

## BUSINESS ASSOCIATE SUBCONTRACTOR AGREEMENT

**THIS BUSINESS ASSOCIATE SUBCONTRACTOR AGREEMENT** ("Agreement") is entered into on the date indicated below by and between you ("Client") and SwervePay, LLC ("SwervePay").

Client provides certain functions, activities and/or services as a "business associate" to certain entities that are "covered entities", as both terms are defined in Section 160.103 of title 45 of the Code of Federal Regulations ("CFR").

Pursuant to the SwervePay Terms and Conditions ("Service Agreement"), SwervePay provides certain functions, activities or services (collectively, "Services") to Client as a "subcontractor", as that term is defined in 45 CFR § 160.103.

In order for SwervePay to perform the Services required by the Service Agreement, Client will make available and/or transfer to SwervePay certain Protected Health Information and Electronic Health Information (collectively, "PHI") that is confidential and must be afforded special treatment and protection pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations issued thereunder, as amended from time to time, and the Health Information Technology for Economic and Clinical Health Act, as incorporated in Title XIII of the American Recovery and Reinvestment Act of 2009 and its implementing regulations as issued from time to time ("HITECH Act").

SwervePay will have access to and/or receive from Client certain PHI that can be used or disclosed only in accordance with this Agreement and the HIPAA Rules (as defined below).

Client and SwervePay intend to protect the privacy and provide for the security of PHI disclosed to SwervePay pursuant to this Agreement in compliance with HIPAA and the HIPAA Rules.

**NOW, THEREFORE**, Client and SwervePay agree as follows:

### **ARTICLE I.**

#### **Definitions**

##### **I.1 Meaning of Terms.**

The following terms shall have the meaning ascribed to them in this Section:

- a) **BREACH** means the acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Rule which compromises the security or privacy of the PHI.
- b) **Breach Notification Rule** shall mean 45 CFR Part 164 Subpart D, as may be amended from time to time.
- c) **DESIGNATED RECORD SET** means a group of records maintained by or for a Covered Entity that is: (a) the medical records and billing records about Individuals maintained by or for a covered health care provider; (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (c) used in whole or in part, by or for a Covered Entity to make decisions about Individuals. For these purposes, the term record means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a Covered Entity.
- d) **Electronic Protected Health Information ("EPHI")** means Protected Health Information that is transmitted or maintained by or in electronic media, as defined in 45 CFR § 160.103.
- e) **HHS** means the United States Department of Health and Human Services.
- f) **HIPAA RULES** means the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR Part 160 and Part 164.
- g) **INDIVIDUAL** means the person who is the subject of the PHI, and shall have the same meaning as the term "individual" as defined in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- h) **LIMITED DATA SET** has the same meaning as the term "limited data set" in 45 CFR § 164.514(e)(2).
- i) **PARTIES** means Client and SwervePay.
- j) **PRIVACY RULE** means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR § 160 and § 164, as amended.
- k) **PROTECTED HEALTH INFORMATION ("PHI")** has the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by SwervePay from or on behalf of Client. References to PHI shall include EPHI.
- l) **REQUIRED BY LAW** has the same meaning as the term "required by law" in 45 CFR § 164.103.
- m) **SECRETARY** means the Secretary of the Department of Health and Human Services ("HHS") or his or her designee.
- n) **SECURITY INCIDENT** has the same meaning as the term "security incident" in 45 CFR § 164.304, which generally means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- o) **SECURITY RULE** means the Security Standards for Protecting Electronic Health Information at 45 CFR §

160, § 162 and § 164, as amended.

p) **TRANSACTION STANDARDS** means the standards adopted by the Secretary under 45 CFR Part 162.

q) **UNSECURED PHI** has the same meaning set forth at 45 CFR § 164.402, as amended, and generally means PHI that is not secured through the use of technologies and methodologies that render such PHI unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in guidance.

