

# SwervePay Sub-Merchant Processing Agreement

This SwervePay Sub-Merchant Processing Agreement (“Agreement”) is effective as of the date signed below (“Effective Date”) between the customer designated below (“Client”) and SwervePay, LLC (“Payment Facilitator”) governing Client’s use of Payment Facilitator’s payment processing services to accept credit cards, debit cards, ACH transactions and/or checks (together, the “Services” and individually, each a “Service”).

CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY USING THE SERVICES CLIENT ACCEPT THESE TERMS AND CONDITIONS. IF CLIENT DOES NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, PROMPTLY DISCONTINUE USE OF THE SERVICES.

## 1. Services

The Services allow Client to accept payment card transactions, ACH transactions and other electronic payment transactions (collectively, “Payment Transactions”) into Client’s bank account(s) or a Payment Facilitator account (as determined by Payment Facilitator in its sole discretion) on a compatible computer and/or mobile device. The Services are licensed to Client, and Payment Facilitator owns all copyright, trade secret, patent, and other proprietary rights in the Services. Payment Facilitator is not a bank; Payment Facilitator is a registered payment facilitator that processes or directs the processing of payments Client receives from Client customers (each “Client Customer” and collectively, “Client Customers”). To do this, Payment Facilitator enters into agreements with other processors and banks. Client will be required to provide certain personal and/or business information to open an account with Payment Facilitator, which must be approved by Payment Facilitator prior to using the Services (the “Sub-Merchant Account”). Client must provide accurate and complete information to Payment Facilitator when opening the Sub-Merchant Account. Payment Facilitator may forward some or all of this information to its processor and to any other person or entity that has involvement in connection with the processing of any of Client’s Payment Transactions, including Client’s bank or other financial institutions and Card Organizations. If Client’s request to open a Sub-Merchant Account is approved, Payment Facilitator may request additional information from Client at any time. Payment Facilitator may also periodically obtain reports to determine whether Client continues to meet the requirements for a Sub-Merchant Account. In addition, Client may be required to enter into additional agreements as required by Payment Facilitator’s processors (each a “Payment Facilitator Processor” and collectively, “Payment Facilitator’s Processors”) or the card organizations, such as MasterCard, Visa, Discover Network or American Express (the “Card Organizations”). The Card Organizations and Payment Facilitator Processors require that Client and Payment Facilitator comply with all of their respective applicable bylaws, rules and regulations, which may be amended at any time (collectively, the “Rules”). Payment Facilitator may amend this Agreement to comply with such amendments. Portions of these rules and regulations applicable to Visa and MasterCard are available on the Visa and MasterCard websites.

## **2. Card Readers / Swipe Device**

Once Client's Sub-Merchant Account is approved, and if purchased (or alternate arrangements) or required for Client's account, the swipe device(s) will be sent to Client at the address provided. Payment Facilitator does not warrant that the swipe device or the Services will be compatible with Client's computer, mobile device or third-party carrier. Client's use of any swipe device and the Services may also be subject to the terms of Client's mobile device manufacturer and Client's carrier. Payment Facilitator shall not be responsible for any damages caused by defects associated with any swipe devices used by Client with respect to Client's business or any hacking of any of such swipe devices.

**3. Sub-Merchant Account** By establishing a Sub-Merchant Account, Client confirms that Client is either a legal resident of the United States, a United States citizen, or 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. Client agrees that Payment Facilitator is authorized to contact and share information about Client's Sub-Merchant Account with Client's bank or other financial institution and all Card Organizations. Upon approval of Client's Sub-Merchant Account and by accepting the terms of this Agreement, Client authorizes Payment Facilitator to hold, receive, and disburse funds on Client's behalf. Client may terminate this authorization by closing Client's Sub-Merchant Account. Client agrees that in using the Services, Client will do the following:

- Only send SMS receipts to Client Customers who have requested a receipt be delivered in that manner;
- Comply with all applicable laws and regulations and all requirements of: (i) Card Organizations applicable to merchants; and (ii) all Payment Facilitator Processors.
- Maintain the security of account login information Client receives as part of Client's use of the Services.
- Client agrees that if Client loses Client's computer or mobile device, or Client has reason to believe that Client's Sub-Merchant Account is no longer secure, Client will immediately notify Payment Facilitator;
- Not accept payments in connection with any illegal activity, or any activity that is inconsistent with Client's type of business;
- Not accept payments for any of the following categories of goods or services or business (collectively, "Prohibited Transactions"): (i) adult content; (ii) airline or cruise line; (iii) credit counseling or identity protection services; (iv) debt elimination or reduction services; (v) distressed property sales and marketing; (vi) gambling establishments or gambling; (vii) no card present tobacco or pharmaceutical sales; (viii) multilevel marketing programs or goods or services sold through such systems; (ix) goods or services sold through rebate or upsell programs; (x) timeshare resales and related marketing of goods, services or properties; (xi) sales to from operations outside the United States of America; (xii) sales of goods or services from Client's sub-merchants or other third party sellers of such goods or services; (xiii) acceptance of credit cards, debit cards or other forms of payment at scrip dispensing terminals; (xiv) buyer club activities or buyer club memberships; (xv) inbound or outbound telemarketing services; or (xvi) continuity or subscription services generated from direct marketing activities.

