

SWOOPME, INC.

Terms of Use Agreement

Welcome to Swoop, the online and mobile service(s) of SwoopMe, Inc. (“**Swoop**,” “**we**,” or “**us**”). This page explains the terms by which you may use our online and/or mobile services, website, and software provided on or in connection with the service (collectively the “**Services**”). By accessing or using the Service, you signify that you have read, understood, and agree to be bound by this Terms of Use Agreement (“**Agreement**”) and to the collection and use of your information as set forth in the [Swoop Privacy Policy](#), whether or not you are a registered user of our Services. Swoop reserves the right to make unilateral modifications to these terms and will provide notice of these changes as described below. This Agreement applies to all visitors, users, and others who access the Services (“**Users**”).

PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THIS AGREEMENT CONTAINS A MANDATORY INDIVIDUAL ARBITRATION AND CLASS ACTION/JURY TRIAL WAIVER PROVISION THAT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.

1. **Use of Our Services**

Swoop provides a technology platform that enables users of Swoop’s Services to arrange and schedule roadside assistance and other automobile-related services with third party providers of such services (each a “**Third Party Provider**”).

A. Eligibility

This is a contract between you and Swoop. You must read and agree to these terms before using the Services. If you do not agree, you may not use the Services. You may use the Services only if you can form a binding contract with Swoop, and only in compliance with this Agreement and all applicable local, state, national, and international laws, rules and regulations.

You must be at least 18 years of age (or the age of legal majority in your jurisdiction if different than 18) to be eligible to use the Services. Any use or access to the Services by anyone under 13 is strictly prohibited and in violation of this Agreement. In certain instances, Swoop may require you to provide proof of identity to create your account, or to access or use the Services, and you acknowledge and agree that you may be denied access or use of the Services if you refuse to provide such proof. The Services are not available to any Users previously removed from the Services by Swoop.

B. Swoop Services

Subject to the terms and conditions of this Agreement, you are hereby granted a non-exclusive, limited, non-transferable, freely revocable license to use the Services for your personal, noncommercial use only and as permitted by the features of the Services. Swoop reserves all rights not expressly granted herein in the Services and the Swoop Content (as defined below). Swoop may terminate this license at any time for any reason or no reason.

C. Swoop Accounts

Your Swoop account gives you access to the services and functionality that we may establish and maintain from time to time and in our sole discretion. We may maintain different types of accounts for different types of Users. If you open a Swoop account on behalf of a company, organization, or other entity, then (a) “you” includes you and that entity, and (b) you represent and warrant that you are an authorized representative of the entity with the authority to bind the entity to this Agreement, and that you agree to this Agreement on the entity’s behalf. By connecting to Swoop with a third-party service, you give us permission to access and use your information from that service as permitted by that service, and to store your log-in credentials for that service.

You may never use another User’s account without permission. When creating your account, you must provide accurate and complete information, and you must keep this information up to date. Your failure to maintain accurate, complete, and up-to-date account information may result in your inability to access and use the Services or our termination of this Agreement.

You are solely responsible for the activity that occurs on your account, and you must keep your account password secure. We encourage you to use “strong” passwords (passwords that use a combination of upper and lower case letters, numbers and symbols) with your account. You must notify Swoop immediately of any breach of security or unauthorized use of your account. Swoop will not be liable for any losses caused by any unauthorized use of your account.

You may control your User profile and how you interact with the Services by changing the settings in your settings page. By providing Swoop your email address you consent to our using the email address to send you Services-related notices, including any notices required by law, in lieu of communication by postal mail. We may also use your email address to send you other messages, such as changes to features of the Services and special offers. If you do not want to receive such email messages, you may opt out or change your preferences in your settings page. Opting out may prevent you from receiving email messages regarding updates, improvements, or offers.