1.2 Other Terms. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR Parts 160, 162, and 164. Any reference to a regulation or section in the Code of Federal Regulations shall include any corresponding regulation subsequently issued regardless of the date of issue.

## ARTICLE II

### General Terms

II.1 Interpretation of Provisions. In the event of an inconsistency between the provisions of this Agreement and the mandatory terms of the HIPAA Rules (as may be expressly amended from time to time by the HHS or as a result of final interpretations by HHS, an applicable court, or another applicable regulatory agency with authority over the Parties), the HIPAA Rules shall prevail.

II. 2. Provisions Permitted by HIPAA Rules. Where provisions of this Agreement are different from those mandated by the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of the Agreement shall control.

II. 3. Conflicts with Services Agreement. In the event of an inconsistency between the provisions of this Agreement and the Services Agreement, the provisions of this Agreement shall prevail.

## ARTICLE III

### Obligations and Activities of Subcontractor

III. 1. Limits on Use and Disclosure. SwervePay agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.

III. 2.Safeguards. SwervePay agrees to use reasonable and appropriate administrative, physical and

technological safeguards to: (i) prevent use or disclosure of the PHI other than as provided for by this Agreement; and (ii) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains or transmits on behalf of Client as required by the Security Rule. SwervePay represents and warrants that it has implemented, and during the term of this Agreement shall maintain, comprehensive written privacy and security policies and procedures and the necessary administrative, technical and physical safeguards appropriate to the size and complexity of SwervePay operations and the nature and scope of its activities. SwervePay will comply with the Security Rule requirements set forth in Subpart C of 45 CFR Part 164, all of which are hereby incorporated into this Agreement.

III. 3. Application of Privacy Provisions. SwervePay may use and disclose PHI that SwervePay obtains or creates only if such use or disclosure is in compliance with each applicable requirement of 45 CFR § 164.504(e), relating to business associate agreements. The HIPAA Rules that relate to privacy and that are made applicable with respect to Client and SwervePay are hereby incorporated into this Agreement.

III. 4. Mitigation of Harm. SwervePay agrees to reasonably mitigate any harmful effect that is known to SwervePay of a use or disclosure of PHI by SwervePay, or any agent or subcontractor of SwervePay, in violation of the requirements of this Agreement or the HIPAA Rules.

III. 5 Report of Improper Use or Disclosure or of Security Incidents. SwervePay agrees promptly to report to Client any breach of security, intrusion, or unauthorized use or disclosure of the PHI not provided for by this Agreement, or any Security Incident of which SwervePay (or any of its agents or subcontractors) becomes aware. Such report shall be in writing and shall be reported to Client as soon as practicable after SwervePay becomes aware of such use or disclosure or Security Incident, but in no event more than forty-eight (48) hours following such date. SwervePay shall take reasonable and prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Notwithstanding the foregoing, the parties acknowledge and agree that this section constitutes notice by SwervePay to Client of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Client shall be required. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on SwervePay's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

III. 6. Report of Breach of Unsecured PHI. In addition to the general obligations of SwervePay under Section 3.5 regarding reporting the improper use or disclosure of PHI and Security Incidents, SwervePay shall also promptly notify Client of a Breach of Unsecured PHI within forty-eight (48) hours of when SwervePay discovers such Breach. A Breach shall be treated as discovered by SwervePay as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or other agent of SwervePay. SwervePay' notification shall be in writing and shall include identification, to the extent possible, of each Individual whose Unsecured PHI

has been, or is reasonably believed by SwervePay to have been subject to the Breach. SwervePay shall include the following information in its notification of Breach to Client:

- (a) A description of the Breach, including the date of the Breach and the date of the discovery of the Breach, if known;
- (b) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, credit card numbers, diagnosis, disability code or other types of PHI were involved);
- (c) Any steps that Individuals should take to protect themselves from potential harm resulting from the Breach;
- (d) A description of what SwervePay is doing to investigate the Breach, to mitigate the harm to Individuals and to protect against further Breaches; and
- (e) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll free telephone number, an e-mail address, Web site or postal address.