- Use the Services only for lawful merchant activities as approved by Payment Facilitator and not in a manner that results in or may result in complaints, disputes, chargebacks, fees, fines or penalties; and
- Not knowingly submit any sales transaction (i) that adds any surcharge to the transaction, except to the extent authorized by the Rules or applicable law, (ii) that adds any tax to the transaction, unless applicable law expressly allows for Client to impose a tax; provided, any tax amount, if allowed, must be included in the transaction amount and not collected separately, (iii) that represents the refinancing or transfer of an existing Cardholder obligation that is deemed to be uncollectible or arises from the dishonor of a Cardholder's personal check or from the acceptance of a Card at a terminal that dispenses scrip, (iv) that is not a valid transaction between the Client and a bona fide Cardholder, (v) that Client knows or should have known to be fraudulent or not authorized by the Cardholder, or that Client knows or should have known to be authorized by a Cardholder colluding with Client for a fraudulent purpose, (vi) until after the products are shipped the services are performed, and/or Client has completed the transaction, unless Client has obtained Cardholder consent for a recurring transaction, (vii) where a valid authorization was required but not obtained, (viii) where multiple authorizations for amounts less than the total sale amount have been obtained, (ix) which results in a disbursement of cash or cash equivalent to a Cardholder or (x) that establishes a maximum dollar sale transaction amount, except to the extent authorized by the Rules.
- Not submit any refund transaction: (i) that does not correlate to an original sales transaction from the Cardholder, (ii) that exceeds the amount shown as the total on the original sale transaction, unless the excess represents the exact amount required to reimburse the Cardholder for postage paid by the Cardholder to return merchandise in accordance with a policy applied consistently by Client to all Client Customers, (iii) for returned products that were acquired in a cash purchase from Client, (iv) that would cause an overdraft, or (v) more than three (3) business days following either: (A) a regulatory requirement granting a Cardholder's right to a refund; or (B) a non-disputed Cardholder request.
- Not use any Cardholder data or other transaction data received from Payment Facilitator or Payment Facilitator Processor for any purpose not authorized by this Agreement.
- Not disclose any Cardholder data or other transaction data to any entity except for necessary disclosures to affected Cardholders, and through Payment Facilitator Processor to affected Card Organization entities.
- Not provide Payment Facilitator any inaccurate, incomplete, or misleading information.
- Provide Payment Facilitator with timely notification of events that have caused or could cause material changes in Client's ability to fulfill Client's obligations under this Agreement, including but not limited to (i) adverse changes in Client's financial health; (ii) adverse changes in Client's business conditions or environment; or (iii) actions by governmental or non-governmental agencies.
- Not transfer or attempt to transfer Client's financial liability by asking or requiring Cardholders to waive

their dispute rights.

- Not submit transactions on behalf of another entity that the Card Organizations would consider a sub-ISO, Payment Service Provider (PSP), Payment Facilitator, or other third party payment provider.
- Not submit transactions for entities that do not have their principal places of business in the United States
- Not use the Services to process cash advances.

#### **4. Unauthorized Use, Compliance with Law**

Client may only use the Services in compliance with all laws, rules, and regulations applicable to the use of the Services. Payment Facilitator may choose not to authorize or settle any transaction submitted to Payment Facilitator if Payment Facilitator believes the transaction is in violation of this Agreement or may cause harm to Client, Client Customers, Payment Facilitator, or Payment Facilitator's processors. Client expressly authorizes Payment Facilitator to share information about Client, Client's Sub-Merchant Account or Client's transactions with Client's bank(s) and other financial institutions and with law enforcement if Payment Facilitator believes the Services have been used for an illegal, unauthorized or criminal purpose. **Unauthorized Use, Compliance with Law**

Client agrees to pay the applicable fees set forth when Client signed up for the Services ("Fees"). Payment Facilitator reserves the right to change Fees at any time upon thirty (30) days after sending notice (by any means, including but not limited to email, text, regular mail or otherwise) prior to the effective date of the change. Client's continued use of the Services indicates Client's consent to the change in Fees. If Client does not consent to the change in Fees, Client must close Client's Sub-Merchant Account, otherwise we shall be permitted to change or add such Fees thirty days following sending of the notice. Client further agrees that if unusual or unexpected transaction activity occurs on Client's Sub-Merchant Account, Payment Facilitator has the right to hold funds while Payment Facilitator conducts an investigation into the processing activity. Payment Facilitator also has the right to request and to receive from Client's documentation to support the transaction activity, including, but not be limited to, invoices, signed sales receipts, shipping documentation, and any other relevant documentation pertaining to a transaction or transactions in question.

#### **5. Deposit of Sub-Merchant Account Funds**

Client will establish and maintain with an Automated Clearing House ("ACH") receiving depository institution acceptable to Payment Facilitator's Processors one or more commercial checking account(s) based in the United States to facilitate payment for Payment Transactions. Client will maintain sufficient funds in the account to accommodate all transactions, including, but not limited to, Fees, fines and chargebacks. Client irrevocably authorizes the debit of the account for chargebacks, Fees and any other penalties, fees or payments or monies due under this Agreement to Payment Facilitator or its Payment Facilitator Processors with respect to Client's Sub-Merchant Account (collectively, "Indebtedness to Payment Facilitator"). Once Client's bank account is validated, Payment Facilitator or Payment Facilitator's Processor(s) will deposit to

Client's Sub-Merchant Account the amounts actually received by Payment Facilitator for completed transactions submitted through the Services no later than two days following the end of every business day. Payments to Client's bank account will normally register within 2-3 business days. Each transaction will be considered complete when Payment Facilitator has received the funds and when such funds have been accepted by the designated bank or financial institution. Payment Facilitator shall have the right to deduct from Client's Sub-Merchant Account: (i) following the end of each month during the term of this Agreement any Fees owing from Client to Payment Facilitator or any Payment Facilitator Processor; and (ii) immediately at any time, any Indebtedness to Payment Facilitator.

