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## Dealer Pay Terms of Service

These Terms of Service (“**Terms**”) hereby constitute the legal agreement between you (“**you**”, “**your**” or “**Customer**”) and Dealer Pay, LLC, a Missouri limited liability company (“**Dealer Pay**”, “**we**”, “**our**”, “**us**” or “**Company**”), and governs your use of Dealer Pay’s various products and services (collectively the “**Services**”), including but not limited to those made available through our mobile application, websites, software, hardware, and other digital tools. As a condition of your use of some of the Services that we offer, you will be required to enter into a Merchant Agreement (defined below) by and between you and Dealer Pay’s payment processing and banking partners and other supplemental agreements as determined by us (each a “**Supplemental Agreement**”).

Each time you either:

- a. Click “**Accept**” or a similar button on a Dealer Pay digital property;
- b. Check a box captioned with acceptance language published on a Dealer Pay digital property;
- c. Execute and submit to Dealer Pay an application to use any of the Services including the Dealer Pay POS (a “**Dealer Pay Application**”); or
- d. Use any of the Services.

You acknowledge and agree that you have read and understand these Terms and that you agree to be bound by them. If you use 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 DEALER PAY PORTAL OR THE SERVICES IF YOU DO NOT AGREE TO THESE TERMS. PLEASE REVIEW THEM CAREFULLY.**

### **1. Dealer Pay Role and Description of the Services**

a. Subject to these Terms, Dealer Pay will grant you access to its proprietary platform (the “**Portal**”) through which Dealer Pay provides the Services, which Services include, without limitation, electronic payment processing services (in conjunction with its Service Providers, as hereinafter defined), point-of sale solutions, hardware solutions, technology solutions, e-commerce solutions and gift and stored value program solutions. The Portal provided by Dealer Pay consists of (1) the software applications that comprise the Portal and provide the means by which you manage your use of the Services, and (2) other related mobile applications, websites, application programming interfaces (“**APIs**”), hardware, publications, and other related products and services (including software maintenance, service information, help content, bug fixes or maintenance releases) provided by or made available by Dealer Pay from time to time. Dealer Pay shall also provide technical documentation as needed, and technical support and customer support.

b. Dealer Pay is not a bank, or an electronic payment processor. If you are approved by one of our payment processing and banking partners (collectively referred to herein as “**Service Providers**”), a component of the Services accessible to you vis-à-vis the Portal will allow you to accept various cards such as debit cards, credit cards, prepaid cards, gift cards and the like (collectively “**Cards**”) issued by the card brand associations such as American Express Company, Discover Financial Services, Inc., Mastercard International, Inc., and Visa, Inc. (collectively the “**Card Brands**”) for the sale of your products and services to your respective customers. The electronic payment processing services we offer as a component of the Services are referred to herein as the “**Payment Services.**” We may remove or add Cards by Card Brand or type that we accept as part of the Payment Services at any time without prior notice.

c. You will be required to enter into a written agreement with our Service Providers to receive the Payment Services (each a “**Merchant Agreement**”) and to qualify to use all of the Services that we offer hereunder. In the event that the terms and conditions of your Merchant Agreement conflict with these Terms governing your use of the Services, the terms and conditions of the applicable Merchant Agreement shall control.

d. The Services and password-protected portions of the Portal are available only to those Dealer Pay customers (and their respective employees and authorized representatives) who receive Payment Services through Dealer Pay and/or its Service Providers, and who have entered into a Merchant Agreement. If you are not subject to a current Merchant Agreement and are not authorized to receive Payment Services through Dealer Pay and/or its Service Providers, you (and your respective employees and authorized representatives) are not permitted to access the password-protected

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portions of the Portal. Any such unpermitted or otherwise unauthorized use of the password-protected portions of the Portal shall be deemed to be in violation of these Terms. All use of the Portal and Services thereon, including any 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 thereon 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.

e. You hereby agree to restrict access the passwords you create to use the Portal to those authorized employees and agents as may be reasonably necessary and consistent with the purpose of these Terms and will ensure that each such employee and agent authorized by you to access and use the Portal is aware of and otherwise complies with all applicable provisions of these Terms regarding such use and access. If there is any unauthorized use of the Portal arising in connection with your login credentials and you have not reported such unauthorized use to Dealer Pay in advance, you will be deemed to be in breach of these Terms and will be liable for any misconduct in connection with such unauthorized use of the Portal. Dealer Pay shall be entitled to rely on any information or instructions purported to come from you by anyone you provide your passwords or give access to the Portal.

