

SwervePay Offerings Terms and Conditions (Last Updated December 1, 2020)

Please read the following carefully because these SwervePay Offerings Terms and Conditions ("Terms and Conditions") govern your and your business's use of the Offerings provided by SwervePay, LLC. By enrolling to use and using the Offerings you are accepting these Terms and Conditions on behalf of your business and acknowledge that this is a legal agreement between your business and SwervePay, LLC, a Delaware Limited Liability Company, with offices at 1150 W. Kilgore Ave., Muncie IN 47305 ("SwervePay").

If you do not agree with these Terms and Conditions and the Sub-Merchant Payment Processing Terms, attached hereto as Exhibit 1, in their entirety, you and your business cannot enroll to use and cannot actually use any of the Offerings. Your use of any of the Offerings will constitute your agreement to these Terms and Conditions even if you do not physically sign this agreement.

- 1. Client.** "Client" means the business that has enrolled to use and will use the Offerings (as defined in Section 5).
- 2. Enrollment.** "Enrollment Form" means the enrollment form completed by Client to use the Offerings and any applicable attachments to the Enrollment Form referenced therein. To use any of the Offerings, Client will need to complete the applicable Enrollment Form and as part of the enrollment process, indicate Client's agreement to these Terms and Conditions. The Enrollment Form sets forth the fees for the Offerings. If there is any conflict between the Enrollment Form and these Terms and Conditions, including the attached Sub-Merchant Payment Processing Terms, these Terms and Conditions will prevail. The enrollment form and these Terms and Conditions, including the attached Sub-Merchant Payment Processing Term, form the agreement between the parties ("Agreement").
- 3. Effective Date and Term.** The date Client accepts these Terms and Conditions by submitting an Enrollment Form is the effective date of the Agreement ("Effective Date"). The Enrollment Form will specify the duration of the initial term of the Agreement from the Effective Date ("Initial Term"). Thereafter, the term of the Agreement will automatically renew for successive one year periods (each a "Renewal Term"), unless a party provides the other party written notice of termination at least 30 days prior to the renewal date. In which case, this Agreement will automatically terminate at the end of the then current Term. "Term" means the Initial Term and any Renewal Term(s).
- 4. Payment Processing Services.** Upon enrollment and approval by SwervePay in accordance with this Agreement, SwervePay shall provide Client with payment processing services that enable Client to accept payments via payment cards, automated clearing house transactions ("ACH"), and other approved electronic payment transactions into Client's bank account through electronic means ("Payment Processing Services"). SwervePay will provide and Client will use the Payment Processing Services in accordance with the attached Sub-Merchant Payment Processing Terms. However, for card transactions with cards issued by American Express, Discover, or any other closed loop Card Organization, SwervePay shall provide authorization services only, and shall not have any responsibility for the settlement to client of the funds associated with such card transactions. Instead, Client authorizes settlement of transactions to be made directly by American Express, Discover, or other closed loop Card Organization(s).
- 5. Offerings and Right to Use** To the extent SwervePay makes available to Client and Client elects to use any of the following,

SwervePay will permit Client to use (a) communication tools, such as texting, e-mail, chatbots, or other electronic means for Client to communicate with Payers ("Communication Tools"); (b) web-based point of sale system ("Point of Sale Tool"); and (c) payment portals made available over the internet for the purposes of Client to collect payments from Payers ("Portals"). "Payer" means any individual or entity making a payment to Client using payment cards, ACH, or other approved electronic payment transactions. "Offerings" means the Payment Processing Services, Communication Tools, Point of Sale Tool, and Portals to the extent Client is using any of the forgoing. Subject to Client paying all necessary Fees and complying with all the other terms of this Agreement, SwervePay grants Client a non-exclusive and non-transferable subscription right for Client to use the Offerings for the Term.

6. Fees and Taxes. Client shall pay SwervePay the fees for the Offerings as set forth in the Enrollment Form ("Fees"). SwervePay may modify, increase, add different, or otherwise change the Fees by providing Client 30 days' advance written notice provided in accordance with Section 29. Client's continued use of the Offerings will indicate Client's consent to the change in Fees. If Client does not agree to the change in Fees, Client will need to notify SwervePay in writing of the objection and cease all use of the Offerings. Client acknowledges that the Fees do not include any taxes. Client shall collect, report, and remit any taxes required to be collected, paid, or withheld in connection with the Offerings and Terminals. Taxes are Client's sole responsibility. SwervePay is not responsible for determining whether or not taxes apply or for calculating, collecting, reporting, or remitting any taxes on Client's behalf. If a tax authority seeks collection from SwervePay of any taxes in connection with this Agreement, then Client shall reimburse SwervePay upon receipt of notice from SwervePay that SwervePay has paid such tax. SwervePay and its process may make available any reports required by law regarding Client to the Internal Revenue Service or any other Federal or state taxing authority.

7. Terminals. SwervePay may permit Client to purchase point of sale payment card processing terminals ("Terminals"). Upon Client delivering payment for the purchase of the Terminals, Client shall own the Terminals. Client acknowledges that the Terminals are manufactured by third parties and are only provided for Client's convenience. SwervePay provides all Terminals on "AS IS" basis and without any warranty of any kind. Client assumes all responsibility and liability for its use and the security of the Terminals. SwervePay disclaims all liability related to any defects or vulnerability in the Terminals, any third party hacking or otherwise gaining unauthorized access to the Terminals, or any use of the Terminals by Client.

8. Communication Tools. To the extent Client utilizes the Communication Tools, Client shall obtain all necessary consents from the Payers to use the Communication Tools to communicate with the Payer. Client shall comply with any applicable legal obligation, carrier requirements, or industry standards related to communicating with Payers using the Communication Tools. Client shall make public terms and conditions related to Client's use of the Communication Tools to communicate with the Payer and have each Payer agree to those terms and conditions. To the extent Client uses any Communication Tool that requires the use of a telephone carrier or wireless services provider, Client acknowledges that the applicable messages and associated data will be transmitted through such carriers and providers. Client authorizes SwervePay to disclose all requested information to the carriers and providers to allow Client's use of the applicable Communication Tools. Client also acknowledges that some of the Communication Tools may require the uploading and transmitting of data and information over the Internet.