Should Payment Facilitator need to conduct an investigation or resolve any dispute related to Client's Sub-Merchant Account (including but not limited to issues around possible Prohibited Transactions or other breaches by Client of this Agreement or applicable Payment Facilitator, Payment Facilitator Processor or Card Organization Rules), Payment Facilitator may defer payment or restrict access to Client's funds for as long as Payment Facilitator deems necessary. Payment Facilitator also may defer payment or restrict access to Client's funds as required by law or court order, or if otherwise requested by law enforcement or governmental entity.

#### **6. Sub-Merchant Account Activity**

Client is responsible for monitoring Client's transactions and ensuring that Payment Facilitator's payments to Client are correct. Client agrees to contact Payment Facilitator immediately if Client discovers an error or an unauthorized transaction on Client's Sub-Merchant Account. Client must notify Payment Facilitator of any errors in payments made to Client within thirty (30) days of the error or unauthorized transaction. Client's failure to notify Payment Facilitator of any such errors within the applicable thirty (30) day period will constitute a waiver of any right or claim to amounts owed to Client.

Client is responsible for reconciling all transactions with Client's Sub-Merchant Account and keeping permanent records of such transactions.

#### **7. Reserve Account/Security Interest**

For the purpose of providing a source of funds to pay damages which Payment Facilitator or its Payment Facilitator Processors may potentially suffer under this Agreement and to pay Indebtedness to Payment Facilitator or other amounts Client may owe Payment Facilitator under this Agreement or assessed by any Payment Facilitator Processor, a separate reserve account (the "Reserve Account") may be established from time to time by Client, Payment Facilitator, or any Payment Facilitator Processor to secure Client's current and/or future potential obligations as reasonably determined by Payment Facilitator or any Payment Facilitator Processor. The Reserve Account will be in an amount as reasonably determined by Payment Facilitator or its applicable Payment Facilitator Processor(s) to protect their present or future interests and may be raised, reduced or removed at any time by Payment Facilitator or any Payment Facilitator Processor, in Payment Facilitator's sole discretion. If there are not sufficient funds in Client's Reserve Account, Payment Facilitator has the right of recoupment and set-off and may fund the Reserve Account from any funding source associated with Client's Sub-Merchant Account, including but not limited to any funds due to Client under this Agreement, or available in Client's bank account. Client grants Payment Facilitator a security interest in and lien on any and all funds held in (a) any Reserve Account, (b) all funds at any time in the Sub-Merchant Account, regardless of the source of funds, and (c) any amounts due to Client under this Agreement. Client agrees to provide other security to Payment Facilitator upon request to secure Client's obligations under this Agreement. This security interest may be exercised by Payment Facilitator or any Payment Facilitator Processor or any of Payment

Facilitator or any Payment Facilitator Processor's assigns, without notice or demand of any kind by making an immediate withdrawal, debit or freezing of Client's assets. Payment Facilitator may also make reversals of deposits or transfers made to Client's Sub-Merchant Account. Client agrees to execute any additional documentation required for Payment Facilitator to perfect Payment Facilitator's security interest, including such form(s) of control agreement(s) as Payment Facilitator may from time to time require regarding dominion of the funds referenced in Sections 8(a), 8(b) and 8(c) hereof. Client further agrees to pay to Payment Facilitator upon demand any Indebtedness Owing to Payment Facilitator or other monies owing by Client to Payment Facilitator or any Payment Facilitator Processor pursuant to this Agreement or otherwise.

## **8. Honoring Cards**

- Whenever possible, Client 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. Client will not honor a Card if the Card has expired or if Client determines 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.
- Client is responsible for ensuring that the cardholder of each Card understands that Client is responsible for the transaction, including the goods or services that are the subject of the transaction. In addition, Client is solely responsible for all customer service issues relating to Client's goods or services, including pricing, fulfillment, order cancellation, returns, refunds and adjustments, warranty, and support.
- Client will not add any amount to the posted price of goods or services Client offers as a condition of paying with a Card that is not consistent with the Card Organization Rules and laws.
- Client will properly disclose to the holder of each form of credit card, debit card or other card (each a "Card" and collectively, the "Cards") that is or may be used in connection with any of the transactions subject to this Agreement (each a "Cardholder"), at the time of transaction, any limitation Client has on accepting returned merchandise. Client's return policy must be in accordance with the Card Organization Rules. If Client's refund policy prohibits returns or is unsatisfactory to the Cardholder, Client may still receive a Chargeback relating to such transactions.
- Client agrees to make a written receipt available to the Cardholder for any transaction. Client may provide the Cardholder the option to decline a written receipt. Client may also offer electronic receipts delivered by SMS or e-mail to the Cardholder.

## **9. Taxes**

Client is responsible for collecting, reporting and remitting any taxes required to be collected, paid or withheld in connection with the Services ("Taxes"). Payment Facilitator 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 Client receives: (i) more than \$20,000 in gross amount of payments and (ii) more than 200 payments, Payment Facilitator or its Payment Facilitator processor(s) is authorized to report annually to the Internal Revenue Service ("IRS"), as required by law, Client's name, address, Tax Identification Number (such as a Social Security Number (SSN), or Employer Identification Number (EIN)), the total dollar amount of the payments Client receives in a calendar year, and the total dollar amount of the payments Client receives for each month in a calendar year.

## **10. Returns**

By using the Services, Client agrees to process returns of, and provide refunds and adjustments for, Client's goods or services through Client's Sub-Merchant Account in accordance with this Agreement, each Payment Facilitator Processor's Rules and applicable Card Organization Rules.