In the event that some of the above listed information is not known by SwervePay at the time of notification of Client of the Breach, SwervePay shall provide such information to Client as soon as it becomes available to SwervePay, but in no event later than thirty (30) days after SwervePay discovers such Breach. SwervePay shall also provide such assistance and further information with regard to the Breach to Client as reasonably requested by Client in order for Covered Entities to timely meet their notice obligations to Individuals, the media, and/or the Secretary, as applicable, under 45 CFR §§ 164.404, 164.406, and 164.408. If a notification, notice, or posting required by the Breach Notification Rule would impede a criminal investigation or cause damage to national security, such notification shall be delayed as required by law enforcement pursuant to 45 CFR § 164.412.

III. 7. Agents and Subcontractors. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), SwervePay agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by SwervePay on behalf of Client, agrees in writing to the similar restrictions and conditions that apply through this Agreement to SwervePay with respect to PHI. Such written agreement shall also require the agent or subcontractor to implement reasonable and appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains or transmits on behalf of Client.

III. 8. Availability of Internal Practices, Books and Records. SwervePay shall make internal practices, books, and records relating to the use and disclosure of PHI received from, or received by SwervePay on behalf of Client available to the Secretary in a time and manner designated by the Secretary, for purposes of determining compliance with the HIPAA Rules. SwervePay shall notify Client, in writing, of any request by the Secretary under this Section

### III. 9. Access to Records.

a) SwervePay shall provide access, at the request of Client, and in the time and manner reasonably designated by Client, to PHI in a Designated Record Set to Client or, as directed by Client, to an Individual, in order to meet the requirements under 45 CFR § 164.524 with regard to providing an Individual with a right to access the Individual's PHI.

b) SwervePay shall, at the request of Client and in the time and manner reasonably designated by Client, make PHI maintained by SwervePay available to Client, or as directed by Client, to a person or entity other than an Individual, for use and disclosure pursuant to a valid written authorization and maintain appropriate documentation for the period, including, but not limited to, copies of any written authorization by an Individual or his or her legal representative, to enable Client to fulfill its obligations under the Privacy Rule, including but not limited to 45 CFR § 164.508.

c) If any Individual requests access to, or the release pursuant to an authorization or otherwise of, PHI directly from SwervePay or its agents or subcontractors, SwervePay shall notify Client in writing within three (3) days of the request.

III. 10. Amendments to PHI. SwervePay agrees in the time and manner reasonably designated by Client to make PHI in a designated record set available for any amendments that a Covered Entity has agreed to make pursuant to 45 CFR § 164.526 or to otherwise allow such Covered Entity to comply with its obligations under 45 CFR § 164.526. If any Individual requests an amendment of PHI contained in a Designated Record Set directly from SwervePay or its agents or subcontractors, SwervePay shall notify Client in writing within three (3) days of the request.

### III. 11. Documentation and Accounting of Disclosures.

a) SwervePay shall document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Such documentation shall be kept with regard to all disclosures of PHI except the disclosures described in 45 CFR § 164.528(a)(1). For each such disclosure, SwervePay shall document the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI and, if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably states the basis for the disclosure.

b) SwervePay shall provide to Client or an Individual, in the time and manner reasonably designated by Client, information collected in accordance with subsection (a) of this Section of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. In the event that a request for an accounting is delivered directly to SwervePay or its agent or subcontractor by an Individual or a party other than Client, SwervePay shall within three (3) days of such request forward it to Client in writing. SwervePay shall, unless otherwise directed by Client or as Required by

Law, supply an accounting of disclosures of PHI only to Client.

III.12. Disclosure of Minimum PHI. SwervePay shall comply with the minimum necessary standard set forth in 45 CFR §164.502(b) when using, disclosing or requesting PHI from Client or other third party, and shall use, disclose or request the minimum PHI necessary to accomplish the intended purpose of the use, disclosure or request.