D. Services Rules

You agree not to engage in any of the following prohibited activities: (i) copying, distributing, or disclosing any part of the Services in any medium, including without limitation by any automated or non-automated “scraping”; (ii) using any automated system, including without limitation “robots,” “spiders,” “offline readers,” etc., to access the Services in a manner that sends more request messages to the Swoop servers than a human can reasonably produce in the same period of time by using a conventional on-line web browser (except that Swoop grants the operators of public search engines revocable permission to use spiders to copy publically available materials from Joinswoop.com for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials); (iii) transmitting spam, chain letters, or other unsolicited email; (iv) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Services; (v) taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure; (vi) uploading invalid data, viruses, worms, or other software agents through the Services; (vii) collecting or harvesting any personally identifiable information, including account names, from the Services; (viii) using the Services for any commercial solicitation purposes; (ix) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (x) interfering with the proper working of the Services; (xi) accessing any content on the Services through any technology or

means other than those provided or authorized by the Services; or (xii) bypassing the measures we may use to prevent or restrict access to the Services, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Services or the content therein.

We may, without prior notice, change the Services; stop providing the Services or features of the Services, to you or to Users generally; or create usage limits for the Services. We may permanently or temporarily terminate or suspend your access to the Services without notice and liability for any reason, including if in our sole determination you violate any provision of this Agreement, or for no reason. Upon termination for any reason or no reason, you continue to be bound by this Agreement.

You are solely responsible for your interactions with other Users. We reserve the right, but have no obligation, to monitor disputes between you and other Users. Swoop shall have no liability for your interactions with other Users, or for any User's action or inaction.

2. Mobile Software

A. **Mobile Software.** We may make available software to access the Services via a mobile device ("**Mobile Software**"). To use the Mobile Software you must have a mobile device that is compatible with the Mobile Software. Swoop does not warrant that the Mobile Software will be compatible with your mobile device. You may use mobile data in connection with the Mobile Software and may incur additional charges from your wireless provider for these services. You agree that you are solely responsible for any such charges. Swoop hereby grants you a non-exclusive, non-transferable, revocable license to use a compiled code copy of the Mobile Software for one Swoop account on one mobile device owned or leased solely by you, for your personal use.

You may not: (i) modify, disassemble, decompile or reverse engineer the Mobile Software, except to the extent that such restriction is expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense, distribute or otherwise transfer the Mobile Software to any third party or use the Mobile Software to provide time sharing or similar services for any third party; (iii) make any copies of the Mobile Software; (iv) remove, circumvent, disable, damage or otherwise interfere with security-related features of the Mobile Software, features that prevent or restrict use or copying of any content accessible through the Mobile Software, or features that enforce limitations on use of the Mobile Software; or (v) delete the copyright and other proprietary rights notices on the Mobile Software. You acknowledge that Swoop may from time to time issue upgraded versions of the Mobile Software, and may automatically electronically upgrade the version of the Mobile Software that you are using on your mobile device. You consent to such automatic upgrading on your mobile device, and agree that the terms and conditions of this Agreement will apply to all such upgrades. Any third-party code that may be incorporated in the Mobile Software is covered by the applicable open source or third-party license EULA, if any, authorizing use of such code. The foregoing license grant is not a sale of the Mobile Software or any copy thereof, and Swoop or its third-party partners or suppliers retain all right, title, and interest in the Mobile Software (and any copy thereof). Any attempt by you to transfer any of the rights, duties or obligations hereunder, except as expressly provided for in this Agreement, is void. Swoop reserves all rights not expressly granted under this Agreement.

If the Mobile Software is being acquired on behalf of the United States Government, then the following provision applies. The Mobile Software will be deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR

Section 227.7202 and FAR Section 12.212, as applicable. Any use, reproduction, release, performance, display or disclosure of the Services and any accompanying documentation by the U.S. Government will be governed solely by these Terms of Services and is prohibited except to the extent expressly permitted by these Terms of Services. The Mobile Software originates in the United States, and is subject to United States export laws and regulations. The Mobile Software may not be exported or re-exported to certain countries or those persons or entities prohibited from receiving exports from the United States. In addition, the Mobile Software may be subject to the import and export laws of other countries. You agree to comply with all United States and foreign laws related to use of the Mobile Software and the Services.

