



United States **Healthcare Service Terms**

Last Updated: April 20, 2022

These healthcare service terms (the "Healthcare Service Terms") will apply to Affirm's provision of and Merchant's access to and use of the Services in the United States with respect to any Merchant Product that includes Healthcare Services (as set forth in Appendix A) or to the extent a Merchant provides a platform or other e-commerce service ("Platform Merchant") for medical, dental, or other healthcare providers ("Healthcare Providers"). Capitalized terms used in the Healthcare Service Terms but not defined below are defined in the Agreement. In the event of any inconsistency, conflict, or ambiguity as to the rights and obligations of the Parties under these Healthcare Service Terms, the terms of these Healthcare Service Terms will control and supersede any such inconsistency, conflict, or ambiguity.

Affirm may amend these Healthcare Service Terms in accordance with the Merchant Agreement.

Article 1. Healthcare Service Terms

To the extent that a Merchant (i) provides any Healthcare Services or (ii) is a Platform Merchant working with Healthcare Providers, the provisions of this Article I will apply.

Section 1.01 Affirm Product Placement. Commencing on the Launch Date and continuing throughout the Term, Merchant will (and will cause Healthcare Providers to, if applicable) display (i) with respect to online placement, the Services on the home page, product page, cart page, and checkout page on each Merchant Site and (ii) with respect to Location placement, to the extent applicable and pursuant to the terms of the Merchant Agreement, Affirm Approved Marketing Materials at or near the register and in the waiting room or reception area. "Locations" mean Merchant's (or Healthcare Provider's, if applicable) physical offices as mutually agreed by the parties and as updated from time to time in writing by Merchant. Locations may include virtual and telehealth consultations, provided that any such consultations conform to Merchant's (and Healthcare Providers', if applicable) industry standard practices and Applicable Law.

Section 1.02 Data Management and Compliance. Merchant will not access (and, if applicable, will require that Healthcare Providers not access) any Customer credit information, including, but not limited to, any data required for obtaining a credit bureau score or any information contained in a consumer report obtained by Affirm. Any sharing of Customer data under this Agreement will not involve access to or use of Protected Health Information or involve services that would cause Affirm to be considered to be engaged in the activities of a Business Associate as such terms are defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

Section 1.03 Merchant Indemnification. In addition to any indemnification obligations in the Merchant Agreement, Merchant will defend, indemnify, and hold harmless each Affirm Party from and against all Losses suffered, incurred, or sustained by any Affirm Party resulting from or arising out of any claim relating to: (a) any claims for malpractice; (b) any consumer complaint relating to Merchant or any Healthcare Provider; (c) any transaction, contract, understanding, promise, representation or any other relationship, actual, asserted or alleged between Merchant (and/or any Healthcare Provider) and any third party, including, but not limited to, a Customer; or (e) any data security breach of Merchant (and/or Healthcare Provider) involving information of Customers who purchased Healthcare Services through the Services.

Section 1.04 Changes in Healthcare Services. After a Customer schedules and pays for any applicable Healthcare Services with Merchant or, if a Platform Merchant and applicable, a Healthcare Provider, and Merchant (or any Healthcare Provider, as applicable) determines in good faith that the Healthcare Services need to be modified (each a “Healthcare Service Change”), as between the Parties, Merchant will be responsible for any such Healthcare Service Change or, if applicable, coordinating with Healthcare Providers for any such Healthcare Service Change. In the event a Healthcare Service Change results in an increase to the cost of Healthcare Services financed through the Services in excess of the Affirm Product issued to the Customer in connection with such Healthcare Services, Merchant will provide the Customer the ability to pay for the increased cost through a different payment method or a new Affirm Product (if permissible). Merchant will send or otherwise direct to Affirm any questions that Merchant or Healthcare Provider, if applicable, receives from Customers relating to the Services.

Section 1.05 Provision of Healthcare Services; Disbursement.

(a) Merchant represents and warrants (on behalf of itself and its Healthcare Providers, as applicable) that Merchant or Healthcare Provider, as applicable, will only perform Healthcare Services to the applicable Customer where Merchant (or the applicable Healthcare Provider) has confirmed the appropriateness of such Healthcare Service during the visit in which payment has been partially or fully rendered. Merchant is responsible for ensuring that a Customer’s use of the Services will not be used as a partial payment in conjunction with any insurance funds for payment of such Healthcare Services. In no event will any Affirm Product exceed the gross amount of a Merchant’s sale of goods and/or services (inclusive of any Booking Fees) to Customer or loan amount permitted by Applicable Law; provided, that if the Affirm Product exceeds such gross amount, Merchant will promptly issue a refund to the Customer for such excess amount.

(b) The Parties agree that no part of the Merchant Agreement shall be construed as inducement or encouragement for the referral of patients or the purchase of healthcare goods or services except in compliance with Applicable Law. No payment under the Merchant Agreement is intended to constitute remuneration in return for the referral of patients or the ordering of Healthcare Services from Merchant.

Section 1.06 Additional Service Terms and Conditions for Merchant. In connection with offering the Services to Customers and potential Customers, Merchant will:

(a) not make any assertion that a Customer owes Merchant any amount for any transaction where Customer has executed a loan agreement for Affirm Services in connection with such transaction, including but not limited to asserting the existence of a mechanic’s lien in association therewith;

(b) not market the Services to any customer or Customer who has been administered or is under the influence of general anesthesia, conscious sedation, or nitrous oxide, or who is compromised rationally or otherwise unable to provide informed consent;

(c) not market the Services to any customer or Customer who is in a treatment area, including, but not limited to, an exam room, surgical room, or other area where medical treatment is administered, unless the patient agrees to fill out and sign the application to arrange for or establish credit or a loan in the treatment area, provided that any such agreement is not in violation of this Section 1.06(c);

(d) not discuss Affirm or the Services at any place other than Merchant’s or the applicable Healthcare Provider’s usual place of business (no discussions in places such as a customer’s home, a consumer’s workplace or in dormitory lounges or at facilities rented on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds, and restaurants);

(e) not assist any Customer in the completion or submission of an application for Affirm Products (as defined in the Merchant Agreement) (except to the extent required to provide a reasonable accommodation with respect to any disability);

- (f) not provide Healthcare Services outside of the Locations of any Merchant Site (if applicable);
- (g) provide any written or electronic notice required under Applicable Law to any patient seeking to use the Services to purchase any Merchant Products; and
- (h) not utilize any autodialer, prerecorded or artificial voice message, or otherwise initiate any calls or text messages to consumers promoting or otherwise relating to the Services.

Section 1.07 Additional Service Terms and Conditions for Platform Merchants.

(a) **Merchant Channels.** Merchant will at all times during the Term maintain the Channels and enable (i) Healthcare Providers to participate in the Channels; and (ii) Customers to book and pay for the Healthcare Services with Healthcare Providers using the Services through all Channels. Merchant will be solely responsible for the availability, maintenance and content of the Channels.

(b) **Merchant Booking Fees.** Merchant will be solely responsible for any booking fee (including but not limited to the establishment, implementation, authorization and collection thereof) that Merchant elects to charge Customers in connection with such Customers' use of the Channels for booking appointments with Healthcare Providers for Healthcare Services (each such fee, a "Booking Fee"). Merchant may permit Customers to use the Services to pay for any such Booking Fee through the Channels. Any amounts or fees paid by or to (Merchant, Affirm or a Customer) a Healthcare Provider or for Healthcare Services, including any Fees and Booking Fee, will not take into consideration the volume or value of, nor be intended to generate, any referrals for Healthcare Services.

(c) **Confidential Information.** "Confidential Information" will also include any Confidential Information exchanged by Healthcare Provider with Affirm.