9. Implementation. The parties shall cooperate with one another to set up and enable Client's use of the Offerings. Client acknowledges that the implementation of the Offerings will not begin until SwervePay assigns resources to begin the project. Client shall provide SwervePay with all access to any data, systems and information reasonably required to implement the Offerings. SwervePay will provide all implementation services on a remote basis between the hours of 8 am and 5 pm based on the location of the resources performing the implementation services. Client shall provide at least one qualified Client representative to receive training on the Offerings.

10. Support and Maintenance. After making the Offerings available for Client's use in a production environment ("Go Live Date"), the parties will cooperate with one another in the administration of the Offerings. Client may contact SwervePay through SwervePay's designated support communication

channels to obtain general support by logging a support ticket. SwervePay will seek to make any Intrusive Changes only during its standard or scheduled maintenance windows. As used in this Section, "Intrusive Changes" means maintenance that will render the Offerings unavailable and "Non-Intrusive Changes" means maintenance that is not intended to make any of the Offerings unavailable. Client acknowledges that SwervePay performs Non-Intrusive Changes as needed.

11. SaaS Offerings. For Offerings either hosted or provided as a software as a service ("SaaS Offerings"), SwervePay may utilize one or more third-party hosting providers to provide the SaaS Offerings and may change hosting providers by providing Client 30 days advance written notice. SwervePay uses reasonable efforts to make any of the SaaS Offerings available. Client acknowledges that SwervePay may make any of the SaaS Offerings unavailable during Scheduled Downtime and for Emergency Maintenance. "Scheduled Downtime" means time required to perform backup, maintenance and restore any of the SaaS Offerings that occurs during SwervePay's standard maintenance window or during any additional downtime that is scheduled in advance by SwervePay. "Emergency Maintenance" means any corrective action intended to address hardware or software failures, viruses, malware, worms, other disabling code, or other conditions likely to cause degradation, security risks, or interruption, as designated by SwervePay in its reasonable discretion, with or without notice to Client. In using the SaaS Offerings, Client shall not: (a) forge authentication credentials, use the authentication credentials of another user or disclose Client's authentication credentials to any third party; (b) damage, bypass, break, or otherwise circumvent any of SwervePay's security mechanisms; (c) use the SaaS Offerings: (i) to attempt to breach, circumvent or hack a third party, (ii) to transmit viruses, malicious, harmful, or deleterious programs or code, (iii) to launch or facilitate a denial of service attack; or (iv) in a manner that otherwise poses a security threat; (d) probe, scan, or test the vulnerability of the SaaS Offerings or monitor data or traffic of the SaaS Offerings without permission from SwervePay; (e) reverse-engineer the SaaS Offerings in order to find limitation, vulnerability or to evade, disable, or render inaccurate accounting billing, capacity limitations, or other functions of the SaaS Offerings; (f) use the SaaS Offerings to encourage, facilitate, engage, or in connection with abuse, harassment, discrimination, fraudulent activities, deceptive practices or other unlawful activities, or harmful or malicious acts; or (g) use the SaaS Offerings in a manner that would violate the Truth in Caller ID Act, the CAN SPAM Act of 2003, the Telephone Consumer Protection Act, the Do-Not Call Implementation Act, or any other local, state, federal, or foreign law or regulation. If Client fails to comply with this Section, SwervePay may immediately suspend Client's use of any or all of the Offerings until Client cures the violation, and may terminate this agreement if Client does not cure.

12. Connections. To enable Client's use of the Offerings, Client shall establish and maintain any necessary connections that meet SwervePay's standards between Client's network or systems and the Offerings. Client shall pay all costs related to setting up these connections. Client is responsible for making sure all such equipment functions appropriately and Client shall replace that equipment as needed.

13. Accuracy of Client Data. Client acknowledges that Client is responsible for the accuracy and integrity of the information Client provides through Client's use of the Offerings and the setting up maintaining of any accounts to use the Offerings. Client is also responsible for adopting procedures to identify and correct errors and omissions in such provided information. Client shall maintain the security of any account user names, passwords and any other login information Client uses to access and use the

Offerings and shall promptly notify SwervePay if Client becomes aware of any unauthorized disclosure or use of Client's account information. Client acknowledges that SwervePay does not review any of Client's data or information for accuracy, validity, or compliance and SwervePay is not responsible for errors caused by insufficient or inaccurate data. Client shall monitor the contents of any messages being sent through the Offerings.

14. Client's Compliance with Laws and Standards. Client shall comply with and use the Offerings in a manner that complies with the Operating Rules (as defined in Exhibit 1), the Health Insurance Portability and Accountability Act, the Hi-Tech Act, the Fair Debt Collection Practices Act, the Electronic Funds Transfer Act, the Telephone Consumer Protection Act, the Payment Card Industry Data Security Standards, and any other applicable laws, regulations or requirements related to privacy, handling of personally identifiable, health or financial information, the collection of debts, processing payments, and Client's business ("Laws and Standards"). Client acknowledges that it has not retained SwervePay to provide guidance, advice, or counsel with respect to compliance with the Laws and Standards. Client takes full responsibility and assumes all risk and liability for Client's own compliance with the Laws and Standards and Client's use of the Offerings in compliance with the Laws and Standards. Client will reimburse SwervePay for any fines, legal expenses, reasonable attorneys' fees, or out of pocket costs incurred by SwervePay because of Client's failure to comply with these Laws and Standards. If Client fails to comply with this Section, SwervePay may immediately suspend Client's use of any or all of the Offerings until Client cures the violation.