## **11. Chargebacks**

The amount of a transaction may be reversed or charged back to Client's Sub-Merchant Account (each a "Chargeback") for reasons, including, but not limited to, any one of the following: (a) an invalid Card account is submitted by Client; (b) neither the Cardholder nor a person authorized by the Cardholder received the goods or services requested; (c) the Cardholder disputes the quality of the goods or services received; (d) the Cardholder never received a credit for a returned item or a cancelled order; (e) the Cardholder was charged incorrectly; (f) the authorization code is invalid; (g) the Card was expired or not effective; (h) the transaction is disputed; (i) the transaction is reversed by the Card Organization, any Payment Facilitator Processor, or a financial institution for any reason, (j) the transaction was not authorized; or (k) the transaction is allegedly unlawful, suspicious, or believed by Payment Facilitator to be in violation of the terms of this Agreement.

For any transaction that results in a Chargeback, Payment Facilitator may withhold the Chargeback amount in the Reserve Account. Client may be subject to a chargeback on sales for a minimum period of 360 days from the date the sale was entered into the processing system. Payment Facilitator may deduct the amount of any Chargeback and any associated fees, fines, or penalties assessed by each applicable Payment Facilitator Processor from Client's Sub-Merchant Account, Client's Reserve Account, if any, any proceeds due to Client, or Client's bank account. If Client has pending Chargebacks or Payment Facilitator reasonably believes that a Chargeback is likely, Payment Facilitator may withhold or delay payments from Client's Sub-Merchant Account for the later of: (i) 270 days following termination of this Agreement; (ii) 180 days from Client's last Chargeback; or (iii) 30 days following Client's delivery of written notification disputing the Chargeback in question and the basis therefor with appropriate documentation in accordance with [Section 13](#) below. Client agrees to respond to all Chargebacks promptly. If Payment Facilitator is unable to recover funds related to a Chargeback for which Client is liable, Client will pay Payment Facilitator the full amount of the Chargeback immediately upon demand. Client agrees to pay all costs and expenses, including without limitation attorneys' fees and other legal expenses, incurred by or on behalf of Payment Facilitator related to Payment Facilitator's efforts to collect any Sub-Merchant Account deficit balances unpaid by Client.

If Payment Facilitator determines that Client is incurring an excessive amount of Chargebacks, Client may be subject to a Card Organization's monitoring program. Client is responsible for monitoring Client's monthly chargeback percentage and developing chargeback reduction programs as required by the Card Organizations. Payment Facilitator may also establish controls or conditions governing Client's Sub-Merchant Account, including but not limited to (a) an increase in processing fees, (b) creating a Reserve Account in an amount reasonably determined by Payment Facilitator to cover anticipated Chargebacks and related fees, (c) delaying payments, and (d) terminating or suspending the Services and this Agreement. Failure to establish such controls or conditions as established by Payment Facilitator within the specified period (or ten days following notification of such controls or conditions if no time period is specified) shall constitute a breach by Client of this Agreement.

## **12. Processing Errors**

Client agrees to promptly notify Payment Facilitator of any errors within thirty (30) days after the date of the asserted error or missing transaction(s). If Client does not notify Payment Facilitator within the 30-day period, Payment Facilitator is not liable for, nor obligated to investigate, correct, such asserted error and Client agrees that all claims related to such error are waived. If Payment Facilitator discovers processing errors, it will attempt to rectify processing errors.

## **13. Privacy and Legal Notices; HIPAA, TCPA, FDCPA**

Client agrees to keep information received from Cardholders confidential. Client will not disclose to any third party any Cardholder account information 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"). Client must keep all Cardholder information in a secure manner to prevent disclosure to unauthorized parties. Client may not disclose or distribute any such information to a third party or use the information for marketing purposes unless Client receives the express consent of the user. Furthermore, Client agrees to be subject to Payment Facilitator's privacy policy and any other legal notices located at [www.swervepay.com](http://www.swervepay.com).

Client 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"), Fair Debt Collection Practices Act ("FDCPA") and HIPAA and its related Rules and Regulations, and agree to indemnify, defend and hold Payment Facilitator and its Affiliated Entities (defined below) 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 Services provided to Client and/or Client Customers by Payment Facilitator or any of its Affiliated Entities, including but not limited to any claims arising from following Client's direction for communications to Client Customers 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 Section 13, indemnification of Payment Facilitator and its Affiliated Entities includes, but is not limited to payment by Client of any judgment, settlement, claim, penalties and costs, interest, reasonable attorneys' fees and cost of defense, if Payment Facilitator or an Affiliated Entity is named as a party to any action or suit related to delivery of communications to Client Customer or otherwise subject to this indemnification. In such an event, Payment Facilitator and its Affiliated Entities shall have the option at any time of either being defended by Client's counsel or providing their own defense to the action (subject to regular monthly reimbursement from Client for costs and fees incurred, regardless of the outcome of such action). For purposes of this Section 13: (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 Payment Facilitator (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 Payment Facilitator or assists Payment Facilitator in delivering any of the Services provided by Payment Facilitator pursuant to this Agreement.

## **14. Consent to Electronic Notices**

From time to time, Payment Facilitator may be required to provide to Client certain notices, disclosures or information about Client's

Sub-Merchant Account or in connection with the Services. Client agrees that this information may be provided to Client by posting it on Payment Facilitator's website or mobile app, or by sending Client an e-mail to the e-mail of record with Payment Facilitator when Client signed up for the Services. Notices provided to Client via e-mail will be deemed given and received on the transmission date of the e-mail. Notices posted to the website or mobile app will be deemed given and received within 24 hours of posting.

## **15. Compliance with Law: Payment Card Industry Data Security Standards Non-Disclosure & Storage of**

### **Cardholder and Transaction Information Requirements**

While Payment Facilitator and/or its Affiliates use advanced security features to ensure the security and safety of Client's personal information and that of Client Customers, Payment Facilitator cannot absolutely guarantee the security of any of such personal information from unauthorized access, loss or disclosure by third parties. Client confirms and certifies that: (a) Client is, and shall be, in full compliance during the term of this Agreement with all laws, statutes and federal and/or state regulations, as well as the Rules as may be applicable to Client, Client's business and any Payment Transaction; (b) all acceptances of Cards as a form of payments via the Internet shall at a minimum, include the following information and processes on their Internet sites: (i) prominent display of Sub-Merchant name as "Merchant" and as the name that will appear on the cardholder statement, (ii) a complete description of good or services offered; (iii) delivery standards including method and time for delivery; (iv) terms and conditions of purchase, and export or legal descriptions; (v) return/refund policy described in reasonable details; (vi) opportunity to review and confirm order prior to order submission; (vii) secure method for payment data transmission; (viii) currency of transaction used to make payment (USD); (ix) disclosure of Sub-Merchant outlets to country of origin; (x) display of card association or payment network logos; (xi) clear disclosure of Sub-Merchant privacy policy; (xii) alternate Sub-Merchant contact info options; and (xiii) display of web hosting company contact information; (c) it (and any outside agent that it may utilize to submit Transactions to Payment Facilitator) complies and will comply with the Payment Card Data Security Standards ("PCI DSS") and Sub-Merchant hereby agrees to pay any fines and penalties that may be assessed by Visa, MasterCard or Discover or any other Card Organization as a result of Sub-Merchant's non-compliance with the requirements of PCI DSS, any data breaches, or by its failure to accurately validate its compliance. Sub-Merchant 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. The foregoing is an on-going obligation during the term of this Agreement and as this Agreement may be renewed. Sub-Merchant acknowledges and understands that Sub-Merchant may be prohibited from participating in Visa, MasterCard or Discover or other Card Organization programs if it is determined that Sub-Merchant is non-compliant. The following lists certain (but not all) of the current PCI DSS requirements, all of which Sub-Merchant shall comply with, if applicable: (i) install and maintain a working network firewall to protect data accessible via the Internet; (ii) keep security patches up to date; (iii) encrypt stored data; (iv) encrypt data sent across networks; (v) use and regularly update anti-virus software; (vi) restrict access to data to business ("need to know"); (vii) assign a unique ID to each person with computer access to data; (viii) not use Payment Facilitator supplied defaults for system passwords and security parameters; (ix) track access data by unique ID; (x) maintain a policy that addresses information security for employees and contractors; and (xi) restrict physical access to Cardholder information. Sub-Merchant shall notify Payment Facilitator if it utilizes any third-party that provides payment related services, directly or indirectly, and/or stores, transmits, or processes Cardholder data. Sub-Merchant is responsible for ensuring compliance of any such third-parties with PCI DSS. In the event of the failure, including bankruptcy, insolvency, or other suspension of Sub-Merchant's business operations, Sub-Merchant shall not sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or other Cardholder transaction information to third-parties (collectively, "Cardholder Information"). Sub-Merchant on behalf of itself and each of its agents and Affiliates shall either return this Cardholder Information to Payment Facilitator, or provide Payment Facilitator with acceptable proof of destruction of Cardholder Information. If Sub-Merchant is undergoing a forensic investigation regarding PCI DSS compliance at the time Sub-Merchant executes this Agreement, then Sub-Merchant shall fully cooperate with the investigation until completed. Payment Facilitator warrants that it and each of its Affiliates complies with the applicable required PCI DSS regulations and that Payment Facilitator and each of its Affiliates is a PCI DSS validated service provider.

## **16. Termination of Services**

Client may cancel the Services or terminate this Agreement at any time, with, or without cause. Cancellation of the Services will become immediate upon Client's notice to Payment Facilitator. Cancellation of the Services or termination of this Agreement will not alter Client's obligation to pay all amounts owed to Payment Facilitator, including any Fees, and Client will continue to be bound by this Agreement, which obligations shall survive any termination of this Agreement. Upon termination of this Agreement, the license granted under this Agreement shall cease and Payment Facilitator shall not be liable to Client or any third party for such termination or access to the Services.

Upon termination of this Agreement, any pending transactions will be cancelled unless processed by Payment Facilitator (or its Payment Facilitator Processors) in Payment Facilitator's sole discretion. Subject to Section 18 below, any funds that Payment Facilitator is holding in custody for Client at the time of termination, less any applicable Fees chargebacks, penalties or payments due under this Agreement, will be paid out to Client according to Client's payment schedule (consistent with past practice and subject to Payment Facilitator's rights to withhold payment for monies owed to Payment Facilitator or reserves established by Payment Facilitator). If an investigation is pending at the time Client closes Client's Sub-Merchant Account, Payment Facilitator may hold Client's funds until the investigation is completed. Payment Facilitator may hold all funds for up to 180 days from the date of the last transaction or 180 days from the date of the last chargeback, whichever is the later.

Payment Facilitator may terminate this Agreement and close Client's Sub-Merchant Account for any reason or no reason at any time upon notice to Client, and without liability to Client for closing Client's Sub-Merchant Account. Payment Facilitator may also suspend or terminate the Services and access to Client's Sub-Merchant Account if Client: (a) have violated the terms of this Agreement, the Card Organization Rules, any other agreement Client has with Payment Facilitator, (b) pose an unacceptable credit or fraud risk to Payment Facilitator or any Payment Facilitator Processor, as determined by Payment Facilitator in its sole discretion, (c) fall outside the credit policy approved by a Payment Facilitator Processor, or if requested by a Card Organization or governmental entity, (d) provide any false, incomplete, inaccurate, or misleading information or otherwise engage in fraudulent or illegal conduct, or (e) breach any of Client's obligations under this Agreement. Payment Facilitator also reserves the right to add Client's Sub-Merchant Account to the Terminated Merchant File, if Client's Sub-Merchant Account meets the criteria defined by MasterCard.

## **17. Effect of Termination**

Any termination of this Agreement does not relieve Client of any obligations to pay any Fees, penalties or costs accrued prior to the termination and any other amounts owed by Client to Payment Facilitator as provided in this Agreement. Client will continue to be responsible for any and all Chargebacks, credits and adjustments and all other amounts then due, or which later become due. In connection with termination, Payment Facilitator or its applicable Payment Facilitator Processor(s) may require the establishment and maintenance of a Reserve Account by Client in accordance with Section 7.

Subject to the terms and conditions of this Agreement, Payment Facilitator grants Client a personal, limited, non-exclusive, non-transferable license, during such time that Client satisfies the conditions set forth in this Agreement, to electronically access and use the Services solely for the purpose described herein. Except as expressly allowed herein or by applicable law, Client is not licensed or permitted under this Agreement 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 Client under this Agreement; (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 Payment Facilitator's other

licensees or customers; or (vi) export the Services, directly or indirectly.

## **18. Reservation of Rights and Ownership**

Payment Facilitator reserves all rights not expressly granted to Client in this Agreement. Components of the Services are protected by copyright, trade secret and other intellectual property laws. Payment Facilitator and its licensors own the title, copyright, and other worldwide intellectual property rights in the Services and all copies of the Services. This Agreement does not grant Client any rights to trademarks or service marks of Payment Facilitator. This Agreement does not limit any rights that Payment Facilitator may have under trade secret, copyright, patent or other laws.

## **19. Privacy & Use of Client's Information**

The Services may utilize SMS messages delivered through wireless service providers, such as AT&T, Sprint, Verizon, etc. Client acknowledges that any SMS message goes through Client 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 Payment Facilitator 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. Client acknowledges and agrees that Payment Facilitator may provide information about Client to wireless service providers as described above. Client also acknowledges that in accessing the Services Client may upload or enter certain data from Client's account(s) such as names, addresses and phone numbers, purchases, and sales among others, to the Internet. Client may be made aware of or offered services, features, products, applications, online communities, or promotions provided by Payment Facilitator or Payment Facilitator's Affiliates. Installing this application grants Payment Facilitator the right to send the identifiers for Client's mobile device to third parties for the use of advertising purposes. Client is responsible for securely managing access to Client's data and to the Services. Client agrees to be bound by the applicable Payment Facilitator privacy policy, as it may be amended from time to time in accordance with its terms.

## **20. Disclaimer of Warranties**

THE SERVICES AND ANY CONTENT ACCESSIBLE THROUGH THE SERVICES ARE PROVIDED "AS-IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PAYMENT FACILITATOR, ITS AFFILIATES, LICENSORS, PARTICIPATING FINANCIAL INSTITUTIONS, PAYMENT FACILITATOR PROCESSORS, THIRD-PARTY CONTENT OR SERVICE PROVIDERS, DEALERS AND SUPPLIERS (COLLECTIVELY, "SUPPLIERS") DISCLAIM ALL GUARANTEES AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES, CONTENT, AND RELATED MATERIALS, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, AND NON- INFRINGEMENT. PAYMENT FACILITATOR DOES NOT WARRANT THAT THE SOFTWARE, THE SERVICES, THE SWIPE DEVICE, THIRD PARTY SERVICES OR ANY ONLINE SERVICES ARE SECURE OR FREE FROM BUGS, VIRUSES, INTERRUPTION, OR ERRORS, OR THAT THE SERVICES WILL MEET YOUR REQUIREMENTS. FURTHER, PAYMENT FACILITATOR DOES NOT WARRANT ACCESS TO THE INTERNET OR TO ANY OTHER SERVICE OR CONTENT OR DATA THROUGH THE SERVICES. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO CLIENT. THIS WARRANTY GIVES CLIENT SPECIFIC LEGAL RIGHTS, AND CLIENT MAY HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE.

## **21. Limitation of Liability and Damages**

CLIENT AGREE THAT IN NO EVENT WILL PAYMENT FACILITATOR, ANY PAYMENT FACILITATOR PROCESSOR OR ANY AFFILIATE OF PAYMENT FACILITATOR BE LIABLE FOR ANY LOSS, COST, LIABILITY OR DAMAGE INCURRED AS A RESULT OF YOUR USE OF THE SERVICES, THE TERMINATION OF SERVICES OR PARTICIPATION IN THIRD PARTY SERVICES. THE ENTIRE CUMULATIVE LIABILITY OF PAYMENT FACILITATOR, PAYMENT FACILITATOR'S AFFILIATES, ITS SUPPLIERS AND PAYMENT FACILITATOR PROCESSORS FOR ANY REASON ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY OF THE SERVICES SHALL BE LIMITED AS PROVIDED HEREIN. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PAYMENT FACILITATOR, ITS AFFILIATES, ITS PAYMENT FACILITATOR PROCESSORS AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGES RELATING TO LOSS OF BUSINESS, TELECOMMUNICATION FAILURES, THE LOSS, CORRUPTION OR THEFT OF DATA, VIRUSES, SPYWARE, LOSS OF PROFITS, USE OF THE SOFTWARE WITH HARDWARE OR OTHER SOFTWARE THAT DOES NOT MEET PAYMENT FACILITATOR'S SYSTEMS REQUIREMENTS OR THE LIKE, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF ANY OF PAYMENT FACILITATOR, ITS AFFILIATES, ITS SUPPLIERS, ITS PAYMENT FACILITATOR PROCESSORS OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION AND/OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO CLIENT. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN PAYMENT FACILITATOR AND CLIENT. PAYMENT FACILITATOR WOULD NOT HAVE PROVIDED THE SERVICES WITHOUT SUCH LIMITATIONS.

## **22. Consent**

Client's consent to do business electronically and receive electronic communications from Payment Facilitator, and Payment Facilitator's agreement to do so covers all transactions Client conducts through the Services for as long as Client remains a licensee of the Services. If Client later decides that Client does not want to receive future communications electronically, Client may contact Payment Facilitator with withdrawal in writing of Client's consent and discontinue the use of the Services.

## **23. Indemnification**

Client agrees to indemnify, defend and hold Payment Facilitator, its Affiliates, its Payment Facilitator Processors, contractors, employees, agents and its third party suppliers, licensors, attorneys and partners (collectively, the "Payment Facilitator Indemnitees") harmless from any and all claims, losses, damages, and liabilities, costs and expenses, including without limitation legal fees and expenses, arising out of or related to Client's use or misuse of the Services, any violation by Client of this Agreement, or any breach of the representations, warranties, and covenants made by Client in this Agreement. Payment Facilitator reserves the right, at Client's expense, to assume the exclusive defense and control of any matter for which Client is required to indemnify any of Payment Facilitator Indemnitees, including rights to settle, and Client agrees to cooperate with the defense and settlement of these claims. Payment Facilitator will use reasonable efforts to notify Client of any claim, action, or proceeding brought by a third party that is subject to the foregoing indemnification upon becoming aware of it.

## **24. Amendment**

Please review the Agreement periodically on Payment Facilitator's website provided to Client for additional terms and changes. Payment Facilitator has the right to change or add to the terms of this Agreement, and to change, delete, discontinue, or impose conditions on any feature or aspect of the Services, including but not limited to, Fees, terms, Internet-based services, pricing, technical support options, and other product-related policies, at any time upon notice by any means Payment Facilitator determines in its discretion to be reasonable. Client's continued use of the Services after Payment Facilitator's publication of any such changes shall constitute Client's acceptance of this Agreement as modified.

## **25. Third Party Services**

In connection with Client's use of the Services, Client may be made aware of services, products, offers and promotions provided by third parties, and not by Payment Facilitator ("Third Party Services"). If Client decides to use Third Party Services, Client is responsible for reviewing and understanding the terms and conditions as well as any fees, if any, governing any Third Party Services. Client authorizes Payment Facilitator to use and disclose Client's contact information, including name and address, for the purpose of making the Third Party Services Client chooses available to Client. Client agrees that the third party, and not Payment Facilitator, is responsible for the performance of the Third Party Services.

## **26. Export Restrictions**

Client acknowledges that the Services are subject to the U.S. export controls regulations administered by the U.S. Dept. of Commerce (15 CFR, Chapter VII) and that Client will comply with all applicable laws and regulations. Client 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 Client knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons.

## **27. Representations and Warranties**

Client represents and warrants to Payment Facilitator that: (a) if an individual, Client is at least eighteen (18) years of age; (b) Client is eligible to register and use the Services and have the right, power, and ability to enter into and perform under this Agreement; (c) the name identified by Client when Client registered is Client's name or business name under which Client sells goods and services; (d) any sales transaction submitted by Client will represent a bona fide sale by Client; (e) any sales transactions submitted by Client will accurately describe the goods and/or services sold and delivered to a purchaser; (f) Client will fulfill all of Client's obligations to each of Client Customers for which Client submits a transaction and will be responsible for and resolve any customer dispute or complaint directly with the purchaser and will be financially liable to Payment Facilitator for transactions entered into with purchasers; (g) Client and all transactions initiated by Client will comply with all federal, state, and local laws, rules, and regulations applicable to Client and/or Client's business, including any applicable tax laws and regulations; (h) except in the ordinary course of business, no sales transaction submitted by Client through the Services will represent a sale to any principal, partner, proprietor, or owner of Client's entity or any of Client's other Affiliates; (i) Client 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; (j) Client's use of the Services will be in compliance with this Agreement; (k) Client agrees to follow the applicable Card brand operating Rules and regulations; and (l) Client is not engaged in any of the businesses or in any of the activities listed on Exhibit A, attached hereto and incorporated herein by reference.

## **28. Miscellaneous**

Except as expressly set forth in this Agreement, this Agreement is a complete statement of the agreement between Client and Payment Facilitator and sets forth the entire liability of Payment Facilitator, its Payment Facilitator Processors, its Affiliates and its suppliers and Client's exclusive remedy with respect to the Services and Third Party Services and their use. The suppliers, agents, employees, distributors, and dealers of Payment Facilitator are not authorized to make modifications to this Agreement, or to make any additional representations, commitments, or warranties binding on Payment Facilitator. Any waiver of the terms herein by Payment Facilitator must be in a writing signed by an authorized officer of Payment Facilitator and expressly referencing the applicable provisions of this Agreement. If any provision of this Agreement is invalid or unenforceable under applicable law, then it shall be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions will continue in full force and effect. This Agreement may not be assigned by Client without the prior written approval of Payment Facilitator, but may be assigned without Client's consent by Payment Facilitator without restriction. Any assignment in violation of this Section will be void. This Agreement will be governed by Illinois law, without regard to its conflicts of law principles, and applicable federal law. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The parties hereby consent to the exclusive jurisdiction and venue in the state courts in Cook County, Illinois or federal court for the Northern District of Illinois for the resolution of any dispute with respect to the this Agreement or any of the Services called for herein. Client hereby waives Client's right to trial by jury with respect to any judicial proceeding relative to this Agreement or any of the Services called for herein. For purposes of this Agreement, the term "Affiliate" shall mean a person or entity controlled by or under common control with another person or entity, as the term "affiliate" is construed under Rule 405 promulgated under the Securities Act of 1933 as amended. All rights and obligations of the parties hereto accruing under this Agreement during the term of this Agreement shall survive any termination of this Agreement. Headings are included for convenience only, and shall not be considered in interpreting this Agreement. This Agreement may be executed in several counterparts, whether by original, photocopy, facsimile, email pdf or electronic signature, both of which when taken together shall constitute one valid binding Agreement. By clicking via the internet or other electronic media that Client agrees to the terms of this Agreement, this shall constitute the counterpart electronic signature by both Client and Payment Facilitator to be bound by the terms of this Agreement. Any notice required hereunder shall be deemed given if delivered in writing in person or sent by email to the email address of the other party set forth below or if sent by Federal Express or other bonded courier one business day after sent via next business day or same business day delivery to the address of the party set forth below to three business days after deposit in the U.S. Mail by either registered or certified mail, addressed to the party entitled to notice at the address set forth below, or if a party delivers notice of a change in address, then the delivery shall be made to the most recent address provided by notice of the party changing his, her or its address as set forth in such notice. If no address is designated by Client below, then the address shall be Client's main corporate address as set forth on Client's main corporate website.

