



## **United States Affirm Service Terms**

**Last Updated: April 27, 2022**

Merchant's access to and use of the Services in the United States and United States territories are subject to the Affirm Service Terms described below. Capitalized terms used in the Affirm Service Terms but not defined below are defined in the Agreement. Affirm may amend the Affirm Service Terms from time to time in accordance with the Merchant Agreement.

### **Article 1. United States General Service Terms**

#### **Section 1.1 Integration.**

##### **(a) Integration Overview.**

(i) Affirm will provide Merchant with access to and use of certain integration resources and documentation ("Documentation") through Affirm's support pages located at <https://docs.affirm.com/affirm-developers/docs/direct-overview> and other pages on Affirm's website. Merchant will integrate the Services with the Affirm-approved Channels in accordance with Affirm's instructions and the Documentation. As part of providing access to the Services, Affirm may provide Merchant with access to and use of APIs. Affirm may from time-to-time at its sole discretion, make changes to the API (including by adding or removing functionality) and the related Documentation.

(ii) Upon Merchant's reasonable request, Affirm will assist Merchant with respect to the integration of the Services by providing: (a) a testing environment and code review to ensure that Merchant's code is accurate and complies with Affirm's technical and solution design, and (b) information reasonably required to integrate the Services, including the corresponding production API key and technical specifications. Affirm will not be required to perform software development or any other manual integration assistance in connection with such assistance. Affirm will make public and private API keys for live and test transactions available to Merchant. Private API keys are Affirm's Confidential Information, and Merchant will secure its private API keys and will not publish or share its private API keys with any unauthorized persons. Merchant will contact Affirm immediately if Merchant becomes aware of any unauthorized use of any of its private API keys or any other breach of security regarding the Services.

(iii) Affirm will have no liability for any Loss resulting from Merchant incorrectly integrating or failing to comply with Affirm's integration instructions.

(b) **Direct Integration.** Affirm has developed and, if agreed upon in writing by the Parties, will provide Merchant with access to and use of an API that may be used to access and use the Services via direct integration ("Direct Integration").

(c) **Virtual Card Integration.** Affirm has developed and, if agreed upon in writing by the Parties, will provide Merchant's customers with access to one-time use virtual cards ("Virtual Cards"), supported by virtual card networks, that Customers may use to purchase Merchant Products ("Virtual Card Integration").

(d) **Merchant-Branded Virtual Card Landing Page - Affirm Lite Integration.** Affirm has developed and, if agreed upon in writing by the Parties, will provide Merchant with access to a hyperlink to a landing page with various customizable components, which will enable prospective Customers to apply for a Virtual Card

("Affirm Lite Integration"). Merchant may make the Affirm Lite Integration available to Customers via an Affirm-hosted landing page, as instructed by Affirm or as described in the Documentation for use in applicable Channels.

(e) **Platform Integration.** Affirm may integrate with an ecommerce checkout platform or payment processing gateway (each, a "Platform") which enables Affirm to provide its Services through the Platform to Merchant customers (a "Platform Integration"). Through such Platform Integration, for purposes of the Payout, Affirm may offer its Services through Direct Integration or Virtual Cards. To the extent a Merchant Site is hosted by a Platform which requires Affirm to submit certain data for the purpose of fulfilling Affirm's contractual obligations to such Platform, Affirm may disclose certain Merchant Confidential Information to such Platform during or after the Term, and Affirm will not be liable for any use, disclosure or other act or omission by such Platform related to such Merchant Confidential Information.

## **Section 1.2 License Grants.**

(a) **API License.** Upon the terms and subject to the conditions of the Agreement, Affirm hereby grants Merchant a limited, revocable, non-exclusive, non-transferable license to integrate and access the APIs, during the Term, for the sole purpose of providing and displaying the Services in the Territory and enabling Customers to access and use the Services in the Territory.

(b) **Open Source Software.** The Services may include software subject to open source or free software licenses ("Open Source Software"). Affirm provides no, and expressly disclaims any and all, representations, warranties, and conditions concerning any Open Source Software. Nothing in the Agreement grants Merchant rights that supersede the terms and conditions of any applicable Open Source Software license.

## **Section 1.3 Privacy; Data Processing and Security.**

(a) **Privacy.** In the performance of its obligations under the Agreement, each Party may create, receive, or have access to information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household ("Personal Information" or "Personal Data"). A Party's Personal Information will be considered such Party's Confidential Information under the Agreement and will be subject to the ownership interests of the Parties as described in Section 1.3(b) and any other applicable terms of the Agreement. Affirm may grant Merchant access to Affirm Confidential Information in its sole discretion for the sole purpose or as reasonably necessary to provide the Services or to perform obligations required under this Agreement and may, at any time and without cause, (a) cease sharing Affirm Confidential Information with Merchant and (b) require that Merchant delete, destroy, erase or otherwise cease all Processing of Affirm Confidential Information, unless otherwise required by Applicable law or in order to perform obligations to Customers required under the Agreement.

(b) **Ownership of Personal Information.** "Affirm Personal Information" means Personal Information collected from a third party by Affirm or by a third party on behalf of Affirm in connection with Affirm's provision of the Services. "Merchant Personal Information" means Personal Information collected from a third party by Merchant or by a third party on behalf of Merchant in connection with Merchant's receipt of the Services. Affirm owns all right, title, and interest in and to Affirm Personal Information, and Merchant owns all right, title, and interest in and to Merchant Personal Information. The Parties acknowledge and agree that some of the same data elements (e.g., a Customer's name) may be both Affirm Personal Information and Merchant Personal Information. Each Party acknowledges that (a) each Party maintains information about Customers derived from numerous sources (including directly from the Customer); and (b) information about Customers developed or maintained by one Party may be identical to information that the other Party has developed or maintains.

(c) **Processing Personal Information.** Each Party will, as applicable, “Process” (as such term is defined in Cal. Civ. Code Title 1.81.5, § 1798.100 et seq. (the “CCPA”)) Personal Information in accordance with Applicable Law, its applicable privacy policy, and the Agreement.

