



## **United States Affirm Service Terms**

**Last Updated: August 14, 2023**

Capitalized terms used in the Affirm Service Terms but not defined below are defined in the Order Form or 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. To the extent Merchant integrates the Services, Merchant will integrate the Services in accordance with Affirm's instructions and the Documentation. Affirm may from time-to-time at its sole discretion, make changes to the Services (including by adding or removing functionality) and the 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. Affirm will have no liability for any Loss resulting from Merchant incorrectly integrating or failing to comply with Affirm's integration instructions or the Documentation.

##### **(b) Types of Integration.**

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

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

(iii) **Affirm Lite Integration.** If agreed upon in writing by the Parties, Affirm will provide Merchant with access to a hyperlink to an Affirm-hosted landing page, which will enable prospective Customers to apply for a Virtual Card ("Affirm Lite Integration").

(iv) **Platform Integration.** Merchant may integrate with a third party intermediary (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 Card Integration. 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 Processing 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.** Each Party will comply with the Data Processing Addendum located at: <https://www.affirm.com/terms/merchant-policies/global-dpa>.

**Section 1.4 Risk Evaluation.** If Affirm has reasonable concerns about Merchant's eligibility to offer the Services, Merchant will reasonably cooperate with Affirm to allow Affirm to evaluate Merchant's eligibility, which may include providing Affirm with information reasonably requested by Affirm (except to the extent Merchant is a publicly traded company, in which case Affirm will access publicly available information). Any information provided pursuant to this Section that is Merchant Confidential Information will be treated as such in accordance with the Agreement.

### **Section 1.5 Fraudulent Transactions.**

(a) The Parties will work together to prevent fraudulent Customer transactions and minimize the risk of loss associated with such fraudulent transactions. 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"), unless Merchant requests Affirm's approval via email to [orderreview@affirm.com](mailto:orderreview@affirm.com) and Affirm provides prior written approval. Affirm may terminate the Agreement immediately for Merchant's breach of the foregoing. 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).

(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, and notifies Merchant (such notice, email sufficient, "Affirm Fraud Notice"), 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. Merchant will respond to the Affirm Fraud Notice within 24 hours and will include the current status of order and what actions are being taken to resolve the request. If the Merchant Product has already

shipped, Merchant will send Affirm tracking information, where applicable. Merchant will be liable for any loss resulting from such Successful Transaction if Merchant fails to respond to an Affirm Fraud Notice within such time period.

**Section 1.6 Prohibited Business Policy.** Merchant will not allow the Services to be used in connection with any Prohibited Business. The categories of business and business practices described in the Prohibited Business Policy (each, a “Prohibited Business”) are 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 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 in the Territory 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 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. “Payable Amount” means Fees or other amounts payable by Merchant to Affirm pursuant to this Agreement. 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 interchange or similar processing fees related to the use of credit or debit cards in connection with the Services. 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 Affiliates', or its bank partners' authorization to debit the applicable Bank Account. Affirm may invoice Merchant for Payable Amounts. Merchant will pay all amounts invoiced under this Section no later than 30 days after Merchant's receipt of the applicable invoice.

(i) **Direct Integration Terms.** 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. 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, Affirm will not be liable to Merchant for Merchant's receipt of that Payout. Merchant will receive disbursements (each, a "Payout") equal to the total dollar amount of Successful Transactions not already disbursed to Merchant, less (A) accrued but unpaid Fees; (B) amounts relating to unresolved Customer Disputes; (C) Fees that are disputed by Affirm in good faith; and (D) 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. 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.

(ii) **Virtual Card Terms.** 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 less undisputed amounts owed by Merchant to Affirm, which may include amounts resulting from Customer refunds; 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. 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. Merchant will reimburse Affirm 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).

(b) **Upfront Payment.** A Customer may make a one-time partial ("Down Payment or Partial Payment") or complete payment ("Complete Payment") (collectively, an "Upfront Payment"), of the applicable purchase price that is collected by Affirm from a Customer on behalf of Merchant in connection with the Services. Affirm may, in its sole discretion, require a Customer to make an Upfront Payment with respect to using an Affirm Product. An Upfront 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 an Upfront Payment to Merchant is subject to and conditioned upon successful receipt of the associated Upfront Payment from Customer. In connection with a Complete Payment, Merchant will pay Affirm (i) the Fee associated with the Complete Payment as stated in the Agreement or (ii) if no Fee for the Complete Payment is stated in the Agreement, the lowest enabled Fees set forth in the Agreement. To the extent an Upfront Payment is required and as applicable, Merchant appoints Affirm Loan Services, LLC and/or Affirm Payments, LLC as its payment collection agent solely for the purpose of accepting such Upfront Payment from Customers on behalf of Merchant and such Upfront Payment will be treated as received by Merchant upon receipt by Affirm Loan Services, LLC and/or Affirm Payments, LLC, as applicable.

(c) **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.

(d) **Past Due Amounts.** Any Payable Amount that Affirm is unable to collect or Merchant otherwise fails to pay in accordance with this Agreement will be considered past due (collectively, "Past Due Amounts"). For each month where Merchant has Past Due Amounts, Merchant will incur an interest charge on the aggregate outstanding Past Due Amounts for such month equal to the lesser of (i) 1.50%, or (ii) the maximum amount permitted by Applicable Law.

(e) **Right to Revise Fee Schedule.** Notwithstanding anything to the contrary in the Agreement, Affirm may revise the Fee Schedule defined in an Order Form and/or any other amounts due to Affirm under this Agreement and such revisions will be effective upon written notice (email sufficient) to Merchant by Affirm.

(f) **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 Payouts or invoice Merchant for any amounts related to such Transaction Error. Nothing herein precludes Affirm from making a good faith challenge as to the accuracy of Fees charged or due hereunder and making an adjustment as necessary.

**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.** Affirm may apply upgrades, patches, bug fixes, or other maintenance to the Services ("Maintenance"), and Merchant will 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 substantial increase in Merchant's or Merchant's customers' use of the Services and will provide estimates of anticipated demand upon Affirm's request. Upon further request by Affirm, Merchant will promptly provide Affirm with aggregated and anonymized data regarding past and anticipated volume through the 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), as applicable. All information provided by Merchant pursuant to this Section will be considered Merchant Confidential Information. Merchant 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 Shipping & Fulfillment.** Merchant will maintain and comply with shipping and service fulfillment practices that meet or exceed (a) good industry standards maintained and complied with by merchants similar to Merchant, and (b) any requirements set forth in Merchant's agreements with applicable Customers.

**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 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. Merchant expressly consents to receive electronic delivery of copies of such informational returns (including, but not limited to all applicable Form 1099s). If Merchant would like to withdraw its consent it must notify Affirm in accordance with the terms herein. If consent is withdrawn, Affirm will mail Merchant a paper copy, however, Merchant is obligated to notify Affirm of any and all changes of address.

**Section 1.18 No Third-Party Beneficiaries.** Notwithstanding anything to the contrary in the Merchant Agreement, (a) Affirm Loan Services LLC and Affirm Payments, LLC will be third-party beneficiaries under the Agreement, (b) the Agreement confers on Affirm Loan Services LLC and Affirm Payments, LLC the rights and remedies set forth herein, (c) Affirm Loan Services LLC and Affirm Payments, LLC may each enforce any and all rights of Affirm hereunder, except as prohibited by Applicable Law, and (d) neither Affirm Loan Services LLC nor Affirm Payments, LLC will 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 and Affirm Payments

LLC's rights under this Section transfer to any successor of Affirm Loan Services LLC or Affirm Payments LLC, as applicable.

**Section 1.19 Sanctions Screen.** To the extent that a Merchant operates a marketplace or is the merchant of record for multiple third parties, Merchant will establish, maintain, and comply with a comprehensive sanctions program ("Merchant Sanctions Program") that meets the minimum requirements under Applicable Law. Upon request, Merchant will provide Affirm with information reasonably related to Merchant Sanctions Program, and Merchant will make commercially reasonable efforts to rectify any gaps identified by Affirm regarding Merchant Sanctions Program to the extent required to meet Applicable Law.

**Section 1.20 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), 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 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, 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"), 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 1.21 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 the Merchant Agreement. Any electronic mail sent to Affirm will be sent to: [legalnotices@affirm.com](mailto:legalnotices@affirm.com).

**Section 1.22 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*), 1.17 (*Tax Matters*), 1.18 (*No Third-Party Beneficiaries*), 1.20 (*Dispute Resolution*) and 1.21 (*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 and Configuration Service Terms

Affirm, in its sole discretion, may deprecate, replace, or rebrand any part of the Services under the Agreement. As between the Parties, Customer underwriting, credit decisioning, Customer APR, loan amounts, term lengths and cart ranges will be determined by Affirm in its sole discretion. "Territory" means any U.S. state, jurisdiction, or territory authorized by Affirm in its sole discretion.

**Section 2.1 Installments (formerly referred to as "Core") Product.** Affirm offers a closed-end installment loan for customers to finance the purchase of Merchant Products at 0-36% APR, or such other interest rate as Affirm may determine in its sole discretion, with various loan terms (the "Installments Product"). Affirm will use one or more state-chartered banks, FDIC-insured institutions, or Affirm Loan Services, LLC, or a combination thereof, to originate the Installments Product for Customers in the Territory.

**Section 2.2 Pay in 4 (formerly referred to as "Split Pay") Product.** Affirm offers a closed-end installment loan for Customers to finance the purchase of Merchant Products at 0% APR, which will be repaid in four or fewer installments (the "Pay in 4 Product"). Affirm Loan Services, LLC will originate the Pay in 4 Product for Customers in the Territory.

**Section 2.3 Configurations.**

(a) **Adaptive Checkout.** "Adaptive Checkout" means a checkout configuration where customers are dynamically offered personalized payment options, at Affirm's sole discretion, for each transaction. Merchant will pay Affirm the applicable Fees corresponding to the Affirm Product a Customer selects with Affirm.

(b) **Affirm Card.** A Customer may utilize the Affirm Card, which provides an eligible Customer the ability to apply for an Affirm Product in Affirm's mobile application with respect to a purchase of a Merchant Product. In connection with such purchase, Merchant will pay Affirm (x) the Fee associated with the Affirm Card as stated in the Agreement or (y) if no Fee for the Affirm Card is stated in the Agreement, the applicable Fees corresponding to the Affirm Product a Customer selects with Affirm.

(c) **Other Configurations.** If a Customer utilizes an Affirm Product to purchase a Merchant Product, Merchant will pay the applicable Fees corresponding to the Affirm Product a Customer selects with Affirm, unless stated as otherwise in the Order Form.

## 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 In-Store 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"). "In-Store Merchant Personnel" means Merchant's employees, personnel, contractors, representatives or agents 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"). Merchant will ensure In-Store Merchant Personnel will comply with all Training Materials and instructions provided by Affirm and 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. The Parties will identify and agree upon the means of training In-Store Merchant Personnel. Merchant will be solely responsible for ensuring that its In-Store 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 In-Store Merchant Personnel have completed Affirm's required training.

(c) **In-Store Marketing.** Affirm may 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). Affirm may audit Merchant's placement of Affirm Approved Marketing Materials at Locations and compliance with the terms of the Agreement.

(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 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.

(e) **In-Store Merchant Personnel.** In-Store 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 In-Store 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 In-Store Merchant Personnel, including matters involving benefits, immigration, misclassification or compensation. Upon Affirm's request, Merchant will remove a In-Store 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 In-Store 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 permits Affirm, upon Affirm's request, to review any consumer consents and scripts at any time related to its telephonic activities with customers or Customers in connection with 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 Telesales Merchant Personnel to market and offer the Services to customers by telephone to facilitate customers' use of Affirm Products to purchase Merchant Products ("Telesales"). "Telesales Merchant Personnel" means Merchant's employees, personnel, contractors, representatives or agents 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"). Merchant will ensure Telesales Merchant Personnel will comply with all Training Materials and instructions provided by Affirm and 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. The Parties will identify and agree upon the means of training Telesales Merchant Personnel. Merchant will be solely responsible for ensuring that its Telesales 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 Telesales Merchant Personnel have completed Affirm's required training.

(c) **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.

(d) **Telesales Merchant Personnel.** Telesales 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 Telesales 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 Telesales Merchant Personnel, including matters involving benefits, immigration, misclassification or compensation. Upon Affirm's request, Merchant will remove a Telesales 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 Telesales Merchant Personnel to be a security risk with respect to the Services or Affirm's business operations.

(e) **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 permits Affirm, upon Affirm's request, to review any consumer consents and scripts at any time related to its telephonic activities with customers or Customers in connection with the Services.