III. 13. Training. SwervePay shall provide appropriate training to its workforce in security, privacy, and confidentiality issues and regulations relating to PHI.

III. 14. Response to Subpoena. SwervePay shall promptly notify Client if it receives a subpoena or other legal process seeking the disclosure of PHI. SwervePay agrees to allow Client to control the response to any such subpoena or legal process.

III. 15. Notification of Claims. SwervePay shall promptly notify Client upon notification or receipt of any civil or criminal claims, demands, causes of action, lawsuits, or governmental enforcement actions arising out of or related to this Agreement or the PHI, regardless of whether Client and/or SwervePay are named as parties in such claims, demands, causes of action, lawsuits, or enforcement actions.

III. 16. Recordkeeping and Document Retention. SwervePay shall retain any documentation it creates or receives relating to its duties under this Agreement for the duration of this Agreement. Client shall have the right to reasonably access and copy any such documentation during the term of the Agreement. At the termination of this Agreement, SwervePay shall destroy all such documentation.

III. 17. Transaction Standards. If SwervePay conducts any transaction for Client for which a standard has been adopted by the Secretary under 45 CFR Part 162, the following shall apply:

a) SwervePay, its agents and subcontractors, shall conduct all transmissions of data required under the Agreement that are subject to the Transaction Standards in compliance with the Transaction Standards, as they may be amended from time to time. With respect to any such Transactions, neither Party shall: (i) change the definition, data condition, or use of a data element or segment in a Transaction Standard; (ii) add any data elements or segments to the maximum defined data set; (iii) use any code or data elements that are either marked "not used" in the Transaction Standard's implementation specification or are not in the Transaction Standard's implementation specification(s); or (iv) change the meaning or intent of the Transaction Standard's implementation specification(s).

b) Each Party, at its own expense, shall provide and maintain the hardware, software, services and testing necessary to effectively and reliably conduct the applicable Transaction Standards.

III. 18. Restrictions on Remuneration, Marketing, and Fundraising. To the extent the Agreement would otherwise allow SwervePay to receive remuneration for PHI, SwervePay shall not directly or indirectly receive remuneration in exchange for any PHI as prohibited by 42 U.S.C. § 17935(d). To the extent that SwervePay is otherwise authorized under this Agreement to communicate about a product or service, it shall not make or

cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a). To the extent that SwervePay is otherwise authorized under this Agreement to make a fundraising communication, it shall not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b) and 45 CFR § 164.514(f).

## ARTICLE IV

### **Permitted Uses and Disclosures by Subcontractor**

IV. 1. Use or Disclosure to Perform Functions, Activities, or Services. Except as otherwise limited in this Agreement, SwervePay may use or disclose PHI to perform those functions, activities, or services that SwervePay performs for, or on behalf of, Client, provided that such use or disclosure would not violate the Privacy Rule if done by Client. Any such use or disclosure shall be limited to those reasons and those individuals as necessary to meet SwervePay' obligations. In all circumstances, SwervePay shall limit such uses and disclosures to the minimum amount of PHI that is necessary to fulfill those obligations.

IV. 2. Disclosures to Workforce. SwervePay shall not disclose PHI to any member of its workforce unless necessary to fulfill a purpose described in Section 4.1 and unless SwervePay has advised such person of SwervePay' obligations under HIPAA Rules and of the consequences for such person and for SwervePay of violating the HIPAA Rules.

IV. 3. Appropriate Uses of PHI. Except as otherwise limited in this Agreement, SwervePay may use PHI for the following purposes: (a) the proper management and administration of SwervePay; (b) to carry out the legal responsibilities of SwervePay; (c) to report violations of the law to appropriate Federal and State authorities consistent with 45 CFR § 164.502(j)(1); (d) to carry out SwervePay obligations under the Service Agreement; or (e) as Required By Law.