(i) If, during the Term of the Agreement, Merchant Processes credit, debit, or other payment card number and cardholder information with respect to Customers, Merchant will at all such times remain in compliance with the Payment Card Industry Data Security Standard (“PCI DSS”) requirements, including, without limitation, remaining aware at all such times as of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at Merchant’s sole cost and expense. Merchant will not receive any Cardholder Data (as defined in the latest PCI DSS) from Affirm under the Agreement.

(ii) Affirm will act solely as a Service Provider (as such term is defined in the CCPA) with respect to Merchant Personal Information and, as such, shall Process Merchant Personal Information solely to provide the Services to Merchant and carry out its obligations under the Agreement. Affirm will not Process Merchant Personal Information for any other purpose, unless required by Applicable Law. Affirm will notify Merchant if it believes that it cannot follow Merchant’s instructions or fulfill its obligations under the Agreement because of a legal obligation to which it is subject, unless Affirm is prohibited by Applicable Law from making such notification.

(iii) For clarity, Affirm will not: (a) sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means in exchange for monetary or other valuable consideration (collectively, “Sell”) any Merchant Personal Information; (b) retain, use, or disclose Merchant Personal Information for any purpose other than for the specific business purpose of performing the Services, including retaining, using, or disclosing Merchant Personal Information for a commercial purpose other than performing the Services; or (c) retain, use, or disclose Merchant Personal Information outside of the direct business relationship between the Parties as defined in the Agreement. Affirm certifies that it understands these restrictions.

(iv) Notwithstanding anything to the contrary, Affirm may Process Merchant Personal Information as necessary to: detect data security incidents; protect against fraudulent or illegal activity; effectuate repairs; engage subcontractors; comply with Applicable Law, law enforcement requests or defend against or maintain legal claims; and build or improve the quality of its products and services

(v) Merchant will not (and will not allow any third party at its direction or on its behalf to) (a) Sell Affirm Personal Information; (b) permit others to Sell Affirm Personal Information; or (c) Process Affirm Personal Information for any purpose other than carrying out Merchant’s obligations under the Agreement.

(d) **Data Security.**

(i) In addition to any other data security requirements in the Agreement, each Party will establish, maintain and comply with physical, technical, and administrative controls and an accurate, comprehensive and up-to-date data security program and policy inclusive of adequate data security measures consistent with Applicable Law and industry standards to protect the other Party’s Confidential Information from disclosure, destruction, misuse, loss, acquisition, or alteration by an unauthorized third party.

(ii) Merchant will regularly monitor, evaluate and adjust, as appropriate, its security measures in light of any risk assessment findings, relevant changes in Applicable Law or relevant data security standards, technology advances, changes to Merchant’s systems, internal or external threats to Confidential Information, reasonable requests from Affirm arising out of security or other concerns reasonably identified and communicated to the extent possible, and Merchant’s own changing business arrangements in order to ensure that Merchant’s data security program and controls remain accurate, comprehensive and up-to-date.

(iii) Merchant may not (and may not allow any third party at its direction or on its behalf to) (i) Sell Affirm Personal Information or any other Affirm Confidential Information; (b) permit others to Sell Affirm Personal Information or any other Affirm Confidential Information; (c) Process Affirm Personal Information or any other Affirm Confidential Information for any purpose other than carrying out Merchant's obligations under the Agreement; or (d) conduct unauthorized security assessments, including vulnerability scans and penetration tests, on Affirm systems.

(iv) In the event that Merchant suffers or learns of any disclosure, destruction, loss, misuse, acquisition or alteration by an unauthorized third party of Affirm's Confidential Information (a "Security Breach"), Merchant will: (a) promptly (but in no event later than 48 hours following confirmation of the Security Breach) notify Affirm in writing of such Security Breach and furnish Affirm with the details of such Security Breach; (b) cooperate in any reasonable effort, action, or proceeding to protect all Confidential Information, including any applicable Personal Information subject to such Security Breach and to reasonably mitigate and/or remediate the impact of the Security Breach; (c) promptly use best efforts to prevent a recurrence of any future Security Breach and (d), as applicable, come into compliance with Applicable Law. In addition to, and consistent with, any applicable audit rights provided to Affirm under the Agreement, in the event of a Security Breach, to the extent that such Security Breach involves Affirm Confidential Information, Affirm will have the right, to audit or conduct (or cause a qualified, independent third party to audit or conduct) a security assessment for verification of Merchant's data security obligations as set forth in this Section 1.3. Such security assessment will be at Affirm's sole cost and election.

(v) Merchant will encrypt all Affirm Confidential Information, including Personal Information, in-transit, and will encrypt all Personal Information both at rest and in-transit with industry-standard encryption methods and algorithms, such as AES -256 and the two most recent, non-deprecated versions TLS, respectively. Merchant will not transmit any unencrypted Personal Information over the internet or a wireless network, and will not store any Personal Information on any mobile computing device, such as a laptop computer, USB drive or portable data device, except where there is a business necessity and only if the mobile computing device is protected by industry standard encryption.

(vi) Merchant will ensure that: (a) Merchant's connectivity to Affirm's information systems and all attempts at the same will be only through Affirm's security gateways/firewalls and only through Affirm's authorized security procedures, which can be obtained from Affirm's Information Security Department; (b) Merchant will not access, and will not permit unauthorized persons or entities to access, Affirm's information systems without Affirm's express written authorization, and any such actual or attempted access will be consistent with Affirm's authorization; (c) any private API keys or other material provided to Merchant for the purpose of Merchant authenticating to Affirm's information systems shall constitute Confidential Information and shall be protected as such; and (d) Merchant will take appropriate measures to ensure that Merchant's information systems which connect to Affirm's information systems, and anything provided to Affirm, do not contain any computer code, programs, mechanisms, or programming devices designed to, or that would, enable the disruption, modification, deletion, damage, deactivation, disabling, harm or otherwise be an impediment, in any manner, to the operation of the Affirm's services or information systems, and Merchant will immediately notify Affirm upon detection of any vulnerabilities thereto.

