



## Exhibit A MERCHANT AGREEMENT

Last Updated: January 23, 2023

This Merchant Agreement ("Merchant Agreement") is entered into by and between the Merchant listed in an Order Form ("Merchant") and the Affirm counterpart named in such Order Form ("Affirm"), as applicable (each, a "Party" and collectively, the "Parties") and effective as of the Effective Date referenced in such Order Form. Upon the execution and delivery of an Order Form by a Merchant and Affirm, (i) such Merchant will become a party to this Agreement and all references to "Merchant" in this Agreement will be deemed to reference such Merchant as the context requires, and (ii) such Affirm counterpart will become a party to this Agreement and all references to "Affirm" in this Agreement will be deemed to reference such Affirm counterpart as the context requires, in each case solely with respect to its participation in offering the Services and its actions and omissions on its own behalf conducted under this Agreement. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Order Form or the Affirm Service Terms.

The terms and conditions set forth in any attachments or schedules referenced herein (including any terms, conditions, and materials in the Affirm Service Terms) are hereby incorporated by reference into this Merchant Agreement. This Merchant Agreement will apply to and govern Affirm's provision of and Merchant's access to and use of any Services agreed upon by the Parties, any order form entered into by the Parties (each, an "Order Form"), and any other writing agreed upon by the Parties (collectively, the "Agreement").

### 1. General Terms and Conditions.

**1.1 General.** Affirm (itself or through its affiliates or bank partners) offers certain products and services (collectively, "Affirm Products") through Affirm's proprietary platform and related application programming interfaces ("APIs"), virtual card networks, and other technology and access solutions (collectively, the "Services"). Merchant desires to use certain Services to market and offer Affirm Products to its customers, which may, among other activities described in the applicable Order Form or Affirm Service Terms, enable such customers to purchase Merchant's goods and services ("Merchant Products"). Merchant may use the Services in accordance with the Agreement. A "Customer" is any person who applies to use the Services or who uses the Services in accordance with this Agreement. A "Representative" of each Party means its employees, personnel, contractors, representatives or agents, including, In-Store Personnel and Telesales Personnel.

**1.2 Authorized Channels.** The rights and obligations set forth in the Agreement will apply to all Merchant Sites listed in an Order Form, any additional URLs, and other channels, which may include physical retail locations and telesales systems (each, a "Channel"), in which the Parties will market and offer the Services. Merchant may make the Services available on a new URL or through a new Channel only with prior approval from Affirm. Any marketing and offering of the Services through an approved Channel will be conducted in accordance with the applicable Affirm Service Terms. Merchant may not change the ownership or control of any Merchant Site and subsequently offer Affirm's Services without Affirm's prior approval.

**1.3 Territories.** The Services will only be available in those territories authorized by Affirm for the applicable Product (each, a "Territory") as set forth in the applicable Affirm Service Terms.

**1.4 Service Terms.** Merchant will maintain and comply with Merchant's internal policies, including policies for shipping and fulfillment of customer orders, privacy of customer information, customer refunds and returns, and customer dispute resolution, that meet or exceed good industry standards for merchants similar to Merchant (collectively, "Merchant Policies"), provided that the Agreement will control in the event of a conflict, ambiguity, or inconsistency between the Agreement and a Merchant Policy. Affirm has implemented and maintains certain policies, standards, processes, and terms and conditions (including specific terms that apply to particular industries (e.g. healthcare)) that apply to the Services in the applicable Territory (collectively, the "Affirm Service Terms"), which are located at <https://www.affirm.com/terms/merchant-policies> and may be modified by Affirm in

accordance with Section 12.11. Merchant will comply with the applicable Affirm Service Terms when offering and using the Services.

## 2. Intellectual Property; License Grants.

**2.1 Intellectual Property.** As between the Parties, Affirm retains exclusive ownership of all right, title, and interest in and to all IP relating to or embodied in the Services, including the APIs, and any Confidential Information provided to Merchant by Affirm (collectively, the "Affirm IP"). Neither Party will, by virtue of the Agreement, gain any rights of ownership of IP owned (prior to, on or after the Effective Date) by the other Party. "IP" means all worldwide rights in and to intellectual, industrial, and other property, whether exclusive or non-exclusive, including rights to inventions, trademarks, trade names, trade dress, service marks, logos, brand names, other indicia of origin, trade secrets, know-how, technology, research tools, data, software, improvements, processes, designs, techniques, works of authorship and rights of attribution, whether or not protected by patents or copyrights, the Marks, patent applications, patents, copyrights, moral rights, all other rights pertaining to intellectual property, and all goodwill associated therewith. Merchant's submission of any feedback, comments, or suggestions to Affirm related to Affirm IP ("Feedback") is voluntary. Notwithstanding any other provision of the Agreement, (a) Affirm may use Feedback and incorporate it into Affirm's products, technologies, and services without any obligation to Merchant or restriction as to Affirm's use of such Feedback, (b) Merchant hereby waives all rights it or its representatives have or may have, including all IP rights, in and to the Feedback, and will cause its representatives to waive all moral or similar rights that its representatives have to Affirm, and (c) Merchant hereby assigns to Affirm all of Merchant's rights in and to Feedback and will cause its representatives to assign all of such representatives' rights to Affirm. In the event Merchant is unable to waive or assign its or its representatives rights in and to Feedback pursuant to Applicable Law, then Merchant hereby grants to Affirm an irrevocable, perpetual, exclusive, royalty-free, fully paid-up, worldwide, license, to use, reproduce, distribute, perform, display and create derivative works of, such Feedback, without the need for a separate writing. Merchant is not entitled to any compensation or reimbursement of any kind under any circumstances for any Feedback. If Merchant develops any modifications, corrections, enhancements, derivatives, or extensions of or relating to Affirm IP, all rights, title, and interest in and to all IP therein will be owned exclusively by Affirm. Should Affirm IP become, or in Affirm's opinion likely become, the subject of an IP infringement claim by a third party, Affirm, at its option, may: (i) procure for Merchant the right to continue using the applicable Affirm IP, (ii) modify the applicable Affirm IP to make it non-infringing provided the same functionality is maintained, or (iii) terminate this Merchant Agreement or the applicable Order Form as to the potentially infringing Services.

### 2.2 License Grants.

(a) **Licenses.** The applicable Affirm Service Terms will set forth all terms and conditions governing any licenses related to the Services.

(b) **Trademark License.** Upon the terms and subject to the conditions of the Agreement, each Party (the "Licensor") hereby grants to the other Party (the "Licensee") a limited, revocable, non-exclusive, non-transferable license and right to use, reproduce, display, distribute, and transmit the Licensor's name, logo, and any other trademarks, trade names, service marks, photographs, graphics, brand imagery, text, and other content, in each case provided by the Licensor, in any and all media formats, whether registered or unregistered (with respect to each Licensor, the "Marks"), in connection with the use and marketing of the Services during the Term. Licensee's use of the Licensor's Marks may be subject to usage guidelines and quality control standards that Licensor may provide to Licensee from time to time. Upon Licensor's request, Licensee will provide to Licensor representative samples of Licensee's use of the Marks, and Licensor reserves the right to reject any such use in the event that Licensor reasonably believes a deficiency exists in the manner of use of the Marks by Licensee. All goodwill arising out of the use of the Licensor's Marks will inure to the benefit of the Licensor. Use of a Licensor's Marks does not create in the Licensee any ownership interest in Licensor's Marks. Neither Party will register or apply for registration of the other Party's Marks (or any confusingly similar trademarks, trade names, service marks, logos, or names). Each Party will reasonably cooperate with the other Party with respect to any infringement action regarding such rights.

**2.3 Restrictions on Use of the Services.** Merchant will not: (a) offer for sale or lease, or sell, resell, or lease, or in any way transfer the Services; (b) attempt to create a substitute or similar service through use of, or access to, the Services; or (c) access or use the Services in a way intended to avoid incurring Fees, misrepresent usage or performance data, misrepresent transaction amounts or item data, misrepresent user information, or knowingly permit Customers and third parties to engage in actions that are prohibited under the Agreement. In addition, Merchant will not, nor will Merchant allow any third party to (i) modify, translate, reverse engineer, decompile, disassemble, otherwise attempt to derive source code from, or create derivative works based on, Affirm IP, (ii) make unauthorized copies of Affirm IP, (iii) modify or remove any proprietary notices, disclosures, disclaimers, or Affirm Marks from the Services or Affirm IP, or (iv) use the Services or Affirm IP in any manner or for any purpose other than for which the Services or Affirm IP have been provided or incorporated.