15. Proprietary Rights. SwervePay retains sole and exclusive ownership of all right, title and interest in the Offerings, any modifications thereto, and any related information, documentation, or deliverables SwervePay provides to Client under this Agreement. To the extent necessary to verify this ownership, Client agrees to and hereby does assign to SwervePay all copyrights, patent rights, title, and all other proprietary rights to the Offerings, any modifications thereto, and any related information, documentation, or deliverables SwervePay provides under this Agreement. Client shall not alter, modify, adapt, translate, copy, reverse engineer, decompile, disassemble, or create any derivative works of the Offerings. Client shall not remove, modify, or obscure any copyright, trademark or other proprietary rights notices that are contained in the Offerings or any related information, documentation, or deliverables. Client shall not attempt to circumvent or circumvent any user limits, license keys, or other license, timing or use restriction built into the Offerings.

16. Confidentiality. The party receiving information ("Recipient") from the other party ("Discloser") shall treat Discloser's information as confidential ("Confidential Information") unless: (1) Recipient is able to demonstrate that the Confidential Information was known to Recipient prior to the disclosure; (2) Recipient is able to demonstrate the Confidential Information is part of the public domain; or (3) Recipient's personnel, without knowledge of the Confidential Information, independently develops the information. Except as permitted under this Agreement, Recipient shall only use the Confidential Information to perform its obligations and shall not disclose or permit any third party to disclose any Confidential Information to any other person. Recipient shall not and shall not permit any third party to reproduce the Confidential Information or any portions thereof unless such reproductions are permitted by or are necessary for Recipient to perform its obligations under this Agreement. Recipient shall ensure that all reproductions of Discloser's Confidential Information contain (if any) Discloser's proprietary or confidentiality notices in the same manner in which such notices were set forth in or on the original.

Recipient will protect the Discloser's Confidential Information in the same manner that it employs to protect its own Confidential Information and in no event, will Recipient use less than reasonable efforts to protect the Discloser's Confidential Information from disclosure. Recipient may disclose the Confidential Information to its employees, subcontractors, advisors, or affiliates, who have been informed of the confidential nature of the Confidential Information and who have obligations of confidentiality that protect such types of information from disclosure to third parties. If Recipient is required by law or court order to disclose Discloser's Confidential Information, Recipient may disclose the Confidential Information; subject to, where legally permitted, Recipient will: (1) provide Discloser prompt and advance written notice of the requirement; and (2) after providing the notice, reasonably assist Discloser, at Discloser's election and expense, in seeking to obtain an order protecting the information from further disclosure.

17. Use of Data. Client acknowledges that (a) SwervePay provides Offerings under this Agreement that will utilize the data provided by Client to allow Client to collect payment and generate communications with individuals, and to achieve other desired outcomes; and (b) SwervePay collects statistical, system, user experience and other data related to Client's use of the Offerings for the purposes of: (1) monitoring and improving the functionality of the Offerings; (2) offering trending or statistical De-Identified Data to SwervePay's user base; and (3) aggregating and using De-Identified Data for SwervePay's own business purposes as described in any applicable privacy policy for the Offerings. "De-Identified Data" means data that does not identify Client and does not identify any individual or identify any entity. SwervePay shall only use De-Identified Data in a manner that complies with applicable laws. Client authorizes SwervePay to transmit and share data submitted by Client to SwervePay's processor, applicable financial institutions, Card Organization(s), and/or any other person or entity to facilitate the provision of the Payment Processing Services.

18. SwervePay Warranties. SwervePay warrants that SwervePay uses reasonably qualified personnel to provide the services. Client's sole and exclusive remedy for a breach of this warranty is SwervePay re-performing of the applicable services at no additional cost to Client. SwervePay warrants that SwervePay complies with the applicable Operating Rules and any other applicable laws, regulations or requirements related to privacy, handling of personally identifiable, health or financial information, the processing of payments, and SwervePay's business. Client acknowledges that Client is not relying upon any other representations, warranties, or promises that are not contained in this Agreement. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, SWERVEPAY DISCLAIMS ALL WARRANTIES WITH REGARD TO THE OFFERINGS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE REGARDING MERCHANTABILITY, NONINFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE. SWERVEPAY DOES NOT WARRANT THAT THE PRODUCTS AND SERVICES WILL MEET CLIENT'S REQUIREMENTS OR THAT THE PRODUCTS AND SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

19. Sunsetting. SwervePay may cease providing any of the Offerings by providing Client with at least 12 months advance written notice that the applicable Offering is being sunset. After that 12 month period, SwervePay will have no further obligations related to the applicable Offering and will cease charging Client for any applicable Fees associated with the sunsetted offering.

20. Termination for Breach. If either party breaches this Agreement in any manner, the other party may terminate this Agreement by first providing the breaching party with written notice describing the breach in detail and allowing the breaching party 30 days after receipt of the notice to cure the breach. If the breaching party fails to cure, this Agreement will automatically terminate at the end of the 30-day cure period.

21. **Effect of Termination.** Within 90 days of termination or expiration of this Agreement, Recipient will destroy and purge from its computer systems the Discloser's Confidential Information (including all copies, excerpts and summaries thereof), except to the extent such Confidential Information is stored pursuant to the Recipient's standard back-up procedures or retained to meet Recipient's legal or regulatory requirements or Recipient's internal audit, document retention or internal compliance requirements. If the Discloser's Confidential Information is retained as permitted in this Section, the Recipient will continue to abide by the confidentiality obligation of this Agreement until the Recipient ceases retaining such Confidential Information. Recipient shall destroy and purge such Confidential Information within the normal timeframe for deleting and purging such data. Client acknowledges that SwervePay retains transaction records as required by applicable law and the Operating Rules and that information is not considered Client's Confidential Information. Upon request by the Discloser, the Recipient will certify in writing that the Recipient has complied with its obligations under this Section. Sections 6, Sections 14-16, the disclaimer in Section 18, Sections 21-24, Sections 29-32 of these Terms and Conditions and Section 17 of the attached Sub-Merchant Processing Payment Terms survive termination of this Agreement.