**Section 1.4 Risk Evaluation.** Affirm may from time to time and in its sole discretion, review and determine Merchant's eligibility to offer the Services. Merchant will promptly furnish to Affirm all information reasonably requested by Affirm in connection with Affirm's evaluation, which may include information about Merchant's general business operations, financial information, and information about Merchant's directors, principals, and officers. All information provided by Merchant in response to Affirm requests related to risk evaluations will be considered Merchant Confidential Information.

**Section 1.5 Fraudulent Transactions.**

(a) Merchant will designate an individual who will serve as the single point of contact for fraud matters related to the Services.

(b) Except as otherwise stated in the Agreement, Affirm assumes the risk of loss resulting from fraud by Customers with respect to Successful Transactions. Merchant assumes the risk of loss resulting from fraud (i) caused by Merchant or Merchant's employees, contractors, representatives, or agents or (ii) in connection with a Customer changing information (including shipping information) previously communicated to Affirm in the checkout flow after Affirm has approved such Customer and prior to the order being submitted to Merchant in the checkout flow (an "Updated Checkout"). Merchant will not allow a Customer to effectuate an Updated Checkout without Affirm's prior written consent (email sufficient at [orderreview@affirm.com](mailto:orderreview@affirm.com)). Affirm may terminate the Agreement immediately for breach of the foregoing.

(c) If Affirm informs Merchant that a transaction is fraudulent or likely fraudulent before the sale is Captured, and Merchant subsequently ships or provides the applicable Merchant Product despite such information, Merchant will be liable for any loss resulting from such transaction. If Affirm discovers that a Successful Transaction is fraudulent after the applicable sale is Captured, but before the applicable Merchant Products are delivered or otherwise made available to Customer, Merchant will use best efforts to communicate with the carrier or other third party to recall the shipment, or, as applicable for services or electronically delivered Merchant Products, cancel the provision of the applicable Merchant Products. After a Customer's order is submitted to Merchant in the checkout flow, Merchant will use best efforts to identify suspicious shipping address changes and will notify Affirm of such suspicious changes by email to Affirm at [orderreview@affirm.com](mailto:orderreview@affirm.com).

**Section 1.6 Prohibited Business Policy.** Merchant will not offer or market the Services in connection with the categories of business and business practices in the Prohibited Business Policy ("Prohibited Business Policy") located at: [https://docs.affirm.com/affirm-developers/docs/compliance\\_and\\_guidelines](https://docs.affirm.com/affirm-developers/docs/compliance_and_guidelines). In addition, Merchant will not market or offer the Services, or allow the Services to be used, in connection with any Merchant Product that is subject to delayed fulfillment (e.g., preorders or backorders), unless Merchant clearly discloses on the product and checkout pages that such Merchant Product is subject to such delayed fulfillment. Merchant further agrees that it will not discuss Affirm or the Services at any place other than Merchant's usual place of business, where such prohibition includes, by way of example, discussions in such places as a Customer's home, a consumer's workplace, dormitory lounges, and facilities rented on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds, and restaurants.

**Section 1.7 Exclusivity.** Except for the Services, during the Term, Merchant will not integrate, market, offer, sell, or promote any financial products or services that: (a) are similar to an Affirm Product, including any closed-end installment loan or payment deferral options; or (b) are open-ended credit programs. Merchant will not be prohibited under this Section 1.7 from accepting generally accepted multi-purpose credit, charge cards, or debit or secured cards (e.g., MasterCard or Visa cards), provided that Merchant will not permit any such cards to (i) be co-branded, sponsored, or co-sponsored by Merchant, or (ii) bear Merchant Marks.

**Section 1.8 Affirm Disclosures.** Affirm may provide to Merchant disclosures related to the Services. Upon receipt of such disclosures, Merchant will promptly display such disclosures on Merchant Channels in accordance with Affirm's instructions. Such disclosures may include notices required by Applicable Law and statements intended to prevent Customer complaints. Affirm may, at any time, review and confirm Merchant's compliance with Affirm's instructions regarding such disclosures, and upon receipt of written notice by Affirm, Merchant will modify any disclosures in accordance with Affirm's instructions.

**Section 1.9 No Discrimination or Other Disparate Treatment.** Merchant will not discriminate against or otherwise disadvantage (relative to Merchant's transactions involving other methods of payment) its customers who use or desire to use the Services to purchase a Merchant Product, which discrimination or disadvantaging may include, but is not limited to, (a) imposing surcharges, fees, or other costs on such customers; (b) excluding such customers from receiving or participating in any discounts, rebates, savings, offers, incentives, loyalty program benefits, points, or rewards; and (c) acting in a manner that violates Regulation Z, 12 C.F.R. § 1026.

## **Section 1.10 Payout and Payment Terms.**

(a) **Payout to Merchant.** During the Term, Affirm, its affiliate, or its bank partner will disburse to Merchant amounts equal to the gross total dollar amount of Successful Transactions, less any applicable adjustments, for the applicable Affirm Product. A “Successful Transaction” is a sale of a Merchant Product to a Customer using the Services that is Captured by Merchant. A sale is “Captured” when a Merchant has fulfilled the Authorized transaction to the Customer by making Merchant Product available to the Customer except where Merchant has elected to auto-capture. A sale is “Authorized” when the transaction is placed in a pending state and is available to be Captured by Merchant. . Applicable Fees will be due by Merchant to Affirm immediately upon a Successful Transaction. In accordance with Applicable Law, Merchant is solely responsible for determining the gross transaction amount payable by Customers (inclusive of any applicable Taxes or other fees). Merchant will be responsible for any standard commercial debit interchange or similar processing fees related to the use of credit cards in connection with the Services.