IV. 4. Appropriate Disclosures of PHI; Confidentiality Assurances and Notification. Except as otherwise limited in this Agreement, SwervePay may disclose PHI to a third party to carry out the functions described in Section 4.1 or for the proper management and administration of SwervePay, or to carry out the legal responsibilities of SwervePay, provided that disclosures are Required By Law, or SwervePay obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies SwervePay of any instances of which it is aware in which the confidentiality of the information has been breached.

IV. 5. Data Aggregation Services. If SwervePay provides data aggregation services, SwervePay may use PHI to provide Data Aggregation services as permitted by 42 CFR § 164.504(e)(2)(i)(B), except as otherwise provided



by this Agreement.

## ARTICLE V

### Obligations of Client

V. 1. Change or Revocation of Permission. Client shall provide SwervePay with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect SwervePay' permitted or required uses and disclosures. SwervePay shall comply with any such changes or revocations.

V. 2. Restrictions on Use or Disclosure. Client shall notify SwervePay of any restriction to the use or disclosure of PHI that a Covered Entity has agreed to in accordance with 45 CFR § 164.522. SwervePay shall comply with any such restrictions.

V. 3. No Request to Use or Disclose in Impermissible Manner. Except as necessary for the management and administrative activities of SwervePay as allowed in Article IV, Client shall not request SwervePay to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by a Covered Entity or Client.

## ARTICLE VI

### Term and Termination

VI. 1. Term. The Term of this Agreement shall be effective as of the date first documented above, and shall terminate when all PHI provided by Client to SwervePay, or created or received by SwervePay on behalf of Client, is destroyed or returned to Client.

VI. 2. Termination with Cause. Upon either Party's knowledge of a material breach by the other Party, the non-breaching Party, in its discretion, may take either or both of the following actions:

a) Provide an opportunity (in a reasonable time frame determined by the non-breaching Party) for the breaching Party to cure the breach or end the violation, and if the breaching Party does not cure the breach or end the violation, terminate this Agreement; or

b) Immediately terminate this Agreement if the breaching Party, in the non-breaching Party's discretion, has breached a material term of this Agreement and cure is not possible.

VI. 3. Judicial or Administrative Proceedings. Either Party may terminate this Agreement and any other agreement or relationship between the Parties related to the Services by written notice to the other Party,

effective immediately, if: (a) the other Party is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Rules, or other security or privacy laws; or (b) a finding or stipulation that the other Party has violated any standard or requirement of HIPAA, the HIPAA Rules, or any other security or privacy laws is made in any administrative or civil proceeding in which the Party has been joined.

VI. 4. Changes in Law. In the event of passage of a law or promulgation of a regulation or an action or investigation by any regulatory body which would prohibit the relationship between the Parties, or the operations of either party with regard to the subject of this Agreement, the Parties shall attempt in good faith to renegotiate the Agreement to delete the unlawful provision(s) so that the Agreement can continue. If the Parties are unable to renegotiate the Agreement within thirty (30) days, the Agreement, and any other agreement or relationship between the Parties related to the Services shall terminate immediately, upon written notice of either party.

VI. 5. Effect of Termination.

a) Except as provided in paragraph (b) of this Section VI.5, upon termination of this Agreement for any reason, SwervePay shall destroy all PHI received from Client, or received by SwervePay on behalf of Client. This provision shall apply to PHI that is in the possession of subcontractors or agents of SwervePay. If requested by Client in writing, SwervePay shall certify in writing to Client that such PHI has been destroyed.

b) In the event that SwervePay determines that it is necessary to retain some or all of the PHI to continue its proper management and administration or to carry out its legal responsibilities, SwervePay shall not use or disclose such retained PHI other than for the purposes for which the PHI was retained and subject to the same conditions set forth in this Agreement that applied prior to this Agreement's termination. SwervePay shall destroy the retained PHI pursuant to Section VI.5(a) when it is no longer needed by SwervePay for its proper management and administration or to carry out its legal responsibilities.

## **ARTICLE VII**

### **Miscellaneous**

VII. 1. Assignment. This Agreement shall be binding upon and inure to the benefit of the respective legal successors of the Parties. Neither this Agreement nor any rights or obligations hereunder may be assigned, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, this Agreement may be assigned as part of an assignment of the Service Agreement without obtaining the other party's prior written consent provided such assignment complies with the requirement of the Service Agreement.

VII. 2. Property Rights. All PHI shall be and remain the exclusive property of Client and/or Covered Entity. SwervePay agrees that it acquires no title or rights to the PHI, including any de-identified information, as a

result of this Agreement.

VII. 3. Preemption of Other Agreements and Liability Limitations/Exclusions. To the extent that any provision of this Agreement conflicts with any other agreement between the Parties, whether written or oral, the provisions of this Agreement shall govern. Furthermore, and by way of example and not limitation, the termination provisions of this Agreement shall supersede the termination provisions of any other agreement, including, but not limited to, any limitations on terminating any other agreement (such as notice periods) or any provisions requiring a period to cure.

VII. 4 Survival. The respective rights and obligations of Subcontractor under Section VI.5 of this Agreement shall survive the termination of this Agreement.

VII. 5. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Client to comply with the requirements of HIPAA, and the HIPAA Rules.

VII. 6. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended, and for which compliance is required.

VII. 7. Entire Agreement. This document, together with any written schedules, amendments and addenda, constitute the entire agreement of the Parties and supersedes all prior oral and written agreements or understandings between them with respect to the matters provided for herein.

VII. 8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana to the extent that the provisions of HIPAA or the HIPAA Rules do not preempt the laws of the State of Indiana.

VII. 9. Modifications. Any modifications to this Agreement shall be valid only if made in writing and signed by a duly authorized agent of both Parties.

VII. 10. Notice. Any notice required or permitted to be given by either party under this Agreement shall be sufficient if in writing and hand delivered (including delivery by courier) or sent by postage prepaid certified mail return receipt requested, as follows:

If to Client:

At the address indicated below.

If to SwervePay:

SwervePay, LLC

Attn: Legal Department

1150 West Kilgore Avenue

Muncie, IN 47305-1588

VII. 11. Severability. The Parties agree that if a court determines, contrary to the intent of the Parties, that any of the provisions or terms of this Agreement are unreasonable or contrary to public policy, or invalid or unenforceable for any reason in fact, law, or equity, such unenforceability or validity shall not affect the enforceability or validity of the remaining provisions and terms of this Agreement. Should any particular provision of this Agreement be held unreasonable or unenforceable for any reason, then such provision shall be given effect and enforced to the fullest extent that would be reasonable and enforceable.

VII.12. Waiver of Breach. No failure or delay by either party in exercising its rights under this Agreement shall operate as a waiver of such rights, and no waiver of any breach shall constitute a waiver of any prior, concurrent, or subsequent breach.

VII. 13. Titles. Titles or headings are used in this Agreement for reference only and shall not have any effect on the construction or legal effect of this Agreement.

VII. 14. Independent Contractors. For purposes of this Agreement, SwervePay and Client are and will act at all times as independent contractors. None of the provisions of this Agreement are intended to create, nor shall be deemed or construed to create, any relationship other than that of independent entities contracting with each other for the purpose of effecting this Agreement. None of the provisions of this Agreement shall establish or be deemed or construed to establish any partnership, agency, employment agreement or joint venture between the Parties.

VII. 15. No Third Party Beneficiaries. It is the intent of the Parties that this Agreement is to be effective only in regards to their rights and obligations with respect to each other. It is expressly not the intent of the Parties to create any independent rights in any third party or to make any third-party beneficiary of this Agreement and no privity of contract shall exist between third parties and each party.

Date:
By:
Name:
Title:
Address:
,

Email: