

Pay Factory, Inc.
Gateway Services
Terms and Conditions

Last Updated May 31, 2022

These Gateway Services Terms and Conditions (“**Terms**”) between you (“**Sponsored Merchant**”) and Pay Factory, Inc. (“**Pay Factory**”) shall govern your use of the Gateway Services (defined below).

1. Gateway Service

These Terms apply to your (Sponsored Merchant’s) purchase of access to use a payment gateway service (“**Gateway Service(s)**”) from Pay Factory in conjunction with your use of Card Acceptance or Platform Services pursuant to a Card Services Agreement. Your Card Services Agreement will describe which Gateway Service you have purchased the right to use. If your Card Services Agreement indicates that your access to use a payment gateway service is purchased from a third party that is not Pay Factory, then these Terms will not apply and the terms and conditions applicable to your payment gateway service will be those between you and the third party.

2. Availability of Service

The Gateway Service is the property of Pay Factory and its third party service providers and licensors (“**Service Provider**”), as applicable. Pay Factory’s ability to facilitate access to the Gateway Service is dependent upon the continuation of services provided by its Service Providers. Service Providers have the ability to change, reduce, or modify the functionalities associated with the Gateway Service. Sponsored Merchant acknowledges that Pay Factory makes no representations or warranties regarding (a) the continued availability of the Gateway Service; (b) the functionalities that will be available through the Gateway Service or how those functionalities may change, expand, or diminish over time; (c) the performance of the Gateway Service, (d) appropriate hardware, (e) service levels; or (f) any other variable pertaining to the deployment or performance of the Gateway Service.

3. Fees

Sponsored Merchant shall pay fees to Pay Factory as set forth in Card Services Agreement. Such fees are in addition to, and shall not be in place of, any other fees set forth in any other agreement(s) between Pay Factory and Sponsored Merchant. Furthermore, such fees may be modified or supplemented by Pay Factory upon thirty (30) days’ notice. Sponsored Merchant’s continued use of the Gateway Service following thirty days after receipt, publication, or communication of such notice shall constitute its agreement and acquiescence to such modification(s) and supplementation(s).

4. Restrictions on Use of Service

Neither Pay Factory nor its Service Providers transfer any of its or its or their intellectual property rights in the Gateway Service to Sponsored Merchant. Sponsored Merchant agrees not to reverse engineer, decompile, or disassemble the Gateway Service or the software applications associated therewith.

5. Documentation

Sponsored Merchant agrees that any documentation (including customer manuals) it receives related to the Gateway Service is strictly confidential and that it will not alter, modify, or distribute such documentation without express written permission from Pay Factory.

6. Integration

Sponsored Merchant will work with Pay Factory and, if necessary, Service Provider, in a collaborative fashion to obtain access to the Gateway Service, including by providing requested information about the payment processing environment and method of payment capture.

7. Support

For Sponsored Merchants that have purchased the Gateway Service from Pay Factory, any requests for customer support by Sponsored Merchant shall be made directly to Pay Factory. Sponsored Merchants that have purchased Gateway Service from a third party shall direct any request for support to such third party. At Pay Factory’s request, Sponsored Merchant will work in a collaborative fashion with Pay Factory and/or Service Provider to address any customer support needs.

8. Limitation of Liability and Disclaimer of Warranties; Dispute Resolution

IN NO EVENT SHALL PAY FACTORY OR SERVICE PROVIDER, OR ANY OF ITS OR THEIR RESPECTIVE AGENTS, OFFICERS, DIRECTORS, EMPLOYEES, OR AFFILIATES, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, LOST PROFITS, OR LOSS OF REVENUE RELATIVE TO THE SERVICES OR ACTIVITIES HEREUNDER, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE OR SUCH PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHERMORE, PAY FACTORY AND SERVICE PROVIDER’S AGGREGATE FINANCIAL RESPONSIBILITY FOR ANY BREACH, FAILURE OF PERFORMANCE, ACT, OR OMISSION UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES OR CHARGES PAID TO PAY FACTORY BY CUSTOMER FOR THE TRANSACTION OR ACTIVITY THAT IS OR WAS THE SUBJECT OF THE ALLEGED BREACH, FAILURE OF PERFORMANCE, ACT, OR OMISSION. PAY FACTORY AND SERVICE PROVIDER MAKE NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE SPECIFICALLY EXCLUDED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, PERFORMANCE, USAGE, AND/OR TRADE.

9. Choice of Law and Venue

All disputes or controversies of any nature whatsoever (whether in contract, tort, or otherwise) arising out of, relating to, or in connection with these Terms or the Gateway Service shall be

governed by and construed in accordance with the laws of the State of Oklahoma without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Oklahoma. Any action arising out of, relating to, or in connection with these Terms or the Gateway Service shall be resolved in, and the parties hereby consent to the exclusive jurisdiction of, and venue in, the federal and state courts located in the State of Oklahoma, Tulsa County.

10. **Termination**

The availability of the Gateway Service or any portion thereof may be terminated by Service Provider or Pay Factory with or without notice to Sponsored Merchant. Sponsored Merchant shall have no recourse against Pay Factory should such Gateway Service be terminated. Sponsored Merchant's obligations pursuant to Section 3, 4, 5, 8, and 9 shall survive termination of these Terms.

11. **Entire Agreement**

These Terms reflect the entire agreement between the parties related to the Gateway Service, and all prior representations and discussions related to the same are superseded and merged herein.