### **(b) Direct Integration Terms.**

(i) With respect to Services that are provided through a Direct Integration, Merchant will establish and maintain one or more U.S. depository account(s) in good standing (each, a “Bank Account”), which may be verified by Affirm prior to the first Payout and from time to time thereafter. Merchant will notify Affirm in writing at least five business days prior to any change of a Bank Account.

(ii) Affirm, its affiliate, or its bank partner(s) may disburse the Payout, in whole or in part, upon direction by Merchant, directly into a deposit account for the benefit of Merchant (an “F/B/O Account”). After such disbursement to the applicable F/B/O Account, Affirm will not be liable to Merchant for Merchant's receipt of that Payout.

(iii) Merchant will receive disbursements (each, a “Payout”) equal to the total dollar amount of Successful Transactions not already disbursed to Merchant, less (i) accrued but unpaid Fees; (ii) amounts relating to unresolved Customer Disputes; (iii) Fees that are disputed by Affirm in good faith; and (iv) undisputed amounts owed by Merchant to Affirm, which may include amounts resulting from Customer refunds. Affirm will submit Successful Transactions for processing once every day and Payouts will be initiated within three business days of the applicable Successful Transaction. Merchant authorizes Affirm, its affiliate, or its bank partner(s), and will ensure that Affirm, its affiliate, and/or its bank partner(s) are authorized by the bank holder of the applicable Bank Account, to debit the applicable Bank Account for Past Due Amounts. Merchant will provide Affirm with any necessary documentation related to Affirm's, its affiliate's, or its bank partners' authorization to debit the applicable Bank Account. Based on Merchant's account history and Affirm's periodic risk evaluation, Affirm may, in its sole and reasonable discretion, limit the Payout in whole or in part to Merchant during a certain time period.

### **(c) Virtual Card Terms.**

(i) With respect to Services that are provided through Virtual Cards, upon a Successful Transaction resulting from a Customer's use of a Virtual Card, the applicable virtual card network will initiate transfer of the total dollar amount of such Successful Transaction to Merchant's payment processor based on the existing settlement cadence of Merchant's payment processor; provided, that the definition of “Captured” related to a Virtual Card Integration may include sales for which a Customer pre-authorizes the projected gross transaction total. Merchant agrees that such Successful Transactions will be processed pursuant to the terms and conditions of the applicable payment network (e.g., Visa and Mastercard) and the terms and conditions of any applicable agreement between Merchant and its acquiring bank.

(ii) Affirm will invoice Merchant for outstanding Fees not already paid to Affirm by Merchant. Merchant will pay Fees invoiced under this Section 1.10(c) no later than 30 days after Merchant's receipt of the applicable invoice. Affirm may invoice Merchant for the full amount of all Captured sales that are forced by Merchant (i.e., funds that bypass the authorization process through manual entering of a previously obtained

authorization code). Merchant will be responsible for Merchant's standard commercial debit interchange or similar processing fees related to Merchant's use of credit cards.

(d) **Down Payment Collection.** A "Down Payment" or "Partial Payment" is a Customer's initial, one-time partial payment of the applicable purchase price (i.e., down payment) that is collected by Affirm from a Customer on behalf of Merchant in connection with a Successful Transaction. Affirm may, in its sole discretion, require a Customer to make a Down Payment with respect to using an Affirm Product. Merchant agrees that a Down Payment made by a Customer to Affirm will be considered the same as a payment made directly to Merchant. Merchant understands that Affirm's obligation to transmit a Down Payment to Merchant is subject to and conditioned upon successful receipt of the associated Down Payment from Customer.

(e) **Returned Products; Refunds.** Merchant will maintain and comply with its refund and return policy, which must be clearly and conspicuously displayed on Merchant Sites or otherwise easily accessible by Customers prior to each Customer's completion of checkout. In the event that a Merchant Product is returned to Merchant by a Customer following a Successful Transaction, Merchant will (a) accept the return only if it is compliant with Merchant's return policy, as set forth in the applicable Merchant Policies; (b) issue full or partial refunds and not store credit; and (c) promptly process such refund and immediately refund appropriate amounts to Affirm so that Affirm may credit the Customer's outstanding balance accordingly. In the case of partial refunds, Merchant will determine the amount of such refund, in its sole discretion, and will be solely liable for any Merchant Customer Dispute relating thereto. Neither Merchant nor Customer may use the Services to pay for any fees, including restocking fees, charged by Merchant in connection with the return of a Merchant Product.

(f) **Past Due Amounts.** Any Fees or other amounts due to Affirm that Affirm is unable to collect or Merchant otherwise fails to pay in accordance with the Payout Terms applicable to the Services will be considered past due (collectively, "Past Due Amounts"). Merchant will immediately pay all outstanding Past Due Amounts upon its receipt of notice from Affirm. Each month, Merchant will incur an interest charge equal to the lesser of (i) 1.50% of the aggregate outstanding Past Due Amounts for such month, or (ii) the maximum amount permitted by Applicable Law.

(g) **Right to Revise Fees.** Affirm may revise the Fees defined in an Order Form when reasonably justified by regulatory, economic, or merchant risk changes and such revisions will be effective upon written notice to Merchant by Affirm.

(h) **Errors.** To the extent (i) Merchant Captures, cancels, or voids a sale or a loan related to the Agreement, directly or indirectly, whether by error or omission or (ii) Merchant uses a payment processor or other similar provider and such provider Captures, cancels, or voids a sale or a loan related to the Agreement, directly or indirectly, whether by error or omission (each, a "Transaction Error"), the Parties will work together to resolve such Transaction Error. Affirm will have no liability with respect to any Transaction Error or Losses related therefrom, and Affirm may, in its sole discretion, withhold settlement funds or invoice Merchant for any amounts related to such Transaction Error.

**Section 1.11 Currency.** Unless otherwise specified in the Agreement, all references to currency, monetary values and dollars set forth herein will mean United States dollars (USD) and all payments hereunder will be made in USD.