B. Mobile Software from iTunes. The following applies to any Mobile Software you acquire from the iTunes Store (“**iTunes-Sourced Software**”): You acknowledge and agree that this Agreement is solely between you and Swoop, not Apple, and that Apple has no responsibility for the iTunes-Sourced Software or content thereof. Your use of the iTunes-Sourced Software must comply with the App Store Terms of Services. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the iTunes-Sourced Software. In the event of any failure of the iTunes-Sourced Software to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the iTunes-Sourced Software to you; to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the iTunes-Sourced Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be solely governed by this Agreement and any law applicable to Swoop as provider of the software. You acknowledge that Apple is not responsible for addressing any claims of you or any third party relating to the iTunes-Sourced Software or your possession and/or use of the iTunes-Sourced Software, including, but not limited to: (i) product liability claims; (ii) any claim that the iTunes-Sourced Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation; and all such claims are governed solely by this Agreement and any law applicable to Swoop as provider of the software. You acknowledge that, in the event of any third-party claim that the iTunes-Sourced Software or your possession and use of that iTunes-Sourced Software infringes that third party’s intellectual property rights, Swoop, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by this Agreement. You and Swoop acknowledge and agree that Apple, and Apple’s subsidiaries, are third-party beneficiaries of this Agreement as relates to your license of the iTunes-Sourced Software, and that, upon your acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement as relates to your license of the iTunes-Sourced Software against you as a third-party beneficiary thereof.

3. Our Proprietary Rights

The Services and all materials therein or transferred thereby, including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, copyrights, photographs, audio, videos, and music (the “Swoop Content”), and all Intellectual Property Rights related thereto, are the exclusive property of Swoop and its licensors. Except as explicitly provided herein, nothing in this Agreement shall be deemed to create a license in or under any such Intellectual Property Rights, and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any Swoop Content. Use of the Swoop Content for any purpose not expressly permitted by this Agreement is strictly prohibited.

You may choose to or we may invite you to submit comments or ideas about the Services, including without limitation about how to improve the Services or our products (“Ideas”). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place Swoop under any fiduciary or other obligation, and that we are free to use the Idea without any additional compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, Swoop does not waive any rights to use similar or related ideas previously known to Swoop, or developed by its employees, or obtained from sources other than you.

4. Paid Services

A. **Billing Policies.** Certain aspects of the Services may be provided for a fee or other charge. If you elect to use paid aspects of the Services, you agree to the Pricing and Payment Terms as we may update them from time to time. Swoop may add new services for additional fees and charges, add or amend fees and charges for existing services, at any time in its sole discretion. Any change to our pricing or payment terms shall become effective in the billing cycle following notice of such change to you as provided in this Agreement.

B. **Refunds Policy.** You may cancel your Swoop account at any time and Swoop will refund a pro rata portion of any prepaid fees covering the remainder of the subscription term after the effective date of cancellation; provided that, in the event that Swoop suspends or terminates your account or this Agreement for your breach of this Agreement, you understand and agree that you shall receive no other refund or exchange for any unused time on a subscription, any license or subscription fees for any portion of the Services, any content or data associated with your account, or for anything else.

C. **Payment Information; Taxes.** All information that you provide in connection with a purchase or transaction or other monetary transaction interaction with the Services must be accurate, complete, and current. You agree to pay all charges incurred by users of your credit card, debit card, or other payment method used in connection with a purchase or transaction or other monetary transaction interaction with the Services at the prices in effect when such charges are incurred. You will pay any applicable taxes, if any, relating to any such purchases, transactions or other monetary transaction interactions.

D. **California Residents.** The provider of services is set forth herein. If you are a California resident, in accordance with Cal. Civ. Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210 or (916) 445-1254.

5. Privacy

We care about the privacy of our Users. You understand that by using the Services you consent to the collection, use and disclosure of your personally identifiable information and aggregate data as set forth in our [Privacy Policy](#), and to have your personally identifiable information collected, used, transferred to and processed in the United States.