22. **Indemnification.** Each party shall indemnify and defend the other party, its affiliates, and its officers, directors, and employees, from and against any third party claims, losses, damages, liabilities, lawsuits, and expenses (including reasonable attorneys' fees, court costs and other defense expenses) arising out of or resulting from: (a) the indemnifying party's failure to comply with the Operating Rules; (b) the indemnifying party's breach of any warranty or representation under this Agreement; and (c) a data security breach or unauthorized access or disclosure of Client data or Payer information arising out of any act or omission of the indemnifying party, its affiliates, or contractors. The indemnified party shall notify the indemnifying party of any claim that falls under this Section promptly after the indemnifying party learns of such claim; provided, however, that the indemnifying party will only be relieved of its obligations under this Section due to the failure of the indemnified party to provide such prompt notice to the extent that the failure materially prejudices the indemnifying party in defending such claim. The indemnifying party's obligations under this Section are conditioned upon the indemnified party: (i) providing all reasonably requested information and cooperation to the indemnifying party; and (ii) giving the indemnifying party sole control of the defense or settlement of such claim, at the indemnifying party's sole cost and expense; provided, however, that the indemnifying party may not settle any such claim in a manner that requires the indemnified party to admit fault or incur any direct expense without the consent of the indemnified party, which will not be unreasonably withheld or delayed. If the indemnifying party fails to timely undertake the defense of a claim under this Section, each of the indemnified parties may undertake the defense (including settlement) of such claim and the indemnifying party will reimburse the indemnified parties for all such costs.

23. **Limitation of Liability.** For any causes of action, claims, or assertions arising under or related to this Agreement or to the offerings (each a "Claim"), Swervepay's liability in the aggregate to Client will not exceed THE AGGREGATE AMOUNT OF FEES AND CHARGES PAID TO SWERVEPAY PURSUANT TO THIS AGREEMENT during the 6 months prior to the date the Claim is made, regardless of the form of action (whether based on contract, tort, negligence, strict liability, or otherwise). IN NO EVENT WILL SWERVEPAY BE LIABLE TO CLIENT FOR ANY LOST PROFITS OR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY, OR SPECIAL DAMAGES OF ANY TYPE OR NATURE, EVEN IF SWERVEPAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLIENT ACKNOWLEDGES THAT FEES OR CHARGES OF THE CARD ORGANIZATIONS OR OTHER THIRD PARTIES PASSED THROUGH TO CLIENT PURSUANT TO THIS AGREEMENT WILL NOT BE INCLUDED IN THE CALCULATION OF FEES AND

CHARGES PAID TO SWERVEPAY WHEN DETERMINING SWERVEPAY'S LIABILITY UNDER THIS SECTION. CLIENT EXPRESSLY AGREES TO PAY ANY FEES OR ASSESSMENTS LEVIED BY ANY CARD ORGANIZATION AS A RESULT OF ANY ACTIVITY ASSOCIATED WITH CLIENT'S MERCHANT ACCOUNT, AND THAT SWERVEPAY IS NOT LIABLE FOR ANY SUCH FEES OR ASSESSMENTS UNDER ANY CIRCUMSTANCES. FURTHER, UNDER NO CIRCUMSTANCES WILL SWERVEPAY HAVE ANY LIABILITY TO CLIENT FOR PLACING CLIENT ON THE MATCH LIST BASED ON A GOOD FAITH, REASONABLE BELIEF BY SWERVEPAY THAT SUCH PLACEMENT WAS PROPER.

24. Governing Law. This Agreement will be interpreted and construed in accordance with the laws of the state of Indiana in the United States without regard to conflict of law principles. All disputes arising out of or related to this Agreement will be exclusively brought and exclusively maintained in the State courts located in Delaware County, Indiana, or the United States District Court for the Southern District of Indiana, Indianapolis Division (or upon appeal, to the appellate courts of corresponding jurisdiction to such State or Federal court). Each party consents to and waives any objection to the exclusive personal jurisdiction and venue of such State and Federal courts.

25. Government Sales. This section applies to all acquisitions of the Offerings and documentation (collectively or individually for the purposes of this section, the "Government Acquired Products") by or for the government of the United States of America or other government entity (the "Government"), or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the Government. By accepting delivery of the Government Acquired Products, Client hereby acknowledges that (a) the Offerings and documentation have been developed exclusively at private expenses, (b) the software based Offerings are commercial software and the documentation is commercial software documentation within the meaning of the acquisition regulation(s) applicable to this procurement, (c) the terms and conditions of this Agreement govern the all use and disclosure of the Government Acquired Products, and will supersede any conflicting contractual terms or conditions, and (d) this Agreement meets the Client's needs or is consistent in all respect with United States law.

26. Force Majeure. Except for Client's payment obligations hereunder, a party will not be responsible for any failure to perform due to acts of God, terrorism, war, riot, embargoes, fire, floods, earthquakes, strikes, or other causes beyond its reasonable control (each a "Force Majeure Event") provided that such party gives prompt written notice to the other party of the Force Majeure Event. The time for performance will be extended for a period equal to the duration of the Force Majeure Event. If the Force Majeure Event causes a delay of more than three months, either party may terminate an Order or this Agreement without penalty by providing written notice to the other party.

27. No Transfer or Assignment. Without obtaining SwervePay's advance prior written consent, Client shall not assign, transfer, sublicense, subcontract, or otherwise delegate, in whole or in part any of Client's rights, duties or obligations under this Agreement, including the right to receive settlement of funds pursuant to this Agreement. Any assignment, transfer, or delegation made by Client without complying with this Section is null and void and will permit SwervePay to terminate this Agreement immediately upon providing written notice to Client. Any, indirect or direct, change of ownership of Client is considered an assignment.

28. Export. Client shall not export or re-export the Offering without the prior written authorization of SwervePay and, as may be required under United States laws and regulations, the prior written authorization of the United States Department of Commerce or any other relevant Federal agency.