**Section 1.12 Scheduled Maintenance.** From time to time, Affirm may apply upgrades, patches, bug fixes, or other maintenance to the Services ("Maintenance"). Affirm will use reasonable efforts to minimize periods when the Services are unavailable, and Merchant will use reasonable efforts to comply with any Maintenance requirements provided by Affirm. Merchant will promptly notify Affirm of, and assist Affirm in diagnosing, any failure or other impediment to Merchant's use of the Services.

**Section 1.13 Capacity Planning Notification.** Merchant will notify Affirm as early as reasonably possible of any anticipated increase in Merchant's or Merchant's customers' use of the Services and will provide estimates of



anticipated demand upon Affirm's request. Merchant will notify Affirm in writing no later than five business days prior to Merchant (A) marketing or offering the Services on or through any new (1) Merchant Site, including any new distinct domain or brand related to an existing Merchant Site, (2) device type, (3) Merchant Product category, (4) marketing source, event, or promotion; and (B) undertaking any other action that is reasonably likely to increase Merchant or its customers' demand for Services (each, a "Traffic Source"). Upon request by Affirm, Merchant will promptly provide Affirm with data regarding Merchant and its customers' past and anticipated consumption of Services, including pageview volumes for webpages that host Affirm promotional messaging, overall transaction volumes, and Affirm transaction volumes (including average daily transaction volumes, daily impression volume peaks, and hourly impression volume peaks) with respect to the Traffic Source, as applicable. All information provided by Merchant with respect to a Traffic Source will be considered Merchant Confidential Information. Merchant agrees that it will not use the Services for high-frequency internal Merchant testing or load testing.

**Section 1.14 Liens Imposed on Merchant.** In the event that any encumbrance, debt, mortgage, attachment, pledge, charge, claim, lien, or other security interest, including any filing authorized by Merchant of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction (each, a "Lien") is created, incurred, assumed, or otherwise suffered to exist upon any Merchant Product, including inventory, assets, or any other property of Merchant, that is the subject of a Successful Transaction, (A) Merchant will promptly notify Affirm in writing of any such Lien, and (B) upon becoming aware of such Lien, either through notice by Merchant or by other means, Affirm may immediately suspend or terminate the Services, terminate all or part of the Agreement, or exercise any other rights and remedies available under the Agreement, at law or in equity.

**Section 1.15 Enhanced Analytics.** If Merchant integrates Affirm's Enhanced Analytics solution described further at: <https://docs.affirm.com/affirm-developers/docs/enhanced-analytics>, Affirm may use (A) such technology to track, gather and share data regarding the Services, provided that such data will be aggregated and anonymized ("Enhanced Analytics"), and (B) third-party services to collect, monitor, and analyze the Enhanced Analytics.

**Section 1.16 Customer Dispute Resolution Procedures.** All disputes, inquiries, or complaints by a Customer related to Merchant Products or business (each, a "Merchant Customer Dispute") will be first directed to Merchant for Merchant to resolve in accordance with applicable Merchant Policies. Merchant will work in good faith to resolve each Merchant Customer Dispute in a timely manner. If Merchant is unable to resolve a Merchant Customer Dispute, Affirm will reasonably assist in facilitating resolution of the Merchant Customer Dispute in accordance with its customer dispute resolution procedures located at: <https://docs.affirm.com/affirm-developers/docs/dispute-resolutions>, provided that to the extent that a Merchant Customer Dispute is related to a Successful Transaction resulting from a Customer's use of a Virtual Card, resolution of such Merchant Customer Dispute will comply with the rules of the applicable virtual card network. In accordance with the foregoing, Merchant will comply with Affirm's reasonable requests, including providing Affirm with supporting documentation to resolve the Merchant Customer Dispute. Merchant will direct any disputes, inquiries, or complaints by a Customer related to the Services or business (each, an "Affirm Customer Dispute") directly to Affirm for resolution.

**Section 1.17 Marketing and Brand Guidelines.** Merchant will comply with Affirm's marketing guidelines located at: [https://docs.affirm.com/affirm-developers/docs/compliance\\_and\\_guidelines](https://docs.affirm.com/affirm-developers/docs/compliance_and_guidelines), unless an exception is expressly approved by Affirm in writing.

**Section 1.18 Merchant Portal.** Affirm will provide access to and use of Affirm's online merchant interface (the "Merchant Portal") to Merchant's authorized users in accordance with and subject to the Merchant Portal Terms of Use located at: <https://www.affirm.com/terms/merchant-portal-terms>. In the event Merchant reasonably believes unauthorized access to the Merchant Portal or a password to the Merchant Portal has been compromised, Merchant will immediately notify Affirm in writing. Merchant will be solely liable for all activity arising from its access to, use of, or any other act or omission with respect to the Merchant Portal, whether or not authorized by Merchant. During the Term, Affirm may, in its sole discretion, offer new or different services or permit Merchant to



modify its existing Services via the Merchant Portal, and the Parties may agree, via the Merchant Portal, upon terms and conditions with respect to such Services.

**Section 1.19 Books and Records.** Merchant will keep complete and accurate books and records pertaining to its receipt and handling of transactions processed through the Services (the “Books and Records”). During the Term and for a period of six months after the expiration or termination of the Agreement, Affirm will have the right to audit the Books and Records that are directly relevant to verifying the accuracy of amounts paid to Affirm by Merchant hereunder. Such audit will occur no more than once in a six-month period, at the place where Merchant maintains the Books and Records, during its normal business hours, and with at least 30 days’ prior written notice by Affirm. Merchant will allow Affirm or a certified public accountant selected by Merchant (that is reasonably acceptable to Affirm) reasonable access to (including the right to make copies of) the Books and Records in accordance with the foregoing. Affirm will be responsible for its costs of the audit, unless it is determined that the amount payable to Affirm is greater than the amount actually paid or credited to Affirm by Merchant, in which case Merchant will reimburse Affirm for its reasonable costs of such audit.

