

Dealer Pay Terms of Service

Last Revised: November, 2020

These Terms of Service ("**Terms**") constitute the legal agreement between you ("**you**," "**your**" or "**Customer**") and Dealer Pay, LLC ("**Dealer Pay**," "**we**," "**our**," "**us**" or "**Company**") and govern your use of Dealer Pay's products and services ("**Services**"), including those made available through our mobile applications, websites, software, hardware, and other means (collectively, "**Portal**"). The Services enable you to access certain merchant account information and other content in accordance with a separate Merchant Agreement (defined below) or other Supplemental Agreements as determined by us ("**Supplemental Agreement**").

By: (a) clicking an "Accept" or similar button, (b) checking a box captioned with acceptance language, (c) signing an Application for Dealer Pay POS ("**Dealer Pay Application**") for use of any of the Services, or (d) using the Services, you acknowledge that you have read and understand these Terms and that you agree to be bound by them. If you are using the Services on behalf of a company or other legal entity, the term "**you**" shall refer to such entity in addition to the individual user, and the individual accepting these Terms on behalf of such entity represents that he or she has authority to bind the entity to these Terms.

YOU MAY NOT USE THE PORTAL OR THE SERVICES IF YOU DO NOT AGREE TO THESE TERMS. PLEASE REVIEW THEM CAREFULLY.

1. Dealer Pay Role; Services

1.1 Dealer Pay is not a bank or payment processor. If you are approved by our designated credit card processor, our Services allow you to obtain access to payment acceptance provided by such credit card processor of any US- issued and many non-US issued credit, debit, prepaid and gift cards ("**Payment Services**") bearing the American Express Company, Discover Financial Services, Inc., Mastercard International, Inc. and Visa, Inc. (collectively, "**Networks**"). We may remove or add cards brands and type that we accept at any time without prior notice.

1.2 You will be required to enter into an agreement with an approved credit card processor to receive Payment Services from such credit card processor ("**Merchant Agreement**") and to qualify to receive the Services from Dealer Pay. The terms and conditions of your Merchant Agreement may impact your use of the Services.

1.3 The Services and password-protected portions of the Portal are available only to those entities (and the employees and authorized representatives of such entities) who have submitted an application for Payment Services through Dealer Pay and have entered into a Merchant Agreement. If you are not subject to a current Merchant Agreement, you may only visit the publicly accessible portions of the Portal. All use of the Portal and Services, including any application programming interfaces ("**APIs**") made available on the Portal, are subject to the applicable documentation and specifications which may be posted and/or updated on the Portal from time to time in our sole discretion. The Portal and Services may at times be temporarily unavailable or inaccessible due to system maintenance or technical

difficulties including those of the internet or other networks, or while your mobile device is in roaming mode.

1.4 You will restrict access to Portal passwords to those employees and agents as may be reasonably necessary consistent with the purposes of these Terms and will ensure that each such employee and agent accessing and using the Portal is aware of and otherwise complies with all applicable provisions of these Terms regarding such use and access. Dealer Pay shall be entitled to rely on any information or instructions purported to come from you by anyone having access to its passwords.

2. Data Security, Confidentiality and Security Incidents

2.1 You agree to Dealer Pay's Privacy Policy, located at www.dealerpayllc.com, which explains how we collect, use and protect the personal information you provide to us.

2.2 You authorize Dealer Pay to act on your behalf and to accept and transmit data and other information as necessary for Dealer Pay to deliver the Services and fulfill its obligations under these Terms. You acknowledge and agree that Dealer Pay will collect, retain, use, process, and transfer information and data collected from you and your customers, including but not limited to non-public, personally identifiable data, financial data, payment information and payment history, and other related data in accordance with a Supplemental Agreement, these Terms, and Dealer Pay's privacy policy. You grant to Dealer Pay a nonexclusive, perpetual, non-revocable, royalty free license to use, retain, and share any information transmitted through the Services by you for the purpose of providing the Services. This license shall survive for such period as necessary for Dealer Pay to provide the Services, comply with the law or the rules and requirements of the Networks ("**Network Rules**"), or comply with its internal guidelines and procedures. Without limiting the foregoing, and notwithstanding any other provision of these Terms, you agree that Dealer Pay may disclose information transmitted through the Services by you in the following circumstances: (a) where it is necessary to provide the Services or otherwise fulfill its obligations under these Terms; (b) to comply with government agency, court order, or other legal or administrative reporting requirements; (c) if you consent by giving us your written permission; (d) to its service providers who supply or administer the Services; (e) to prevent, investigate, or report possible illegal or fraudulent activity; or (f) as otherwise permitted by applicable law.