SwervePay does not represent that the Offerings are appropriate or available for use in other countries. If Client obtains SwervePay's authorization to export the Offerings, Client is solely responsible for compliance with all applicable laws, including export and import regulations of other countries.

29. **Notices to Client.** Client consents to do business electronically with SwervePay and receive electronic communications from SwervePay under this Agreement. SwervePay may provide Client notices, disclosures, or other information about the Offerings and Fees charged under this Agreement. Client agrees that SwervePay may provide this information and these notices by making them available on SwervePay's website, through any mobile application in use by Client, or by sending Client an e-mail to Client's email of record with SwervePay when Client signed up for any of the Offerings. Notices provided on the website or through a mobile application will be deemed given and received within 24 hours of posting and notices sent to Client's email will be deemed given and received on the date of transmission. Alternatively, SwervePay may provide written notice by delivering the notice to Client at the most recent address that SwervePay has on file for such Client. Notices provided to Client's most recent address will be deemed given and received at the earlier of: (a) when received, if hand delivered; (b) five days after being mailed by U.S certified mail, return receipt requested, postage prepaid; or (c) one business day after mailed if by a reputable overnight delivery service with tracking capabilities. Client may update the address of its principal office by providing notice to SwervePay.

30. **Notices to SwervePay.** All written notices to SwervePay under this Agreement need to be in writing and delivered to SwervePay at its principal office (currently, 1150 W. Kilgore Ave; Muncie, IN 47305) and to the attention of the "Legal Department". The notice is deemed received by a party at the earlier of: (a) when received, if hand delivered; (b) five days after being mailed by U.S. certified mail, return receipt requested, postage prepaid; or (c) one business day after mailed if sent by a reputable overnight delivery service with tracking capabilities. SwervePay may update the address of its principal office by providing notice to Client.

31. **Amendments.** SwervePay may updates these Terms and Conditions or the attached Sub-Merchant Payment Processing Terms at any time by providing Client with at least 90 days advance written notice. By continuing to use the Offerings after this 90 day period, Client will be deemed to have accepted the updated Terms and Conditions or updated Sub-Merchant Payment Processing Terms ("Updated Terms"). If Client does not agree to the Updated Terms, Client will prior to the expiration of the 90 day period, cease all use of the Offerings and notify SwervePay that Client is terminating this Agreement. If Client does not provide such notice within the 90 day period, Client's right to terminate under this Section will expire. SwervePay may withdraw the Updated Terms within 30 days of when Client notifies SwervePay of Client's desire to terminate this Agreement and have the Agreement continue under the unaltered Terms and Conditions or unaltered Sub-Merchant Payment Processing Terms. If SwervePay does not withdraw the Updated Terms, then this Agreement will terminate in accordance with Client's notice.

32. General. This Agreement is the complete and exclusive statement of the parties' agreement and supersedes all proposals, prior agreements, and other communications (oral or written) between the parties relating to the subject matter of this Agreement. A waiver by either party of or a party's delay exercising its rights under this Agreement does not constitute a waiver of any other provision, breach, or default. If any provision of this Agreement is held invalid, illegal, or unenforceable, the remaining provisions will remain in effect. This Agreement inures to the benefit of and binds the parties, their permitted successors, heirs, and assigns. In all matters relating to this Agreement, Client and SwervePay will act as independent contractors. Neither party shall represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party, nor to represent the other party as an agent, employee, franchisee, or in any other capacity. Except as it relates to each of the party's obligations under Section 22, the parties hereby agree that there are no third party beneficiaries under this Agreement.

Exhibit 1

Sub-Merchant Payment Processing Terms

1. Payment Facilitator Relationship. SwervePay is a Payment Facilitator. "Payment Facilitator" is defined by the Operating Rules and generally refers to a service provider that is registered with a processor to facilitate the processing of payment transactions on behalf of sub-merchants. As a Payment Facilitator, Client acknowledges that SwervePay is not a bank, that there is no fiduciary relationship between Client and SwervePay, and that SwervePay enters into agreements with other processors and banks to provide the Payment Processing Services.

2. Operating Rules. In using the Payment Processing Services, Client shall comply at all times with the Operating Rules. "Operating Rules" means (1) the by-laws, operating regulations and all other rules policies and procedures of MasterCard International, Inc. ("MasterCard"), VISA USA, Inc. ("Visa"), Discover, American Express, and other payment networks ("Card Organizations"); (2) the Payment Card Industry Data Security Standard; (3) the VISA Cardholder Information Security Program and Payment Application Best Practices; (4) the MasterCard Site Data Protection Program and POS Terminal Security Program; (5) American Express's Data Security Operating Policy; (6) Discover's Information Security & Compliance Program; and (7) any other program or requirement that may be published or mandated by MasterCard, Visa, Discover, American Express, or other payment networks/card associations.

3. Sub-Merchant Account. To use the Payment Processing Services Client shall work with SwervePay to set up and maintain one or more sub-merchant accounts by: (1) providing all required documentation and information, and (2) cooperating with SwervePay's due diligence, Office of Foreign Asset Control related inquiries, and underwriting efforts. Client shall provide and maintain accurate and complete information with SwervePay to enable SwervePay to provide the sub-merchant accounts and the Payment Processing Services. Client authorizes SwervePay to share any such information with SwervePay's processors, the sponsor bank, Client's financial institutions, the Card Organizations, or to any other person or entity whose involvement is necessary to provide the Payment Processing Services. Client acknowledges that SwervePay will perform ongoing risk assessments related to Client's sub-merchant accounts in accordance with the Operating Rules. Client authorizes SwervePay to request reports about Client from consumer reporting agencies, and Client shall cooperate to provide all documents requested by SwervePay to perform ongoing monitoring and analysis of Client's financial condition. If any information is identified in these activities by SwervePay that either prevents SwervePay from being able to establish a sub-merchant account for Client or requires that SwervePay terminate Client's existing sub-merchant account, SwervePay may immediately cease providing the Payment Processing Services, the other Offerings, and terminate this Agreement by providing notice to Client.