**Section 1.20 Reserve Account.** Affirm has the right to establish a reserve that Merchant must maintain in a separate reserve account controlled by Affirm (the “Reserve Account”) to secure the performance of Merchant’s obligations under the Agreement. If Affirm elects to establish the Reserve Account, Affirm will give Merchant written notice, and within three (3) business days of Merchant’s receipt of such notice, Merchant will submit a wire transfer of the full amount required by Affirm to the Reserve Account, or Affirm may withhold such required amount from Payouts in order to establish the Reserve Account. In the event Affirm establishes the Reserve Account based on a suspicion of fraudulent transactions, Affirm may establish the Reserve Account by withholding the amount from Payouts. Affirm may make withdrawals or debits from the Reserve Account, without prior notice to Merchant, to collect any amounts owed by Merchant to Affirm.

**Section 1.21 Tax Matters.**

(a) Affirm may charge, collect, deduct or withhold any applicable federal, state or local sales or use taxes (individually, a “Tax” or collectively, “Taxes”) that Affirm may be legally obligated to charge, collect, deduct or withhold from any amounts payable to Merchant under the Agreement, and any payment reduced by such Taxes will constitute full payment and settlement of amounts payable to Merchant under the Agreement. If Affirm is unable to validate any Tax-related identification information Merchant has provided to Affirm, Affirm may (in its sole discretion) deduct such Taxes from amounts otherwise owed to Merchant. If Merchant is exempt from payment of any such Taxes, Merchant must provide Affirm with an original certificate that satisfies Applicable Law demonstrating Merchant’s Tax-exempt status. Upon Affirm’s reasonable request, Merchant must provide Affirm with any Tax information, forms, documents, invoices, or certifications as may be required to satisfy any Tax obligations of Affirm with respect to the Agreement.

(b) Merchant will be solely responsible for identifying and paying all Taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on Merchant with respect to or in connection with Merchant’s use of the Services. Merchant will have sole responsibility and liability for: (i) determining what, if any, Taxes apply to the sale of Merchant Products or any payments Merchant makes or receives in connection with Merchant’s use of the Services; and (ii) assessing, charging, collecting, reporting, and remitting Taxes for Merchant’s business to the appropriate Tax and revenue authorities.

(c) Pursuant to Applicable Law, Affirm may be required to file periodic informational returns with Tax authorities in relation to Merchant’s use of the Services. Affirm is not responsible for any Tax filings of Merchant that are made in reliance upon any information that is provided by Merchant to Affirm.

**Section 1.22 No Third-Party Beneficiaries.** Notwithstanding Section 11.6 of the Merchant Agreement (*No Third-Party Beneficiaries*), Merchant acknowledges and agrees that (a) Affirm Loan Services LLC will be a third-party beneficiary under the Agreement, (b) the Agreement confers on Affirm Loan Services LLC the rights and remedies

set forth herein, (c) Affirm Loan Services LLC may enforce any and all rights of Affirm hereunder, except as prohibited by Applicable Law, and (d) Affirm Loan Services LLC will not be required to perform any of Affirm's obligations under the Agreement or be liable for Affirm's performance of or failure to perform such obligations. Affirm Loan Services LLC's rights under this Section 1.22 transfer to any successor of Affirm Loan Services LLC.

**Section 1.23 Healthcare Services.** To the extent that any Merchant Products include Healthcare Services (as defined in the Healthcare Service Terms) or to the extent a Merchant's technology and software services are utilized by medical, dental or other health care providers ("Healthcare Providers"), the Parties will comply with the applicable healthcare services policies, terms and conditions that apply to the Services (collectively, the "Healthcare Service Terms") located at <https://www.affirm.com/terms/merchant-policies>.

**Section 1.24 Sanctions Screen.** To the extent that a Merchant operates a marketplace or is the merchant of record for multiple merchants, retailers, contractors or similar third party service providers, Merchant will establish, maintain, and comply with a comprehensive sanctions program that meets the minimum requirements set forth in the Merchant Sanctions Policy located at: [https://docs.affirm.com/affirm-developers/docs/compliance\\_and\\_guidelines](https://docs.affirm.com/affirm-developers/docs/compliance_and_guidelines).

**Section 1.25 Dispute Resolution.**

(a) **Arbitration.** Except with respect to the specific aspect of any Dispute that reasonably requires injunctive relief as a remedy (in which case, the applicable Party may seek injunctive relief from a court of competent jurisdiction located in the Northern District of California or a California state court located in San Francisco), the Parties agree that any Dispute will be determined by final and binding arbitration conducted by JAMS according to the rules and procedures in effect at the time the arbitration is commenced. Disputes with amounts claimed greater than \$250,000 will apply the JAMS Comprehensive Arbitration Rules and Procedures, and Disputes with amounts claimed less than or equal to \$250,000 will apply the JAMS Streamlined Arbitration Rules. The arbitration will be conducted before a single neutral arbitrator in San Francisco, California. Judgment on the award may be entered in any court of competent jurisdiction. This clause will not preclude either Party from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. In all arbitrations, each Party will bear the expense of its own counsel, experts, witnesses, administrative fees and expenses, and preparation and presentation of evidence at the arbitration. Arbitration proceedings and information related to them will be deemed and maintained as Confidential Information of each Party, including the nature and details of the Dispute, evidence produced, testimony given, and the outcome of the Dispute, unless agreed otherwise or such information was already in the public domain or was independently obtained. Merchant and Affirm, and all witnesses, advisors, and arbitrators will share such information only as necessary to prepare for or conduct arbitration or other legal proceeding, or enforcement of the outcome, unless additional disclosure is required by Applicable Law.