2.3 To the extent you use, process, or submit personally identifiable information, including without limitation cardholder data or account numbers, you agree to notify your customers how and why personally identifiable data is collected and used in accordance with applicable law and rules. You will not use, disclose, sell, or disseminate any card, cardholder, or other transaction information obtained in connection with a transaction except for purposes of completing the transaction, or to resolve chargebacks, retrievals, or similar issues involving the transaction, unless otherwise required by a court order, governmental agency request or subpoena, or applicable law. You represent and warrant that you have adopted all security measures and taken all precautions necessary to ensure that all transaction data, cardholder data, and personally identifiable data are adequately protected and that

your electronic systems (including without limitation all hardware and software used) are secure from access, breach, intrusion, or compromise by any unauthorized third parties. You further represent, warrant, and agree that (a) you will use the Services only for lawful purposes and in compliance with all applicable laws, rules, and regulations; (b) you are solely responsible for verifying the accuracy and completeness of data submitted to Dealer Pay; and (c) all information submitted using the Portal and Services are true, correct, and complete to the best of your knowledge.

2.4 In the course of using the Portal or the Services, you may be exposed to information of a confidential or proprietary nature belonging to Dealer Pay (“**Confidential Information**”), including but not limited to information regarding the Services and related technology, or information regarding Dealer Pay’s business, financial, or marketing activities. You will not disclose any such information to any third party without Dealer Pay’s prior written consent, and that you will not use such information except as expressly authorized by Dealer Pay. Internal dissemination of Confidential Information shall be limited to those employees or agents whose duties justify the need to know such information and then only on the basis of an agreement by such employees or agents of their obligation to maintain the trade secret or confidential status of such Confidential Information and to restrict the use thereof solely to the use permitted under these Terms. You shall remain responsible for the actions of your affiliates, employees, and agents, and any other person to whom Confidential Information is disclosed. Upon the termination of the Supplemental Agreement or these Terms for any reason, you shall promptly return to Dealer Pay any and all copies of Confidential Information in your possession or the possession of your affiliates, employees, and agents.

2.5 We have implemented technical and organizational measures designed to secure your personal information from accidental loss and from unauthorized access, use, alteration, or disclosure. However, Dealer Pay will have no obligation with regard to the transport of data and will have no liability with respect to the unauthorized interception or modification of data or the access or compromise of data by third parties, including without limitation with respect to illegal or fraudulent access, and you agree that you assume all such risk and liability. In the event that you or any of your vendors’ systems are breached or an unauthorized person has gained access to any Confidential Information, Log-In Credentials (defined below), or any personal data or transaction data, you shall promptly: (a) notify Dealer Pay in writing and by email of such occurrence; (b) notify any affected parties as required under any applicable laws or industry guidelines; (c) take all actions and precautions necessary to prevent any continuous or additional breach; and (d) commence all remedial efforts and other actions required under the applicable laws, regulations, or Network Rules.

3. Disclosures and Notices

3.1 From time to time Dealer Pay may change, expand or improve the Services and/or Portal. These Terms may be amended by Dealer Pay at any time in its sole and absolute discretion. These Terms may not be amended or modified by you. If changes to these Terms are material, we will make reasonable efforts to notify you of the modified Terms in a way that we deem to be reasonable in the circumstances, by

posting the revised version on our website, communicating it to you through the Portal, by emailing it to the email address listed in your Dealer Pay account, or otherwise electronically through Dealer Pay's normal client communications channels. The revised version of the Terms will be effective as of the time it is posted, but will not apply retroactively. Your continued use of the Services after the posting of a revised version of the Terms constitutes your acceptance of such revised Terms.

3.2 All communications and notices made to Dealer Pay under these Terms shall be in writing, delivered in person or by mail courier, return receipt requested, addressed to Dealer Pay's addresses set forth on the Portal for this purpose.

4. Your License

4.1 Subject to these Terms and our receipt of all applicable fees from you, we grant you a limited, non-exclusive, revocable, non-transferable, non-sublicensable license to install and use applicable Dealer Pay software, access the Portal and applicable Dealer Pay websites ("**Dealer Pay Sites**"), to use applicable documentation and related materials delivered or made available to you in connection with the Services, and to otherwise use the Services. We may make software updates to the Services available to you, which you must install to continue using the Services. Any such software updates may be subject to additional terms made known to you at that time.

4.2 You acknowledge and agree that Dealer Pay may from time to time issue upgraded versions of the Services, and may automatically electronically upgrade the version of the Services that you are using on a computing device, or otherwise. You consent to such automatic upgrading on the computing device (or otherwise), and agree that the license granted to you under this Agreement will apply to all such upgrades. Dealer Pay may at its discretion require a minimum version of installed software to provide support for Dealer Pay operating on your computing devices or otherwise.

4.3 Dealer Pay may, without liability to you, modify or discontinue offering the Services or particular aspects thereof at any time; provided, however, that in the event we decide to discontinue offering the Services, you shall be entitled to continue use of the Services under these Terms for any portion of the term that you have prepaid.

4.4 The Portal may include access to content and information created, owned, or controlled by third parties. The Portal may also link to third parties' websites. While we may make these available to you, they are not under Dealer Pay's control, Dealer Pay has not originated the information provided by such third parties and Dealer Pay is not responsible for their content. Dealer Pay is not responsible in any way for, nor does it guaranty, the accuracy of such information or availability to you. You agree to utilize such third party information at your own risk. Some or all of the Services may be provided by an affiliate or subsidiary of Dealer Pay or a third party, and you may be subject to both these Terms and the terms of service of that third party in order to receive such Services or use or access their content, software, or websites. Accordingly, we encourage you to review the terms of use and privacy policies, if any, associated with third-party content or websites. Certain portions of the Services may utilize or include third party software that is subject to open source and/or third party license terms ("**Third Party Software**"). In such event, you may obtain any applicable license

for Third Party Software to the extent such terms are not already included herein. Your right to use such Third Party Software as part of, or in connection with, the Services is subject to and governed by the terms and conditions of the open source or third party license applicable to such Third Party Software, including, without limitation, any applicable acknowledgements, license terms and disclaimers contained therein. The disclaimer of warranty and limitation of liability provisions in these Terms will apply to all elements of the Services.

5. Copyright and Trademark Infringement

5.1 We respect the copyright and trademark rights of others and ask you to do the same. As part of the Services, Dealer Pay uses a diverse range of proprietary and authorized third party information, listings, directories, text, and user generated content, photographs, designs, graphics, images, and other material and effects available by means of the Services.

5.2 Dealer Pay and its suppliers own all rights, title, interest and other worldwide Intellectual Property Rights (defined below) in the Services and Portal. All rights not expressly granted in these Terms are exclusively reserved to Dealer Pay.

5.3 For the purposes of these Terms, “**Intellectual Property Rights**” means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights, and other intellectual property rights that may exist now or come into existence in the future, and all of their applications, registrations, renewals and extensions, under the laws of any state, country, territory or other jurisdiction.

5.4 You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying any materials associated with the Services. Our stylized name and other related graphics, logos, service marks and trade names used on or in connection with the Services are part of our Intellectual Property Rights and may not be used without permission in connection with any third- party products or services. Other trademarks, service marks and trade names that may appear on or in the materials associated with the Services are the property of their respective owners.

5.5 Dealer Pay owns the Intellectual Property Rights embodied in or otherwise related to the Services and the Portal. You shall not take any action which may in any way interfere with or violate our rights in the Services or Portal, the materials delivered or made available to you in connection with the Services through the Portal or otherwise, or our Intellectual Property Rights, and you will uphold our rights in and to our Intellectual Property Rights.

5.6 You may submit comments or ideas about the Services (“**Ideas**”). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited, and without restriction, that it will not place us under any fiduciary, confidentiality or other obligation, and that we are free to use the Idea without any additional compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone.

6. Use of Services; Add-on Services

6.1 You must register and create an administrator account ("**Account**") within the Portal in order to use the Services. Information gathered through the registration process and information related to the Account will be subject to these Terms and our Privacy Policy. To the extent applicable, when utilizing the Services or using any Accounts, the you are required to use the security procedures currently or hereafter maintained by us to confirm that only authorized End Users (defined below) have access to the Services. You and your End Users are prohibited from utilizing alter-egos or other disguised identities when utilizing the Services.