## **2. Data Security, Confidentiality and Security Incidents**

a. You agree to Dealer Pay's Privacy Policy published at <https://www.dealer-pay.com/privacy> (the "**Privacy Policy**") which explains how we collect, use, and protect the non-public personal identifying information ("**PII**") for you and your customers that provide to us through your use of the Portal, Services and Payment Services. PII may also include personal and proprietary financial information, payment information including Cardholder data, payment history, and other related data.

b. You authorize Dealer Pay to act on your behalf and to accept and transmit data and other information including PII as necessary for Dealer Pay to deliver the Services and fulfill its obligations under these Terms. You hereby acknowledge and agree that Dealer Pay during its provision of the Services will collect, retain, use, process, and transfer information and data, including PII, collected from you and your customers in accordance with these Terms, the Privacy Policy, and a Supplemental Agreement. You grant to Dealer Pay a nonexclusive, perpetual, non-revocable, royalty free license to use, retain, and share any information transmitted by you through the Services for the purpose of Dealer Pay's provision of the Services. This license shall survive for such period as necessary for Dealer pay to provide the Services, comply with applicable laws, regulations, and/or the Card Brands' respective rules (collectively the "**Rules**"). Without limiting the foregoing, and notwithstanding any other provision herein, you agree that Dealer Pay may disclose information transmitted by you through your use of the Portal and Services in the following circumstances:

- i. when necessary to provide the Services or otherwise fulfill its obligations hereunder;
- ii. to comply with an order issued by any government agency, court of competent jurisdiction, or other legal or administrative reporting requirements;
- iii. when you consent by giving us your written permission;
- iv. to our Service Providers who supply or administer the Services and Payment Services;
- v. to prevent, investigate, or report possible illegal or fraudulent activity; or
- vi. as otherwise permitted by applicable law.

c. To the extent you use, process, or submit PII, including without limitation cardholder data or bank account numbers, you agree to notify your customers how and why PII is collected and used by us hereunder in accordance with applicable laws and rules. You will not use, disclose, sell, or disseminate any card, cardholder, or other transaction information (collectively "**Cardholder Payment Information**") obtained in connection with a transaction submitted using the Payment Services pursuant to a Merchant Agreement except for the purpose of completing the transaction, unless otherwise required by a court order, governmental agency request or subpoena, and/or applicable law. You represent, and warrant, that you have adopted all security measures and taken all precautions necessary to ensure that all PII and Cardholder Payment Information are adequately protected and that your computer systems (including without limitation all hardware and software used in conjunction with your use of the Portal, Services and/or Payment Services) are secure from unauthorized access, breach, intrusion, or compromise by any third parties. You further represent, warrant, and agree that you (i) will use the Portal, Services, and Payment Services only for lawful purposes and in compliance with all applicable laws, rules, and regulations; (ii) are solely responsible for verifying the accuracy and completeness of all data, including PII and Cardholder Payment Information, submitted to Dealer Pay; and (c) will to the best of your knowledge submit true, correct, and complete information and data when using the Portal and Services.

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d. While using the Portal, Services, or the Payment Services, you may be exposed to Dealer Pay's confidential and proprietary trade secret information ("**Confidential Information**"), including but not limited to information regarding the Services and related technology, and/or Dealer Pay's business, financial, or marketing activities. You hereby agree that 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. To the extent that any use of Confidential Information is authorized by Dealer Pay pursuant to these Terms or otherwise, the internal dissemination of Confidential Information for your use shall be limited to those employees or agents whose duties justify the need to know such information and then only based on 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 you further disclose Confidential Information. Upon the termination of these Terms or any Supplemental Agreement for any reason, you shall promptly return to Dealer Pay all copies of Confidential Information in your possession or the possession of your affiliates, employees, and agents.