(b) **Governing Law.** The Agreement and performance under the Agreement will be governed by and construed in accordance with the laws of the State of California notwithstanding any conflict of law rules; provided, however, that the Parties acknowledge that transactions under the Agreement may involve matters of interstate commerce, and notwithstanding the provisions in this paragraph referencing applicable substantive law, the Federal Arbitration Act (9 U.S.C. §§ 1-16) will govern the agreement to arbitrate. To the fullest extent permitted by Applicable Law, each of the Parties agrees that any dispute, claim, or controversy arising out of or relating to the Agreement, or the breach, termination, enforcement, interpretation, or validity thereof, including whether any claim is arbitrable ("Dispute") arising out of or in connection with the Agreement, whether in arbitration or in court, will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a Dispute proceeds in court rather than through arbitration, each Party knowingly and irrevocably waives any right to trial by jury in any action, proceeding or counterclaim arising out of or relating to the Agreement or any of the transactions contemplated between the Parties.

**Section 1.26 Notices, Acceptances and Approvals.** All notices, acceptances, approvals, and other communications provided pursuant to the Merchant Agreement will be in writing, which may be provided

electronically, and deemed duly given in accordance with Section 11.1 of the Merchant Agreement. Any electronic mail sent to Affirm will be sent to: [infosec@affirm.com](mailto:infosec@affirm.com).

**Section 1.27 Survival.** In addition to Section 11.12 of the Merchant Agreement, Sections 1.2 (*License Grants; Intellectual Property*), 1.3 (*Privacy; Data Processing and Security*), 1.16 (*Customer Dispute Resolution Procedures*), 1.21 (*Tax Matters*), 1.22 (*No Third-Party Beneficiaries*), 1.25 (*Dispute Resolution*) and 1.26 (*Notices, Acceptances and Approvals*), as well as any other provision of the Agreement that contemplates performance or compliance subsequent to termination or expiration of the Agreement, will survive termination of the Agreement.

## Article 2. United States Product Service Terms

Upon notice to Merchant, Affirm, in its sole discretion, may deprecate and automatically replace an Affirm Product with its successor, at which time such Affirm Product will automatically become part of the Services under the Agreement.

**Section 2.1 Installments (formerly referred to as “Core”) Product.** The following Affirm Service Terms apply to Affirm’s provision of and Merchant’s access to and use of Affirm’s Installments Product (the “Installments Product”) to the extent that the Installments Product is part of the Services. As between the Parties, Customer underwriting, credit decisioning, and cart ranges will be determined by Affirm in its sole discretion.

(a) **General Description.** Affirm offers the Installments Product as a closed-end installment loan for customers to finance the purchase of Merchant Products at 0% or 10-30% APR with various loan terms. The Installments Product is available for a maximum Customer transaction total of no more than \$17,500.00.

(b) **Payout Terms.** Affirm (i) will use one or more state-chartered banks or other FDIC-insured institutions to originate the Installments Product for Customers in all territories noted in clause (c) below except Iowa and (ii) solely with respect to Customers in Iowa, Affirm Loan Services, LLC will be the creditor at origination for any Successful Transaction resulting from a Customer’s use of the Installments Product, and Affirm Loan Services, LLC will cause payment to be made directly to Merchant. With respect to Customers in Iowa and when applicable in Affirm Loan Services, LLC’s sole discretion, to the extent a Down Payment is required, Merchant appoints Affirm Loan Services, LLC as its payment collection agent solely for the purpose of accepting such Down Payment from Customers on behalf of Merchant and such Down Payment will be treated as received by Merchant upon receipt by Affirm Loan Services, LLC.

(c) **Authorized Territory.** The Installments Product will be available in the following territories:

- (i) All states in the United States;
- (ii) the District of Columbia;
- (iii) Guam;
- (iv) Puerto Rico;
- (v) the U.S. Virgin Islands; and
- (vi) any state, territory or jurisdiction authorized by Affirm during the Term.

**Section 2.2 Split Pay Product.** The following Affirm Service Terms apply to Affirm Loan Services, LLC’s provision of and Merchant’s access to and use of Affirm Loan Services, LLC’s split pay product (the “Split Pay Product”) to the extent that the Split Pay Product is part of the Services. As between the Parties, Customer underwriting, credit decisioning, and cart ranges will be determined by Affirm in its sole discretion.

(a) **General Description.** Affirm Loan Services, LLC offers the Split Pay Product as a closed-end installment loan for Customers to finance the purchase of Merchant Products at 0% APR, which will be repaid by Customer in four or fewer bi-weekly installments over an eight-week loan term.

(b) **Payout Terms.** Affirm Loan Services, LLC will be the creditor at origination for any Successful Transaction resulting from a Customer's use of the Split Pay Product, and Affirm Loan Services, LLC will cause payment to be made directly to Merchant. To the extent that a Down Payment is required, Merchant appoints Affirm Loan Services, LLC as its payment collection agent solely for the purpose of accepting such Down Payment from Customers on behalf of Merchant and such Down Payment will be treated as received by Merchant upon receipt by Affirm Loan Services, LLC.

(c) **Authorized Territory.** The Split Pay Product is available in the following territories:

(i) All states in the United States;

(ii) the District of Columbia; and

(iii) any state, territory or jurisdiction authorized by Affirm during the Term.

### **Article 3. United States Channel Service Terms**

**Section 3.1 In-Store Service Terms.** The following Affirm Service Terms apply to the In-Store Channel to the extent Merchant's use of the In-Store Channel is approved by Affirm under the Agreement.

(a) **In-Store Overview.** Affirm authorizes Merchant Personnel to market and offer the Services to customers by performing in-store activities that facilitate customers' use of Affirm Products to purchase Merchant Products (the "In-Store Activities"). As used in this Section 3.1, "Merchant Personnel" means personnel who perform In-Store Activities. Merchant is only authorized to perform In-Store Activities at Merchant physical retail stores agreed upon by the Parties in writing ("Locations").

