

Dealer Pay Terms of Service

Last Revised: 1/18/2017

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 services, including mobile applications, websites, software, hardware, and other products and services (collectively, the “Services”). By using the Services, you, on your own behalf and on behalf of any business entity for whom you are accessing the Services, agree to these Terms.

1. Dealer Pay Role

1.1 Dealer Pay is not a bank. Our Services allow you to accept payments from any US-issued and many non-US issued credit, debit, prepaid and gift cards bearing the American Express Company, Discover Financial Services, Inc., MasterCard International, Inc. and Visa, Inc. (collectively, the “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 a Merchant Agreement with an approved credit card processor (“Merchant Agreement”). The terms and conditions of your Merchant Agreement may impact your use of the Services.

2. Privacy

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

3. Disclosures and Notices

3.1 From time to time Dealer Pay may change, expand and improve the Services. We may amend the Terms at any time with notice that we deem to be reasonable in the circumstances, by posting the revised version on our website, communicating it to you through the Services, or by emailing it to the email address listed in your Dealer Pay account. The revised version 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 constitutes your acceptance of such revised version.

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 applicable Dealer Pay websites (“Dealer Pay Sites”), 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 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 contained herein will apply to all such upgrades. You recognize that 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 You understand and agree that 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 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. 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. You acknowledge and agree that 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 You agree that Dealer Pay and its suppliers own all rights, title, interest and other worldwide Intellectual Property Rights (as defined below) in the Services.

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. You shall not take any action which may in any way interfere with or violate our rights in the Services, the materials delivered or made available to you in connection with the Services, or our Intellectual Property Rights, and you will do everything in your power to 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

6.1 You must register and create an administrator account (“Account”) within the Dealer Pay platform, 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 Services. You are responsible for providing, administering and maintaining usernames and passwords (the “Log-In Credentials”) for all of your authorized employees and agents (each, an “End User”) to access the Services. Each End User must have a valid username with passwords for the purpose of accessing the Services. You and your End Users must keep all Log-In Information confidential. Log-In Information 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 Information 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 Carrier rates for phone, data and text messaging may apply and you are responsible for any such charges with your carrier.

7. Restrictions

7.1 You may not, nor may you permit any third party, directly or indirectly, to:

- access or monitor any material or information on any other device using any manual process or robot, spider, scraper, or other automated means;
- 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 by our other customers, or impose an unreasonable or disproportionately large load on our infrastructure;
- 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;
- (i) decompile, reverse engineer, disassemble, attempt to derive the source code of, or decrypt the Services or the Dealer Pay Sites; (ii) make any modification, adaptation, improvement, enhancement, translation or derivative work from the Services; (iii) violate any applicable laws, rules or regulations in connection with your access to or use of the Services; (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 otherwise obscure or modify the any manner in which the Services are displayed; (v) use the Services to attempt to interfere with the proper functioning and display of the proper operation and usage of the Services or the Dealer Pay Sites by any other authorized users and third parties; or (vi) use any proprietary information or interfaces of the Services or other intellectual property for any reason.
- use and benefit from the Services via a rental, lease, timesharing, service bureau or other arrangement;
- use the Services 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
- Use the Dealer Pay Site or Services for the benefit of third parties or to compete with Dealer Pay.

7.2 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.

8. Compatible Devices

8.1 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. You acknowledge and agree that 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.

9. Third Party Products

9.1 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.

10. Your Content

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

10.2 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.

10.3 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.

10.4 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.

10.5 Dealer Pay may disclose information about Customer's 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 the Customer’s responsibility to ensure

that use of the Services complies with Customer's internal IT and security policies and procedures including any applicable Federal and State requirements.

10.6 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.

11. Security

11.1 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, we cannot guarantee that unauthorized third parties will never be able to defeat those measures or use your personal information for improper purposes. You provide your personal information at your own risk.

11.2 You are responsible for safeguarding your Log-In Credentials and for restricting access to the Services from your compatible mobile devices and computer(s). You will immediately notify us of any unauthorized use of your Log-In Credentials or Account or any other breach of security of which you become aware.

12. Communications

12.1 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.

13. Payment Terms and Fees

13.1 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. If you provide banking credentials and/or credit card information to Dealer Pay, you authorize us to charge such accounts for all purchased Services listed in the Merchant Agreement and any other affiliated agreements. You are responsible for providing complete and accurate billing and contact information to us and notifying us of any changes to such information.

13.2 Dealer Pay may require automatic collection, via an ACH debit, on the first of each month.

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

13.4 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 and affiliated agreements. We are not responsible for any claims, chargebacks, declines, warranty expirations, or bank fee reimbursements.

13.5 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.

13.6 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.

14. Term and Termination

14.1 Except as otherwise provided herein, the term of these Terms commence when the Merchant Agreement is signed 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.

14.2 Dealer Pay may terminate these Terms, or suspend or terminate your access to Services, 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.

14.3 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.

15. Effect of Termination

15.1 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.

15.2 In addition, unless we terminate these Terms for no reason and except as provided in 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.

16. Indemnity

16.1 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 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; (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; and (e) 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.

17. Severability

17.1 If any provision of these Terms are 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.

18. Warranties

18.1 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.

18.2 No advice or information provided by Dealer Pay, its affiliates, or their respective employees and agents shall create any warranty.

18.3 DEALER PAY MAKE 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, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

18.4 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.

19. Limitations of Liability and Damages

19.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, 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, 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, RESULTING FROM: (I) THE USE OR INABILITY TO USE THE SERVICES; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED FOR TRANSACTIONS ENTERED INTO THROUGH THE SERVICES; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (IV) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICES; OR (V) ANY OTHER MATTER RELATED TO THE SERVICES, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY.

19.2 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.

19.3 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).

19.4 IN NO EVENT WILL DEALER PAY BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS DUE TO INTERNET OUTFAGES, STRIKES, LABOR DISPUTES, NATURAL DISASTERS, WARS, GOVERNMENT SANCTIONS, ACTS OF GOD, OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE INABILITY TO USE, OR UNAVAILABILITY OF THE SERVICE.

20. General Provisions

20.1 Amendments. No change or modification of this Agreement will be valid unless it is in writing and signed by each party to this Agreement.

20.2 No Waiver. 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.

20.3 Governing Law; Venue. 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 sole venue and location for any suit or other proceeding of any kind regarding any aspect of these Terms or the Services.

20.4 Compliance of Law. The parties shall comply with any and all applicable laws, rules and regulations of the governmental authorities concerned.

20.5 Force Majeure. A party shall not be liable for any failure of or delay in the performance of this Agreement 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, 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 thereunder 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.