**2.4 Marketing Materials.** Affirm may provide certain pre-approved marketing language and disclosures ("Affirm Approved Marketing Materials") to Merchant to offer and market the Services. Merchant may not use any materials other than Affirm Approved Marketing Materials in the form provided by Affirm to offer and market the Services, and in all cases such uses are subject to brand and marketing guidelines in the Affirm Service Terms. Merchant will include Affirm Marks wherever Merchant markets, offers, or promotes the Services. Merchant permits, and will obtain any third-party licenses or consents required to enable, Affirm to use Merchant Marks in marketing or promotional materials in connection with the Services, at no additional cost to Affirm. Affirm may withdraw its approval of any Affirm Approved Marketing Materials upon notice to Merchant. If Merchant breaches its obligations under this Section 2.4, Merchant will immediately cure such breach, including by removing any non-compliant marketing materials from Merchant Channels.

### **3. Merchant Payouts and Merchant Fees.**

**3.1 Payout and Payment.** The applicable Affirm Service Terms will set forth all terms and conditions governing any payouts and payments related to the Services. The terms and conditions for paying Fees may vary for individual Services and will be set forth in the applicable Affirm Service Terms. Except as expressly provided under the Agreement, each Party will bear its own costs and expenses incurred in connection with each Party's obligations under the Agreement.

**3.2 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.

**3.3 Fraudulent Transactions.** The Parties will work together to prevent fraudulent Customer transactions and minimize the risk of loss associated with such fraudulent transactions and will comply with applicable processes and procedures set forth in the Affirm Service Terms.

### **4. Service Restrictions.**

**4.1 Prohibited Businesses.** The categories of business and business practices described in the Prohibited Business Policy (each, a "Prohibited Business") referenced in the applicable Affirm Service Terms, are ineligible for the Services, and Merchant will not allow the Services to be used in connection with any Prohibited Business.

### **5. Confidential Information and Data Security.**

**5.1 Confidential Information.** In connection with the Agreement, including the negotiation of the Agreement, a Party ("Recipient") may receive or have access to confidential or proprietary information of the other Party or its affiliates ("Discloser"), whether received or disclosed by such Parties or their respective Representatives. As used in the Agreement, "Confidential Information" means the information exchanged by the Parties prior to, during or after the negotiation of the Agreement that should be reasonably understood to be confidential or proprietary in nature, regardless of whether such information was provided subject to a

nondisclosure agreement between the Parties, the terms and conditions of the Agreement, any proprietary information, technical data, demographic information, trade secrets, or know-how, including research, product plans, products, services, customers, customer lists, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, or other business information disclosed by either Party either directly or indirectly in any form but excluding information that: (a) was lawfully, and not otherwise as a result of any violation of confidentiality obligations, in Recipient's possession before receiving it from Discloser; (b) is rightfully received by Recipient from a third party without restriction, and, to Recipient's knowledge, without a breach of a confidentiality obligation imposed on such third party; (c) is or becomes generally available to the public other than through a breach of the Agreement; or (d) was or is independently developed by Recipient without use of or reference to any Confidential Information. For avoidance of doubt, Affirm's proprietary financial platform, including any solution designs, specifications, enhancements, or improvements made thereto, is Affirm's Confidential Information.

**5.2 Nondisclosure of Confidential Information.** Recipient will: (a) keep the Confidential Information of Discloser confidential and not use or copy such Confidential Information other than as expressly authorized by Discloser and as permitted under the Agreement; (b) protect the Confidential Information of Discloser from unauthorized use or disclosure by using at least the same degree of care as Recipient employs to avoid such unauthorized use or disclosure of its own Confidential Information, but in no event any less than reasonable care; and (c) limit access to Confidential Information to those of its Representatives who need such access for purposes consistent with the Agreement and will be liable for any breach of this Section 5.2 by such Representatives. It is understood that Discloser's Confidential Information will remain the sole property of Discloser. In the event that Recipient or any of its Representatives are legally compelled by Applicable Law, subpoena, or similar court process to disclose any Confidential Information of Discloser, Recipient will, to the extent legally permissible, provide Discloser with notice of such circumstances and will limit such disclosure to only what legal counsel for Recipient advises is specifically required by Applicable Law, subpoena, or similar court process. This provision will supersede and replace any previous agreement, whether written or oral, between the Parties hereto regarding Confidential Information.

**5.3 Privacy; Data Security.** The Parties will process information under this Agreement in compliance with Applicable Law and the terms and conditions set forth in the applicable Affirm Service Terms.

## **6. Representations and Warranties.**

**6.1** Each Party represents and warrants that as of the Effective Date: (i) it is duly formed, validly existing, and in good standing under the laws of its state of incorporation or formation; (ii) it has the right, power, and authority to enter into the Agreement; (iii) the Agreement has been duly and validly executed and delivered and constitutes legal, valid, and binding obligations of each Party; (iv) it is in compliance with Applicable Law in connection with carrying out its obligations under the Agreement; (v) there is no pending or, to such Party's knowledge, threatened litigation, arbitration matter, or other dispute to which such Party 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 Party's ability to fulfill its obligations under the Agreement; and (vi) the execution and delivery of the Agreement will not conflict with, or result in a violation or breach of, any of the terms, conditions, or provisions of such Party's organizational documents or any legal restriction or any agreement or instrument to which such Party is now a party or by which it is bound, or require the consent of any person or entity not subject to the Agreement. Merchant represents, warrants, and covenants that it will convey good and valid title to the Merchant Products delivered or otherwise made available to a Customer as a result of any Successful Transaction, free and clear of all encumbrances, debts, mortgages, attachments, pledges, charges, claims, and liens of any kind.

**6.2** EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT AND EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, AFFIRM MAKES NO OTHER WARRANTY OF ANY KIND REGARDING THE SERVICES, AND EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.

**7. Indemnification.**

**7.1 Merchant Indemnification.** Merchant will defend, indemnify, and hold harmless Affirm, its affiliates, and their respective officers, directors, agents, employees, successors, and assigns (individually and collectively, an "Affirm Party") from and against all penalties, damages, losses, or expenses (including reasonable attorneys' fees) (collectively, "Losses") suffered, incurred, or sustained by any Affirm Party resulting from or arising out of any claim relating to: (a) Merchant's breach of an obligation under the Agreement, including fines or penalties arising from such breach; (b) personal injury (including death) or property damage resulting from Merchant's acts or omissions; (c) Merchant's breach of its obligations under the Agreement with respect to the offering, marketing, sale, or distribution of goods or services that are Prohibited Businesses; (d) the goods or services provided by Merchant, including any claims for false advertising, unfair business practices, discrimination, or product defects; (e) any 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 and any Taxes in connection with Merchant's business; (f) Merchant's violation, misappropriation, or infringement of the IP of a third party; (g) fraud, gross negligence, or willful misconduct of Merchant; (h) the acts or omissions of Merchant Representatives; or (i) a Security Incident of Affirm Personal Data on information systems owned, controlled, or subcontracted by Merchant or by a Merchant Subprocessor resulting from Merchant's or Merchant Subprocessor's negligent acts or omissions.

**7.2 Indemnification Procedure.** A right to indemnification under the Agreement is conditioned upon the following: (a) notice by the indemnified Party (the "Indemnified Party") to the other Party (the "Indemnifying Party") after the Indemnified Party's receipt of the assertion or the commencement of any third-party action, proceeding, or other claim with respect of which the Indemnified Party will seek indemnification under the Agreement; (b) control of the investigation, preparation, defense, and settlement thereof by the Indemnifying Party (provided, however, that the Indemnifying Party will not, without the prior consent of the Indemnified Party, settle, compromise, or consent to the entry of any judgment with respect to the indemnified claim); and (c) cooperation by the Indemnified Party, at the Indemnifying Party's request, in the Indemnifying Party's defense of the indemnified claim. The Indemnified Party will have the right to participate in the defense of the indemnified claim at the Indemnified Party's expense (notwithstanding any indemnification obligations under the Agreement).

**8. Limitation of Liability.** In no event will Affirm be liable or obligated to Merchant for any special, indirect, incidental, punitive, exemplary, or consequential damages or lost profits, whether in contract or tort (including breach of warranty, negligence, and strict liability), and Affirm's liability for any Losses arising out of or relating to Affirm's performance or failure to perform its obligations under the Agreement will be limited, in the aggregate, to an amount equal to the total Fees payable to Affirm under the applicable Order Form for the 12 months prior to the month in which the most recent event giving rise to such liability occurred. All claims for any losses arising out of or relating to Affirm's performance or failure to perform its obligations under the agreement must be filed within two years from the date giving rise to such claim. This limitation of liability will apply to the maximum extent permitted by applicable law and notwithstanding the failure of any limited remedy. Each party enters into this agreement in reliance upon the limitations of liability set forth in this section, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

**9. Dispute Resolution.**

**9.1 Informal Dispute Resolution.** Prior to the initiation of arbitration, the Parties will first attempt to resolve their Dispute informally as set forth in this Section 9.1 (the "Informal Dispute Resolution Process"). Either

Party may initiate the Informal Dispute Resolution Process by giving notice of a Dispute to the other Party (the “Notice of Dispute”), which will include a reasonably detailed statement of the Dispute. During the Informal Dispute Resolution Process, each Party will honor all reasonable requests made by the other Party for non-privileged information reasonably related to the Dispute. All negotiations and proceedings pursuant to this Section 9.1 will be confidential and will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

**9.2 Formal Dispute Resolution.** Either Party may seek formal resolution of a Dispute upon the earliest to occur of the following: (a) 30 days have elapsed from the delivery of the Notice of Dispute; (b) commencement of arbitration is appropriate to avoid the expiration of an applicable limitations period or to preserve a superior position with respect to other creditors; or (c) a Party makes a good-faith determination that a breach of the Agreement by the other Party is such that injunctive relief is necessary. Terms and conditions governing other dispute resolution, such as arbitration, will be set forth in the applicable Affirm Service Terms.

**9.3 Governing Law.** Governing law will be set forth in the applicable Affirm Service Terms.

## **10. Force Majeure.**

**10.1 Force Majeure Event.** Except for each Party’s payment obligations, neither Party will be liable for any failure or delay in performance of its obligations under the Agreement if and to the extent such failure or delay is caused, in whole or in part, directly or indirectly, by fire, storm, earthquake, flood or other weather, terrorism, epidemic, pandemic, unavailability of necessary utilities or raw materials, unavailability of components, war, riot, elements of nature or acts of God, regulation, ordinance, instructions of government or other public authorities, any other event that is traditionally recognized by California courts as an event of force majeure, or any other cause beyond the reasonable control of such Party, provided that the nonperforming Party is without fault in causing such failure or delay, and such failure or delay could not have been prevented by reasonable precautions and could not reasonably be circumvented by the nonperforming Party through the use of alternate sources, workaround plans, or other means.

**10.2 Obligations.** In the event of such a force majeure event, the nonperforming Party will give prompt notice to the Party to whom performance is due that describes at a reasonable level of detail the circumstances causing such failure or delay and the expected period of time the nonperformance will continue. The nonperforming Party will be excused under this Article 10 so long as such Party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay; however, notwithstanding the foregoing, such delay will not be excused under this Article 10 for more than 90 days.

## **11. Term and Termination.**

**11.1 Term.** The Agreement will become effective on the Effective Date of the Order Form first executed by Merchant and will continue in full force and effect until the expiration or termination of the last Order Form that is subject to this Merchant Agreement.

**11.2 Termination.** Affirm may terminate the Agreement, including any Order Form, without cause at any time by giving Merchant notice. Either Party may terminate the Agreement for a material breach that is not cured within 30 days after notice by the other Party or immediately upon notice of termination in the event of a material breach that by its nature cannot be remedied within 30 days. Either Party may terminate the Agreement immediately if the other Party (a) terminates its business operations; (b) becomes insolvent; (c) suffers the appointment of a receiver or makes an assignment for the benefit of a creditor; or (d) enters into any voluntary or involuntary bankruptcy proceedings. In addition, Affirm may terminate the Agreement immediately if (i) Affirm discovers that Merchant misrepresented, omitted, or falsified any information or documentation provided to Affirm; (ii) in Affirm’s reasonable discretion, Merchant engages in conduct that could damage or disparage the reputation or goodwill of Affirm, its personnel, or the Services or otherwise harms or causes a loss of business or

revenue to Affirm; (iii) Merchant violates any Applicable Law; or (iv) as otherwise provided in the Agreement. Any termination by Affirm in accordance with the Agreement will be without cost or penalty.

**11.3 Effect of Termination.** If this Merchant Agreement is terminated for any reason, any Order Form then in effect will automatically be terminated as of the date this Merchant Agreement is terminated, unless otherwise agreed upon by the Parties.