6. Security

Swoop cares about the integrity and security of your personal information. However, we cannot guarantee that unauthorized third parties will never be able to defeat our security measures or

use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk.

7. Third-Party Links and Information

The Services may contain links to third-party materials that are not owned or controlled by Swoop. Swoop does not endorse or assume any responsibility for any such third-party sites, information, materials, products, or services. If you access a third-party website or service from the Services, you do so at your own risk, and you understand that this Agreement and Swoop's Privacy Policy do not apply to your use of such sites. You expressly relieve Swoop from any and all liability arising from your use of any third-party website, service, or content. Additionally, your dealings with or participation in promotions of advertisers found on the Services, including payment and delivery of goods, and any other terms (such as warranties) are solely between you and such advertisers. You agree that Swoop shall not be responsible for any loss or damage of any sort relating to your dealings with such advertisers.

8. Indemnity

You agree to defend, indemnify and hold harmless Swoop and its subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Services, including any data or content transmitted or received by you; (ii) your violation of any term of this Agreement, including without limitation your breach of any of the representations and warranties above; (iii) your violation of any third-party right, including without limitation any right of privacy, Intellectual Property Rights, and any rights of Third Party Providers; (iv) your violation of any applicable law, rule or regulation; (v) any content that is submitted via your account including without limitation misleading, false, or inaccurate information; (vi) your willful misconduct; or (vii) any other party's access and use of the Services with your unique username, password or other appropriate security code.

9. No Warranty

THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF THE SERVICE IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM SWOOP OR THROUGH THE SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, SWOOP, ITS SUBSIDIARIES, ITS AFFILIATES, AND ITS LICENSORS DO NOT WARRANT THAT THE CONTENT IS ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICE WILL MEET YOUR REQUIREMENTS; THAT THE SERVICE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR MOBILE DEVICE OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD OR YOUR USE OF THE SERVICE.

SWOOP DOES NOT GUARANTEE THE SUITABILITY, SAFETY, OR ABILITY OF ANY THIRD PARTY PROVIDER, NOR THAT ANY SUCH THIRD PARTY PROVIDER WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS.

SWOOP DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SWOOP SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, AND SWOOP WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND PROVIDERS OF SUCH THIRD PARTY PRODUCTS OR SERVICES.

FEDERAL LAW, SOME STATES, PROVINCES AND OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION AND LIMITATIONS OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS AND EXCLUSIONS UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

10. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SWOOP, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, ARISING OUT OF OR RELATING TO THE USE OF, OR INABILITY TO USE, THIS SERVICE. UNDER NO CIRCUMSTANCES WILL SWOOP BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SWOOP ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF OUR SERVICE; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH OUR SERVICE BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; (VII) THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY; AND/OR (VIII) ANY TRANSACTION OR RELATIONSHIP BETWEEN YOU AND ANY THIRD PARTY PROVIDER. IN NO EVENT SHALL SWOOP, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS, OR LICENSORS BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT YOU PAID TO SWOOP HEREUNDER OR \$100.00, WHICHEVER IS GREATER.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS,

EVEN IF SWOOP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS OF LIABILITY UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

The Services are controlled and operated from facilities in the United States. Swoop makes no representations that the Services are appropriate or available for use in other locations. Those who access or use the Services from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations. You may not use the Services if you are a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government. Unless otherwise explicitly stated, all materials found on the Services are solely directed to individuals, companies, or other entities located in the United States.

11. Governing Law, Arbitration, and Class Action/Jury Trial Waiver

A. **Governing Law.** You agree that: (i) the Services shall be deemed solely based in California; and (ii) the Services shall be deemed a passive one that does not give rise to personal jurisdiction over us, either specific or general, in jurisdictions other than California. This Agreement shall be governed by the internal substantive laws of the State of California, without respect to its conflict of laws principles. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the preceding sentences with respect to the substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16). The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. You agree to submit to the personal jurisdiction of the federal and state courts located in Santa Clara County, California for any actions for which we retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a our copyrights, trademarks, trade secrets, patents, or other intellectual property or proprietary rights, as set forth in the Arbitration provision below, including any provisional relief required to prevent irreparable harm. You agree that Santa Clara County, California is the proper forum for any appeals of an arbitration award or for trial court proceedings in the event that the arbitration provision below is found to be unenforceable.