6.2 You will receive login credentials that will allow access to the Portal. You are responsible for providing, administering and maintaining usernames and passwords ("**Log-In Credentials**") for all of your authorized employees and agents "**End User**") to access the Services through the Portal. Each End User must have a valid username with passwords for the purpose of accessing the Portal. You and your End Users must keep all Log-In Credentials confidential. Log-In Credentials are the property of Dealer Pay. Log-In Credentials may be used only by the assigned End User and may not be shared or transferred by End Users without your consent and control. You acknowledge and agree that you are exclusively responsible for ensuring that any person permitted to access an End User will do so only on your behalf (not, for example, for the person's own purposes or the benefit of third parties) and that such person fully complies with this Agreement. You are fully responsible for managing access to, and security and confidentiality of, such End User. You agree to notify Dealer Pay immediately if there has been an unauthorized use of Log-In Credentials and/or any access numbers, keys and passcodes or any other breach of security.

6.3 You are responsible for deactivating or deleting End Users upon termination of their employment or engagement with you, a change of an End User's responsibilities such that they no longer include assisting with payment processing or specific functions of payment processing, or upon your knowledge of an End User's breach of any of the provisions of the Terms. Upon its receipt of any such notice, Dealer Pay may deactivate such End User's access to the Services.

6.4 If your access to the Portal is terminated, the Log-In Credentials shall be rescinded, you shall not be permitted to use the Portal, and all rights, licenses and sublicenses granted with respect to the Portal, whether real or implied, shall be terminated.

6.5 Carrier rates for phone, data and text messaging may apply and you are responsible for any such charges with your carrier.

6.6 [Dealer Pay may offer certain various add-on services ("**Add-on Services**") now or in the future which you may elect to receive as part of the Services. If the pricing of any Add-on Services are not set forth on Dealer Pay Application form, such Add-on Services may be subject to separate pricing schedules which will be provided in connection with your registration for such Add-on Services. The Add-on Services are described on the Dealer Pay website and in other documentation that Dealer Pay may publish or provide to you. If you elect the receive any Add-on Services, such Add-on

Services are subject to these Terms as well as the following terms for each Add-on Service, respectively:

- a. **SAFE:** If you elect to receive the Add-on Service SAFE ("**SAFE Service**"), you will be permitted to store your customer's credit card credentials in the form of a token for future use. Your use of your customer's stored credit card credential must comply with the Network Rules and your Merchant Agreement. You acknowledge and agree that you will not receive the account number with any of your customer's account numbers associated with any token provided in connection with the SAFE services. You shall only use the stored credential as authorized by the cardholder in writing. You shall maintain a copy of such authorization in accordance with the time requirements included in the Network Rules.
- b. **Recurring Payments:**
- c. **Charity Round-UP:**
- d. **Pay Share:** If you elect to participate in the Pay Share program ("**Pay Share**"), the additional terms and conditions below will apply.
- e. **Communications:**
- f. **Analytics:]**

6.7 Pay Share Terms and Conditions. Pay Share allows you to pass through credit card processing fees to the consumer. If you elect to participate in the Pay Share program, you agree to the following terms and conditions:

- a. Upon receiving approval from Dealer Pay to enroll in the Pay Share program, you must register your participation in the program with Visa and Mastercard by filling out and submitting the merchant surcharge notification forms available at <https://usa.visa.com/Forms/merchant-surcharge-notification-form.html> and <https://www.mastercard.us/en-us/surcharge-disclosure-webform.html>. There is a thirty-day waiting period after notifying the card brands before you may begin charging the Pay Share amounts to your customers.
- b. Pay Share is available in the following rates: 1%, 2%, 3%, or 3.99%. You may choose a single Pay Share rate or customize the Pay Share rate by department, dollar threshold, or whether the transaction is a card-present or card-not-present transaction.
- c. The Pay Share program is only for customers paying with a credit card. You may not charge the Pay Share amount for debit cards, regardless whether the cardholder using a debit card selects the "credit" or "debit" button on the payment terminal if the option is available.
- d. If you participate in the Pay Share program, you should post the appropriate signage at the point of entry to your business **and** at the point of sale. The method for presenting the required disclosures depends on the type of

transaction:

- i. **In-person transactions:** The point-of-entry disclosure must notify customers that a surcharge will be charged on credit card payments. The point-of-sale disclosure must specify the Pay Share rate in effect with the following text: "We impose a surcharge percentage on credit cards." The point-of-entry disclosure must be in a minimum 32-point Arial font, and the point-of-sale disclosure must be in a minimum 16-point Arial font, but in all cases the text cannot be smaller or less prominent than surrounding text.
 - ii. **Online transactions:** The customer must be notified of the Pay Share surcharge on the first page that references credit card brands accepted. In addition, the Pay Share rate must be displayed on the checkout page, before the user is charged, with the following text: "We impose a surcharge percentage on credit cards." There is no surcharge on debit cards." The customer must be provided an opportunity to cancel the transaction after the Pay Share disclosure is displayed but before the payment is submitted. These online notices must be presented in a minimum 10-point Arial font, but in no event smaller or less prominent than surrounding text.
 - iii. **Telephone Orders:** Verbal notice of the Pay Share amount and confirmation from the cardholder are suggested before submitting the transaction. In addition, if you publish a catalog for telephone orders, the first page of the catalog that references credit card brands accepted must disclose the Pay Share surcharge in a minimum 8-point Arial font, in no event smaller or less prominent than surrounding text.
- e. The transaction details and Pay Share amount will be itemized on the customer's transaction receipt.
 - f. You may change the Pay Share criteria at any time with a written request from a dealership administrator and Dealer Pay approval. A waiting period may be required before the changes go into effect.
 - g. Currently, Pay Share is not available in Colorado, Connecticut, Kansas, Maine, Massachusetts, or Oklahoma.
 - h. The Pay Share program, including in which states the program is available or prohibited, is subject to change with or without notice, based on changes in law or card brand rules.

7. Restrictions

- a. You may not, nor may you permit any third party, directly or indirectly, to:
 - i. access or monitor any material or information on any other device using any manual process or robot, spider, scraper, or other automated means;
 - ii. perform or attempt to perform any actions that would

interfere with the proper working of the Services, prevent access to or use of the Services or Portal by our other customers, or impose an unreasonable or disproportionately large load on our infrastructure;

- iii. copy, reproduce, alter, modify, create derivative works, publicly display, republish, upload, post, transmit, resell or distribute in any way material, information or Services from Dealer Pay;
 - iv. (i) decompile, reverse engineer, disassemble, attempt to derive the source code of, or decrypt the Services, the Portal, or the Dealer Pay Sites; (ii) make any modification, adaptation, improvement, enhancement, translation or derivative work from the Services or Portal; (iii) violate any applicable laws, rules or regulations in connection with your access to or use of the Services or Portal; (iv) remove, alter or obscure any proprietary notice (including any notice of copyright or trademark) of Dealer Pay or its affiliates, partners, suppliers or the licensors of the Services or Portal or otherwise obscure or modify the any manner in which the Services or Portal are displayed; (v) use the Services or Portal to attempt to interfere with the proper functioning and display of the proper operation and usage of the Services, the Portal, or the Dealer Pay Sites by any other authorized users and third parties; or (vi) use any proprietary information or interfaces of the Services, the Portal or other intellectual property for any reason.
 - v. use the Services or Portal for any illegal activity or goods or in any way that exposes you, other Dealer Pay users, our partners, or Dealer Pay to harm; or otherwise use the Services except as expressly allowed under these Terms and applicable additional terms; or
 - vi. Use the Dealer Pay Site, Portal or Services for the benefit of third parties or to compete with Dealer Pay; or distribute to third parties or publically display the Portal contents or use any portion thereof for commercial purposes, except as expressly authorized.
- b. If we reasonably suspect that your Account or any End User associated with your Account has been used for an unauthorized, illegal, or criminal purpose, you give us express authorization to share information about you, your Account, your End Users and any of your and your End Users' transactions with applicable law enforcement officials.
- j. Compatible Devices**
- a. Dealer Pay does not warrant that the Services will be compatible or interoperable with your computer, computing hardware, mobile device or any other piece of hardware, software, equipment or device

installed on or used in connection with the Services. Your use of the Services may be subject to the terms of your agreements with your mobile device manufacturer or your carrier. Dealer Pay and its affiliates, partners, suppliers and licensors shall have no liability to you for any losses suffered resulting from or arising in connection with compatibility or interoperability problems.

k. Third Party Products

a. All third party hardware and other products included or sold with the Services are provided solely according to the warranty and other terms specified by the manufacturer, who is solely responsible for service and support for its product. For service, support, or warranty assistance, you should contact the manufacturer directly. DEALER PAY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH THIRD PARTY PRODUCTS, AND EXPRESSLY DISCLAIMS ANY WARRANTY OR CONDITION OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

l. Your Content

a. The Services may include functionality for uploading or providing photos, logos, products, loyalty programs, promotions, advertisements and related materials or information (“**Content**”).

b. You grant us and our subsidiaries, affiliates, and successors a worldwide, non-exclusive, royalty-free, fully-paid, transferable, and sub-licensable right to use, reproduce, modify, adapt, publish, prepare derivative works of, distribute, publicly perform, and publicly display your Content throughout the world in any media in order to provide and promote the Services. You retain all rights in your Content, subject to the rights you granted to us in these Terms. You may modify or remove your Content via your Account or by terminating your Account, but your Content may persist in historical, archived or cached copies and versions thereof available on or through the Services.

c. You will not upload or provide Content or otherwise post, transmit, distribute, or disseminate through the Services any material that: (a) is false, misleading, unlawful, obscene, indecent, lewd, pornographic, defamatory, libelous, threatening, harassing, hateful, abusive, or inflammatory; (b) encourages conduct that would be considered a criminal offense or gives rise to civil liability; (c) breaches any duty toward or rights of any person or entity, including rights of publicity, privacy or trademark; (d) contains corrupted data or any other harmful, disruptive, or destructive files; (e) advertises products or services competitive with Dealer Pay’s or its partners’ products and services, as determined by us in our sole discretion; or (f) in our sole

judgment, is objectionable, restricts or inhibits any person or entity from using or enjoying any portion of the Services, or which may expose Dealer Pay, its affiliates or its customers to harm or liability of any nature.

d. Although we have no obligation to monitor any Content, we have absolute discretion to remove Content at any time and for any reason without notice. You understand that by using the Services, you may be exposed to Content that is offensive, indecent, or objectionable. We take no responsibility and assume no liability for any Content, including any loss or damage to any of your Content.

e. Dealer Pay may disclose information about your use of Services to satisfy any law, regulation, government agency request, court order, search warrant, subpoena or other legal process. Services are encrypted, although it is solely your responsibility to ensure that use of the Services complies with your internal IT and security policies and procedures including any applicable Federal and State requirements.

f. If you choose "Allow" to allow the Services to use current location, then, you give Dealer Pay and its vendors permission to use, disclose, and display the current location of your wireless device in the provision of the Service, including geo-tagging your messages and content. Dealer Pay is not responsible for your location information should you choose to publicly disclose it through the use of the Services.

m. Communications

a. You consent to accept and receive communications from us, including e-mail, text messages, calls, and push notifications through your Account. These communications will deliver messages, including for the purposes of secondary authentication, receipts, reminders and other notifications.

n. Payment Terms and Fees

a. Dealer Pay may provide you with the ability to pay fees or purchase optional Services through the Portal. Dealer Pay accepts payments by credit/debit card and automated clearing house (**ACH**) payments, and the Portal is compliant with the data security standards promulgated by the PCI Security Standards Council. By submitting your payment information (whether on a one-time or recurring basis) you authorize Dealer Pay and its affiliates, successors, or assigns to charge your credit card or initiate ACH debits for all fees and other amounts owed to Dealer Pay or its affiliates, successor or assigns in accordance with the terms included on the Dealer Pay Application, if applicable. You will be subject to

additional fees and/or penalties for late payments, returned checks, or other declined payments due to insufficient funds as indicated in the Portal. All fees listed are exclusive of taxes unless otherwise noted, and you agree to be responsible and hold Dealer Pay harmless for any taxes levied by applicable governmental authorities (including without limitation sales and use taxes and value-added taxes, where applicable).

b. You will provide Dealer Pay with valid and updated banking or credit card information, with a valid approved Merchant Agreement, reasonably acceptable to Dealer Pay. You are responsible for providing complete and accurate billing and contact information to us and notifying us of any changes to such information.

c. Dealer Pay may require automatic collection, via an ACH debit, on the first of each month pursuant to the payment authorization included in the Dealer Pay Application.

d. Installation and/or Equipment/Hardware fees, may be collected separately by invoice.

e. You agree to pay Dealer Pay all amounts due including any fees, reversals, invalidated payments, chargebacks, refunds or other amounts that you owe to Dealer Pay under the Merchant Agreement, Supplemental Agreements, and affiliated agreements.

f. If any invoiced amount is not received by Dealer Pay by the due date, then without limiting our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) we may condition future access to Services on receipt of payment.

g. If any amount owing by you under this or any other agreement for Services is thirty (30) or more days overdue (or ten (10) or more days overdue in the case of amounts you have authorized Dealer Pay to charge to your bank account or credit card on file), we may, without limiting our other rights and remedies, accelerate your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full.

o. Term and Termination

a. Except as otherwise provided herein, the term of these Terms with respect to the Payment Services and password-protected portions of the Portal commence when the Merchant Agreement is signed and shall continue until the Merchant Agreement expires or is terminated in accordance with its terms. Notwithstanding the foregoing, these Terms apply at any time you access or use the Services, even if your Merchant Agreement has expired or terminated.

b. Dealer Pay may terminate these Terms, or suspend or

terminate your access to Services or the Portal, at any time for any reason. We will take reasonable steps to notify you of termination by email or at the next time you attempt to access your Account.

c. Notwithstanding any termination of these Terms, you remain responsible for any and all fees and charges due and incurred for the month during which the termination occurs and will not be entitled to any partial month credits or refunds. Back end merchant processing for credit/debit cards and checks/ACH, may have different cancellation requirements and/or fees, and therefore such fees may continue to accrue and shall be paid by you.

p. *Effect of Termination*

a. If your Account is terminated or suspended for any reason: (a) the license and any other rights granted under these Terms will end, (b) we may (but have no obligation to) delete your information and account data stored on our servers, and (c) we will not be liable to you or any third party for compensation, reimbursement, or damages for any termination or suspension of the Services, or for deletion of your information or Account data.

b. In addition, if we terminate your use of the Service for cause (including but not limited to a breach of these Terms or the Merchant Agreement), if you have elected Services for a fixed number of months or years, you shall pay to Dealer Pay an amount equal to fifty percent (50%) of your average monthly Service Charge for each remaining months of the term election as liquidated damages.

q. *Indemnity*

a. You will indemnify, defend, and hold us and our subsidiaries (and our respective employees, directors, agents, affiliates and representatives) harmless from and against any and all claims, costs, losses, damages, judgments, tax assessments, penalties, interest, and expenses (including without limitation reasonable attorneys' fees) arising out of or related to any claim, action, audit, investigation, inquiry, or other proceeding instituted by a person or entity that arises out of or relates to: (a) any actual or alleged breach of your representations, warranties, or obligations set forth in these Terms; (b) your wrongful or improper use of the Services or Portal; (c) your violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights; (d) your violation of any law, rule or regulation of the United States or any other country; (e) content you submit or send using the Portal; (f) your content or data; and (g) any other party's access and/or use of the Services with your Log-In Credentials, or the Log-In Credentials associates with your End Users.

r. Severability

a. If any provision of these Terms is held by a court of competent jurisdiction to be contrary to the law or public policy, the remaining provisions of the Terms remain in full force and effect.

s. Disclaimer of Warranties

a. DEALER PAY DISCLAIMS ANY AND ALL RESPONSIBILITY OR LIABILITY FOR THE ACCURACY, CONTENT, COMPLETENESS, LEGALITY, AND LICENSURE OF THIRD PARTY SOFTWARE, OR THE RELIABILITY, OR OPERABILITY OR AVAILABILITY OF INFORMATION OR THE MATERIAL ACCESSIBLE BY USE OF THE SERVICES.

b. NO ADVICE OR INFORMATION PROVIDED BY DEALER PAY, ITS AFFILIATES, OR THEIR RESPECTIVE EMPLOYEES AND AGENTS SHALL CREATE ANY WARRANTY.

