



# AUTHORIZED PARTNER PROGRAM

## Terms and Conditions

**THIS AUTHORIZED PARTNER AGREEMENT** (the “Agreement”) is by and between Shift4 Payments, LLC (“Company”) and Sales Partner (the name of which is set forth on the Agreement Schedule A), and is effective upon submission of a Merchant by Sales Partner to Company (“Effective Date”).

**NOW, THEREFORE**, in consideration of the mutual promises made and upon Sales Partner’s submission of Merchants to Company, the parties agree as follows and to any amendments made by Company upon notice to Sales Partner

### 1. **Definitions**

The following terms when used in this Agreement shall have the meanings set forth in this Section:

“**Associated Sale Personnel**” means any and all employees, independent contractors, agents or any other person or entity who acts for or on behalf of Sales Partner, or is controlled to any extent whatsoever by Sales Partner in the solicitation of merchant applications to be submitted to Company or in any other marketing activity undertaken on behalf of Company.

“**Card Brands**” means Visa, MasterCard, Discover, American Express.

“**Loss**” means any loss incurred by Company for any reason attributable to this Agreement or a Merchant Agreement, including but not limited to fines, assessments, and penalties imposed by a Card Brands or any Merchant loss, including but not limited to those associated with the Rules and uncollected chargebacks, fees and Merchant fraud.

“**Merchant**” means a business referred by Sales Partner to Company that has entered into a Merchant Agreement.

“**Merchant Agreement**” means the written contracts required by Company, its parents, subsidiaries, affiliates, successors, and assigns to be entered into by a Sales Partner customer to enable the customer to participate in the Merchant Program.

“**Merchant Program**” means the various packages of Company equipment, Shift4 Dine, and Company payment services.

“**Pass Through Fees**” means fees and other back-end charges, including but not limited to the cost of postage, paper statements, merchant records, terminal records, TMF look-ups, arbitration and RMS fees. A \$1.75 fee for each Voice Authorization also applies over network pass-through costs. If any pass-through fees are applicable, they will be priced at cost and passed-through to Sales Partner.

“**Rules**” means the written regulations and procedures issued by the Card Brands and the debit networks as amended from time to time.

“**Shift4 Dine**” means Company’s point of sale software product suite.

“**Sponsor**” means Citizens Bank N.A or any other bank that sponsors Company into the Card Brands.

“**Third Party Processor**” means any company that facilitates the processing of a transaction as a result of a merchant processing a Transaction via the COMPANY Merchant Program.

“**Transaction**” means the purchase by a cardholder of goods or services from a Merchant, by use of a credit card or debit card.

2. **Limited Appointment:** Shift4 appoints Partner, to act as a non-exclusive distributor of Shift4 Dine solely in accordance with the terms and conditions of this Agreement.

### 3. **Sales Partner Obligations**

- a. Sales Partner shall use its commercially reasonable best efforts to locate, investigate and refer potential merchants to Company for the Merchant Program and will inform Company if it has knowledge that may affect a merchant’s ability to meet its obligations under the Merchant Program
- b. Sales Partner agrees to comply with all other obligations, which may be imposed on Company by the Card Brands, the debit networks, and/or Company’s sponsor bank in order to sell merchant and credit card processing services
- c. Sales Partner shall not without Company’s prior written consent, (i) directly or indirectly solicit a Merchant, for purposes of providing merchant services or point of sale software that competes with the merchant services offered by Company; (ii) intentionally, knowingly or otherwise interfere with, disrupt or attempt to disrupt any current business relationship, contractual or otherwise, between Company; (iii) advise a Merchant that its agreement with Company is expiring with the

intent to refer the Merchant to another merchant services provider; or (iv) induce any Merchant to terminate its Merchant Agreement. Sales Partner agrees that Company owns all right, title and interest in all Merchant Agreements and Merchants may not be moved to a third-party processor without Company's prior written consent. Sales Partner will not solicit any Merchant to terminate a Merchant Agreement for any reason after termination of this Agreement. Notwithstanding anything to the contrary, if Sales Partner breaches any part of this section, then Company may immediately terminate this Agreement and permanently withhold all future compensation payments that Sales Partner may be entitled to under this Agreement. The prohibition on the conduct specified in this section shall continue in effect for so long as Sales Partner is entitled to receive recurring compensation from Company. In the event the Agreement is terminated and Sales Partner is not referring merchants to Company under any other agreement, or Sales Partner is no longer entitled to receive compensation from Company, then the prohibition on the conduct specified in this section will continue for a period of five (5) years from the date the last payment was made by Company.

- d. In order to maintain your status as an Authorized Partner you must (i) offer Shift4 Dine as your primary product offered and shall not be promoted alongside or as an alternative a competitive product (ii) meet minimum production requirements as determined by Shift4, and (iii) provide support in a reasonable and timely manner and maintain training certifications as required by Shift4 from time to time. Your "Authorized Partner" status may be revoked upon notice if Shift4 determines in its reasonable discretion that you have failed to act in accordance with (i), (ii), or (iii).

#### 4. **Residual Compensation**

Sales Partner shall be eligible for the residuals, bonuses and other compensation described in this Agreement:

- a. Sales Partner may receive a residual base commission on the price set for the processing of credit/debit card transactions pursuant to a Merchant Agreement. The residual base commission shall be calculated by subtracting the price set by Company for processing, as set forth in the Schedule A, and Pass-Through Fees, from the price agreed to by the Merchant. Company may amend Schedule A pricing from time to time and Sales Partner will be bound by such change upon notice from Company.
- b. Residual base commissions shall be paid by Company to Sales Partner within approximately 45 days after the commissions are earned, subject to Company's right to set off for any amount owed to it by Sales Partner. At the time of each payment, Company will deliver to Sales Partner a statement detailing the computations used by Company in arriving at the compensation. Sales Partner will promptly examine all such statements, and will notify Company in writing within two (2) months of any error or any other claim related to residual-based commissions of any kind ("Residual Claim"). Unless Company is notified of Residual Claim within two (2) months of when payment was due or upon the Company making the statement available, Company shall have no liability to adjust the amount of compensation owed under this Section.
- c. Company will establish Merchant fee pricing for merchant client applications, the sale of equipment or software, or other costs associated with a Merchant's participation in the Merchant Program and may amend such pricing from time to time within its sole discretion or as required by its suppliers, and Sales Partner shall be bound by such change upon notice by Company.
- d. Company shall determine pricing, the rate of residual-based commission, costs and any other amounts to be compensated for or charged to Sales Partner, in the event there is a new product, service, or fee charged or offered to Merchants which is introduced by Company subsequent to the of this Agreement.
- e. Notwithstanding anything to the contrary, if the Agreement is terminated for cause or Sales Partner does not refer any Merchant to Company within a six (6) month period and Sales Partner is owed less than five hundred (\$500.00) dollars of residual base commissions in any given month, then Company shall be under no obligation to pay such amounts or to pay any residual base commissions for any future monthly period.
- f. Sales Partner authorizes Company to initiate Automated Clearing House ("ACH") transfer entries to credit and/or debit Sales Partner's account on file with Company for all rights or obligations arising out of the Addendum, including but not limited to the payment or recoupment of residual compensation or bonuses. This authorization shall remain in effect unless and until Company has received written notification from Sales Partner that this authorization has been terminated in such time and manner to allow Company to act.

## 5. **Partners Rights in Residuals**

Subject to the terms of this Agreement, Sales Partner shall retain the right in residual-based commissions earned under this Agreement and shall have the right to transfer and assign its residual base commission rights under this Agreement if, but only if Sales Partner gives Company forty-five (45) days written notice of Sales Partner's intent to sell, transfer or assign Sales Partner's rights to residual base commissions and has provided Company with a copy of the written offer and full terms of said offer. Company shall have a right of first refusal to match any written offer to acquire Sales Partner's rights to residual base commissions. Company shall have thirty (30) days from the date it receives written notice to match the written offer or to decline to match the written offer. If Company desires to purchase the residual base commissions, Sales Partner shall sell at the purchase price offered by such third-party.

## 6. **Marketing Materials**

Sales Partner will cease using Company's marketing and solicitation materials upon termination of this Agreement or upon written notice from COMPANY at any time.

