



United States Merchant Healthcare Service Terms

Last Updated: May 20, 2021

This 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 Products that include Healthcare Services (as set forth in Exhibit 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 Merchant Agreement, Order Form or other documents governing Merchant's use of the Services. In the event of any inconsistency, conflict or ambiguity as to the rights and obligations of the Parties under this Healthcare Service Terms, the terms of this Healthcare Service Terms will control and supersede any such inconsistency, conflict or ambiguity.

Affirm may amend the Healthcare Service Terms from time to time in accordance with the Merchant Agreement.

Article I. General Policies and Service Terms

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

Section I.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" will 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 I.02 Data Management and Compliance. Merchant agrees not to 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. No sharing of Customer data will involve access 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 I.03 Merchant Indemnification. In addition to 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; (c) any transaction, contract, understanding, promise, representation or any other relationship, actual, asserted or alleged between Merchant and any third party, including Customer; or (e) any data security breaches of Merchant involving information of Customers who purchased Healthcare Services through the Services.

Section I.04 Termination. In addition to the rights set forth in the Merchant Agreement, Affirm may terminate the Agreement immediately if Merchant violates any Applicable Law or as otherwise provided in the Agreement. Any termination by Affirm in accordance with the Agreement will be without cost or penalty to Affirm.

Article II. Service Specific Policies and Service Terms

Section II.01 To the extent a Merchant provides Healthcare Services, the provisions of this Article II will apply:

(a) **Changes in Healthcare Services.** After a Customer books Healthcare Services with Merchant, and Merchant determines in good faith that the Healthcare Services need to be modified (each a "Healthcare Service Change"), Merchant will be responsible for any such Healthcare Service Change. In the event a Healthcare Service Change results in a modification to the cost of Healthcare Services financed through the Services, Merchant will submit the Healthcare Service Change into its sales and online booking platform, and Merchant will promptly notify Affirm in writing (electronic notification acceptable) to cancel the applicable Affirm Product issued to the Customer for those Healthcare Services requiring modification. The Customer will be required to apply for a new Affirm Product to finance the modified Healthcare Services. Merchant will send or otherwise direct to Affirm any questions that Merchant receives from Customers relating to the Services.

(b) **Provision of Healthcare Services; Disbursement.** Merchant hereby acknowledges and agrees that Payouts may not be made until Merchant confirms that (i) provision of the Healthcare Services to the applicable Customer is appropriate; and (ii) such provision of Healthcare Services to the applicable Customer will occur at least in part in that same visit in which the Merchant confirmed appropriateness of such Healthcare Services pursuant to this Section 2.02. Merchant hereby represents and warrants to Affirm that all Affirm Products offered to Customers using the Services will cover the cost of the applicable Healthcare Services in full and 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 Products exceed the gross amount of a Merchant's sale of goods and/or services to Customer or loan amount permitted by Applicable Law.

(c) **Additional Merchant Service Terms and Conditions.** In connection with offering the Services to Customers and potential Customers, in addition to the terms and conditions set forth on a Merchant Site and elsewhere in this Agreement, Merchant will:

(i) not make any assertion that a Customer owes it any amount for any Successful Transaction, including but not limited to asserting the existence of a mechanic's lien in association therewith;

(ii) 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;

(iii) 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 2.03(c);

(iv) not provide Healthcare Services outside of the Locations;

(v) 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; or

(vi) not send Affirm any medical information belonging to Customers that are subject to HIPAA in connection with any Customer Disputes.

(d) **Healthcare Laws.** In addition to the Merchant Agreement, with respect to Merchant and any Healthcare Provider, “Applicable Laws” shall include any Applicable Laws related to (i) the operation of the businesses of Merchant, 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 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) and (4) patient credit laws regulating the practices of medical providers arranging for credit transactions, and (ii) Merchant’s participation in the Services.

(e) **Healthcare Representations and Warranties.** In addition to the Merchant Agreement, Merchant represents and warrants to Affirm that: (i) it has all 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; (ii) it will maintain insurance coverage in full force during the Term as described in Section 2.2(a) of this Healthcare Policy; (iii) 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; (iv) the Agreement will not in any way be construed or applied to impact the independent and professional judgment of Merchant; (f) all forms of agreements Merchant provides to Customers are in compliance with Applicable Law; and (f) it will treat a Customer who has approved a disbursement of an loan through the Services (or a Successful Transaction) as if such Customer had paid Merchant in full using cash.

(f) **Disputes between Customer and Merchant.** Notwithstanding anything set forth in the Merchant Agreement, Merchant will not send Affirm any protected health information that is subject to HIPAA belonging to Customers. Any such 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 Policy and Service Terms.

(g) **Other Remedies.** In addition to the Merchant Agreement, Affirm may suspend the Services at certain Locations in Affirm’s sole discretion.

Section II.02 Dental Services and Medical Aesthetic Services. To the extent a Merchant provides Dental Services or Medical Aesthetic Services (as set forth in Exhibit A hereto), the provisions of this Section 2.02 will apply:

(a) **Insurance.** 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 non-contributory 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.

Article III. Platform Specific Policies and Services Terms.