(b) **Training.** Affirm will provide Merchant with appropriate training materials and instructions for the purpose of promoting the Services through In-Store Activities (collectively, "Training Materials"). Training Materials may include instruction on Affirm VCN flows, exception flows, preferred customer messaging, disclaimers, and support channels. Merchant Personnel will comply with all Training Materials and instructions provided by Affirm. The Parties will identify and agree upon the means of training Merchant Personnel, which may include in-person or online "train the trainer" training, self-guided online training, and/or in-person group training. Merchant will be solely responsible for ensuring that its Merchant Personnel (A) complete all required training prior to performing In-Store Activities, and (B) comply with the instructions and Training Materials provided by Affirm. Merchant will, upon Affirm's request, certify to Affirm that all Merchant Personnel have completed Affirm's required training.

(c) **In-Store Marketing.** Affirm will provide certain Affirm Approved Marketing Materials to Merchant, which Merchant will print and deploy at Merchant's own expense at each Location no later than 30 days after its receipt of such Affirm Approved Marketing Materials (or as otherwise agreed to in writing by the Parties). Merchant Personnel will place Affirm messaging at (A) the product level on or near pricing information, and (B) at or near the register, in each case, in a manner that makes it likely that customers will see such Affirm messaging and associate it with the applicable Merchant Products. Affirm may audit Merchant's placement of Affirm Approved Marketing Materials at Locations and compliance with the terms of the Agreement.

(d) **Unauthorized Statements.** Merchant Personnel will not make any statements, commitments, representations or warranties with respect to Affirm or the Services, except as expressly authorized in advance and in writing by Affirm, which authorization may be in the Training Materials.

(e) **Data Sharing / Performance.** Each month during the Term, or as otherwise agreed upon in writing by the Parties, Merchant will provide Affirm a report of the transactional data resulting from the In-Store Activities during the previous month, which data will include SKU level transaction data for Affirm transactions, category data of Affirm transactions, percent of total transactions that are Successful Transactions (i.e., Affirm's share of cart data) and other data reasonably requested by Affirm. Affirm may use such data to improve the Services and such reporting will be considered Feedback under the Agreement.

(f) **Merchant Personnel.** Merchant Personnel are not employees of Affirm or any of Affirm's affiliates, and neither Affirm nor any of its affiliates will be liable to Merchant Personnel for any claims or causes of action arising out of, or related to, their performance of the In-Store Activities, even if subsequently deemed to be an employee of Affirm under the Agreement. Merchant will be solely responsible for resolving all employment-related matters related to and claims made by Merchant Personnel, including matters involving benefits, immigration, misclassification or compensation. Upon Affirm's request, Merchant will remove a Merchant Personnel from performing the In-Store Activities as soon as practicable. Affirm may immediately suspend Merchant's authorization to perform In-Store Activities if Affirm, in its sole discretion, deems one or more Merchant Personnel to be a security risk with respect to the Services or Affirm's business operations.

(g) **TCPA and TSR Compliance.** Merchant will comply with the Telephone Consumer Protection Act and Telemarketing Sales Rule, their state-law analogues, and any rules relating to telemarketing. Merchant agrees to permit Affirm, upon Affirm's request, to review any consumer consents and scripts at any time prior to or after commencing telephonic activities with customers or Customers related to the Services.

**Section 3.2 Telesales Service Terms.** The following Affirm Service Terms apply to the Telesales Channel to the extent Merchant's use of the Telesales Channel is approved by Affirm under the Agreement.

(a) **Telesales Overview.** Affirm authorizes Merchant Personnel to market and offer the Services to customers by telephone to facilitate customers' use of Affirm Products to purchase Merchant Products (the "Telesales"). As used in this Section 3.2, "Merchant Personnel" means Merchant personnel who perform Telesales.

(b) **Training.** Affirm will provide Merchant with appropriate training materials and instructions for the purpose of promoting the Services via Telesales (collectively, "Training Materials"). Training Materials include instruction on the Affirm VCN flows, exception flows, preferred customer messaging, disclaimers, and support channels. Merchant will comply with all Training Materials and instructions provided by Affirm. The Parties will identify and agree upon the means of training Merchant Personnel, which may include in-person or online "train the trainer" training, self-guided online training, and/or in-person group training. Merchant will be solely responsible for ensuring that its Merchant Personnel (A) complete all required training prior to performing Telesales, and (B) comply with the instructions and Training Materials provided by Affirm. Merchant will, upon Affirm's request, certify to Affirm that all Merchant Personnel have completed Affirm's required training.

(c) **Unauthorized Statements.** Merchant Personnel will not make any statements, commitments, representations or warranties with respect to Affirm or the Services, except as expressly authorized in advance and in writing by Affirm, which authorization may be in the Training Materials.

(d) **Data Sharing / Performance.** Each month during the Term, or as otherwise agreed upon in writing by the Parties, Merchant will provide Affirm a report of the transactional data resulting from the Telesales during the previous month, which data will include SKU level transaction data for Affirm transactions, category data of Affirm transactions, percent of total transactions that are Successful Transactions (i.e., Affirm's share of cart data) and other data reasonably requested by Affirm. Affirm may use such data to improve the Services and such reporting will be considered Feedback under the Agreement.

(e) **Merchant Personnel.** Merchant Personnel are not employees of Affirm or any of Affirm's affiliates, and neither Affirm nor any of its affiliates will be liable to Merchant Personnel for any claims or causes of action arising out of, or related to, their performance of the Telesales, even if subsequently deemed to be an

employee of Affirm under the Agreement. Merchant will be solely responsible for resolving all employment-related matters related to and claims made by Merchant Personnel, including matters involving benefits, immigration, misclassification or compensation. Upon Affirm's request, Merchant will remove a Merchant Personnel from performing the Telesales as soon as practicable. Affirm may immediately suspend Merchant's authorization to perform Telesales if Affirm, in its sole discretion, deems one or more Merchant Personnel to be a security risk with respect to the Services or Affirm's business operations.

(f) **TCPA and TSR Compliance.** Merchant will comply with the Telephone Consumer Protection Act and Telemarketing Sales Rule, their state-law analogues, and any rules relating to telemarketing. Merchant agrees to permit Affirm, upon Affirm's request, to review any consumer consents and scripts at any time prior to or after commencing telephonic activities with customers or Customers related to the Services.