

SwervePay General Terms of Services for All Services

UNLESS OTHERWISE EXPRESSLY AGREED IN AN AUTHORIZED WRITTEN AGREEMENT, THESE TERMS OF SERVICE (“TOS”) APPLY TO ALL SERVICES DELIVERED BY OR RECEIVED FROM SWERVEPAY FOR ANY MERCHANT OR CUSTOMER. THESE TOS ARE INCORPORATED BY REFERENCE INTO EACH AND EVERY AGREEMENT BETWEEN SWERVEPAY AND EACH PURCHASE, CONSUMER, OR OTHER USER OF ITS SERVICES. IT CONSTITUTES A LEGAL AND BINDING AGREEMENT BETWEEN YOU AND SWERVEPAY, LLC. YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS OF SERVICE BEFORE EXECUTING THE AGREEMENT. BY USING ANY OF OUR SERVICES, YOU ACCEPT THESE TERMS OF SERVICE. IF YOU DO NOT AGREE WITH THESE TERMS OF SERVICE, PROMPTLY DISCONTINUE USE OF THE SERVICES.

In these TOS, “Customer,” “You” and “Your” refer to each customer or sub-merchant and its designated agents, including Your administrative contact, employees, officers, directors, agents, Affiliates, successors and assigns, and “SwervePay,” “we,” “us” and “our” refer collectively to SwervePay, LLC, an Illinois limited liability company, and its Members, officers, directors, employees, agents, affiliates, subsidiaries (including, but not limited to SwervePay Auto, LLC, SwervePay Finance, LLC and SwervePay Health, LLC), successors and/or assigns. These TOS explains our obligations to You, and Your obligations to us in relation to the service(s) You purchase, use or otherwise acquire from us (“Services”). By using any Services, You agree to establish an account with us for such Services. When You use Your account or permit someone else to use Your account to purchase or otherwise acquire access to any SwervePay Services or to modify or cancel Your Services (even if we were not notified of such authorization), this Agreement as amended covers any such service or actions. Additionally, You agree that the administrative contact for any Services provided to You is Your agent with full authority to act on Your behalf with respect to such Services, as permitted by the Services and related documentation, including (but not limited to) the authority to terminate, transfer (where transfer is permitted by the Agreement), or modify such Services, or purchase additional services. Any acceptance of Your application(s) or requests for our Services and the performance of our Services will be deemed to occur at our offices in Chicago, Illinois.

Important Notice Concerning Bundled Services: If You purchase separate SwervePay Services that are sold together as a “bundled” package, as opposed to Your purchasing such services separately, termination of any part of the Services may result in termination of all SwervePay Services provided as part of the bundled package unless arrangements are made to pay for the Services separately.

Definitions

“Affiliate(s)” means a person or entity controlled by or under common control with another person or entity, including, without limitation, as the term “affiliate” is construed under Rule 405 promulgated under the Securities Act of 1933 as amended.

“Customer Agreement(s)” means any agreement for Services between SwervePay and a Customer, each of which shall and hereby does incorporate these TOS by reference except as otherwise expressly agreed in such agreement.

“Card Issuer” means, as applicable, any of Visa, MasterCard, Discover, American Express, any ATM or debit or gift card network, or any other financial service card organizations, with two or more of such organizations hereinafter sometimes collectively referred to as “Card Issuers” and as to each Card Issuer, each such card issued by it, a “Card” and each holder or owner of a Card being a “Cardholder” or “Customer.”

“Card Organization Rules” means the rules imposed from time to time by each Card Issuer intended to govern the usage of its network and services.

“Chargeback” means a challenge to a payment that a Customer or Cardholder files directly with his, her or its Card Issuer, bank or other similar party.

“Customer Data” means any information received from a Cardholder or Customer used in connection with the Services.

“Financial Institution” means banks or financial institutions having business relationships with one or more Financial Processors that have agreed to evaluate and provide merchant accounts and payment authorization services to merchants.

“**Financial Processor**” means an entity with which SwervePay has established a relationship that performs the back-end authorization and processing of Transactions between the Customer’s Financial Institution and the Cardholder’s bank.

“**Services**” means any services used by Customer, including merchant services, payment services, and services involving Software and any add-on or additional services requested or specifically described in an agreement. Current descriptions of SwervePay’s Services are available at www.swervepay.com.

“**Software**” means the object code version of SwervePay’s client software, HTML code, application programming interfaces (“**APIs**”), related documentation and other client software or code which SwervePay may provide to Customer, including updates, to enable SwervePay to provide the Services to Customer. Unless otherwise specified, Software shall not include any source code. The Software is proprietary to SwervePay and is licensed to Customer pursuant to these TOS, and subject strictly to those terms and restrictions.

“**Management Web Site**” means SwervePay’s online account management tools for Your use of the Services.

“**Swipe Device**” means a device, which if purchased or required for Your use of the Services, is capable of receiving information from a Card for payment processing, including via magnetic swipe, chip-reader, or other means. Once Your Customer Account is approved, and if purchased or required for Your account, a Swipe Device will be sent to You or acquired by You for use at the address provided. SwervePay does not warrant that the swipe device or the Services will be compatible with Your computer, mobile Device or third-party carrier. Your use of the Swipe Device and the Services may also be subject to the terms of Your mobile device manufacturer and Your carrier. We shall not be responsible for any damages caused by defects associated with any Swipe Devices used by You with respect to Your business or any hacking, or other unauthorized use, of any of such Swipe Devices.

“**Transaction**” means a transfer of funds between You and a third-party using the Services, including information related to the purchase of goods and services from Customer by a third-party, such as any of its customers, clients, patients, or consumers of its products and/or services. Specifically, a Transaction is an authorization, delayed capture, sale, void, voice authorization or credit data transmission between SwervePay and its back-end processors in connection with the Services.

Customer Obligations

General Service Requirements. Customer shall be solely responsible for the following:

1. **Accuracy of Information Provided.** You must provide accurate and complete information to us when applying for Your Customer Account. If Your request to open a Customer Account is approved, we may request additional information from You at any time. You shall maintain and promptly update such information if it should change.
2. **Customer Websites.** Customer is responsible for establishing, hosting and maintenance of its website(s) and its connection to the internet (“**Customer Website(s)**”), fulfilling all orders for products and services sold by merchant to its users on the merchant website(s) or otherwise, including without limitation transmitting merchant’s registration information and transaction data to SwervePay servers or via the SwervePay Management Website and ensuring that any data stored or transmitted by merchant in conjunction with the Services and for enrollment for the Services is accurate, complete and in the form as requested by SwervePay, is securely collected and is not corrupted due to merchant’s systems. Customer is also responsible for reviewing the transactions in its account on a regular basis and notifying SwervePay promptly of unauthorized activity through its account.
3. **Banking.** Customer is responsible for establishing and maintaining a commercial banking relationship and account with one or more Financial Institutions, for purposes of receiving the Services (“**Account**”). The terms of such relationship shall be determined solely by Customer and the Financial Institution.

4. **Access.** Customer is responsible for keeping its access credentials, including usernames, user IDs, passwords and the like, confidential. Customer shall notify SwervePay immediately upon learning of any unauthorized use of its user name or password. Customer shall be solely responsible for (i) updating its passwords for access to the Services periodically, and (ii) creating passwords that are reasonably “strong” under the circumstances, in accordance with SwervePay’s requirements. A “strong” password is at least six characters long, does not contain all or part of the user’s account name, and contains at least three of the four following categories of characters: uppercase characters, lowercase characters, base 10 digits, and symbols found on the keyboard (such as !, @, #). Strong passwords should be generated in such a way that knowledge of one does not lead to knowledge of another.
5. **Business Practices.** Customer is responsible for maintaining commercially reasonable business practices in conjunction with use of the Services, collecting, storing and transmitting its customer data in a secure manner and protecting the privacy of its customer data. Customer shall comply with SwervePay’s requests for reasonable action on Customer’s part, to the extent necessary, to maintain security and integrity of the Services;
6. **Computing.** Customer is responsible for updating to the most current Software version and security updates and patches necessary to properly operate the Services and keeping all Customer enrollment and payment information current and updated on the Management Web Site; and
7. **Compliance.** Customer agrees, and hereby represents and warrants that Customer shall (a) use the Services in accordance with the applicable user guides and other documentation provided by SwervePay from time to time; and (b) not use or permit others to use information obtained through the use of the Services for any purpose other than in conjunction with the Services and in a manner described in the documentation for the Services.

Honoring Cards. Whenever possible, You will identify the person presenting a Card and purporting to be a person authorized to use a Card and check the expiration date and signature on each Card. You will not honor a Card if the Card has expired or if You determine or suspect that the account number on the Card does not match the account number on the Card’s magnetic stripe or the account number is listed on a current Electronic Warning Bulletin file. You are responsible for ensuring that the Cardholder understands that You are responsible for the transaction, including the goods or services that are the subject of the transaction. In addition, You are solely responsible for all customer service issues relating to Your goods or services, including pricing, fulfillment, order cancellation, returns, refunds and adjustments, warranty, and support. You will not add any amount to the posted price of goods or services You offer as a condition of paying with a Card that is not consistent with the Card Issuer Rules and laws. You will properly disclose to each Cardholder that is or may be used in connection with any of the transactions subject to this Agreement, at the time of transaction, any limitation You have on accepting returned merchandise. Your return policy must be in accordance with the Card Issuer Rules. If Your refund policy prohibits returns or is unsatisfactory to the Cardholder, You may still receive a Chargeback relating to such transactions. You agree to make a written receipt available to the Cardholder for any transaction. You may provide the Cardholder the option to decline a written receipt. You may also offer electronic receipts delivered by SMS or e-mail to the Cardholder.

Returns. You agree to process returns of, and provide refunds and adjustments for, Your goods or services through Your Customer Account in accordance with these TOS, any Customer Agreement, each Vendor Processor’s Rules and applicable Card Issuer Rules.

Restrictions on Use of Services. In connection with the Services, You will comply with all Payment Card Industry Data Security Standard (“PCI-DSS”) requirements and consent to our Acceptable Use Policy, which is available at www.swervepay.com: You also agree that You will (a) not send SMS receipts to customers who have expressly refused delivery of a receipt in that manner; (b) comply with all applicable laws and regulations and all requirements of: (i) Card Issuers applicable to merchants; and (ii) all SwervePay Processors; (c) maintain the security of account login information You receive as part of Your use of the Services; (d) if You lose Your computer or mobile device, or You have reason to believe that Your account is no longer secure, You will immediately notify us; (e) not accept payments in connection with any illegal activity, or any activity that is inconsistent with Your type of business or any activity prohibited by the rules of Your Card Issuer.

Compliance With Law. You may only use the Services in compliance with all laws, rules, and regulations applicable to the use of the Services. We may choose not to authorize or settle any transaction submitted to SwervePay if we believe the transaction is in violation of these TOS, the applicable Customer Agreement(s) or may cause harm to You, us, or our Processors.

Processing Errors. You will promptly notify us of any errors within ten (10) days after the date of the asserted error or missing transaction(s). If You do not notify us within the ten (10)-day period, we shall not be liable for, nor obligated to investigate, correct, such asserted error and You agree that all claims related to such error are waived. If we discover processing errors, we will attempt to rectify those processing errors efficiently.

Wireless Service Providers. The Services may utilize SMS messages delivered through wireless service providers, such as AT&T, Sprint, Verizon, etc. You acknowledge that any SMS message goes through Your and the message recipient’s wireless service provider’s systems. The privacy statement of each associated wireless service provider applies as the message passes through those systems. As a requirement to permit usage of SMS systems some wireless service providers may require that we disclose to them information about users of the Services and the nature of business to be conducted. In this situation the information will be used to ensure legitimate use of the SMS systems and not for marketing purposes. You acknowledge and agree that we may provide information about You to wireless service providers as described above. You may upload or enter certain data from Your account(s) such as names, addresses and phone numbers, purchases, and sales among others, to the Internet. You may be made aware of or offered services, features, products, applications, online communities, or promotions provided by us or our affiliates. Installing any of our applications or Software grants us the right to send the identifiers for Your mobile device and Your Customers to third-parties for the use of advertising purposes. You are responsible for securely managing access to Your data and to the Services. You agree to be bound by our privacy policy, as it may be amended from time to time in accordance with its terms or these TOS.

SwervePay's Obligations

Services. Subject to the terms in this Agreement, SwervePay agrees to (i) provide to Customer the Services for which Customer enrolls and pays the applicable fees, either upon request or pursuant to a Customer Agreement, including without limitation the transmission of Transaction information to Financial Processors, and (ii) provide Customer with access to standardized reports regarding Customer’s Transactions processed using the Services and certain reporting tools to assist Customer in accounting activities. SwervePay hereby grants to Customer the right to access and use the Services in accordance with these TOS and any applicable Customer Agreement. SwervePay is not bound by nor should Customer rely on any representation by (i) any agent, representative or employee of any third-party referring or relating to the Services, including Your application or request for them; or in (ii) information posted on our Website of a general informational nature.

Modification of Terms; Changes to Services. Except as otherwise provided in a Customer Agreement, Customer agrees that SwervePay may: (a) revise, amend, update or otherwise change these TOS, including without limitation modifying the service fees or payment terms; and/or (b) revise, amend, update or otherwise change or terminate any part of the Services at any time. Any such revision or change will be binding and effective either, at SwervePay’s sole discretion, thirty (30) days after posting a revision of these TOS on the SwervePay Management Web Site, or upon electronic or written notification to You. You agree to periodically review the Management Web Site, including the current version of this Agreement available on the Management Web Site, to be aware of any such revisions. If You do not agree with any revision to the Agreement, You may terminate this Agreement at any time by providing us with thirty (30) days’ prior written notice. Notice of Your termination will be effective thirty (30) calendar days after receipt and processing by us. Any fees paid by You if You terminate Your Agreement with us are nonrefundable, except as otherwise expressly stated herein, but You will not incur any additional fees due to such termination. By continuing to use SwervePay Services after any revision to this Agreement or change in Services, You agree to abide by and be bound by any such revisions or changes. No non-executive employee, contractor, agent or representative of SwervePay is authorized to alter or amend the terms and conditions of these TOS.