e. We have implemented technical and organizational measures designed to secure the PII and Cardholder Payment Information you submit to use through your use of the Portal, Services, and Payment Services, from accidental loss and unauthorized access, use, alteration, or disclosure. However, Dealer Pay shall have no obligation regarding the transmission of such data and no liability with respect to the unauthorized interception, modification, and/or access or compromise of such data by third parties, including without limitation with respect to illegal or fraudulent access. You further agree that you assume all such risk and liability. If your or any of your vendors' computer systems are breached or accessed by an unauthorized person to any Confidential Information, Log-In Credentials (defined below), PII and/or Cardholder Payment Information, you shall promptly:

- i. notify Dealer Pay in writing and by email of each such occurrence;
- ii. notify any affected parties as required under any applicable laws or industry guidelines;
- iii. take all actions and precautions necessary to prevent any continuous or additional breach; and
- iv. commence all remedial efforts and other actions required under the applicable laws, regulations, or the Rules.

### **3. Disclosures and Notices**

a. From time-to-time Dealer Pay may change, expand, or improve the Services and/or Portal. These Terms may not be amended or modified by you without Dealer Pay's express written consent. If changes to these Terms are material, we will make commercially reasonable efforts to notify you of any modified Terms by (i) posting the revised version on our website, (ii) notifying you through the Portal, (iii) emailing you at the email address on file with us in your Dealer Pay account, or (iv) using alternative communications channels as determined by Dealer Pay in its sole discretion. The revised version of the Terms will be effective as of the time it is posted on our website, or when otherwise communicated to you, but will not apply retroactively. Your continued use of the Services after the posting or communication of a revised version of the Terms constitutes your acceptance of such revised Terms.

b. All communications and notices made by you to Dealer Pay hereunder 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**

a. 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 use and access the Portal and 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.

b. 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 any type of device you access the Portal or use the Services. You hereby consent to any automatic upgrade we make and agree that the license granted to you hereunder will apply to all such upgrades.

c. Dealer Pay may, without liability to you, modify or discontinue offering the Services or aspects thereof at

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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.

d. 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 our control, we have not originated the information provided by such third parties, and we are not responsible for the accuracy or availability of such content published thereon. You agree that your utilization of such third-party information is at your own risk. Some or all 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 such third-party content or websites. Certain portions of the Services may also utilize or include third party software that is subject to open source and/or third-party license terms ("**Third Party Software**"). In such an 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**

a. 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.

b. 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. 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 their applications, registrations, renewals, and extensions, under the laws of any state, country, territory, or other jurisdiction.

c. 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.

d. 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.

e. 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**

a. You must register and create and administrator account ("**Account**") within the Portal 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, 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.

b. 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

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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.

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

d. 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 is not set forth on the Dealer Pay Application form, such Add-On Services may be subject to separate pricings 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 to receive any Add-on Services, such Add-on Services are subject to these Terms.

e. Dealer Pay may offer integrations to various DMS providers, and service lane technology companies. Dealer Pay has the right to replicate documents and information contained within these documents, and to store signatures within our software. Dealer Pay may also push information and close repair orders into DMS or service lane technology provider's system, if the company's API allows. Customer agrees to hold Dealer Pay harmless for any data extracted via the API for all DMS or service lane technology integrations.

f. To the extent that you elect to assess a surcharge in connection with any of the Payment Services, you shall enter into a Supplemental Agreement with us detailing the terms and conditions governing such assessment of any surcharges in connection with any of the Payment Services.

## **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 Use the Dealer Pay Site, Portal, or Services for the benefit of third parties,

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or to compete with Dealer Pay; or distribute to third parties, or publicly 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 you and your End Users' transactions with applicable law enforcement officials.

#### **8. 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.

#### **9. 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.

#### **10. 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 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. 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.

c. 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.

d. 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 with the Services.

#### **11. 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.

#### **12. Payment Terms and Fees**

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a. Dealer Pay may provide you with the ability to pay any amounts that you owe Dealer Pay for use of the Services or otherwise through the Portal or otherwise enable you to purchase optional Services through the Portal. Dealer Pay accepts Card, checks and automated clearing house (“ACH”) payments (“Your Method of Payment”), and the Portal is compliant with the data security standards promulgated by the PCI Security Standards Council. By submitting Your Method of Payment in the Portal (whether on a one-time or recurring basis) you authorize Dealer Pay and its affiliates, successors, or assigns to charge your Card or initiate ACH debits for all fees and other amounts owed to Dealer Pay or its Service Providers, affiliates, successor or assigns. You will be subject to additional fees and/or penalties for late payments, returned checks, or other declined payments made by Cards or ACH due to insufficient funds or any other reason 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. As part of the on-boarding process, you will provide Dealer Pay with valid and updated bank deposit account or Card information and complete a Merchant Agreement validated and approved by our Service Providers. Your access to the Portal and the Services is contingent on such information being reasonably acceptable to Dealer Pay. You are responsible for providing complete and accurate billing and contact information to us and promptly notifying us and our Service Providers of any changes to such information.

c. Dealer Pay may require automatic collection, via ACH debit, on the first day of each month pursuant to the payment authorization included in the Dealer Pay Application which was provided to you as part of the on-boarding process.

d. Installation and/or Equipment/Hardware fees, may be collected by invoice separately from and in addition to payment for the Services.

e. Dealer Pay shall provide to you invoices detailing all amounts due to Dealer Pay, including without limitation any installation fees, integration fees, subscription fees, fees for equipment purchases and rentals, reversals, invalidated payments, chargebacks, refunds, or other amounts that you owe to Dealer Pay under the Merchant Agreement, the Dealer Pay Application, any Supplemental Agreement, and affiliated agreements and you hereby agree to pay all such amounts promptly by the applicable due date.

f. Dealer Pay reserves the right to modify its fees and/or any pricing plans in connection thereto upon 30 days’ written notice to standardize or adjust fees based on added value or functionality to the Portal and/or Services.

g. If any amounts due and payable to Dealer Pay under an applicable invoice are not received by Dealer Pay by the due date (and are not otherwise debited by us using your applicable Method of Payment), then without limiting our rights or remedies, (a) those charges shall 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.

h. 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.

i. If you choose to enroll in Dealer Pay’s Pay Share program, the savings from the Pay Share program could be considered taxable income, depending on your state and regulations from the Department of Revenue. Please note that the fees that resulted in your savings may be sales tax eligible, meaning you may be responsible for collecting and remitting sales tax on the fee amounts. Please refer to your state’s Department of Revenue for more specific information.

### **13. Term and Termination**

a. Merchant acknowledges that by signing, this contract binds them to a 3-year (36-month) term with Dealer Pay. Merchant shall have a 60-day cancellation period after onboarding that the contract, and services, may be canceled without penalty. If this contract is terminated by the merchant before the 3-year term has been completed, merchant agrees to pay Dealer Pay an early account closure fee equal to the equivalent of 3-months of software fees. The cancellation fee will be immediately due, and payable to Dealer Pay upon cancellation. Merchant hereby acknowledges, and authorizes, this amount be deducted from the merchant’s bank account, or charged to the credit card on file.

b. Contracts automatically renew upon the 3-year contract end date. Merchant must notify Dealer Pay in

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writing if they wish to cancel with 60 days advance notice of the contract end date.

c. 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.

d. 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 upon attempting to access your account.

e. Notwithstanding any termination of these Terms, you remain responsible for 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.

#### **14. 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.

#### **15. 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.

#### **16. 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.

#### **17. 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. TO MAXIMUM EXTENT PERMITTED BY LAW, THE SERVICE AND PORTAL ARE 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



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WARRANTY NOT EXPRESSLY MADE HEREIN. DEALER PAY EXPRESSLY DISCLAIMS ANY WARRANTY OR CONDITION OF MERCHANTABILITY, TITLE, NON- INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

c. 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 BELIMITED, AND MAY CHANGE OVERTIME.

## **18. 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, 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).

## **19. 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 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 because 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 more than sixty (60) days, then the non-defaulting party may elect to terminate these Terms by a written notice to the defaulting party. Under 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 results from the inability to use or unavailability of the Services.

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

i. If 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.

(Last Revised 07.28.2023)

## Dealer Pay Hardware Terms

Client acknowledges, and agrees, to these terms pertaining to the purchase, or lease, of equipment or hardware from Dealer Pay ("**Equipment/Hardware**"), in addition to the terms and conditions contained in the Dealer Pay Terms of Service.

**Payment Terms:** Client agrees that they are responsible for payment of all Equipment/Hardware, sales tax, shipping fees, equipment return, P2PE, and warranty fees. These fees will be deducted from the designated account, or the billing credit card on file for billing purposes, regardless of scheduled date of installation.

**Warranties** Dealer Pay will provide a one-year limited warranty on hardware devices and equipment. If your equipment/hardware is found to be defective, Dealer Pay will replace your device with the same or comparable model. Defective devices must be returned to Dealer Pay within 7 business days of device being determined defective, or customer may incur charges. Please contact Dealer Pay Support directly at 636.204.6439 if there is an issue with your terminal.

**Rejected Payments due to NSF:** I understand that any payment or payment plan may be rejected by Dealer Pay due to NSF (Non-Sufficient Funds). A \$25.00 NSF fee may be automatically debited for each occasion.

**Return of Equipment/Hardware:** Upon termination of contract, a repurchase of terminals may be considered at Dealer Pay's discretion.



I authorize my bank to debit my account as identified above to the terms stated here. I understand that this payment may be canceled by the Service Provider or Merchant due to NSF (Nonsufficient Funds). I will be liable to pay an NSF fee of \$25.00 (or the amount allowable by law), which may be automatically debited for each NSF. I represent and warrant that I am authorized to execute this payment authorization for the purpose of implementing this payment plan. I indemnify and hold the Service Provider and the Bank harmless from damage, loss or claim resulting from all authorized actions hereunder.

I acknowledge and confirm that all the information provided herein, including the name, type of business and each merchant location where my business is conducted, is complete and accurate. My business will only accept cards as payment in such locations described in the applicable merchant agreement between Merchant, Service Provider and Bank, or the applicable merchant application that is made a part of the applicable merchant agreement. Each merchant location where my business is conducted is located at a fixed location that has been disclosed in the applicable merchant agreement. I acknowledge and confirm that the name of my business, its business activities and each merchant location where my business is conducted will be the same as what is provided in the applicable merchant agreement and will not change for as long as the applicable merchant agreement is in effect.

I further acknowledge and agree that all hardware and equipment, including, without limitation, all terminals, will be operated and maintained in accordance with any applicable manufacturers' manuals by competent and duly qualified personnel only, in accordance with applicable insurance and warranty policies and all requirements of law. All hardware and equipment will be operated for business purposes only and shall never be used for home, household or other consumer purposes. I will maintain all hardware and equipment in good operating order and condition according to reasonable and customary business and professional practices, all at my sole expense. I will protect the hardware and equipment from deterioration other than ordinary wear and tear and will not use hardware and equipment for any purpose other than that for which it was designed.

**DEALER PAY LLC PO Box 66738 PMB 26116 Saint Louis, MO 63166-6738 888.848.3812 [www.dealer-pay.com](http://www.dealer-pay.com)**

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I will maintain the hardware and equipment as required and/or recommended by any vendor of the hardware or equipment and any governmental or regulatory authority. I will not replace, alter, modify or otherwise sell, change or exchange the hardware or equipment. I will keep and use the hardware and equipment only at the merchant location where such hardware and equipment was installed. I will mark and identify the hardware and equipment with all information and in such manner as Dealer Pay may request from time to time and replace promptly any such markings or identifications which are removed, defaced or destroyed. I agree that I will assume all liability in the event if any of the foregoing is untrue or becomes untrue at any time.

I ACKNOWLEDGE AND AGREE THAT THE HARDWARE AND EQUIPMENT ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER. DEALER PAY DISCLAIMS ALL WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY, TO ME AS TO ANY MATTER WHATSOEVER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY DEALER PAY OR ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF DEALER PAY'S OBLIGATION. I WILL BE LIABLE FOR ANY LOST, STOLEN AND/OR PHYSICALLY DAMAGED EQUIPMENT. I UNDERSTAND THAT I WILL BE RESPONSIBLE FOR PAYING FOR ANY REPLACEMENT OF HARDWARE OR EQUIPMENT AT A PRICE THAT DEALER PAY DETERMINES TO BE FAIR AT THAT TIME. I ALSO AGREE TO PAY FOR ANY SHIPPING TO RETURN THE BROKEN HARDWARE OR EQUIPMENT AS WELL AS TO RECEIVE THE REPLACEMENT.

PLEASE NOTE AT ALL DEALER PAY AGREEMENTS ARE CANCELLABLE WITH 60 DAYS OF NOTICE (Based on the billing cycle, billing may accrue to end of the last terminated month).

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