B. **Arbitration.** READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES THE PARTIES TO ARBITRATE THEIR DISPUTES AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM SWOOP. For any dispute with Swoop, you agree to first contact us at info@joinswoop.com and attempt to resolve the dispute with us informally. In the unlikely event that Swoop has not been able to resolve a dispute it has with you after sixty (60) days, we each agree to resolve any claim, dispute, or controversy (excluding any claims for injunctive or other equitable relief as provided below) arising out of or in connection with or relating to this Agreement, or the breach or alleged breach thereof (collectively, "**Claims**"), by binding arbitration by JAMS, under the Optional Expedited Arbitration Procedures then in effect for

JAMS, except as provided herein. JAMS may be contacted at www.jamsadr.com. The arbitration will be conducted in Santa Clara County, California, unless you and Swoop agree otherwise. If you are using the Services for commercial purposes, each party will be responsible for paying any JAMS filing, administrative and arbitrator fees in accordance with JAMS rules, and the award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses. If you are an individual using the Services for non-commercial purposes: (i) JAMS may require you to pay a fee for the initiation of your case, unless you apply for and successfully obtain a fee waiver from JAMS; (ii) the award rendered by the arbitrator may include your costs of arbitration, your reasonable attorney's fees, and your reasonable costs for expert and other witnesses; and (iii) you may sue in a small claims court of competent jurisdiction without first engaging in arbitration, but this does not absolve you of your commitment to engage in the informal dispute resolution process. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Nothing in this Section shall be deemed as preventing Swoop from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of our data security, Intellectual Property Rights or other proprietary rights.

C. **Class Action/Jury Trial Waiver.** WITH RESPECT TO ALL PERSONS AND ENTITIES, REGARDLESS OF WHETHER THEY HAVE OBTAINED OR USED THE SERVICE FOR PERSONAL, COMMERCIAL OR OTHER PURPOSES, ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE PROCEEDING. THIS WAIVER APPLIES TO CLASS ARBITRATION, AND, UNLESS WE AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND SWOOP ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR OTHER REPRESENTATIVE PROCEEDING OF ANY KIND.

12. General

A. **Assignment.** This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Swoop without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

B. **Notification Procedures and Changes to the Agreement.** Swoop may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to you via email notice, written or hard copy notice, or through posting of such notice on our website, as determined by Swoop in our sole discretion. Swoop reserves the right to determine the form and means of providing notifications to our Users, provided that you may opt out of certain means of notification as described in this Agreement. Swoop is not responsible for any automatic filtering you or your network provider may apply to email notifications we send to the email address you provide us. Swoop may, in its sole discretion, modify or update this Agreement from time to time, and so you should review this page periodically. When we change the Agreement in a material manner, we will update the 'last modified' date at the bottom of this page. Your continued use of the Services after any such change constitutes your acceptance of the new Terms of Use. If you do not agree to any of these terms or any future Terms of Use, do not use or access (or continue to access) the Services.

C. **Entire Agreement/Severability.** This Agreement, together with any amendments and any additional agreements you may enter into with Swoop in connection with the Services, shall constitute the entire agreement between you and Swoop concerning the Services. If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect, except that in the event of unenforceability of the universal Class Action/Jury Trial Waiver, the entire arbitration agreement shall be unenforceable.

D. **No Waiver.** No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and Swoop's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.

E. **Contact.** Please contact us at info@joinswoop.com with any questions regarding this Agreement.

F. **Facilitation of Charges.** All charges are facilitated through a third-party payment processing service, Stripe, Inc.: <https://stripe.com/us/connect-account/legal>.

This Agreement was last modified on 3/3/2015.