

## **SWELLCOIN USE & TERMS**

### **User/Consumer Terms and Conditions**

These Terms of Use (this "Agreement"), is a legal agreement between you ("You" or "you" or "Your" applying to both an individual user/consumer and/or a business/merchant as the context may require) and Swell Holdings, LLC., a Florida corporation ("Swellcoin"), and shall govern Your use of and access to the Program (as defined below) and the Website (as defined below). By checking any acceptance boxes, clicking any acceptance buttons, submitting any text or content or simply by making any use of the Program and/or Website, You (a) accept this Agreement and agree to be bound by each of its terms, and (b) represent and warrant to Swellcoin that (i) You are at least 13 years of age and have the authority to enter into this Agreement (either on your own behalf or by having a parent or legal guardian agree to the terms set forth herein on your behalf), (ii) this Agreement is binding and enforceable against You, (iii) to the extent an individual is accepting this Agreement on behalf of an entity, such individual has the right and authority to agree to all of the terms set forth herein on behalf of such entity, and (iv) You have read and understand Swellcoin's Privacy Policy, the terms of which are posted at the Website and incorporated herein by reference (the "Privacy Policy"), and agree to abide by the Privacy Policy. Swellcoin reserves the right to add, modify, delete or otherwise change any of the rules, procedures, conditions, benefits, pertaining to the Program at its sole discretion, with or without notice. If you are under 13 years of age, you are not authorized to use the Program or Website, with or without registering. In addition, if you are under 18 years old, you may use the Service, with or without registering, only with the approval of your parent or guardian. Swellcoin may amend this Agreement from time to time, each of which amendments shall be deemed to be effective 2 days after posting the updated Agreement at the Website or within the Program. You should check the Website, the Program and this Agreement regularly to ensure You remain current on the terms and agreements set forth herein. A users continued participation in the Swellcoin system constitutes their acceptance of any changes to Terms and Conditions. The most current version of these Terms and Conditions will be available at [www.Swellcoin.com](http://www.Swellcoin.com) and will supersede all previous versions of these Terms and Conditions. If you do not agree to abide by these or any future Terms of Use, do not use or access (or continue to use or access) the Program and/or Website. It is your responsibility to regularly check the Program and/or Website to determine if there have been changes and to review such changes.

#### **1. Purpose.**

The purpose of this Agreement is to set forth the terms and conditions under which, among other things, (i) Swellcoin will license to You use of certain of Swellcoin's technology, software and/or services such that You can utilize the Program through your computer and/or mobile device, and (ii) You can access and/or use the Website

(collectively, the "Purpose") in relation thereto. As stipulated elsewhere in this Agreement, Swellcoin does not exert any control over any merchants, retailers, commercial ventures or other third parties, and as such is not liable or responsible for any actions taken or omitted to be taken by any such third party.

## **2. License.**

Swellcoin hereby grants You a non-transferable, non-exclusive, revocable, limited license to access and use Swellcoin's rewards / loyalty software platform commonly referred to as "The Swellcoin Rewards Program" (the "Program") as made available through its website located at [www.Swellcoin.com](http://www.Swellcoin.com) (the "Website") and/or via mobile Program during the Term (as defined below) solely for the Purpose. Swellcoin may, from time to time, update or modify the Program, release new versions of the Program or create new modules related thereto, each of which may, at Swellcoin's discretion, be included within the license described above. You shall not be permitted to sublicense or transfer any of Your rights hereunder including, without limitation, access to the Program.

## **3. Certain Restrictions.**

You shall not directly or indirectly copy or reproduce all or any part of the Program or the Website, whether electronically, mechanically or otherwise, in any form including, but not limited to, the copying of presentation, style or organization. You shall use the Program solely for its intended purposes and shall not use the Program for the benefit of any third party except as specifically contemplated under this Agreement. You shall not use the Program to post, transmit, convey, submit, distribute, store or destroy any content, photographs, descriptions, drawings, content, audio materials, text, messages or other information (collectively, "Posted Information"): (a) in violation of any applicable law, statute, ordinance or regulation; (b) in a manner that will infringe the intellectual property rights of others; (c) that is defamatory, obscene or trade libelous; (d) that contains any viruses, Trojan horses, worms, time bombs, cancel bots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; (e) that is false, misleading or inaccurate in any way; or (f) in violation of the any acceptable use policy or other policy posted at the Website or within the Program from time to time. You shall not violate or attempt to violate the security of the Program or the Website. You shall not reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the Program, including, without limitation, any of the software comprising or in any way making up a part of the Program. In addition, You will not export, re-export or permit any third party to export or re-export, directly or indirectly, the Program where such export or re-export is prohibited by applicable law without appropriate licenses and clearances. You shall defend and indemnify Swellcoin, at Your sole cost and expense, from and against any claims, damages, liabilities and/or expenses arising out of Your breach of any of Your obligations or representations set forth in this Section 3.

#### **4. Certain Responsibilities.**

You shall be solely responsible for: (i) all Posted Information you input into the Program; (ii) ensuring that all Posted Information is appropriate in tone and is accurate; (iii) all personal, private, confidential and/or financial information that you input into the Program; (iv) complying with all applicable laws, rules and regulations at all times; and (v) maintaining all passwords and access codes to the Program, and refraining from sharing or otherwise permitting third parties to use any such passwords and/or access codes to access the Program.

#### **5. Swellcoin Rights.**

Swellcoin shall be entitled, at its sole discretion, to suspend, restrict and/or terminate, without notice of any kind, Your access to the Program or Your Swellcoin account for any reason. Notwithstanding the foregoing, Swellcoin shall not be required to review or monitor any Posted Information entered into the Program or otherwise submitted by You, and You shall be solely responsible for the veracity and accuracy of all such data, content and information.

#### **6. Fees.**

Swellcoin does not currently charge its users/customers to access and use the Program, however Swellcoin may, at any cashback and in its discretion, elect to begin charging fees for use of various portions of the Program and/or for different levels of subscription or account.