4. Client Warranties and Obligations. Client warrants that the individual entering into this Agreement on behalf of Client is at least 18 years of age and is authorized to enter into this Agreement. Client further warrants (a) it is either a legal resident of the United States, a United States citizen, or a legal business entity authorized to conduct business in one of the states in the United States; (b) the name identified by Client when Client completed the Enrollment Form is Client's name under which Client operates and will obtain payment transactions; and (c) Client is in good standing, has all necessary licenses and permits to operate its business, and has all necessary right, power, and ability to comply with the terms of this

Agreement. Client shall only use the Payment Processing Services within the United State. Client shall provide SwervePay with timely notification of any: (i) adverse changes in Client's financial health; (ii) adverse changes in Client's business conditions or environment; (iii) an adverse governmental or regulatory actions taken against Client; (iv) any change in the nature of Client's products or services that makes the products or services materially different to what was previously represented to SwervePay; and (v) any other adverse changes that would interfere with Client's ability to fulfill Client's obligations under this Agreement. Client shall fulfill all obligations to Client's customers related to any payment transaction and will be solely responsible for and resolve any dispute or complaint with a Payer.

5. Restrictions. Client shall:

a. not accept payments in connection with any illegal activity, or any activity that is inconsistent with Client's business as represented to SwervePay.

b. not accept payments for any of the following categories of goods or services or business (collectively, "Prohibited Transactions"): (1) adult content; (2) airline or cruise line; (3) credit counseling or identity protection services; (4) sales to or from operations outside the United States of America and Canada; (5) distressed property sales and marketing; (6) gambling establishments or gambling; (7) card not present tobacco or pharmaceutical sales; (8) goods or services sold through rebate or upsell programs; (9) timeshare resales and related marketing of goods, services or properties; (10) sales of goods or services from Client's sub-merchants or other third party sellers of such goods or services; or (11) buyer club activities or buyer club memberships.

c. not submit any transaction that: (1) adds any surcharge or other amount to the transaction as a condition of paying with a payment card, except to the extent authorized by the Operating Rules and applicable law; (2) 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; (3) represents the refinancing or transfer of an existing Payer obligation that is deemed to be uncollectible or arises from the dishonor of a Payer's personal check or from the acceptance of a Card at a terminal that dispenses scrip; (4) is not a valid transaction between the Client and a bona fide Payer; (5) Client knows or should have known to be fraudulent or not authorized by the Payer; (6) does not result from an act between Client and the Payer; or (7) required a valid authorization and it was not obtained.

d. not submit any refund transaction: (1) that does not correlate to an original sales transaction from the Payer; (2) that exceeds the amount shown as the total on the original sale transaction, unless the excess represents the exact amount required to reimburse the Payer for postage paid by the Payer to return merchandise in accordance with a policy applied consistently by Payer to all Client customers, (3) for returned products that were acquired in a cash purchase from Client; (4) that would cause an overdraft; or (5) more than three business days following either: (A) a regulatory requirement granting a Payer's right to a refund; or (B) a non-disputed Payer request;

e. not transfer or attempt to transfer Client's financial liability by asking or requiring Payer to waive their dispute rights; and

f. 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.

6. Direct Processing Agreement. In accordance with the Operating Rules, SwervePay may need to have Client execute a direct agreement with SwervePay's payment processor, in the form provided by SwervePay's processor. Client will execute that direct agreement upon SwervePay's request. If a direct agreement is deemed required and Client fails to enter into it upon request or the payment processor terminates the direct agreement at any time, SwervePay may cease providing the Offerings and terminate this Agreement by providing written notice to Client.

7. Deposit Account. As part of the Enrollment Form and for any subsequent account Client opens related to the Payment Processing Services, Client shall complete an Authorization for Direct Deposits form and for the duration of this Agreement, Client shall maintain one or more commercial checking account(s) to facilitate payment of payment transactions and automated clearing house network transfers between SwervePay and Client ("Deposit Account"). Client will notify SwervePay in writing any time there is a change in the Deposit Account information that will materially affect the ability of SwervePay to facilitate ACH transactions to Client's Deposit Account. Client acknowledges that SwervePay is not responsible for any failure of Client to receive an ACH transfer that is caused by Client failing to maintain the Deposit Account or accurate Deposit Account information with SwervePay. Client shall maintain sufficient funds in the Deposit Account to accommodate the payment of any Fees, Chargeback liabilities, charges associated with the purchase of Terminals, or payment of any assessments from the Card Organizations.

8. Distribution of Funds to Client. Within one to two business days of a deposit of the funds from a payment by a Payer of an obligation due to Client into the Settlement Bank Account ("Funds"), SwervePay will have the Member Bank transmit via an ACH transfer to Client's Deposit Account the Funds owed to Client provided that SwervePay receives a valid authorization code from the applicable Card Organization. Client further acknowledges that availability of the Funds for use by Client is subject to the control of the banking institutions and SwervePay is not responsible for any delay caused by the banking institutions. "Settlement Bank Account" means a bank or escrow account maintained by the Member Bank for receipt of payments made through the Payment Processing Services. "Member Bank" means a financial institution that provides credit card processing services for SwervePay under this Agreement. Each transaction will be considered complete when SwervePay has received the Funds and when such Funds have been accepted by Client's designated bank or financial institution.