c. TO MAXIMUM EXTENT PERMITTED BY LAW, THE SERVICES AND PORTAL AND PROVIDED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS, WITHOUT WARRANTY OF ANY KIND. DEALER PAY MAKES NO WARRANTY, REPRESENTATION OR CONDITION THAT: (A) THE SERVICES WILL MEET YOUR REQUIREMENTS; (B) YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (C) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE; OR (D) ANY ERRORS IN THE SERVICES WILL BE CORRECTED. THE SERVICES MAY BE SUBJECT TO DELAYS, CANCELLATIONS AND OTHER DISRUPTIONS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM DEALER PAY OR THROUGH THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. DEALER PAY EXPRESSLY DISCLAIMS ANY WARRANTY OR CONDITION OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

d. THE SERVICES MAY BE SUBJECT TO DELAYS, CANCELLATIONS AND OTHER DISRUPTIONS. DEALER PAY MAKES NO WARRANTY, REPRESENTATION OR CONDITION WITH RESPECT TO SERVICES, INCLUDING BUT NOT LIMITED TO, THE QUALITY, EFFECTIVENESS, REPUTATION AND OTHER CHARACTERISTICS OF SERVICES. CONNECTIVITY, FEATURES, OR DELIVERY CAPABILITY MAY VARY, MAY BE LIMITED, AND MAY CHANGE OVER TIME.

t. Limitations of Liability and Damages

a. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW

AND NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS, YOU UNDERSTAND AND AGREE THAT IN NO EVENT SHALL DEALER PAY BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE OR DATA, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICES, THE PORTAL, OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE OR EMOTIONAL DISTRESS, WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE TERMS, OR FROM ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF THE SERVICES, ON ANY THEORY OF LIABILITY, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY.

b. YOU AND THE COMPANY AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE TERMS, THE SERVICES OR THE CONTENT MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

c. UNDER NO CIRCUMSTANCES WILL DEALER PAY BE LIABLE TO YOU FOR MORE THAN THE AMOUNT RECEIVED BY IT AS A RESULT OF YOUR USE OF THE SERVICES IN THE TERM PERIOD DURING WHICH YOU FIRST ASSERT A CLAIM. IF YOU HAVE NOT PAID US ANY AMOUNTS IN THE TERM PERIOD DURING WHICH YOU FIRST ASSERT ANY SUCH CLAIM, OUR SOLE AND EXCLUSIVE LIABILITY SHALL BE LIMITED TO FIFTY DOLLARS (\$50).

u. General Provisions

a. These Terms, together with your Dealer Pay Application and other referenced agreements, constitute the final, complete, and exclusive agreement of the parties relating to the use of the Portal and the Services, and supersede and merge all prior discussions between the parties.

b. A party's failure to exercise or delay in exercising any right, power or privilege under this Agreement shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof.

c. The rights and remedies provided to Dealer Pay in these Terms are cumulative and in addition to any other rights and remedies

available to it at law or in equity.

d. You may not assign or delegate your rights or duties under these Terms without Dealer Pay's express prior written consent. Dealer Pay may assign or delegate its rights or duties under these Terms in its sole discretion. Subject to the foregoing, these Terms shall inure to the benefit of each party's permitted successors and assigns.

e. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Missouri, without regard to its conflict of laws rules. You consent and designate St. Louis County, Missouri as the exclusive venue and location for any suit or other proceeding of any kind regarding any aspect of these Terms or the Services.

f. You shall comply with any and all Dealer Pay security protocols and notices, applicable laws, rules and regulations of governmental authorities, including but not limited to Network Rules.

g. Neither party shall be liable for any failure of or delay in the performance of its obligations under these Terms for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, pandemics, epidemics, government orders or any other force majeure event. In the event of a threatened default or default as a result of any of the above causes, the defaulting party shall exercise its best efforts to avoid and cure such default. In the event such an event prevents performance hereunder for a period in excess of sixty (60) days, then the non-defaulting party may elect to terminate these Terms by a written notice to the defaulting party. In no event will Dealer Pay be liable for any direct, indirect, punitive, incidental, special, consequential, or exemplary damages due to a force majeure event that result from the inability to use or unavailability of the Services.

h. Headings in these Terms are for convenience of reference only and shall not affect interpretation of these Terms.

i. In the event that any provision of these Terms shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that all other provisions shall otherwise remain in full force and effect and enforceable.

j. The parties are independent contractors; nothing in these Terms will be construed to create a partnership, joint venture, or agency relationship between the parties, and neither party by virtue of these

Terms will have any right, power, or authority to act or create any obligation, expressed or implied, on behalf of the other party.