**11.4 Obligations upon Termination.** Termination will not release either Party from financial obligations owed to the other Party for services delivered or payments owed for Services delivered prior to or after termination of this Merchant Agreement (or applicable Order Form). The Parties will cooperate to complete all outstanding obligations to Customers related to the Services. Upon termination of the Agreement:

(a) All authorizations and licenses granted by either Party will immediately terminate, and all rights will revert to the owner, provided that Affirm may continue to use Merchant Marks to the extent reasonably necessary to complete all outstanding obligations to Customers related to the Services. Merchant will immediately cease to represent itself as an Affirm partner and cease its use of any of the Affirm Marks.

(b) Upon request, and except as required by Applicable Law or, with respect to Affirm, as required to maintain or retain for servicing Customers, each Party will immediately destroy or return to the requesting Party, and upon request, certify such destruction of, all of the requesting Party's Confidential Information, including materials derived from such Confidential Information.

## **12. Miscellaneous.**

**12.1 Notices, Acceptances and Approvals.** All notices, acceptances, approvals, and other communications provided pursuant to the Agreement will be in writing, which may be provided electronically, and deemed duly given when: (a) sent via electronic mail by Merchant to the electronic mail address set forth in the Affirm Service Terms, (b) sent via electronic mail by Affirm to the electronic mail address submitted by Merchant on the most current Order Form, or (c) captured in the Merchant Portal or through other electronic means (e.g., "click-to-accept" radio buttons). Notices will be deemed received one business day after being sent or captured in accordance with the foregoing.

**12.2 Applicable Law.** Merchant will comply with, and will offer the Services in a manner that complies with, all applicable requests by governmental authority, court orders, laws, regulations, codes, rules and guidelines imposed by law, any competent government authority, governing body or regulator in each country and jurisdiction (collectively, "Applicable Law") applicable to Merchant's business, the marketing and offering of the Services, and Merchant's use of Affirm IP. Affirm will comply with Applicable Law applicable to its provision of the Services under this Agreement.

### **12.3 Other Remedies.**

(a) In addition to and without limiting any other remedies that Affirm may have under the Agreement, Affirm may suspend the Services, immediately or from such other date as determined by Affirm, upon notice to Merchant, and may suspend Payouts in the event that: (i) Merchant breaches, or Affirm reasonably suspects that Merchant has breached, any provision of the Agreement; (ii) Merchant undergoes a change of ownership or control and Affirm is unable to assess such new ownership or Affirm does not approve such new ownership; (iii) Merchant is involved in excessive Customer Disputes or chargebacks; (iv) Affirm reasonably determines that such suspension is necessary to comply with Applicable Law; (v) there are any outstanding Past Due Amounts payable under the Agreement; (vi) a Lien has been created, incurred, assumed, or otherwise suffered to exist upon any Merchant Product that is the subject of a transaction between Merchant and a Customer; (vii) Affirm has a reasonable suspicion of fraudulent transactions or other suspicious activity related to the Services; (viii) any Merchant Channel undergoes a change in ownership or control; (ix) as applicable, Affirm, its affiliate or its

bank partner is not authorized by Merchant's bank to debit the applicable Bank Account; or (x) if Affirm, its affiliate or its bank partner is unable to disburse Payouts to Merchant's Bank Account.

(b) Affirm may continue any suspension until: (i) Merchant has rectified Merchant's breach of the Agreement or has proven that Merchant did not breach the Agreement, in either case, to Affirm's reasonable satisfaction; (ii) Affirm has assessed and approved, in Affirm's sole discretion, Merchant's new ownership; (iii) Affirm determines, in its reasonable discretion, that Merchant is no longer involved in excessive Customer Disputes and that resuming the Services will not result in excessive Customer Disputes; (iv) Affirm, in its sole discretion, determines that suspension is no longer necessary to comply with Applicable Law; (v) Merchant has paid all Past Due Amounts; and (vi) Affirm no longer has a basis for reasonably suspecting fraudulent transactions or other suspicious activity related to the Services. Affirm will not be liable for any damages arising in connection with its suspension of the Services.

**12.4 Independent Contractors.** The Parties are independent contractors. Nothing in the Agreement will be construed to create a joint venture, partnership, franchise, or agency relationship between the Parties. Neither Party has the authority, without the other Party's approval, to bind or commit the other Party in any capacity.