#### **7. Term and Termination.**

This Agreement shall continue in full force until the earlier to occur of (i) either party providing written or electronic notice of termination to the other party (at which cashback You shall no longer be entitled to access or use the Program), or (ii) Swellcoin electing to terminate Your access to the Program, with or without notice (the "Term"). For purposes of clarity, You are entitled to terminate your Swellcoin account at any time. Upon termination of this Agreement for any reason, You shall no longer be entitled to access or use the Program or any other non-public portions of the Website. In addition to the foregoing, in the event that Swellcoin determines, in its sole and absolute discretion, that You have breached this Agreement, threatened to breach this Agreement, committed any fraud or deception, breached any Swellcoin policy in effect from time to time or otherwise failed to perform to the standards required of Swellcoin, Swellcoin shall be entitled, at its discretion and in addition to any other remedies it may have hereunder and/or at law, to terminate, cancel or suspend Your access to the Program, in each of the foregoing cases at any time and for any period of time. Swellcoin shall not be responsible for the return of any Posted Information of any kind to You upon any termination of this Agreement or suspension of Your access to the

Program, including without limitation any information input into the Program by You. Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of this Agreement shall survive any termination of this Agreement.

The Program has no predetermined termination date and may continue until such time as Swellcoin decides to terminate the Program, at any time, with or without notice. You will have **three (3) months** from the date Program termination is announced to accumulate and redeem cashback. This means that, regardless of the amount You participate in the Program, your right to accumulate and redeem cashback can be terminated by Swellcoin **three (3) months** after Swellcoin announces Program termination.

## **8. Intellectual Property.**

### **(a) General Ownership.**

All trademarks, servicemarks, logos, taglines, patents, copyrights and other intellectual property rights (registered or unregistered) owned by either party on the date hereof shall continue to be owned solely by such party, and except as set forth herein, nothing in this Agreement shall be deemed to confer any rights to any such intellectual property on the other party. For purposes of clarity: (i) as between You and Swellcoin, Swellcoin shall be deemed to be the sole owner of all Posted Information entered into the Program or otherwise posted by You; and (ii) Swellcoin is the sole owner of the name "Swellcoin" as well as the Website, the Program, and all source code, object code, software, content, copyrights, trademarks, servicemarks, logos, taglines, patents and other intellectual property related thereto or included therein. All suggestions, recommendations, bug-fixes, error-fixes or other communications from You to Swellcoin regarding the Program or the Website shall, upon submission to Swellcoin, be owned solely and exclusively by Swellcoin. You acknowledge and agree that the applicable supplier(s) of any third party software included within the Program shall own all worldwide rights, title and interest in and to such third party software (and any intellectual property rights therein), subject to such suppliers' license, if any, of such third party software to Swellcoin.

### **(b) Advertising.**

Swellcoin shall be entitled to display advertising and/or any other content at locations of its choosing within the Website and/or Program, including without limitation adjacent to Your Posted Information.

## **9. Confidentiality; Non-Solicitation.**

You agree to treat as confidential all confidential information of Swellcoin, not to use such confidential information for any purpose other than to the limited extent necessary to use the Program and not to disclose such confidential information to any third party

except as may be reasonably required pursuant to this Agreement and subject to confidentiality obligations at least as protective as those set forth herein. Without limiting the generality of the foregoing, You shall use at least the same degree of care which You use to prevent the disclosure of Your own confidential information of like importance to prevent the disclosure of confidential information disclosed by Swellcoin, provided, however, that in no event shall such degree of care be less than reasonable in light of general industry practice. In addition, during the Term and for a period of one (1) year thereafter, You shall refrain from directly or indirectly soliciting, enticing, persuading or inducing any individual who is then, or has been within the 1-year period prior to the applicable date, an employee of Swellcoin to terminate employment with Swellcoin or to become employed by or enter into contractual relations with any other individual or entity.

## **10. Disclaimers.**

### **(a) No Warranties.**

Except as explicitly set forth herein, neither Swellcoin, nor its affiliates or any of any such party's equity holders, directors, officers, employees, agents, suppliers, licensors nor the like, makes any warranties of any kind, either expressed or implied, including, without limitation, (a) warranties of merchantability or fitness for a particular purpose, (b) that the Website or the Program will be error-free, (c) as to a minimum level of uptime for the Program or the Website, or (d) as to the results that may be obtained by You by entering into this Agreement and/or using the Program. You agree and acknowledge that the Program and Website are licensed and/or provided hereunder on an "as is" basis. In addition, You hereby agree and acknowledge that: (i) Swellcoin shall not be responsible for any actions taken by any other party using the Program or reviewing any of Your information; (ii) Swellcoin does not recommend or endorse any third parties hereunder, and makes no representations or warranties whatsoever regarding any such third party; (iii) Swellcoin is not a party to any transaction between you and any store, retailer or business with which Swellcoin has a business relationship, and as such, any disputes regarding purchases, rewards and/or any other aspect of any transaction or other commercial dealings is solely between You and such third party; (iv) Swellcoin is not responsible for any other party's compliance with applicable laws, rules or regulations; (v) Swellcoin's services are administrative in nature and Swellcoin is not responsible for ensuring that any third party honors any reward, loyalty or other obligations such third party may have towards You; (vi) Swellcoin shall not, under any set of circumstances, be responsible or liable for an content, text, photographs and/or other personal/confidential information, including any Posted Information which may violate applicable law and/or a third party's intellectual property rights; and (vii) the Program and/or Website may not function properly or as intended at times. In summary, the business/merchant reward provider, not Swellcoin, is the provider of the rewards cashback and goods/services related thereto and is solely responsible for redeeming any rewards cashback You obtain. Swellcoin will have no liability if a rewards provider refuses or fails to honor any reward cashback.

(b) Unavailability of Website or Program.

You are responsible, at your sole cost and expense, for providing all equipment necessary to access the Internet, the Website and/or the Program. While it is Swellcoin's objective to make the Website and Program accessible at all times, the Website and/or Program may be unavailable from time to time for any reason including, without limitation, routine maintenance. In addition, various portions of the Website or Program may operate slowly from time to time. You understand and acknowledge that due to circumstances both within and outside of the control of Swellcoin, access to the Website and/or the Program may be interrupted, suspended or terminated from time to time. In particular, and not in limitation of the foregoing, Swellcoin shall not be liable in any way for any delay in responding to an inquiry or question forwarded by You or the effects any delay or unavailability may have on You. YOU AGREE THAT SWELLCOIN SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING FROM ANY SUCH INTERRUPTION, SUSPENSION OR TERMINATION OF THE WEBSITE AND/OR PROGRAM AND THAT YOU SHALL PUT IN PLACE CONTINGENCY PLANS TO ACCOUNT FOR SUCH INTERRUPTIONS OR SUSPENSIONS OF THE WEBSITE AND/OR PROGRAM.

**11. Limitation on Liability.**

SWELLCOIN SHALL NOT, UNDER ANY SET OF CIRCUMSTANCES, BE LIABLE TO YOU FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR DATA, ARISING OUT OF THIS AGREEMENT OR YOUR USE OF THE PROGRAM OR WEBSITE, WHETHER BASED IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, SWELLCOIN'S TOTAL LIABILITY TO YOU FOR ANY CLAIM ARISING HEREUNDER OR RELATED HERETO SHALL NOT EXCEED \$100.

**12. Force Majeure.**

Swellcoin shall not be liable to You for failure or delay in performing any obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control.

**13. General Terms.**

The following terms and conditions govern general use of the Website:

(a) You agree to abide by all restrictions displayed on the Website and/or within the Program, as and when they are updated from time to time, including, without limitation, the rules in this Section 13. Swellcoin reserves the right to block the sending of any inquiry or other content Swellcoin deems inappropriate in its sole discretion, and may terminate all access to the Website and/or Program at any time in its sole

discretion for any or no reason. While Swellcoin reserves the right to monitor all of Your activity on the Website and/or within the Program, it has no obligation to do so.

Permitted Uses. You may use the Website only in good faith for the purposes described herein. You may download and print out portions of the content from the Website for non-commercial purposes provided that You follow the rules in this Agreement. You may not use the Website or Program, or any business listings, contract information or other content, to promote another business or commercial venture.

Distribution. Except as expressly permitted under other provisions of this Agreement, You may not modify, reproduce, duplicate, copy, photocopy, print, republish, display, translate, transmit, distribute, sell, resell, rent, lease, loan, exploit, reduce to any electronic medium or machine-readable form, or otherwise make available in any form or by any means all or any portion of the Website, the content or any information or materials retrieved from either of them, including, without limitation, graphics and logos, in whole or in part, for any purpose.

Derivative Works. You may not create compilations or derivative works of the Website or the Program, the Website or Program content or any other materials from the Website or Program.

Proprietary Notices. You may not remove, change or obscure, and You must retain on all copies of the content You download, any copyright notice or other proprietary notice, Privacy Policy, legal disclosures or terms of use contained in the content or on the Website.

Infringement. You may not use the Website, Program, the Website and/or Program content or any other materials from the Website or Program in any manner that may infringe upon any copyright or other intellectual property right, proprietary right, or property right of Swellcoin or any third party.

Information Distribution. You may not use the Website and/or Program or any communications service, chat room, message board, blog, forum, newsgroup, or other interactive service that may be available to You on or through the Website or Program and/or that may be added to the Website or Program in the future, to transmit, upload, post, distribute or facilitate distribution of, or otherwise make available any information or content, including text, communications, software, images, sounds, data or other information, that:

- is false;
- contains explicit or graphic descriptions or accounts of sexual acts, including, without limitation, sexual language of a violent or threatening nature directed at another individual or group of individuals;
- includes any inside information and/or proprietary or confidential information learned or disclosed under nondisclosure agreements;

- You are restricted from using under any applicable law;
- infringes upon the intellectual property rights of any third party; or
- contains software viruses or any other computer code, files or programs that are designed or intended to disrupt, damage, or limit the functions of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any other party.

Other Prohibited Uses. You may not use the Website or Program for any purpose that:

- is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, or otherwise violates Swellcoin's rules or policies;
- victimizes, harasses, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, disability, or any other classification protected by law;
- invades any person's or entity's privacy or other rights;
- constitutes unauthorized or unsolicited advertising, junk or bulk e-mail (also known as "spamming"), chain letters, any other form of unauthorized solicitation, or any form of lottery or gambling;
- misidentifies You or impersonates any person or entity, including, without limitation, any employee or representative of Swellcoin, or falsely states, implies, or otherwise misrepresents Your affiliation with a person or entity by, for example, pretending to be someone other than You or pretending to represent a company or organization that You are not affiliated with or authorized to represent; or
- could otherwise reasonably be deemed or viewed to be unethical, illegal or offensive.

Others' Personal Information. You may not knowingly solicit or collect personal information from a child 12 years old or younger without appropriate prior verifiable parental consent.

Harm to Minors. You may not take any action on the Website or within the Program or use the Website and/or Program content to harm minors in any way.

Solicitation. You may not use the Website or Program or any Website or Program content in a manner that violates any state or federal law regulating commercial e-mail, facsimile transmissions or telephone solicitations.

(b) The Website, the Program and the Website and Program content may contain and/or provide access to content provided by third parties, including, without limitation, advertising, information, dialogue, opinions, stories, advice, statistical data, text, software, music, sound, photographs, graphics, video, messages, and other materials, whether publicly or privately posted to or e-mailed or otherwise transmitted through the Website or Program ("Third Party Content") that may include content You find to be



offensive, indecent or objectionable. The third party from whom or which any such Third Party Content originates is solely responsible for it and Swellcoin assumes no responsibility to verify, has no control or influence over, makes no representations regarding, and does not guarantee the accuracy, integrity or quality of any Third Party Content. Accordingly, Swellcoin has no liability of any kind to You or any other person relating to any Third Party Content, including, without limitation, mistake, misstatement of law, omission, falsehood, defamation, obscenity, pornography, profanity, opinion, representation and any other content contained in the Third Party Content or for any loss or damage of any kind incurred as a result of the use of any Third Party Content. Statements of opinion and commentary in Third Party Content are those of the third party and, unless Swellcoin expressly states in writing to the contrary, Swellcoin neither endorses nor adopts as its belief any such statements. Swellcoin may provide information in articles Swellcoin posts or links to through the Website only for educational and general informational purposes and not as professional advice. Swellcoin has made no attempt to verify any information contained in any such articles.

(c) As a convenience to You and other Website visitors and users, the Website may contain links to websites that are owned and operated by third parties that are not affiliated with Swellcoin. When You uses these links, You will leave the Website and Swellcoin will have no ability to protect Your interests. You visits linked websites at Your own risk and it is Your responsibility to take any protective measures to guard against viruses and other destructive elements. Swellcoin is not responsible for and, unless it expressly states otherwise in writing, makes no warranty or representation regarding and does not endorse any linked website or any service, product or information provided on or through the linked website.

(d) Mobile Services. The Program may include certain services that are available via a mobile device, including (i) the ability to upload content to the Program via a mobile device, (ii) the ability to browse and otherwise access the Program from a mobile device and (iii) the ability to access certain features of the Program through an the Website and/or application downloaded and installed on a mobile device (collectively, the "Mobile Services"). To the extent You access and/or utilize the Program through a mobile device, Your wireless service carrier's standard charges, data rates and other fees may apply. In addition, downloading, installing, or using certain Mobile Services may be prohibited or restricted by your carrier, and not all Mobile Services may work with all carriers or devices. By using the Mobile Services, You agree that Swellcoin and users/customers and/or business/merchant rewards providers (as permitted by Swellcoin) may communicate with You by SMS, MMS, text message or other electronic means to Your mobile device and that certain information about Your usage of the Mobile Services may be communicated to us. In the event You change or deactivate your mobile telephone number, You agree to promptly update Your Swellcoin account information to ensure that Your messages are not sent to the person that acquires your old number.

Program Requirements. The following terms shall, in addition to all of the other

terms set forth in this Agreement, govern Your use of and participation in Swellcoin's Program which, at a general level, allows you to participate therein.

### ***General Program Rules (User/Consumer)***

You shall, as a condition to making any use of and participating in the Program, be required to follow these rules and make the necessary representations/warranties related thereto.

(1) By registering on the Website and participating in the Program offered by Swellcoin, You verify and agree that:

- You represent that you have read and agree to all Swellcoin Program and Website Use & Terms as set forth in the Agreement;
- All information provided to Swellcoin in Your registration is true and accurate, you are the specific individual identified therein and all participation in the Swellcoin Program is for your own account, and you agree to maintain true, accurate, current and complete information about yourself; and
- You will only attempt to redeem valid reward cashback that You have properly earned through purchases with Swellcoin member businesses/merchants, and You will not duplicate the same and/or make any false representations with respect thereto.

(2) By accessing the Website, registering for the Swellcoin Program, activating Your account and utilizing the same, You verify and agree that:

- Swellcoin does not vet or otherwise guarantee the validity nor the performance of the businesses/merchants participating in the Program, such that You must conduct any and all due diligence that you deem necessary with respect thereto, and your participation in the Program is at your own risk (it being expressly understood that you may not be able to redeem earned reward cashback due to the fact that such is beyond the control of Swellcoin);
- You understand that You may only earn reward cashback from Swellcoin member businesses/merchants;
- You understand that the reward cashback earned can only be redeemed at the issuing business/merchant (unless otherwise provided in writing);
- You understand that You cannot retroactively earn cashback for purchases made prior to joining Swellcoin Program;
- You understand that the return of merchandise/cancellation of a service where You may have earned reward cashback for such purchase will result in a commensurate loss/reduction of reward cashback withdrawn by the business/merchant from Your Swellcoin account. If You have already redeemed reward cashback otherwise subject to reduction/offset, and Your Swellcoin account is void of sufficient cashback for the business/merchant to withdraw, the reward value of the returned item(s)/cancelled service(s) will be reduced and

applied to the refund amount to which you would be entitled and that may be returned to You for such merchandise/service;

- It is Your sole responsibility to verify that only the appropriate value of withdrawn reward cashback is deducted from Your Swellcoin account for returned merchandise/services, and You agree to indemnify and hold Swellcoin harmless for any failure to do so and/or of the business/merchant to properly credit/apply the same;
- Your relationship and all obligations with respect to the reward cashback and merchandise/services lies solely between You and the issuing and participating business/merchant, and Swellcoin has no obligation and/or responsibility with respect thereto;
- You shall not and will not reproduce or alter reward cashback redemption or other materials in any way related to the Swellcoin Program;
- You understand and recognize that businesses/merchants can withdraw from and/or terminate their participation in the Swellcoin Program at any time, and in the event of such you may have up to three (3) months to use remaining reward cashback (although Swellcoin can make no guarantee of such, the honoring of the same being outside the control of Swellcoin);
- You understand and recognize that member businesses/merchants can change their reward cashback offerings at any time, and an alert should be sent to You by such business/merchant making You aware of the change;
- In light of the uncertainty of the continuity of the Program and the willingness/ability of participating businesses/merchants to honor earned reward cashback, You are advised that redeeming reward cashback in a timely manner may decrease the risk of adverse conditions and reduce the possibility that you may not be able to redeem your reward cashback at a later time. The Program has no predetermined termination date and may continue until such time as Swellcoin decides to terminate the Program, at any time, with or without notice.

(3) By utilizing the Program and Website, with respect to Your Swellcoin account, You verify and agree that:

- It is Your sole responsibility to keep secure password information to Your account, and to protect the same and avoid use by unintended/unauthorized third parties;
- ID Security: As part of the Swellcoin Program, e-mail addresses and phone numbers identify and connect users/consumers, merchants/businesses and their accounts to the Swellcoin system and network. It is Your responsibility to make sure both their e-mail and phone access is secure. You further agree to keep login credentials (usernames and passwords) strictly confidential and secure, whether those are individual credentials or those used with multiple employees as a store login with PINS. It is Your responsibility to fully monitor the use of Your credentials at all times, and to change them routinely to avoid any fraudulent or unintended activity. Users who give anyone, including friends, family members,

employees or representatives Your credentials, or in any way fail to adequately safeguard such information, are solely responsible for any and all activities that are performed with Your account.

- EACH USER ACKNOWLEDGES AND AGREES THAT: (i) NEITHER SWELLCOIN NOR ANY OF ITS AFFILIATES WILL HAVE ANY LIABILITY TO YOU FOR ANY UNAUTHORIZED ACTIONS MADE USING ANY USER'S CREDENTIALS; AND (ii) THE UNAUTHORIZED USE OF YOUR CREDENTIALS COULD CAUSE YOU TO INCUR LIABILITY TO BOTH SWELLCOIN AND OTHER USERS. Further, Swellcoin may, without notice to You, suspend or cancel Your account and/or listing at any time even without receiving notice from You if we suspect, in our sole discretion, that Your account or Your email account is being used in an unauthorized or fraudulent manner.
- Swellcoin shall bear no responsibility for any loss or other claim in any way related to the actions of third parties who utilize Your password and/or redeem and/or transfer reward cashback that may belong to You; and
- If You have any reason to believe that Your account may have been compromised, it is Your responsibility to immediately report such to Swellcoin and make sure action is taken with respect thereto.

**The provisions of this section regarding account security shall apply equally to all users/consumers and businesses/merchants.**

#### **14. Copyright Infringement.**

Swellcoin respects the intellectual property of others, and asks You and all users to do the same. Material available on or through other websites may be protected by copyright and the intellectual property laws of the United States and/or other countries, and the terms of use of those websites, and not the this Agreement, govern Your use of that material. It is Swellcoin's policy, in appropriate circumstances and at its discretion, to disable and/or terminate the accounts of users who may infringe or repeatedly infringe the copyrights or other intellectual property rights of Swellcoin and/or others.

The Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. If You believe in good faith that any content made available in connection with the Program infringes Your copyright, You (or Your agent) may send Swellcoin a notice requesting that the content be removed, or access to it blocked. Notices and counter-notices must meet the then-current statutory requirements imposed by the DMCA (See <http://www.loc.gov/copyright> for details). Notices and counter notices with respect to the Program should be sent to Swellcoin's Agent for Notice with the following information in English (Your "Notice"):

- an electronic or physical signature of the person authorized to act on behalf of

the owner of the copyright or other intellectual property interest;

- a description of the copyrighted work or other intellectual property that You claim has been infringed;
- a description of where the material that You claim is infringing is located on the Website or within the Program;
- Your address, telephone number, and email address;
- a statement by You that you have a good faith belief that the disputed use is not authorized by the copyright or intellectual property owner, its agent, or the law;
- a statement by You, made under penalty of perjury, that the above information in Your Notice is accurate and that You are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

In some circumstances, in order to notify the individual or entity who or which provided the allegedly infringing content to which Swellcoin has disabled access, Swellcoin may forward a copy of a valid Notice including name and email address to such individual or entity. Swellcoin's Agent for Notice of claims of copyright or other intellectual property infringement can be reached as follows:

By mail

Copyright Agent

Swellcoin, LLC.

520 Middlebrooks Circle

Tallahassee, Florida 32312

By email

support@Swellcoin.com

## **15. Miscellaneous/Arbitration.**

Each party shall pay its own costs and expenses in connection with this Agreement and its activities hereunder. The rights and obligations of the parties under this Agreement shall be governed by the laws of the State of Florida, without reference to conflict of law principles, and all disputes arising hereunder or in connection with this Agreement, the Website and/or the Program shall be resolved in the appropriate Federal or state court located solely and exclusively in Leon County, Florida. You hereby consent to exclusive jurisdiction in Leon County, Florida, and agree not to raise any defense of forum non conveniens or any similar defense. The relationship between the parties under this Agreement is that of independent contractors and neither shall be, nor represent itself to be, the joint venture, franchiser, franchisee, partner, agent or representative of the other party for any purpose whatsoever. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, but shall not be assignable by You without Swellcoin's prior written consent. If any provision of this Agreement is held to be unenforceable or invalid for any reason, or if any governmental agency rules that any portion of this Agreement is illegal or contrary to

public policy, the remaining provisions, to the extent feasible, will continue in full force and effect with such unenforceable or invalid provision to be changed and interpreted to best accomplish its original intent and objectives.

Notwithstanding the foregoing, At Swellcoin's or Your election, all disputes, claims, or controversies arising out of or relating to the Terms of Use or the Program that are not resolved by mutual agreement and negotiation may be resolved by binding arbitration to be conducted pursuant to the rules set forth by the American Arbitration Association ("AAA") for alternative dispute resolution. Unless otherwise agreed by the parties, arbitration will be held in Leon County, Florida, before a single arbitrator mutually agreed upon by the parties, or if the parties cannot mutually agree, a single (third) arbitrator apcashedbacked/selected by the two arbitrator designees of the parties, and will be conducted in accordance with the rules and regulations promulgated by AAA unless specifically modified in the Terms of Use. The arbitration must commence within forty-five (45) days of the date on which a written demand for arbitration is filed/sent by either party. The arbitrator's decision and award shall be made and delivered within sixty (60) days of the conclusion of the arbitration and within six (6) months of the selection of the arbitrator. The arbitrator will not have the power to award damages in excess of the limitation on actual compensatory, direct damages set forth in the Terms of Use and may not multiply actual damages or award punitive damages or any other damages that are specifically excluded under the Terms of Use, and each party hereby irrevocably waives any claim to such damages. The arbitrator may, in his or her discretion, assess costs and expenses (including the reasonable legal fees and expenses of the prevailing part) against any party to a proceeding. Any party refusing to comply with an order of the arbitrators will be liable for costs and expenses, including attorneys' fees, incurred by the other party in enforcing the award. Notwithstanding the foregoing, in the case of temporary or preliminary injunctive relief, any party may proceed in court without prior arbitration for the purpose of avoiding immediate and irreparable harm. The provisions of this arbitration section will be enforceable in any court of competent jurisdiction.

### **Additional Business/Merchant Terms and Conditions**

#### **1. General.**

The Swellcoin Program empowers Swellcoin member businesses to provide their customers a rewards program as may be further set forth in the Program General Rules below. In the event of any inconsistency among terms and conditions of the Program Rules and these Terms and Conditions (collectively, together with all provisions set forth above, sometimes referred to herein as the "Agreement"), the order of control shall be: (i) these Terms and Conditions, (ii) the Program General Rules, and (iii) any other exhibits, addenda or attachments to these Terms and Conditions including any links contained in the Program General Rules or these Terms and Conditions, which are incorporated by reference herein. For purposes of clarity, these Terms and Conditions are incorporated by reference into the Program Rules agreed to by You as a result of

your use of the Website and participation in the Program, and, together with the Program General Rules and all attachments thereto, govern your use of all Swellcoin Program and services.

## **2. Intellectual Property Rights.**

(i) Swellcoin is the sole and exclusive owner of all right, title and interest in and to any data provided to Swellcoin by your customers or any end user to Swellcoin in connection with the Swellcoin Program, including without limitation all e-mail and/or other contact information ("Customer Data"). As such, you shall not, unless the applicable customer has separately taken all steps necessary to opt in to provide contact information to you, be provided with or otherwise have access to the Customer Data.

(ii) Swellcoin owns all right, title and interest in and to the Swellcoin Program including, without limitation, any intellectual property rights and any improvements, modifications, enhancements or refinements thereto. Except as set forth in the Agreement, all rights not expressly granted to You are reserved. You agree not to decipher, decompile, disassemble, reconstruct, translate, reverse engineer, or discover any of the Swellcoin Programs, intellectual property or ideas, algorithms, file formats, programming, or interoperability interfaces underlying or such intellectual property.

(iii) Swellcoin hereby grants to You a limited, non-transferable, non-exclusive, revocable license to access and use Swellcoin's hosted Merchant Web Portal (the "Portal") for internal business purposes so long as your account with Swellcoin remains current and active. If Swellcoin provides you with a password to access the Portal, you are solely responsible for protecting the password and for any authorized or unauthorized use made of the password. The Portal, and all source code, copyrights and other intellectual property associated therewith, are and shall remain the sole and exclusive property of Swellcoin. You shall refrain from permitting any third party to use your password or otherwise access the Portal. Swellcoin shall have the right to terminate the license granted hereby immediately in the event that you have breached any terms or conditions set forth in the Agreement or if your Swellcoin account is otherwise terminated for any reason by Swellcoin in its sole discretion.

(iv) Swellcoin provides standard registration/installation for its Swellcoin Program, however, in the event of a complex registration/installation (including those that may require third party or outside technical support to complete the installation), Swellcoin may provide technical support in its reasonable discretion.

## **3. Restrictions.**

You: (i) will use the Swellcoin Programs solely for your internal business purposes; and (ii) will not, for yourself, any of your affiliates or any third party (a) sell, rent, lease, license or sublicense, assign, distribute, or transfer the Swellcoin Programs, (b) modify,

change, alter, create derivative works of, decipher, decompile, disassemble, reconstruct, translate, reverse engineer, or discover any source code of the underlying ideas, algorithms, file formats, programming, or interoperability interfaces of the Swellcoin Programs, (c) copy any tangible versions of the Swellcoin Programs, or (d) remove from any of the Swellcoin Programs any language or designation indicating the confidential nature thereof or the proprietary rights of Swellcoin. In addition, you will not export, re-export or permit any third party to export or re-export, directly or indirectly, the Swellcoin Programs where such export or re-export is prohibited by applicable law without appropriate licenses and clearances. Swellcoin retains the right, in its sole discretion, to approve, modify or refuse any Swellcoin related communications or proposed communications or messages to your customers or any Swellcoin end users.

#### **4. Fees; Pricing and Payment Terms; Taxes.**

(i) Swellcoin's current fees for the Swellcoin Program and its services are set forth in the Program General Rules. Swellcoin reserves the right to amend the fees payable for the Swellcoin Programs at any time upon thirty (30) days' prior notice to you; provided, however, that such amendment to the fees will not be applicable until the beginning of the next business day.

(ii) When you provide your payment information to Swellcoin, you are providing Swellcoin with an authorization to process any and all payments as outlined in this Agreement. In certain instances, the payment processing may not occur immediately, and your payment may show as "pending" during this time period. In addition, Swellcoin may request an authorization for the amount of your anticipated transaction in advance and may estimate the final value of the transaction, which may be more than the amount of the actual transaction. Swellcoin will release any funds authorized in excess of the amount of the actual transaction at the time the transaction settles.

(iii) You will be responsible for any sales, use, value-added or import taxes, customs duties or similar taxes assessed in accordance with applicable law with respect to the provision of and participation in the Swellcoin Program.

(vi) Notwithstanding anything herein to the contrary, Swellcoin, in its sole discretion, may suspend or terminate the Agreement and corresponding access and right to use all or any portion of the Swellcoin Program, at any time, upon electronic or other notice to you, if you have not paid all amounts due on or before the payment due date, or for any other breaches of the Program General Rules, these Terms and Conditions, or any other exhibits, addenda or attachments to these Terms and Conditions including any links contained in the Program General Rules or these Terms and Conditions, which are incorporated by reference herein. You are responsible for amounts that remain outstanding as of the date of such termination including early cancellation fees. You agree to pay reasonable attorneys' fees and court costs incurred by Swellcoin (at both the trial and appellate level) to collect any unpaid amounts owed by you.



## **5. Term; Termination; Survival.**

The Agreement will remain in full force unless and until terminated by Swellcoin or as otherwise provided herein. You agree to provide Swellcoin with at least thirty (30) days' written cancellation notice in the event that You wish to discontinue participation in the Program. Notwithstanding the foregoing, each party shall have the right to terminate the Agreement upon written notice to the other party: (i) upon the institution of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debts of the other party that is not otherwise dismissed within sixty (60) days of such institution; (ii) upon the making of an assignment for the benefit of creditors by the other party; or (iii) upon the dissolution of the other party. In addition, in situations involving misuse of the Program, Swellcoin specifically reserves the right to freeze related accounts and stop future redemption of reward certificates issued from those accounts. Swellcoin reserves the right to terminate Your membership for any reason or no reason and at its sole discretion. If at any time Your reward cashback balance becomes negative, Swellcoin may immediately cancel or reverse any or all outstanding cashback and reward redemptions issued from Your account. Swellcoin may also terminate Your Swellcoin Program account.

If your Merchant Agreement specifies that you are entitled to a "30 day Money Back Guarantee" and if, within thirty (30) days of the Installation Date, you desire to have the Swellcoin Kit uninstalled, you agree to provide written notice to Swellcoin within such 30-day period. In order to qualify for your Money-Back-Guarantee, we simply require that you speak to your Merchant Success Manager to set up your program and enroll a minimum of 5 customers during the Money-Back-Guarantee period. If you do not meet these qualifications you will be charged a restocking fee of \$50 upon cancellation. Within thirty (30) days of Swellcoin's receipt of the Swellcoin Kit, Swellcoin will refund you any money collected for the initial monthly subscription fee in the same manner in which the initial fee was paid. All Onboarding, Activation, or Setup fees, once paid, are non-refundable. If, after thirty (30) days from the Installation Date and prior to the subsequent Subscription Period, you desire to terminate the Swellcoin Program, You agree to pay an early cancellation fee equal to six (6) months of your monthly subscription fee, as well as a \$50 restocking fee via the credit card or ACH on file with Swellcoin

## **6. Representations and Warranties; Disclaimer.**

(i) Swellcoin warrants that Swellcoin has the authority to enter into this Agreement.

(ii) You represent, warrant and covenant to Swellcoin that: (a) You have the authority to enter into this Agreement; (b) You are an incorporated/organized and recognized business within the jurisdiction(s) in which you conduct business operations and have a properly issued and valid federal employment identification number (EIN); and (c) you will maintain a valid e-mail address and telephone number, and will only use the Swellcoin Program for lawful purposes and will not violate any law of any country or the

intellectual property rights of any third party.

(iii) EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 6, EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF QUALITY, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN ADDITION, SWELLCOIN DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES AS TO THE RESULTS THAT YOU MAY ACHIEVE ON ACCOUNT USING ANY SWELLCOIN PROGRAM OR SERVICE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU EXPRESSLY AGREE THAT THE USE OF SWELLCOIN PROGRAMS OR SERVICES AND THE INTERNET IS AT YOUR SOLE RISK. SWELLCOIN PROGRAMS AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. YOU HEREBY ACKNOWLEDGE THAT YOU ARE SOLELY RESPONSIBLE FOR OBTAINING AND/OR PROVIDING INTERNET SERVICE TO ALL LOCATIONS IN WHICH THE SWELLCOIN PROGRAMS ARE TO OPERATE.

## **7. Confidential Information.**

Any information that a receiving party knows or has reason to know (either because such information is marked or otherwise identified by the disclosing party orally or in writing as confidential or proprietary, has commercial value, or because it is not generally known in the relevant trade or industry) is "Confidential Information" of the disclosing party and will remain the sole property of the disclosing party. Such Confidential Information includes but is not limited to data, information (including personally identifiable information), ideas, materials, specifications, procedures, schedules, software, technical processes and formulas, source code, product designs, sales, cost and other unpublished financial information, product and business plans, advertising revenues, usage rates, advertising relationships, projections, marketing data and other similar information provided by a party. For avoidance of doubt, Customer Data shall be deemed Confidential Information of Swellcoin. Each party agrees that it will not disclose, use, modify, copy, reproduce or otherwise divulge such Confidential Information to any third party without the prior written approval of the disclosing party except that the receiving party shall have the right to disclose such Confidential Information to the extent required by applicable law or to the directors, officers or employees of the receiving party who have a need to know such Confidential Information in order to perform its obligations under the Agreement and to the extent such directors, officers or employees are subject to obligations of confidentiality and non-disclosure that are substantially similar to the obligations set forth in the Agreement. The prohibitions contained in this Section will not apply to information (i) already lawfully known to the receiving party prior to such disclosure by the disclosing party; (ii) independently developed by the receiving party without access to or use of the disclosing party's Confidential Information; (iii) disclosed in published materials; (iv) generally known to the public; or (v) lawfully obtained from any third party. In addition, a

party will not be considered to have breached its obligations under the Agreement to the extent Confidential Information is required to be disclosed by any governmental authority, provided that, to the extent legally practicable, the receiving party advises the disclosing party prior to making such disclosure in order that the disclosing party may object to such disclosure, take action to ensure confidential treatment of the Confidential Information, or take such other action as it considers appropriate to protect the Confidential Information.

## **8. Dispute Resolution; Governing Law.**

In the event of a reward dispute or mistake between a Business/Merchant and User/Customer, Swellcoin shall bear no liability with respect thereto. Notwithstanding the foregoing, Swellcoin may, in its sole discretion unilaterally make adjustments to user reward cashback. To the extent any disputes arise under the Agreement or otherwise between the parties, the parties will first attempt in good faith to resolve their dispute informally. This Agreement is governed by the State of Florida and you expressly agree to the exclusive jurisdiction for any claim or dispute with Swellcoin in the federal and state courts within the jurisdiction of the United States District Court for the Northern District of Florida and Leon County, Florida. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement.

## **9. Indemnification.**

You will defend, indemnify, and hold Swellcoin and its affiliates and their respective directors, officers, employees, agents and representatives harmless from and against any third party suit, proceeding, assertion against any damages, judgments, liability, costs and expenses (including without limitation any reasonable attorneys' fees and court costs at trial and on appeal) incurred arising from your breach of this Agreement, your participation with the Swellcoin Program, your unauthorized use or misuse of the Swellcoin Program or any unauthorized combination of any Swellcoin Program with any hardware, software, products, data or other materials not specified or provided by Swellcoin.

## **10. Limitation of Liability.**

Swellcoin's aggregate liability for all claims (including claims for indemnification of third party damages) arising out of the Agreement, whether in contract, tort or otherwise, will not exceed the amount of fees paid by you to Swellcoin under the Agreement during the twelve (12) months preceding the date on which the claim occurred. To the maximum extent permitted by applicable law, in no event will Swellcoin be liable for any loss of business profits, business interruption, loss of data or any special, indirect, exemplary, incidental or consequential damages arising from or in relation to the Agreement or the use of the Program, however caused and regardless of theory of liability. In addition, Swellcoin will not be liable for damage (physical or otherwise) incurred by you upon any asset or property from the usage, installation or termination of any Swellcoin Program.

This limitation will apply even if such damages were foreseeable and you have been advised or are aware of the possibility of such damages.

#### **11. Notice.**

Except where explicitly provided otherwise herein, any notice required or permitted hereunder will be delivered to the following:

By mail  
Swellcoin, LLC.  
3012 Windsor Way  
Tallahassee, Florida 32312

By email  
[support@Swellcoin.com](mailto:support@Swellcoin.com)

(with notice deemed given as indicated): (i) by personal delivery when delivered personally; (ii) by established overnight courier upon written verification of receipt; (iii) by certified or registered mail, return receipt requested, upon verification of receipt; or (iv) by electronic delivery when receipt is confirmed orally.

#### **12. Assignment.**

You may not, without the prior written consent of Swellcoin, assign the Agreement, in whole or in part, either voluntarily or by operation of law, and any attempt to do so will be a material default of the Agreement and will be void. The Agreement will be binding upon and will inure to the benefit of the respective parties hereto, their respective successors in interest, legal representatives, heirs and assigns.

#### **13. No Third Party Beneficiaries.**

The Agreement is solely for the benefit of the parties and their successors and permitted assigns, and does not confer any rights or remedies on any other person or entity.

#### **14. Severability.**

If any provision of the Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, that provision will be enforced to the maximum extent permissible under applicable law and the other provisions of the Agreement will remain in full force and effect.

#### **16. Force Majeure.**

Neither party shall be liable to the other if such party is prevented from performing any

of its obligations under the Agreement (with the exception of payment and reward obligations) due to any cause beyond the party's reasonable control including, without limitation, an act of God, fire, flood, explosion, terrorism, war, embargo, government regulation, civil or military authority, acts or omissions of carriers, transmitters, providers, or acts of vandals, or hackers. The time for that party's performance will be extended for the period of the delay or failure to perform due to such occurrence, except that you will not be excused from the payment of any sums of money owed by you to Swellcoin provided prior to the force majeure event.

#### **17. Independent Contractor.**

The Agreement will not be construed as creating or constituting a partnership, joint venture, or agency relationship between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

#### **18. Compliance with Laws.**

Each party will comply with all applicable laws, regulations, and ordinances relating to their performance hereunder.

#### **19. Entire Agreement.**

The Agreement will constitute the entire agreement between Swellcoin and you with respect to the subject matter hereof and all prior oral or written agreements, representations or statements with respect to such subject matter are superseded hereby.

#### **20. Program Requirements.**

The following terms shall, in addition to all of the other terms set forth in this Agreement, govern Your use of and participation in Swellcoin's Program which, at a general level, allows you to participate therein.

##### *General Program Rules (Business/Merchant)*

You shall, as a condition to making any use of and participating in the Program, be required to follow these rules and make the necessary representations/warranties related thereto.

(1) By registering on the Website and participating in the Program offered by Swellcoin, You verify and agree that:

- You will indemnify and hold Swellcoin harmless from any and all claims related to Your participation in the Program, it being expressly understood and agreed that

Swellcoin does not confirm the validity of any business/merchant or customer/user;

- The individual setting-up Your account has full and proper authority to do so as an authorized representative of the business/merchant for which registration is completed;
- The registered EIN provided to Swellcoin belongs to You, is lawfully assigned to the business/merchant that You are enrolling in the Program, with the correct State of registration, official mailing address, and business location address(es);
- All materials/data that You input into the Website and/or the Program true and accurate to the best of Your knowledge and belief, and will be updated/maintained as necessary to insure that such is active and current at all times;
- In the event of termination and/or intended cessation of participation in the Program (regardless of reason therefore), You will provide the required prior written notice to Swellcoin as set forth above, and in addition thereto, will provide separate electronic notice to any and all business/merchant users/customers that have participated in the Program; and
- You are accountable for the actions of agents, employees and the like that enroll/register You into the Swellcoin system for participation in the Program, and You bear all responsibility with respect thereto. In furtherance thereof, you agree to indemnify and hold Swellcoin harmless from any and all claims related to any use (authorized or unauthorized) by such individuals of the Website and/or Program on behalf of You and any merchant/business, it being expressly understood and agreed that Swellcoin shall be entitled to rely upon all such actions regardless of actual or apparent authority with or without verification (there being no obligation related to do so).

(2) By utilizing the Program and Website, and making selections from the Swellcoin reward cashback template(s), You verify and agree that:

- You agree to offer and honor all reward cashback as indicated in Your specific settings/reward program; and
- Any changes to template / reward rate parameters will only affect values **after** the applicable change date, and will not retroactively change the value of previously listed cashback/dollar ratio earnings.

(3) By utilizing the Program and Website, in Your interactions with users/customers, You verify and agree that:

- You will offer and honor reward cashback as indicated in Your specific settings/reward program (including redeeming reward cashback for three (3) months following termination and/or cessation of participation in the Swellcoin Program);
- You will allow users/customers to earn cashback in accordance with the

Program, and will redeem user's/customer's earned reward cashback in a timely manner and without delay, reducing the cost of future purchases/services accordingly;

- You will honor all sales and/or promotions offered by You;
- All data (including, but not limited to, Customer Data), entered into the Website, maintained and/or retrieved by Swellcoin is the sole and exclusive property of Swellcoin;
- For returned merchandise, it is Your responsibility to utilize the Swellcoin withdrawal feature to withdraw earned cashback for returned merchandise. It is further Your responsibility to, in the absence of enough reward cashback to withdraw, ensure that such accompanying reward cashback value be deducted from the returned cash given to the user/customer. You agree to indemnify and hold Swellcoin harmless for any failure by You and/or the user/customer to properly act in this regard; and
- It is Your sole responsibility to scrutinize and validate reward cashback redemptions purporting to be related to the Swellcoin Program for authenticity and accuracy.

### **Compliance with Laws**

You represent and warrant that your use of the Swellcoin Program will comply with all applicable laws and regulations. You are responsible for determining whether Swellcoin's services, the Website and/or the Program are suitable for you to use in light of any regulations such as HIPAA, GLB, EU Data Privacy Laws and/or other applicable laws. If you are subject to regulations (such as HIPAA) and you use the Swellcoin Program or any other Swellcoin service, then Swellcoin will not be liable if any such service does not meet those requirements that are Your sole responsibility.

### **Acceptable Use**

You shall refrain from using the Swellcoin to send anything offensive, to promote anything illegal, or to harass anyone. Not in limitation of the foregoing, You may not send:

1. Pornography or other sexually explicit Emails
  2. Emails offering to sell illegal goods or services
  3. Emails that violate CAN-SPAM Laws or any other applicable laws or regulations
- (a) Acceptable Use - Prohibited Actions

Swellcoin works hard to keep its system clean, but Swellcoin also counts on its user/customers and businesses/merchants to assist with respect thereto. As

such, You may not:

1. Send Spam (as noted above);
  2. Share your password;
  3. Use the Swellcoin Program, the Website or other Swellcoin terms/services to create a competing product or service;
  4. Import or incorporate any of this information into any lists, emails or uploads to our servers: Social Security numbers, passwords, security credentials, or sensitive personal and/or financial information of any kind; or
  5. Send any messages through the Swellcoin Program and/or Website that are not appropriate for its intended use.
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