9. Chargebacks. A "Chargeback" occurs if a charge or transaction is reversed or returned for any reason to Client's sub-merchant account by a Payer or card issuer. Client is solely responsible for the payment of all Chargebacks, and under no circumstances shall SwervePay be responsible for Chargebacks. Further, if a Chargeback occurs for any reason, Client will pay to SwervePay any administrative fees set forth in the Enrollment Form that reflects SwervePay's involvement in the Chargeback resolution process. For any Chargeback, Client will also pay all credit card, debit card, bank, and ACH transaction fees, fines or penalties and refund all Funds transferred to Client's Deposit Account corresponding to the Chargeback amount. Client will be notified of the Chargeback and of the amount due. If Client has a reason to dispute the Chargeback, Client has to dispute the Chargeback based on the date provided in the Chargeback notice. SwervePay has no independent obligation to investigate, dispute, or attempt to obtain reversal or adjustment of any Chargeback. SwervePay may deduct, and Client authorizes SwervePay to deduct, the amount of any Chargeback and any associated fees, fines, or penalties assessed by each processor and bank from: (a) Client's sub-merchant account, (b) Client's Reserve Account (if applicable), (c) Client's Deposit Account; or (d) any amounts due to Client. If Client is incurring an excessive number of Chargebacks, SwervePay

may increase the Fees, may hold back settlement of funds, establish or increase the fund requirements for a Reserve Account, or terminate this Agreement by providing written notice to Client. Client is responsible for monitoring Client's monthly Chargeback percentage and developing Chargeback reduction programs as required by the Card Organizations.

10. Correcting Payment Errors. Client authorizes SwervePay, SwervePay's processor, or Member Bank to debit the Deposit Account or Reserve Account for any misdirected deposits, duplicate deposit, or inadvertent overpayments into Client's Deposit Account. This debit authorization survives the termination of this Agreement until SwervePay validates that there are no Incorrect Deposits that need to be addressed.

11. Statements and Client Review. SwervePay shall make available to Client statements and transaction reports reflecting Client's sub-merchant account activity ("Statements"). Client acknowledges that Client has 90 days from when the Statements are made available to Client to review the Statements for accuracy. Subject to Client providing SwervePay with written notice of any dispute or discrepancy related to the Statement within that 90 day period, Client may reasonably dispute a Statement. Upon receipt of the dispute by SwervePay, SwervePay will review the disputed Statement and the parties will work together in good faith to resolve the dispute. If it is determined that SwervePay owes any additional amounts to Client, SwervePay will disperse that amount in accordance with Section 8 of this Exhibit. Client agrees that SwervePay will not be liable to Client or have any obligation to resolve any discrepancy in any Statement that Client does not dispute in accordance with this Section. Client's failure to follow the dispute resolution procedures in this Section shall result in all such disputes being waived by Client.

12. Reserve Account. Upon notice to Client, SwervePay may elect or be required by SwervePay's payment processor to establish a non-segregated account at a financial institution to ensure payment of all of Client's payment or Fee obligations under this Agreement ("Reserve Account"). Client hereby permits SwervePay to fund the Reserve Account through (a) debiting the Deposit Account; (b) withholding Funds and depositing those funds in the Reserve Account; or (c) invoice Client and Client will pay such invoice within 30 days of the date of the invoice. SwervePay may continue to hold the Reserve Account with any amounts in it for up to one year after the termination of this Agreement. Client acknowledges that Client will not receive any interest on the amounts in the Reserve Account and has no right to access the amounts in the Reserve Account until SwervePay closes the Reserve Account and provides all amounts (if any) in the Reserve Account to Client. SwervePay will close the Reserve Account and release any amounts to Client once Client satisfies all payment obligations under this Agreement. The funds in the Reserve Account will be deemed to be the exclusive property of SwervePay, and not the merchant, while SwervePay holds such funds. Without in any way limiting the foregoing, and merely as an additional form of security, Client hereby further grants SwervePay a security interest in the Reserve Funds to the full extent necessary to satisfy any of Client's obligations to SwervePay. SwervePay may enforce its security interest with or without notice or demand. The security interest(s) granted under this section will continue after termination of this Agreement until Client satisfies all its obligations to SwervePay. Client further agrees to execute and deliver to SwervePay such instruments and documents as SwervePay may reasonably request to confirm and perfect the security interest(s) granted by this Agreement.

13. Investigations and Sharing of Information. If SwervePay reasonably believes that a transaction is in violation of this Agreement, is illegal or otherwise may cause harm to SwervePay, Client, a Payer, or SwervePay's processor, SwervePay may choose not to authorize, process, or settle the transaction. If

SwervePay discovers any such transaction or any other unusual or unexpected transaction activity on Client's sub-merchant account, Client authorizes SwervePay to hold Funds while SwervePay conducts an investigation into the transaction activity. As part of such investigation and upon SwervePay's request, Client will provide all documentation requested to support or otherwise validate any transaction being investigated. As part of any SwervePay investigation or if required by law, court order, or a request from law enforcement or a governmental entity, SwervePay may withhold and defer the distribution to Client of any Funds until such investigation concludes, or such legal or governmental requirement no longer applies. If SwervePay reasonably believes that the Payment Processing Services have been used for an illegal, unauthorized or criminal purpose, Client expressly authorizes SwervePay to share information about Client, Client's sub-merchant account, or Client's transactions with Client's banks, Client's financial institutions, SwervePay's processor, the Card Organizations, SwervePay's advisors, and with law enforcement and governmental entities. If SwervePay reasonably believes in good faith that that Client needs to be reported under the Operating Rules, Client acknowledges that SwervePay may report Client to the MATCH list (Member Alert to Control High-Risk), the Card Organizations, any applicable governmental agency or law enforcement agency.

14. Honoring Cards. Client has the responsibility to validate the identity of the Payer and the Payer's payment card information. If Client determines a payment card is expired or that the account number is listed on a current Electronic Warning Bulletin file or the account number does not match the card's magnetic strip or chip, Client will not honor the payment card or the transaction. Client shall ensure that the Payer understands Client is responsible for the transaction and all the details related to the charges that will be processed on Payer's payment card. Client shall maintain return and refund policies that comply with the Operating Rules and disclose to Payers any refund or return policies Client has. Unless a Payer expressly declines a written receipt, Client shall make a receipt available to a Payer for any transaction, whether in writing or via electronic means. Notwithstanding Client's obligations herein SwervePay shall have the right, in its sole discretion, to decline to process any transaction that it believes is improper, fraudulent, unlawful, or otherwise in violation of any Laws and Regulations.

15. Client's Security Obligations. Client shall keep all payment card, account information and personal information of a Payer ("Payer Information") confidential and not disclose such information to a third party except as permitted under the Laws and Standards. Client shall keep Payer Information in a secure manner to prevent disclosure to unauthorized parties and in a manner that complies with all the Laws and Standards. Upon SwervePay's request, Client will provide proof to SwervePay of Client's compliance with the Laws and Standards. Client will only use the Payer Information for obtaining payment and not use or disclose the Payer Information for marketing purposes or any other unauthorized use without express consent of the Payer. Client shall immediately notify SwervePay if: (a) Client has reason to believe that Client's sub-merchant account is no longer secure or being used for unauthorized purposes; or (b) Client discovers or has reason to suspect that a data breach has occurred. In any such event, Client will fully cooperate, at its expense, with all remediation efforts, forensic examination, and mitigation procedures required under the Laws and Standards or reasonably requested by SwervePay, the Card Organizations, SwervePay's processor, and any of the parties' banks or financial institutions. Client acknowledges that any failure to comply with the Laws and Standards or the occurrence of any data breach suffered by Client may result in Client being assessed penalties or fines by the Card Organization and Client shall pay those penalties and fines.

16. Third Parties. To the extent Client uses any third party to process, store, receive, transmit, or otherwise have access to Payer Information, Client assumes full responsibility and liability for such third party's compliance with this Agreement and the Laws and Standards. SwervePay is not liable for the acts or omissions of such third parties. Client further agrees to notify SwervePay of the identity of all such third parties if those third parties relate to the Payment Processing Services and to ensure that such third parties are properly registered, if required to be so, with the Card Organizations. SwervePay may require any such third parties to undergo testing, approval, and certification by SwervePay or SwervePay's bank or processor. SwervePay may, at any time, also terminate such third parties' access to or ability to integrate with SwervePay. For the sake of clarity, SwervePay's affiliates or subcontractors are not considered a third party under this Section.

17. Termination and Suspension Rights. In addition to the termination rights set forth in the Terms and Conditions, SwervePay may suspend providing the Payment Processing Services to Client upon providing notice to Client, if Client: (a) has violated these Sub-Merchant Payment Processing Terms or any of the Laws and Standards; (b) poses an unacceptable credit or fraud risk, as determined by SwervePay, SwervePay's processor, or the Card Organizations; (c) becomes subject to any investigation or enforcement action by law enforcement or a governmental entity; (d) falls outside of SwervePay's credit policies; (e) provides any false, incomplete, inaccurate, or misleading information or otherwise engages in fraudulent or illegal conduct; or (f) becomes part of the MATCH list or Terminated Client File maintained by MasterCard. If SwervePay suspends providing the Payment Processing Services for any of the foregoing reasons and the circumstances do not change after 30 days, SwervePay may terminate this Agreement by providing written notice to Client. Upon suspension of the Payment Processing Services or termination of this Agreement for any reason, (i) all pending transactions will be cancelled; (ii) Client shall pay all Fees and any other amounts owed to SwervePay that were accrued prior to the termination; and (iii) Client will remain liable for any and all Chargebacks, credits, adjustments, penalties, fines, costs, and all other amounts that become due prior to or after the suspension or termination. As part of the suspension or termination of the Agreement, SwervePay may establish and maintain a Reserve Account in accordance with Section 14 of this Exhibit. If Client is subject to an investigation or enforcement action at the time Client seeks to close a Client sub-merchant account, SwervePay may retain the Funds in the sub-merchant account or a Reserve Account until the investigation or action is completed.

18. Provisions Specific to American Express. If Client is accepting American Express card payments, Client agrees to the following in connection with its acceptance of American Express cards:

- a) Any request to accept American Express cards is subject to approval by American Express. If approved, Client authorizes SwervePay to submit American Express card transactions to American Express. Client also agrees to accept settlement from American Express.
- b) The American Express Merchant Operating Guide is incorporated into this Agreement by reference and available at the following link: https://icm.aexp-static.com/content/dam/gms/en_us/optblue/us-mog.pdf. Client's acceptance of American Express cards must be in accordance with American Express's Merchant Operating Guide and any other rules promulgated by American Express, as amended from time to time.
- c) Client may opt out of receiving commercial marketing materials from American Express without

affecting Client’s ability to accept American Express cards or to receive important transactional or relationship messages from American Express.

d) Client agrees that American Express may use information obtained from Client to screen or monitor Client in connection with American Express card marketing and administrative purposes. In addition, American Express may use data obtained from Client to perform American Express’s responsibilities with the American Express OptBlue Program, to promote the American Express network, to perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes, and important transactional or relationship messages.

e) Client agrees that it may be converted from American Express Card acceptance pursuant to this Agreement to a direct American Express Card acceptance relationship with American Express if and when it becomes a High CV Merchant. “High CV Merchant” means a merchant with either (1) greater than \$1 million in American Express Card Transaction volume (including volume from all Merchant locations) in a rolling 12 month period; or (2) greater than \$100,000 in American Express Card Transaction volume (including all volume from all merchant locations) in any three consecutive months. Client will be notified if such a conversion is required and upon such conversion, Client will be bound by American Express’s then-current Card Acceptance Agreement and Client agrees that American Express will set pricing and other fees payable by Merchant for American Express Card acceptance.

f) Upon termination of this Agreement or of Client’s ability to accept American Express Cards hereunder, Client agrees to remove American Express identifying marks from Client’s website and wherever else they Client displays them.

g) Client agrees to have a refund policy for transactions on American Express cards that is at least as favorable as the refund policy or transactions on other card types.

h) Client acknowledges that it may opt out of accepting American Express cards at any time without affecting its right to accept other payment cards.

i) American Express is a third party beneficiary to this Agreement with respect to the rights in this Agreement, but not the obligations and will be able to enforce the terms of this Agreement against the Client as it relates to Client’s accepting of American Express card payments.

	Client:
	By:
	Its:
	Date of Execution:
	Address:

	Email: