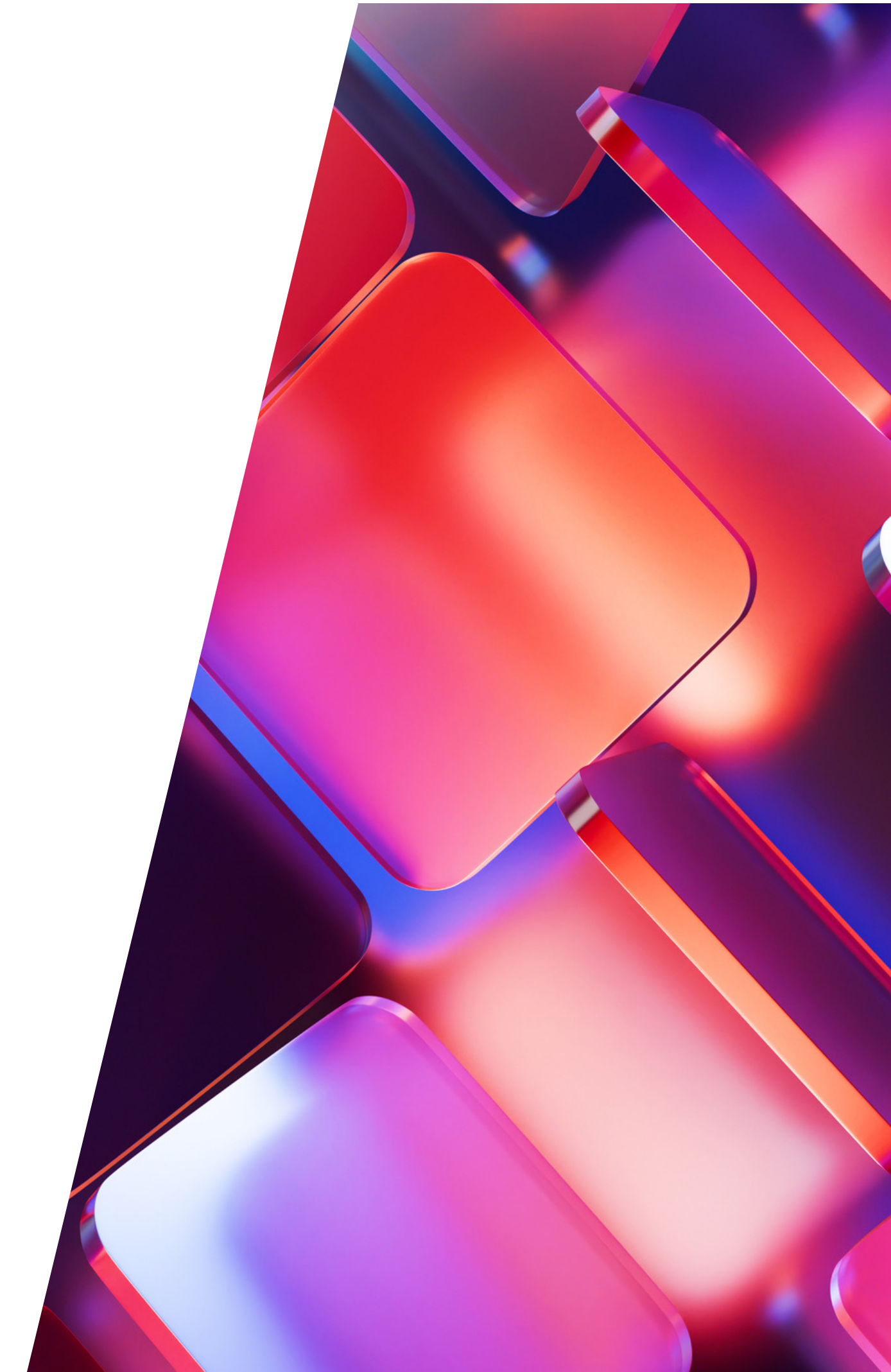
- Provide clear, concise, and easily accessible disclosures about how the AI agent operates, what authorizations are involved, and what risks users assume
- Use plain language designed to ensure users understand payment timing, fees, error resolution rights, and how to revoke or modify the AI agent's permissions
- Avoid misleading or ambiguous statements about the capabilities or limitations of the AI agent to mitigate the risk of unrealistic user expectations
- Ensure users receive advance notice of any material changes to AI agent functionality, terms of use, or payment initiation processes
- Implement robust consent mechanisms that require affirmative user action with respect to authorizing the AI agent to initiate payments on the user's behalf, with easy-to-use controls for managing or revoking authorization
- Monitor ongoing use for signs of misuse or unintended consequences and provide users clear avenues for reporting issues



PRODUCT GUARDRAILS

The greater the role of an AI agent in a payment transaction and the scope of delegation by the user, the more critical it is to have mitigants and controls for risks and vulnerabilities. Consider the following types of measures:

- To reduce the likelihood of inaccurate decisions by the AI agent (e.g., overpaying a vendor due to misread invoice data or misapplying a user's spending limits)
- To confirm that an AI agent is tied to a verified individual with authority to use the payment method and funds (e.g., collecting identifying information for the user payor, verifying the user's identity, and maintaining records of the user's identifying information)
- To mitigate the risk of bias that might be introduced by training data, training methods, or model algorithm choices (e.g., steering users toward certain merchants or payment methods)
- To track and audit decisions that the AI agent has made (e.g., logs of AI agent actions and transaction data)
- To allow for appropriate human oversight of the AI agent in certain circumstances (e.g., "needs human review" triggers for high dollar value or high-risk payment decisions)



HOW CAN WE HELP

FINTECH AND
FINANCIAL SERVICES

Wilson Sonsini's Fintech and Financial Services attorneys are market leaders in creatively and collaboratively partnering with clients at the forefront of payments innovation.

We are a **one-stop shop for innovators in the payment space**. We have deep experience crafting sophisticated legal frameworks, with a view to:

- minimizing regulatory risks
- incorporating industry best practices
- creatively problem-solving with our clients



CONTACT:

Jess Cheng

Partner

New York

jcheng@wsgr.com

**WILSON
SONSINI**

Disclaimer: This communication is provided as a service to our clients and friends for general informational purposes. It should not be construed or relied on as legal advice or a legal opinion, and does not create an attorney-client relationship. This communication may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.