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date of full execution of this Agreement.

**Customer:**

**By:**

**Its:**

**Date of Execution:**

**Address:**

.

**Email:**

15807945

## EXHIBIT A

### PROHIBITED BUSINESSES AND ACTIVITIES

The following businesses and activities are strictly prohibited, unless otherwise agreed to by Payment Facilitator and Payment Facilitator Processors:

- Age Restricted Products or Services
- Any business where the anticipated % of International Card Sales is expected to be greater than 20% of total sales
- Bail Bond Services or Bankruptcy Lawyers
- Career Placement or Advice Center Businesses
- Crowd Sourced Fundraising
- Dating Services
- Delayed Delivery Businesses where the good or service provided is not shipped, delivered or fulfilled when the card transaction is processed but is to occur at a future date
- Online Personal Computer Technical Support
- Personal Enhancement Products and/or Nutraceuticals
- Psychic Services
- Shipping or Forwarding Brokers
- Travel Agencies or Tour Operators
- Any product, service or activity that is deceptive, unfair, predatory or prohibited by one or more Card Brands
- Any merchant selling goods or services that represent a violation of any law, statute or regulation
- Any merchant operating outside the United States
- Any merchant submitting sales for payment that resulted from another commercial entity providing goods or services to the cardholder, including those businesses that may otherwise qualify themselves as a Payment Service Company or Payment Facilitator
- Any merchant selling products that infringe on the intellectual property rights of others, including counterfeit goods or any product or service that infringes on the copyright, trademark or trade secrets of any third party, such as many Cyberlockers
- Any merchants accepting a card as payment for a dishonored check or for an item deemed uncollectible by another merchant
- Loan payments conducted on a Visa branded credit card
- Adult entertainment and/or adult content websites including Electronic Commerce adult content (videotext) merchants that would include MCC's 5967,7273 and 7841
- Buyer Clubs/Membership Clubs
- Direct Marketing: Continuity or Subscription services or merchants including MCC 5968 and 5969
- Direct Marketing-Travel Related Arrangement Services including MCC 5962
- Direct Marketing-Inbound Telemarketing including videotext services and MCC 5967

- Gambling Activities and Establishments including MCC 7995, including lotteries, internet gaming, daily fantasy sports, contests, sweepstakes, “special incentives” or offering of prizes as an inducement to purchase goods or services
- Infomercial merchants
- Internet Pharmacies
- Multi-Level Marketing Businesses
- Outbound Telemarketers and Telecom merchants including MCC’s 4814,4816, and 5966
- Payment Facilitators
- Rebate-Based Businesses
- Up-Selling merchants
- Any merchant that accepts a card at a scrip-dispensing terminal
- Airlines including Charter Airlines
- Bestiality
- Bidding Fee Auctions including Penny Auctions
- Brand or Reputational damaging, potential or otherwise, activities including Child Pornography, Escort Services, Mail Order Brides, Occult
- Commodity Trading or Security Trading
- Credit Counseling or Credit Repair Services
- Credit Protection or Identity Theft Protection Services
- Cruise Lines
- Currency Exchanges or Dealers
- Debt Elimination, Debt Reduction or Debt Consulting Services
- Digital Wallet or Prepaid Companies
- Discount Buying Memberships/Clubs
- Discount Medical or Dental plans including Discount Insurance
- Discount Coupon merchants or Online Sites
- Distressed Property Sales and/or Marketing
- Drug Paraphernalia
- e-Cigarettes
- Firearms and weapons including Ammunition
- High interest rate non-bank consumer lending including, but not limited to, payday lending and title loans
- Investment or “get rich quick” merchants, businesses or programs
- Marijuana dispensaries and related products or services
- Money Transfer, Wire Transfers, Money Orders, Transmitters, and Check Cashing including merchants required to be registered as Money Service Business

- "Negative option" marketing, renewal, or continuity subscription practices; marketing activities involving low-dollar trails, "pay only for shipping", and/or "free trial" periods after which a credit card is periodically and/or a significantly larger amount
- Pawn Shop
- Prepaid Phone Cards
- Prepaid Phone Services
- Pseudo Pharmaceuticals
- Quasi Cash or Stored Value
- Real Estate Flipping
- Sale of Mobile Minutes
- Selling or Sales of Social Media Activity
- Sports Forecasting or Odds Making
- Substances designed to mimic illegal drugs
- Timeshares including resale's and related marketing
- Transacting Virtual Currency or credits that can be monetized, re-sold or converted to physical or digital goods or services or otherwise exit the virtual world

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