(d) **Books and Records.** In addition to the Affirm Services Terms, Merchant will require all Healthcare Providers to keep complete and accurate Books and Records. Merchant will cause Healthcare Providers to 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.

(e) **Obligations related to Healthcare Providers.** In addition to the terms and conditions of the Merchant Agreement:

(i) During the Term, Merchant will monitor the activities of all Healthcare Providers, including using commercially reasonable efforts to establish and maintain a process to monitor, prevent and identify any fraudulent activities, including without limitation, any attempts by Healthcare Providers to commit medical services fraud, overcharge a Customer, or submit fake credit applications.

(ii) Each of Affirm and Merchant may terminate any Healthcare Provider's access to or ability to use the Services. Merchant will be solely liable for (a) the failure of any Healthcare Provider to comply with the obligations set forth in the Agreement; or (b) any action or inaction of Healthcare Providers, including any action or inaction that causes or would reasonably be expected to cause Merchant to be in breach of any of Merchant's obligations under the Agreement.

Section 1.08 Healthcare Laws. With respect to Merchant and any Healthcare Provider, Applicable Law will also include any Applicable Law related to (i) the operation of the businesses of Merchant and any Healthcare Provider, including the offering and sale of Healthcare Services to Customers and the solicitation of such sales of Healthcare Services, including but not limited to any laws and regulations relating to (1) HIPAA and its implementing regulations contained in 45 C.F.R. Parts 160, 162, and 164, any applicable state privacy laws, and any applicable requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 ("HITECH") and its implementing regulations, (2) any state fee

sharing prohibitions, self-referral provisions, corporate practice of medicine prohibitions, or medical referral service business laws, e.g., N.Y. C.L.S. Pub. Health § 4501, regarding medical, healthcare or dental services (as applicable), (3) all federal and state laws regulating health services or payment, including, but not limited to, the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Stark Law (42 U.S.C. § 1395nn), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the civil False Claims Act (31 U.S.C. § 3729 et seq.), the No Surprises Act (Pub. L. No. 116-260 Div. BB), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the exclusion laws (42 U.S.C. § 1320a-7), the civil monetary penalty law (42 U.S.C. § 1320a-7a), (4) Medicare, Medicaid, and any other state or federal law, regulation, guidance document, manual provision, program memorandum, opinion letter, or other issuance which regulates patient or program billing for charges and (5) patient credit laws regulating the practices of medical providers arranging for credit transactions, and (ii) Merchant's participation in the Services. If applicable, Merchant will also require that each Healthcare Provider complies with Applicable Law in connection with its use of the Services and provision of Healthcare Services to Customers.

Section 1.09 Healthcare Representations and Warranties. Merchant (itself, and, as applicable, on behalf of each Healthcare Provider) represents and warrants to Affirm that:

(a) it has and will maintain (and cause all Healthcare Providers to maintain, as applicable) during the Term all necessary licenses, permits, certification, registration, consents or approvals from or by, and has made all necessary notices to, all governmental authorities having jurisdiction, to the extent required for such ownership of and operation of the business or as its business proposed to be conducted;

(b) (i) it is duly formed, validly existing, and in good standing under the laws of its state of incorporation or formation; (ii) it is in compliance with all Applicable Law; (iii) there is no pending or, to such Merchant's knowledge, threatened litigation, arbitration matter, or other dispute to which it, any Healthcare Provider or any of its affiliates is a party that would reasonably be expected to, individually or in the aggregate, have a material adverse effect on such its or each Healthcare Provider's ability to fulfill its obligations under the Merchant Agreement (as applicable); and (iv) the execution and delivery of the Merchant Agreement will not conflict with, or result in a violation or breach of, any of the terms, conditions, or provisions of Merchant or, as applicable, Healthcare Provider's, organizational documents or any legal restriction or any agreement or instrument to which Merchant or such Healthcare Provider, as applicable, is now a party or by which it is bound, or require the consent of any person or entity not subject to the Merchant Agreement;

(c) if applicable, Merchant (itself, and, as applicable, will cause each Healthcare Provider) will maintain insurance coverage in full force during the Term as described in Section 1.12(a) of these Healthcare Service Terms;

(d) it has not ceased to pay its debts in the ordinary course of business nor is it unable to pay its debts as they become due, or its financial condition is not such that the sum of its liabilities is greater than all of its assets;

(e) the Agreement will not be construed or applied to impact the independent and professional judgment of Merchant or any Healthcare Provider;

(f) all forms of agreements Merchant or any Healthcare Provider provides to Customers are in compliance with Applicable Law; and

(g) it will (and will cause each Healthcare Provider, if applicable) treat a Customer who has been approved for and paid using a loan through the Services (or a Successful Transaction) as if such Customer had paid Merchant or such Healthcare Provider in full using cash.

Section 1.10 Disputes between Customer and Merchant. Any unsolicited protected health information sent to Affirm by either Merchant or a Customer will be disregarded by Affirm. Affirm will not make a determination

resulting from a dispute based on the quality of the services provided, only whether the service was provided pursuant to the Affirm Service Terms.

Section 1.11 Other Remedies. In addition to any rights and remedies in the Merchant Agreement, Affirm may suspend the Services at any Location(s) in Affirm's sole and reasonable discretion at any time during the Term.

Section 1.12 Insurance. To the extent a Merchant or any Healthcare Provider provides Healthcare Services with respect to the practice of dentistry or medical aesthetic services, Merchant represents and warrants that it has and will maintain for the duration of the Term (i) Commercial General Liability insurance with coverage for bodily injury, death, property damage, personal and advertising injury and contractual liability, with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; the policy will include Merchant and Affirm, Inc. as additional insured and will be primary and noncontributory with any insurance maintained by the additional insureds; (ii) Professional Liability insurance, with coverage for medical malpractice, sexual misconduct, false advertising, media and website content liability and privacy rights violations, with limits not less than \$1,000,000 per occurrence or the minimum amounts required by applicable state law, whichever is greater, and (iii) Cyber Liability insurance, with coverage for information security, regulatory defense and penalties and data breach costs and expenses. Any required policy written on a claims made basis will be maintained for at least three (3) years after expiration or termination of the Merchant Agreement.

Appendix A
Healthcare Services

The term “Healthcare Services” will mean any Merchant Product: (i) constituting the practice of medicine or the practice of dentistry; or (ii) within the scope of practice of any licensed healthcare professional for which an individual must obtain a professional license in order to perform or be supervised by a licensed professional. Healthcare Services shall include, but not be limited to: (i) Dental Services; (ii) Medical Aesthetic Services; and (iii) Wellness Services, as each term is defined below.

1. **Dental Services**. The term “Dental Services” shall include professional healthcare services related to:
 - a. Dental exams;
 - b. Braces;
 - c. Clear aligner straightening;
 - d. Veneers;
 - e. Dental implants;
 - f. Teeth whitening;
 - g. Dental fillings
 - h. Chipped teeth (bonding);
 - i. Crowns;
 - j. Root canals;
 - k. Bridges; and
 - l. Extractions.

2. **Medical Aesthetic Services**. The term “Medical Aesthetic Services” shall include professional healthcare services related to:
 - a. Microneedling;
 - b. Laser facials;
 - c. Lumecca IPL Photofacial;
 - d. HydraFacials;
 - e. VI Peel;
 - f. Botox;
 - g. Dermal Fillers;
 - h. Kybella;
 - i. Keravive;
 - j. Laser hair removal; and
 - k. Emsculpt Body Toning.

3. **Wellness Services**. The term “Wellness Services” shall include:
 - a. Weight loss and dieting programs (including coaching and education);
 - b. Nutrition services; and
 - c. Testing services (e.g., genetic testing, diagnostic testing).