**12.5 Assignment.** Neither Party may assign all or part of the Agreement without the prior consent of the other Party; provided, however, that such consent will not be required in the case of an assignment in connection with the sale or transfer of all or substantially all the Party's assets; provided, further, that Affirm may assign the Agreement (whether by operation of law, merger or other combination) to an affiliate or subsidiary. Following any assignment permitted hereunder, the assignee will have the same rights and obligations as the assignor and will agree in writing to be bound by the terms and conditions of the Agreement. Merchant must promptly notify Affirm if Merchant undergoes a change of ownership or control.

**12.6 No Third-Party Beneficiaries.** Except as expressly set forth in this Section 12.6 or the applicable Affirm Service Terms with respect to any affiliates or subsidiaries of Affirm, the Agreement is for the benefit of, and may be enforced only by, Merchant and Affirm and their respective successors and permitted transferees and assignees, and is not for the benefit of, and may not be enforced by, any third party.

**12.7 Further Assurances.** Each Party will, upon the request of the other Party, promptly execute and deliver such documents and perform such acts as may be necessary to give full effect to the terms of the Agreement.

**12.8 Interpretation.** For purposes of the Agreement, (a) the words "include," "includes" and "including" will be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to the Agreement as a whole. Where agreement, approval, authorization, acceptance, consent, or similar action by either Party is required under the Agreement, such action will be performed in accordance with Section 12.1 and, except where expressly provided as being in the discretion of a Party, will not be unreasonably delayed or withheld. The headings in the Agreement are for reference only and will not affect the interpretation of the Agreement. The Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. Unless otherwise specified, "days" as used herein refers to calendar days.

**12.9 Waiver.** The failure of any Party to enforce any of the terms and conditions of the Agreement will not constitute a waiver of that Party's right thereafter to enforce each and every term and condition of the Agreement. Any single or partial exercise of any right hereunder will not preclude further exercise of the same right or the exercise of any other right hereunder by either Party. The waiver by any Party of any default or breach of the Agreement will not constitute a waiver of any other default or breach.



**12.10 Entire Agreement.** The Agreement (and any schedules, exhibits, annexes or similar agreements attached or referenced herein and therein), including the Affirm Service Terms and Order Forms (and any attachments or references therein), constitute the entire understanding and contract between the Parties and supersedes all prior agreements (including any prior nondisclosure agreements entered into between the Parties), understandings, arrangements, commitments, or representations, oral or written, between the Parties with respect to the subject matter hereof. Unless otherwise stated in the Agreement with respect to a specific provision, any conflicts between provisions in the Agreement will be resolved in accordance with the following descending order of precedence: the provisions of the Affirm Service Terms, the provisions of any materials referenced in the Affirm Service Terms, the provisions of this Merchant Agreement, and the provisions of the applicable Order Form. The Agreement may be executed in two or more counterparts, each of which will be an original instrument, but all of which will constitute one and the same agreement.

**12.11 Amendments and Severability.** Affirm may amend the Agreement by giving Merchant no less than 30 days' notice prior to the effective date of the proposed change. If Merchant does not want to continue receiving the Services as a result of any such amendment, Merchant may terminate the Agreement by providing Affirm notice of such termination no less than 10 days prior to the effective date of the applicable amendment. Merchant will be deemed to have accepted any amendment notified to Merchant by Affirm on the earlier of (a) Merchant's acceptance of the amendment, or (b) the effective date of the amendment (provided the Agreement has not been terminated before the effective date of the amendment). If any provision of the Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of the Agreement will remain in full force and effect, and to the extent permitted and possible, the invalid or unenforceable term will be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

**12.12 Survival.** Termination of the Agreement will not release either Party from any payment incurred prior to or after termination of the Agreement, including Fees, refunds, or other amounts payable to Affirm with respect to Successful Transactions, or other obligations owed to the other or affect any rights or liabilities of either Party with respect to any breach of the Agreement. Articles 2, 5, 6, 7, 8, 9, 11 and 12, as well as any other provision of the Agreement that contemplates performance or compliance subsequent to termination or expiration of the Agreement and those sections that survive in accordance with the terms of the Affirm Policies, will survive termination of the Agreement until all such obligations are completed; provided that with respect to Article 5, such survival will expire on the third anniversary of the effective date of the termination or expiration of the Agreement.