To the extent a Merchant is a Platform Merchant, the provisions of this Article III will apply.

Section III.01 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.

Section III.02 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 a 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. Subject to Merchant's refund policy posted in the Channels, Merchant will ensure that a Customer can make a change to a scheduled appointment with the selected Healthcare Provider through the Channels if so requested by Customer without having to pay any additional Booking Fee. Any compensation paid by or to (by 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.

Section III.03 Changes in Healthcare Services. After a Customer books Healthcare Services through a Channel, and a Healthcare Provider determines in good faith that the Healthcare Services need to be modified (each a "Healthcare Service Change"), Merchant will be responsible for coordinating with Healthcare Providers with respect to any such Healthcare Service Change. In the event a Healthcare Service Change results in a modification to the cost of Healthcare Services financed through the Services, Merchant will require the applicable Healthcare Provider to submit the Healthcare Service Change into Merchant's system. Upon Merchant's receipt of notification of a Healthcare Service Change from a Healthcare Provider, Merchant will promptly notify Affirm in writing to cancel the applicable original loan issued to the Customer for those Healthcare Services requiring modification. The Customer will be required to apply for a new Affirm Product to pay for the modified Healthcare Services. Merchant will send or otherwise direct to Affirm any questions that Merchant or a Healthcare Provider receives from Customers relating to the Services.

Section III.04 Healthcare Laws. In addition to the Merchant Agreement, with respect to Merchant and any Healthcare Provider, "Applicable Laws" shall include any Applicable Laws 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 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) and (4) patient credit laws regulating the practices of medical providers arranging for credit transactions, and (ii) Merchant's participation in the Services. 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 III.05 Merchant Responsibilities Related to Healthcare Providers. In addition to the Merchant Agreement:

(a) 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.

(b) The Parties hereby acknowledge and agree that each of Affirm and Merchant has the right to terminate any Healthcare Provider accepted for 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 III.06 Loan Amounts and Disbursement. Merchant hereby acknowledges and agrees that all amounts disbursed to Merchant through the Services on behalf of Customers are limited to single-advance loans and such disbursements may not be made until the applicable Healthcare Provider confirms that (i) provision of the Healthcare Services to the applicable Customer is appropriate; and (ii) such provision of Healthcare Services to the applicable Customer will occur at least in part in that same visit in which the Healthcare Provider confirmed appropriateness of such Healthcare Services pursuant to this Section 3.06. Merchant hereby represents and warrants to Affirm that all loans made to Customers through the Channels through the Services will cover the cost of the applicable Healthcare Services in full and will not be used as a partial payment in conjunction with any insurance funds. In no event will any loan amounts offered through the Services exceed the gross amount of a Healthcare Provider's sale of goods and/or services to Customer or loan amount permitted by Applicable Law.

Section III.07 Disputes between Customer and Merchant. Notwithstanding anything set forth in the Merchant Agreement, Merchant will not send Affirm, and will prohibit Healthcare Providers from sending Affirm, any health information belonging to Customers that are subject to HIPAA). Any such unsolicited protected health information sent to Affirm by either Merchant, a Healthcare Provider or a Customer will be disregarded and/or destroyed 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 Policy and Service Terms.

Section III.08 Healthcare Representations and Warranties. In addition to the representations and warranties in the Agreement:

(a) Merchant (itself and, as applicable, on behalf of each Healthcare Provider) represents and warrants to Affirm that it has all and will maintain (and cause all Healthcare Providers to maintain, as applicable) all necessary licenses, permits, 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 and operation or as proposed to be conducted;

(b) Merchant (itself, and, as applicable, on behalf of each Healthcare Provider) represents and warrants that (i) it is duly formed, validly existing, and in good standing under the laws of its state of incorporation or formation; (ii) Healthcare Provider 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 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 Healthcare Provider's ability to fulfill its obligations under the Merchant Agreement; 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 such Healthcare Provider 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; and

(c) Merchant further represents and warrants to Affirm that Merchant will require each Healthcare Provider to treat a Customer who has approved disbursement of a loan through the Services (or where disbursement has occurred) as if such Customer had paid such Healthcare Provider in full using cash.

Section III.09 Confidential Information. “Confidential Information” will also include any Confidential Information exchanged by Healthcare Provider with Affirm.

Section III.10 Books and Records. In addition to the Affirm Policies and 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.

EXHIBIT A
Healthcare Services

The term “Healthcare Services” shall mean any service: (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. 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:

- Dental exams;
- Braces;
- clear aligner straightening;
- veneers;
- dental implants;
- teeth whitening;
- dental fillings;
- chipped teeth (bonding);
- crowns;
- root canals;
- bridges; and
- extractions.

2. **Medical Aesthetic Services**. The term “Medical Aesthetic Services” shall include professional healthcare services related to:

- Microneedling;
- laser facial;
- Lumecca IPL Photofacial;
- HydraFacial;
- VI Peel;
- Botox;
- Dermal Fillers;
- Kybella;
- Keravive;
- laser hair removal; and
- Emsculpt Body Toning.

3. **Wellness Services**. The term “Wellness Services” shall include:

- Weightloss and dieting programs (including coaching and education);
- nutrition services; and
- genetic testing.