Secure Transactions. SwervePay has implemented and will maintain security systems for the transmission of Customer’s

Transactions, consisting of encryption and “firewall” technologies that are understood in the industry to provide adequate security for the transmission of such information over the Internet. SwervePay does not guarantee the security of the Services or Transaction data, and SwervePay will not be responsible in the event of any infiltration of its security systems or other breach of Security of Your data or systems or Customer data or systems, provided that SwervePay has used commercially reasonable efforts to prevent any such infiltration. Customer further acknowledges and agrees that Customer, and not SwervePay, is responsible for the security of Transaction data or information or any other information stored on Customer’s servers, and that SwervePay is not responsible for any other party’s servers (other than subcontractors of SwervePay solely to the extent SwervePay is liable for its own actions hereunder).

Technical Support for Services. SwervePay shall provide the technical support services to Customer, if any, pursuant the support package, if any, selected by Customer in a Customer Agreement. SwervePay’s then-current, standard technical support descriptions for Services shall be available at www.swervepay.com.

Proprietary Rights, Licenses, Restrictions

SwervePay IP. Except as otherwise set forth herein, all right, title and interest in and to: (i) all registered and unregistered trademarks, service marks and logos; (ii) all patents, patent applications, and patentable ideas, inventions, and/or improvements; (iii) all trade secrets, proprietary information, and know-how; (iv) all divisions, continuations, reissues, renewals, and extensions thereof now existing or hereafter filed, issued, or acquired; (v) all registered and unregistered copyrights including, without limitation, any forms, images, audiovisual displays, text, software and (vi) all other intellectual property (“IP”), proprietary rights or other rights related to intangible property which are used, developed, comprising, embodied in, or practiced in connection with any of the Services identified herein (“SwervePay IP”) are owned by SwervePay Services or its licensors, and You agree to make no claim of interest in or ownership of any such SwervePay IP. You acknowledge that no title to the SwervePay IP is transferred to You, and that You do not obtain any rights, express or implied, in the SwervePay Services or its licensors’ services, other than the rights expressly granted in this Agreement. To the extent that You create any Derivative Work (any work that is based upon one or more preexisting versions of a work provided to You, such as an enhancement or modification, revision, translation, abridgement, condensation, expansion, collection, compilation or any other form in which such preexisting works may be recast, transformed or adapted) such Derivative Work shall be owned by SwervePay and all existing and future copyright and other right, title and interest in and to each such Derivative Work, are assigned to, and shall automatically vest in, SwervePay, and to cooperate with SwervePay in connection with any actions by it to establish its rights in the same. SwervePay shall have no obligation to grant You any right in any such Derivative Work. Except to the extent permitted by applicable law, Customer shall not disassemble, decompile, decrypt, extract, reverse engineer, prepare a derivative work based upon, distribute, or time share the Services or any components thereof, or otherwise apply any procedure or process to the Services or components thereof in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings or any algorithm, data, process, procedure or other information contained therein. Customer shall not rent, sell, resell, lease, sublicense, loan or otherwise transfer the Services or components thereof.

Limited License for Software and Services. Unless otherwise expressly provided in a Customer Agreement, SwervePay grants Customer a personal, limited, non-exclusive, non-transferable license, during such time that You satisfy the conditions set forth in each of Your Customer Agreement(s) and these TOS, to electronically access and use the Services solely for the purpose described herein and in any Customer Agreement. Except as expressly allowed herein, a Customer Agreement or by applicable law, You are not permitted to do any of the following and shall not allow any third-party to do any of the following: (i) copy, reproduce, republish, upload, post, transmit, resell or distribute in any way any components of the Services; (ii) permit any third-party to benefit from the use or functionality of the Services via a rental, lease, timesharing, service bureau, or other arrangement; (iii) transfer any of the rights granted to You under any Customer Agreement or these TOS; (iv) work around any technical limitations in the Services, use any tool to enable features or functionalities that are otherwise disabled in the Services, or decompile, disassemble, or otherwise reverse engineer the any component of Services except as otherwise permitted by applicable law; (v) perform or attempt to perform any actions that would interfere with the proper working of the Services or prevent access to or the use of the Services by our other licensees or customers; or (vi) export the Services, directly or indirectly. We reserve all rights not expressly granted to You in these TOS or a Customer Agreement. Components of the Services are protected by intellectual property laws, including international, U.S. federal and state laws. SwervePay and its licensors, collectively (as their respective interests may appear) own the title, copyright, and other worldwide intellectual property rights in the Services and all copies of the Services and any Software. Neither any Customer Agreement nor these TOS: (i) grant You any rights to our trademarks or service marks or (ii) limit any rights that we may have under trade secret, copyright, patent or

other laws, domestic or abroad.

Customer Data. All “Customer Data” provided by You or any of Your Customers in the course of a Transaction shall be owned by You or Your Customer (subject to Your right to make the grants in this [Section 3](#)). You hereby grant us a perpetual, irrevocable, sub-licensable, assignable, worldwide, royalty-free license to use, reproduce, electronically distribute, and display the Customer Data for the purposes of (i) providing and improving the Services; (ii) internal usage, including but not limited to, data analytics and metrics so long as such Customer Data has been anonymised and aggregated with other customer data; (iii) complying with applicable legal requirements and assisting law enforcement agencies by responding to requests for the disclosure of information in accordance with local laws; and (iv) any other purpose for which consent has been provided by the Customer.

Privacy and Security

SwervePay Privacy Policies. Our privacy statement for the Services is located on our Website at <https://www.SwervePay.com> and is incorporated herein by reference, as it is applicable to the Services and each Customer Agreement. The privacy statement sets forth Your and our rights and responsibilities with regard to Your personal information. You agree that we, in our sole discretion, may modify our privacy statement. We will post such revised statement on our Website. You agree to monitor our Website periodically to review such revisions. By using our Services after modifications to the privacy statement, You have agreed to these modifications. You acknowledge that if You do not agree to any such modification, You may terminate this Agreement.

Cardholder Information. You shall keep all Customer Data confidential and secure. You shall not disclose to any third-party any Cardholder account information or other personal information except in connection with the Services and in accordance with the Card Organization Rules or applicable law (including but not limited as required under the Health Insurance Portability and Accountability Act or “HIPAA”). You must keep all Cardholder information in a secure manner to prevent disclosure to unauthorized parties. You may not disclose or distribute any such information to a third-party or use the information for marketing purposes unless You receive the express consent of the user.

Use of Data. Customer acknowledges and agrees that in the course of providing the Services, SwervePay will capture certain transaction and user information (collectively, the “Data”). Customer agrees to provide to SwervePay, and SwervePay shall capture, only the Data that is required by the Software and is necessary for SwervePay to provide the Services. SwervePay agrees to use Data in its personally identifiable form only as necessary to complete the requested transaction. SwervePay shall not disclose Data to third-parties or use the Data, except that SwervePay shall have the rights: (i) to use the Data as necessary to perform the Services pursuant to these TOS or contemplated in a Customer Agreement (including distributing the Data to third-parties providing services requested by Customer); (ii) to maintain the Data as long as necessary, as required by law or as used internally for record keeping, internal reporting, and support purposes; (iii) to compile and disclose Data in the aggregate where individual merchant Data is not identifiable, including without limitation, calculating merchant averages by region or industry; and (iv) to provide the Data as required by law or court order, or to defend SwervePay’s rights in a legal dispute. 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 purposes for which such third-party’s personal Data has been collected, (ii) the intended recipients or categories of recipients of the third-party’s personal Data, (iii) which parts of the third-party’s Data are obligatory and which parts, if any, are voluntary; and (iv) how the third-party can access and, if necessary, rectify the data You hold about them. You further agree to provide such notice and obtain such consent with regard to any third-party personal Data You supply to us in the future. We are not responsible for any consequences resulting from Your failure to provide notice or receive consent from such persons or entities nor for Your providing outdated, incomplete or inaccurate information.

PCI-DSS Requirements. While SwervePay and/or our Affiliates use security and encryption features to ensure the security and safety of Your personal information and that of Your Customers, SwervePay cannot absolutely guarantee the security of Your personal information from unauthorized access, loss or disclosure by third-parties. To ensure the highest level of security You agree to comply with our Acceptable Use Policy, including the PCI-DSS requirements and You represent and warrant that, while using any Services: (a) You are, and shall remain, in full compliance with all laws, statutes and federal and/or state regulations, as well as the Rules as may be applicable to You, Your business and any Card transaction; (c) You (and any outside agent that You may utilize to submit Transactions to SwervePay) comply and will comply with all our Acceptable Use Policy and all PCI-DSS requirements and You hereby agree to pay any fines and penalties that may be assessed by any Card Issuer as a result of Your non-compliance with PCI-DSS requirements, any

data breaches, or by Your failure to accurately validate its compliance. You will review and monitor the requirements at <http://www.visa.com/CISP>, and <http://www.pcisecuritystandards.org> in order to determine the timeframes and mandates for compliance under PCI-DSS requirements. Your obligations to do so continue through the later of (y) the Termination Date or the (z) date You cease using all Services. You acknowledge and understand that You may be prohibited from participating in Card Issuer programs if it is determined that You are non-compliant.

Fees, Accounts and Payment Terms

Fees. As consideration for the Services, You agree to pay SwervePay the applicable service(s) fees set forth on our Website, or as otherwise provided by SwervePay in each Customer Agreement in force and effect, at the time of Your selection (and as it may be amended from time to time), or, if applicable, upon receipt of Your invoice from SwervePay. All fees are due immediately and are non-refundable, except as otherwise expressly noted herein or in a Customer Agreement.

Payments; Refunds; Pre-Payments. You are solely responsible for the credit card or Direct Debit ("**Payment Method**") account information You provide to SwervePay and must promptly inform SwervePay of any changes thereto (*e.g.*, change of expiration date or account number). Changes should be communicated to SwervePay by entering the updated information through the SwervePay tools or contacting SwervePay customer support. All payments shall be made in U.S. dollars. All fees are non-refundable unless otherwise explicitly stated in this Agreement. If we do issue a refund, we will do so via the Payment Method used by You to pay for the Services being refunded. For additional services or add-on services, Customer shall either prepay SwervePay's then-current annual prepaid fees, if available, or pay the then-current monthly fees for such services, in accordance with the applicable Customer Agreement. If Customer uses SwervePay add-on services that are subject to additional standard fees that are not prepaid at enrollment, then SwervePay shall either immediately charge Customer's credit card or debit Customer's DDR account, as applicable, for SwervePay's then-current fees for such services or invoice Customer for such additional standard fees, and Customer shall pay such invoice immediately.

Taxes. Customer is solely responsible for collecting, reporting and remitting any taxes required to be collected, paid or withheld in connection with the Services ("**Taxes**"). SwervePay is not responsible to determine whether or not Taxes apply, or calculate, collect, report, or remit any Taxes to any tax authority arising from any transaction. If in a given calendar year You receive (i) more than \$20,000 in gross amount of payments and (ii) more than 200 payments, Vendor or its Vendor processor(s) is authorized to report annually to the Internal Revenue Service ("**IRS**"), as required by law, Your name, address, Tax Identification Number (such as a Social Security Number (SSN), or Employer Identification Number (EIN)), the total dollar amount of the payments You receive in a calendar year, and the total dollar amount of the payments You receive for each month in a calendar year. You agree to pay all Taxes (including value added, sales and other taxes (other than taxes based on SwervePay's income)) related to the Services or payments made by You hereunder. All payments due to SwervePay shall be made without any deduction or withholding on account of any tax, duty, charge or penalty, except as required by law, in which case, the sum payable by a party in respect of which such deduction or withholding is to be made shall be increased to the extent necessary to ensure that, after making such deduction or withholding, SwervePay receives and retains (free from any liability in respect thereof) a net sum equal to the sum it would have received but for such deduction or withholding being required. Set up fees, if any, will become payable on the applicable effective date for the applicable SwervePay Services. All sums due and payable that remain unpaid after any applicable cure period herein will accrue interest as a late charge of 1.5% per month or the maximum amount allowed by law, whichever is less (the "**Agreement Interest Rate**"). Customer hereby authorizes us to charge Customer's Payment Method for the fees due for the Services, and Customer shall provide to SwervePay proper authorization for purposes of allowing SwervePay to debit the applicable Customer account to collect fees due under these TOS and each Customer Agreement. All fees owed by Customer to third-parties (for example, Financial Institutions, Financial Processors and merchant account providers), are Customer's sole responsibility and are not covered by the Services.

Overcharge Fee. Excluding merchant services, in the event You exceed the Transaction limit permitted for the applicable Services as provided in any Customer Agreement ("**Excess Transaction**") in any month, Customer may be charged a monthly transaction fee ("**Monthly Overcharge Fee**") to be determined by multiplying each Excess Transaction processed in that month by the corresponding Service's Transaction Fee. The Monthly Excess Transaction Fee shall be invoiced or debited in accordance with the terms for Fees above.

Chargebacks. These terms apply to Chargebacks for merchant services:

1. The amount of a transaction may be reversed or charged back to Your Customer Account (each a "**Chargeback**") for reasons,

including, but not limited to, any one of the following: (i) an invalid Card account is submitted by You; (ii) neither the Cardholder nor a person authorized by the Cardholder received the goods or services requested; (iii) the Cardholder disputes the quality of the goods or services received; (iv) the Cardholder never received a credit for a returned item or a cancelled order; (v) the Cardholder was charged incorrectly; (vi) the authorization code is invalid; (vii) the Card was expired or not effective; (viii) the transaction is disputed; (ix) the transaction is reversed by the Card Issuer, our Processor, or a financial institution for any reason; or (x) the transaction was not authorized.

2. For any transaction that results in a Chargeback, we may withhold or cause to be withheld the Chargeback amount in the Reserve Account. You may be subject to a chargeback on sales for a minimum period of one hundred eighty (180) days from the date the sale was entered into the processing system. We may deduct the amount of any Chargeback and any associated fees, fines, or penalties assessed by each applicable Vendor Processor from Your Customer Account, Your Reserve Account, if any, any proceeds due to You, or Your bank account. If You have pending Chargebacks or we reasonably believe that a Chargeback is likely, we may withhold or delay payments from Your Customer Account for the later of: (i) two hundred seventy (270) days following the Termination Date; (ii) one hundred eighty (180) days from Your last Chargeback; or (iii) thirty (30) days following Your delivery of written notification disputing the Chargeback in question and the basis therefor with appropriate documentation in accordance herewith. You agree to respond to all Chargebacks promptly. If we are unable to recover funds related to a Chargeback for which You are liable, You will pay us the full amount of the Chargeback immediately upon demand together with interest computed at the Agreement Interest Rate on any unpaid Chargeback amounts You owe to us from time to time. You agree to pay all costs and expenses, including without limitation attorneys' fees and other legal expenses, incurred by or on behalf of SwervePay related to any efforts to collect any Customer Account deficit balances (including, but not limited to, Chargeback amounts) which remain unpaid by for more than thirty (30) days.

Customer Accounts.

1. **Deposit of Funds.** Upon validation of Your Customer Account, Vendor or Vendor's Processor(s) will deposit to Your Customer Account the amounts actually received by us for completed transactions submitted through the Services at the end of every business day unless otherwise agreed in Your Customer Agreement. Payouts to Your bank account will normally register within two (2) to three (3) business days. Each Transaction will be considered complete when SwervePay has received the funds and when such funds have been accepted by the designated bank or financial institution. We shall have the right to deduct from Your Sub-Customer Account: (i) following the end of each month during the term of this Agreement any Fees owing from You to us or any of our Processors; and (ii) immediately at any time, any Chargebacks, penalties or other Fees owing from You to us or any of our Processors. Should we need to conduct an investigation or resolve any dispute related to Your Sub-Customer Account (including but not limited to issues around possible prohibited transactions or other breaches of these TOS or any Customer Agreement, or applicable SwervePay, Processor or Card Issuer Rules), we may defer payout or restrict access to Your funds for as long as we deem necessary. We also may defer payout or restrict access to Your funds as required by law or court order, or if otherwise requested by law enforcement or governmental entity.
2. **Customer Account Activity.** You are responsible for monitoring Your transactions and ensuring that our payments to You are correct. You agree to contact us immediately if You discover or become aware of an error or an unauthorized transaction on Your Customer Account. You must notify us of any errors in payments made to You within thirty (30) days of the error or unauthorized transaction. Your failure to notify us of any such errors within the applicable thirty (30)-day period will constitute a waiver of any right or claim to amounts owed to You. Further, You are responsible for reconciling all transactions with Your Customer Account and keeping permanent records of such transactions.
3. **Reserve Accounts.** For the purpose of providing a source of funds to pay damages which SwervePay or our Processors may potentially suffer in connection with providing You Services, and to pay Fees, fines, Chargebacks or other amounts You may owe or be assessed by any processor, a separate reserve account (the "**Reserve Account**") may be established from time to time by You, us or any of our Processors to secure Your current and/or future potential obligations as reasonably determined us or our Processor. The Reserve Account will be in an amount as reasonably determined to protect the present or future interests and may be raised, reduced or removed at any time, in our or our Processor's sole discretion. If there are not sufficient funds in Your Reserve Account, You grant us the right of recoupment and set-off and may fund the Reserve Account from any funding source associated with Your Customer Account, including but not limited to any funds due to You for the Services or under any Customer Agreement or available in Your bank account. If, in our opinion, the Personal Property Securities Act 2009 enables us to improve our security interest over the Reserve Account, You agree to do all things necessary, including obtaining the appropriate authorizations and executing any document to effect such improvement.

Representations and Warranties; Disclaimers; Limitations of Liability

By SwervePay. SwervePay represents and warrants that: (a) it has all requisite corporate or other power to enter into this Agreement and to carry out the terms of this Agreement; (b) all corporate action on the part of SwervePay, its officers, board of directors and stockholders necessary for the performance of its obligations under this Agreement has been taken.

Limitations of Liability.

1. EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN A SERVICES AGREEMENT (AS RELATES TO THE SUBJECT MATTER THEREOF), OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, SWERVEPAY AND ITS LICENSORS, AS APPLICABLE, EXPRESSLY DISCLAIM EACH WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES OR SOFTWARE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE AND NON-INFRINGEMENT.
2. SWERVEPAY'S LIABILITY TO YOU RELATING TO THE SERVICES, WHETHER ARISING UNDER THESE TOS, A SERVICES AGREEMENT, OR OTHERWISE, IS LIMITED, AT SWERVEPAY'S OPTION, TO (a) REFUNDING THE PRICE OF THE SERVICES IN RESPECT OF WHICH THE LIABILITY AROSE OR (b) TO PROVIDING, REPLACING OR REPAIRING THOSE SERVICES, OR (c) PROVIDING THOSE SERVICES AGAIN IN A MANNER REASONABLY CALCULATED TO AVOID FUTURE LIABILITY.
3. Customer acknowledges that SwervePay is not a financial or credit reporting institution. SwervePay is responsible only for providing data transmission to effect or direct certain payment authorizations for You and is not responsible for the results of any credit inquiry, the operation of websites of ISPs or Financial Institutions or the availability or performance of the Internet, or for any damages or costs You suffer or incur as a result of any instructions given, actions taken or omissions made by You, Your financial processor(s), Your Financial Institution or any ISP. **IN NO EVENT WILL SWERVEPAY'S LIABILITY (INCLUDING LIABILITY FOR NEGLIGENCE) ARISING OUT OF THIS AGREEMENT EXCEED THE FEES PAID TO SWERVEPAY BY YOU HEREUNDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM FOR DAMAGES. IN NO EVENT WILL SWERVEPAY OR ITS LICENSORS HAVE ANY LIABILITY (INCLUDING LIABILITY FOR NEGLIGENCE) TO YOU OR ANY OTHER PARTY FOR ANY LOST OPPORTUNITY OR PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF THIS AGREEMENT, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY (INCLUDING NEGLIGENCE), AND WHETHER OR NOT SWERVEPAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE REGARDING ANY LIMITED REMEDY.** Notwithstanding the above, the limitations set forth above shall be enforceable to the maximum extent allowed by applicable law.
4. YOU ACKNOWLEDGE THAT NEITHER SWERVEPAY NOR ITS LICENSORS HAVE REPRESENTED OR WARRANTED THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY OR WITHOUT COMPROMISE OF THE SECURITY SYSTEMS RELATED TO THE SERVICES OR THAT ALL ERRORS WILL BE CORRECTED.

By Customer. You represent and warrant that You shall comply with all applicable privacy, consumer and other laws and regulations with respect to Your: (i) provision, use and disclosure of the Data, Cardholder information; (ii) dealings with the users, Cardholders or other parties providing the Data; and (iii) use of the Services. You also represent and warrant that that You are either (x) a legal resident of the United States, (y) a United States citizen, or (z) a business entity authorized to conduct business by the state in which it operates. The Services may only be used within the United States of America.

1. **Corporate and Other Entity Customers.** If Customer is a corporation or corporate entity (which for purposes hereof shall include any limited liability company, limited partnership, limited liability partnership or other entity that limits the liability of its beneficial owners) You represent and warrant that: (i) You have all requisite corporate or other power to enter into this Agreement and to carry out the terms of this Agreement; (ii) all corporate action on the part of You, Your officers, board of directors, stockholders, partners or members necessary for the performance of Your obligations under this Agreement has been taken; (iii) this Agreement constitutes Your valid and legally binding obligation, enforceable against it in accordance with the terms hereof; (iv) You are in good standing in Your jurisdiction of incorporation or organization and are eligible to register and use the Services; (v) Your authorized representative(s) has read and understands the entire Agreement and, after doing so, You desire to be bound thereby, and You have been represented by counsel of Your own choosing; (vi) no representations of

any kind or character have been made to induce You to execute and enter into any Agreement, these TOS, or to accept the Services; (vii) any sales transaction submitted by You will represent a bona fide sale by You; (viii) any sales transactions submitted by You will accurately describe the goods and/or services sold and delivered to a Customer; (ix) You will fulfill all of Your obligations to each customer for which You submit a transaction and will resolve any customer dispute or complaint directly with the purchaser; (x) except in the ordinary course of business, no sales transaction submitted by You through the Services will represent a sale to any principal, partner, proprietor, or owner of Your entity or any of Your other Affiliates; (xi) You will not use the Services, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the operation of the Services; (xii) Your use of the Services will be in compliance with this Agreement; and (xiii) You agree to follow the applicable Card brand operating Rules and regulations.

2. **Individual or Non-Corporate Customers.** If You are an individual or other non-corporate entity not covered by [Section H.3\(a\)](#) above, You represent that: (i) You are at least eighteen (18) years of age if an individual, or if an entity, all persons acting on Your behalf are at least eighteen (18) years of age; (ii) You are eligible to register and use the Services and have the right, power, and ability to enter into and perform under this Agreement; (iii) the name You provided when You registered is Your name or business name under which You sell goods and services; (iv) each sales transaction submitted by You will represent a bona fide sale You made; (v) any sales transactions submitted by You will accurately describe the goods and/or services sold and delivered to a purchaser; (vi) You will fulfill all of Your obligations to each customer for which You submit a transaction and will resolve any customer dispute or complaint directly with the purchaser; (vii) You and all transactions initiated by You will comply with all federal, state, and local laws, rules, and regulations applicable to You and/or Your business, including any applicable tax laws and regulations; (viii) except in the ordinary course of business, no sales transaction submitted by You through the Services will represent a sale to any principal, partner, proprietor, or owner of Your entity or any of Your other Affiliates; (ix) You will not use the Services, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the operation of the Services; (x) Your use of the Services will be in compliance with this Agreement; and (xi) You agree to follow the applicable Card Issuer operating Rules and regulations.

Indemnifications

Mutual Indemnifications. Either party to this Agreement (You, on the one hand, and SwervePay, on the other hand) will defend, indemnify, save and hold harmless the other party and the officers, directors, agents, Affiliates, distributors, franchisees and employees of the other party from any and all third-party claims, demands, liabilities, costs or expenses, including reasonable attorneys' fees, resulting from the indemnifying party's material breach of any duty, representation or warranty of any Customer Agreement or these TOS, as amended. An "**Indemnified Party**" party's right to indemnification is conditioned upon the following: prompt written notice to the party obligated to provide indemnification ("**Indemnifying Party**") of any claim, action or demand for which indemnity is sought; control of the investigation, preparation, defense and settlement thereof by the Indemnifying Party; and such reasonable cooperation by the indemnified part, at the Indemnifying Party's request and expense, in the defense of the claim. The Indemnified Party shall have the right to participate in the defense of a claim by the indemnifying party with counsel of the Indemnified Party's choice at the Indemnified Party's expense. The Indemnifying Party shall not, without the prior written consent of the Indemnified Party, settle, compromise or consent to the entry of any judgment that makes any admissions in the Indemnified Party's name or imposes any liability upon the Indemnified Party.

Customer agrees not to use the Services in violation of any local, state or Federal laws, rules or regulations, or orders, including, but not limited to the Telephone Consumer Protection Act of 1991 ("**TCPA**") and its related July 10, 2015 Omnibus Ruling, the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") and its related Rules and Regulations, and agrees to indemnify, defend and hold SwervePay and any Affiliated Entity harmless from and against all Losses (defined below) that are incurred, suffered or paid, directly or indirectly, by any of them in connection with, arising out of or resulting from any claim alleging improper or illegal use of any of the Products and Services provided to Customer or any of Customer's clients by SwervePay or any Affiliated Entity, including but not limited to any claims arising from following the direction of Customer for communications to its clients as to frequency of sending messages by any medium, including but not limited to text, e-mail, facsimile or paper regarding any matter, including but not limited to past due sums, deposits for anticipated procedures, estimates of cost of procedures, appointment reminders, payment receipts or other communications. For purposes of this Section, indemnification of SwervePay and any Affiliated Entity includes, but is not limited

to payment by Customer of any judgment, settlement, claim, penalties and costs, interest, reasonable attorneys' fees and cost of defense, if SwervePay or any Affiliated Entity is named as a party to any action or suit related to delivery of communications to a Customer client or otherwise subject to this indemnification. In such an event, SwervePay and any Affiliated Entity shall have the option at any time of either being defended by Customer's counsel or providing their own defense to the action (subject to regular monthly reimbursement from Customer for costs and fees incurred, regardless of the outcome of such action). For purposes of this Section: (i) "Losses" means any and all losses, liabilities, damages, penalties, obligations, awards, fines, deficiencies, demands, interest, costs and expenses (including reasonable attorneys' fees, consultants' fees and other professional fees and disbursements); and (ii) "Affiliated Entity" shall mean any "affiliate" of SwervePay (as such term is construed under Rule 405 promulgated under the Securities Act of 1933), as well as, without limitation, any independent contractor, business partner, solution extender, or service provider under contract with SwervePay that assists SwervePay in delivering any of the Services provided by SwervePay or any Affiliated Entity to Customer.

Term and Termination

Term; Renewal. These TOS and each applicable Customer Agreement shall become effective upon the later of (i) the date Customer accepts these TOS in writing via Customer Agreement (the "Effective Date"), or (ii) the date You use any of the Services, if different; and will continue for a period of one (1) year, unless terminated earlier or suspended according to the provisions of these TOS and the applicable Customer Agreement(s). Each Customer Agreement will thereafter automatically renew for successive twelve (12) month terms, unless either party gives the other party written or electronic notice, in accordance with the terms herein, of its intention not to renew the applicable Customer Agreement, at least thirty (30) days prior to the end of the then-current term or renewal term, unless termination is by SwervePay. Any renewal of Your Services is subject to our then-current terms and conditions, successful completion of any applicable authentication procedure, if any, and payment of all applicable Fees owing to us at the time of renewal. Additional payment terms may apply to the SwervePay Services You purchase, as set forth herein and in the applicable Schedules to this Agreement or any applicable Customer Agreement.

Suspension and Termination. Either party hereto may, at its option, and without notice, terminate the Services, effective immediately, should the other party hereto (i) admit in writing its inability to pay its debts generally as they become due; (ii) make a general assignment for the benefit of creditors; (iii) institute proceedings to be adjudicated a voluntary bankrupt, or consent to the filing of a petition of bankruptcy against it; (iv) be adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; (v) seek reorganization under any bankruptcy act, or consent to the filing of a petition seeking such reorganization; or (vi) have a decree entered against it by a court of competent jurisdiction appointing a receiver liquidate, trustee, or assignee in bankruptcy or in insolvency covering all or substantially all of such party's property or providing for the liquidation of such party's property or business affairs.

1. By Customer. Unless otherwise provided in a Customer Agreement, You may terminate the Services and any Customer Agreement upon prior thirty (30) days' written notice to SwervePay by notifying SwervePay's customer support electronically or in writing and following the instructions for cancellation either (i) prior to the end of the initial annual period or any annual renewal period; or (ii) for convenience. Subject to the above, SwervePay shall use commercially reasonable efforts to cancel the Services within seven (7) business days following such written notice from Customer. Customer shall be responsible for the payment of all fees due and payable through the effective date of termination. Termination requests for non-SwervePay, third-party services may not be made through SwervePay. Customer must instead contact such third-parties directly to cancel such services.
2. By SwervePay. Notwithstanding the foregoing, SwervePay may suspend Customer's access to the Services or terminate this Agreement as follows:
 - Following ten (10) days' prior electronic or written notice (such as an overdue invoice) if (a) Customer breaches the Agreement, (b) perpetrates fraud, (c) causes or fails to fix a security breach relating to the Services, (d) fails to comply with SwervePay's best practices requirements for security management or to respond to an inquiry from SwervePay, concerning the accuracy or completeness of the information Customer is required to provide pursuant to this Agreement, (e) if SwervePay reasonably suspects fraudulent activity on Customer's payment services account, (if such breach is not cured within such ten (10)-day period), (f) in the event that certain third-party licenses or access to third-party components of the Services are terminated, or (g) non-payment of invoice; or
 - Immediately, without prior notice, if we reasonably believe: (a) Your breach compromises the security of the Services in any

material fashion, (b) fraudulent Transactions are occurring on Your account, (c) Customer's financial processor or Financial Institution with which Customer has a merchant account requires such termination or suspension or where continued breach of its Rules or contractual terms creates a risk of termination of such merchant account or of such entity doing business with SwervePay; or (d) You or a Transaction violates our Acceptable Use Policy or Rules.

Termination Date. The date upon which termination is effective shall be the "**Termination Date.**"

Effect of Termination.

1. **Cessation.** SwervePay will cease providing the Services and cease charging Your Payment Method, if applicable, for any monthly, annual or bi-annual Service fees as of the expiration of the annual, bi-annual or monthly billing cycle in which the termination is effective. If termination is due to Your default hereunder, You shall bear all costs of such termination, including any reasonable costs SwervePay incurs in closing Your account and applicable termination Fees. You agree to pay any and all costs incurred by SwervePay in enforcing Your compliance with this Section. Upon termination, Your rights to use the Services, and any other rights granted hereunder, shall immediately cease, and You shall destroy any copy of the materials licensed to You hereunder and referenced herein except for such copies that are in electronic format and cannot be readily destroyed without undue cost or effort, which copies may be retained only for archival purposes and not for commercial use. Each party will be released from all obligations and liabilities to the other occurring or arising after the date of such termination, except that any termination of this Agreement will not relieve SwervePay or Customer from any liability or obligations arising prior to the Termination Date, which shall survive any termination of this Agreement. To the extent permitted by applicable law, You agree that upon termination for any reason, we may delete all information relating to Your use of the Service. Notwithstanding the foregoing, Your obligations to pay all fees due through the Termination Date and terms relating to covenants, indemnity, warranties or terms which by their nature are required to survive contract termination will survive any termination of this Agreement.
2. **Bundled Services.** In addition to the terms set forth above, if You purchase Services which are sold together as part of a "bundled" package of services, any termination relating to such bundle will terminate all SwervePay Services included in such bundle. In such cases we may, in our sole discretion and subject to Your agreeing to be bound by the applicable agreement(s) and to pay the applicable fees, allow You to convert certain Services included in the bundled services to stand-alone Services. Notwithstanding the above, termination of the Services will terminate any add-on services. **[What does this mean?]**
3. **Reinstatement of Services.** If Services are suspended or terminated by SwervePay due to lack of payment by Customer, reinstatement of Services shall be subject to Customer paying SwervePay (i) new set-up fees, at SwervePay's then-current rates; and (ii) as applicable, all past due annual or monthly fees and Transaction Fees and all interest thereon at the Agreement Interest Rate (unless waived by SwervePay).
4. **Data Portability.** After the Termination Date, SwervePay, upon written request from You, may, at its option and only if practicable, provide Your new acquiring bank or payment service provider ("**Data Recipient**"), as applicable, with any available credit card information relating to Your Customers, subject to the following conditions: (i) You must provide us with proof that the Data Recipient is in compliance with the PCI-DSS requirements (level 1 PCI compliant) by giving us a certificate or report on compliance with the Association PCI-DSS requirements from a qualified provider and any other information reasonably requested by us; (ii) the transfer of such information is compliant with the latest version of the PCI-DSS requirements; and (iii) the transfer of such information is allowed under the applicable Card Issuer Rules, and any applicable laws, rules or regulations. You shall indemnify, defend, and hold harmless SwervePay from and against any lawsuit, claim, liability, loss, penalty or other expense (including attorney's fees) we suffer or incur arising out of or in connection with the transfer of any data to a Data Recipient.

Confidentiality

1. **Confidential Information.** "**Confidential Information**" means any confidential, trade secret or proprietary information (which may be business, financial or technical information) disclosed by one party to the other under this Agreement that is marked confidential or if disclosed orally designated as confidential at the time of disclosure or that should be reasonably understood

to be confidential. All source code and the terms of any Customer Agreement will be considered Confidential Information.

2. **Confidentiality Obligations.** Each party (i) shall not disclose to any third-party or use any Confidential Information disclosed to it by the other except as expressly permitted by these TOS or a Customer Agreement and for purposes of performing the Services, and (ii) shall take reasonable measures to maintain the confidentiality of all Confidential Information of the other party in its possession or control, which shall in no event be less than the measures it uses to maintain the confidentiality of its own proprietary information or Confidential Information of similar importance. Each party further agrees to use the other party's Confidential Information only for the purpose of its performance of the Services. In addition, the receiving party shall not reverse engineer, disassemble or decompile any prototypes, software or other intangible objects which embody Confidential Information and which are provided to the receiving party hereunder.
3. **Limitation of Confidentiality.** The confidentiality obligations set forth in this Section ("**Confidentiality Obligations**") above do not apply to information that (i) is in or enters the public domain without breach of this Agreement, (ii) the receiving party lawfully receives from a third-party without restriction on disclosure and without breach of a nondisclosure obligation, (iii) the receiving party knew prior to receiving such information from the disclosing party or develops independently without access or reference to the Confidential Information, (iv) is disclosed with the written approval of the disclosing party, or (v) is disclosed five (5) years from the effective date of termination or expiration of this Agreement.
4. **Exceptions to Confidentiality.** Notwithstanding the Confidentiality Obligations set forth above, each party may disclose Confidential Information of the other party (i) to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as required by law but only after alerting the other party of such disclosure requirement and, prior to any such disclosure, allowing (where practicable to do so) the other party a reasonable period of time within which to seek a protective order against the proposed disclosure, or (ii) on a "need-to-know" basis under an obligation of confidentiality substantially similar in all material respects to the Confidentiality Obligations to its legal counsel, accountants, contractors, consultants, banks and other current or potential financing sources (including investors).

Miscellaneous

1. **Third-Party Services.** You may be made aware of services, products, offers and promotions provided by third-parties, and not by SwervePay ("**Third-Party Services**"). If You elect to use Third-Party Services, You are solely responsible for reviewing and understanding the terms and conditions as well as any fees, if any, governing any Third-Party Services. You authorize us to use and disclose Your contact information, including name and address, for the purpose of making the Third-Party Services You select available to You. You agree that the third-party is solely responsible for the performance of the Third-Party Services.
2. **Force Majeure.** Neither party shall be deemed in default hereunder, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder, except for Customer's payment obligations hereunder, due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, or boycott, provided that the party relying upon this Section shall give the other party written notice thereof promptly and, in any event, within five (5) days of discovery thereof, and (ii) shall take all steps reasonably necessary under the circumstances to mitigate the effects of the force majeure event upon which such notice is based; provided, however, that in the event a force majeure event described in this Section extends for a period in excess of thirty (30) days in the aggregate, either party may immediately terminate the Agreement.
3. **Entire Agreement and Modification.** Except for a valid Customer Agreement or any other written agreement signed by both of us, the terms in this Agreement constitute the entire agreement between SwervePay and You regarding its subject matter and its terms supersede any prior or simultaneous agreement, terms, negotiations, whether written or oral, or whether established by custom, practice, policy or precedent, between the parties hereto. Except as otherwise provided for herein, any waiver, modification, or amendment of any provision of this Agreement will be effective only if in writing and signed by the parties herein. You acknowledge and agree that in the event a purchase order ("**PO**") contains additional terms, provisions or language ("**PO Terms**"), those PO Terms shall be null and void unless accepted in writing by SwervePay pursuant to a Customer Agreement.

4. **Severability**. In the event that any provision of these TOS or a Customer Agreement is unenforceable or invalid such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole, and in such event, such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.
5. **No Assignment**. Customer may not assign any rights or obligations under these TOS, to the Services, or any Customer Agreement without the prior written consent of SwervePay. SwervePay may assign its rights, obligations or duties regarding the Services, these TOS or any Customer Agreement upon prior written notice to You.
6. **Governing Law and Jurisdiction**. These TOS, the Services and each Customer Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without reference to its conflicts of laws principles. Each party consents to the exclusive venue and jurisdiction of the competent state and/or federal courts in Chicago, Illinois, for any dispute arising out of or related to this Agreement, with venue to be laid in the appropriate courthouse in Chicago, Illinois. The parties acknowledge and agree that this Agreement is made and performed in Chicago, Illinois. THE PARTIES HEREBY WAIVE ANY RIGHT TO JURY TRIAL WITH RESPECT TO ANY ACTION BROUGHT IN CONNECTION WITH THIS AGREEMENT. For avoidance of doubt, the application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.
7. **Export Restrictions**. You acknowledge and agree that You shall not import, export, or re-export directly or indirectly, any commodity, including Your products incorporating or using any SwervePay products or Services in violation of the laws and regulations of any applicable jurisdiction. The Services are subject to the U.S. export controls regulations administered by the U.S. Dept. of Commerce (15 CFR, Chapter VII). You will not export or re-export the Services, or portion thereof, directly or indirectly, in violation the U.S. export administration laws and regulations to any country or end user, or to any end user who You know or have reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons.
8. **Notices**. Except as otherwise expressly stated in this Agreement, all notices to SwervePay shall be in writing and delivered, via courier, commercial carrier or certified or registered mail (in each case with delivery confirmation), to SwervePay at its official corporate address, or via email (with proof of transmission) to the authorized representative identified in the applicable Customer Agreement. All notices to You shall be delivered to Your mailing address or e-mail address as provided by You in Your account information, as updated by You pursuant these TOS. Unless You choose to opt-out of receiving marketing notices, You authorize SwervePay to notify You as our customer, via commercial e-mails, telephone calls and other means of communication, of information that we deem is of potential interest to You, including without limitation communications describing upgrades, new products and services or other information pertaining to the Services or other SwervePay offerings relating to Internet security or to payment services. Notwithstanding the above, You shall not have the right to opt-out of service or support notices relating to the Services, including without limitation, notices of service modifications, security, performance issues or technical difficulties.
9. **Headings**. The section headings appearing in these TOS or any Customer Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect such section.
10. **Independent Contractors**. Neither party nor their employees, consultants, contractors or agents are agents, employees or joint ventures of the other party, and they do not have any authority to bind the other party by contract or otherwise to any obligation. Each party shall ensure that the foregoing persons shall not represent to the contrary, either expressly, implicitly, by appearance or otherwise.
11. **Non-Disparagement; Publicity**. In consideration of the Services and payments received therefor, neither party will disparage the other party or the other party's trademarks, websites, products or services, or display any such items in a derogatory or negative manner on any website or in any public forum or press release. Unless otherwise stated herein, You shall not issue a press release or otherwise advertise, make a public statement or disclose to any third-party information pertaining to the parties' relationship, the existence or terms of these TOS or any Customer Agreement, the Services and any underlying transactions between SwervePay and You, or referring to the other party in relation to Services without the SwervePay's prior written approval.
12. **Costs, Legal Expenses**. Except as expressly stated in a Customer Agreement, each party shall be solely responsible for the costs and expenses of performing its obligations hereunder. In the event of a dispute arising from or related to the Services, these TOS or a Customer Agreement, which results in litigation or any other proceeding ("**Litigation**") the prevailing party in

such Litigation shall recover from the other its costs, expenses and reasonable attorney's fees in connection with such litigation or other proceeding.