## 7. **Ownership of Merchants**

The parties understand and agree that all right, title and interest in all Merchant Agreements is owned by COMPANY. Merchants may not be moved to a third-party processor.

## 8. **Losses**

All Losses incurred by Company or Sponsor for any reason will be borne by Company. Notwithstanding the previous sentence, Sales Partner will bear 100% of Losses incurred by Company or Sponsor arising out of Sales Partner's or any Associated Sales Personnel's negligence or fraud as determined in the sole discretion of COMPANY. COMPANY shall have the right to set off such amounts from any future residual base commissions due to Sales Partner. Sales Partner will notify Company immediately of any information concerning any Merchant that would indicate that COMPANY may incur a Loss.

## 9. **Pass Through Fees**

With regard to new or increased fees imposed by any Card Brands, Sponsor, or Third-Party Processor, including but not limited to interchange fees, assessment fees, and non-qualifying card surcharge fees, Company reserves the right to pass through to Sales Partner or Merchants, as appropriate, such increased or additional fees. Company may pass through to Merchants any fees or expenses related to implementing changes to software/hardware requirements deemed necessary by any third party. Company will make commercially reasonable efforts provide to Sales Partner notice of such increases.

## 10. **New Products/Service Offerings or Fees**

Company shall determine in its sole discretion; pricing, the rate of residual based commission, costs and any other amounts to be compensated for or charged to Sales Partner, in the event there is a new product, service, or fee charged or offered to Merchants which is introduced by Company subsequent to the execution of this Agreement. Company shall use reasonable efforts to deliver notice of new products, service or offerings only, via the Company's online portal or via an amended Schedule A, which shall meet the requirements notice as set forth in this Agreement. Company will not be required to share in any new or additional fees and may exclude Sales Partner from such fees at any time without notice.

## 11. **Compliance**

Sales Partner will comply with the terms of this Agreement, with the Rules, and with all applicable state and federal laws and regulations. Sales Partner's performance of this Agreement will not violate any applicable law or regulation or any agreement to which Sales Partner may now or hereafter be bound. This includes any legal obligation related to the solicitation of customers.

## 12. **Confidentiality**

Sales Partner and Company each agree that it will retain in strictest confidence the Confidential Information and all information and data belonging to or relating to the business of the other party (including without limitation the terms of this Agreement and information related to Merchants, which the parties acknowledge belongs to Company) that each party will safeguard such information and data by using the same degree of care and discretion that it uses to protect its own Confidential Information, and that each party will reveal such information only to those with a need to know it to carry out the duties under this Agreement, and that each party will reveal such information only to persons or entities not a party hereto only when and to the extent necessary for that person or entity to perform its own obligations under an agreement with Company or Sales Partner. Neither party will use such information for its own benefit other than for the purposes contemplated by this Agreement, nor will it allow any third party to use such information. Sales Partner will limit access to the Company and Card Brand systems to only those employees with a need to have access to carry out the responsibilities of this Agreement. Sales Partner will implement reasonable and appropriate safeguards to prevent unauthorized access to such systems.

### 13. **Term, Termination, Default**

13.1. **Term.** This Agreement will become effective on the Effective Date, and will remain in effect for a period of 1 year from the Effective Date ("Initial Term"). This Agreement will automatically renew for 1-year periods ("Renewal Term") unless terminated earlier in accordance with the provisions of this Agreement.

13.2. **Termination.** Notwithstanding the above, the parties will have the following rights.

- a. **Automatic Termination.** This Agreement will automatically terminate if: (i) any of the Card Brands prohibits Sales Partner from providing, or prohibits Company from allowing Sales Partner to provide, the services set forth in this Agreement, (ii) the Company/Sponsor agreement terminates, (iii) Sponsor is no longer a member of the Card Brands, (iv) Sales Partner is not Active at the end of the Initial Term or is not active at any time during any Renewal Term, or (v) It becomes impossible or impractical for Company to perform by reason of changes to the Rules, regulations of any other provider of services to Company, or changes in federal, state or local laws, regulations or ordinances which this Agreement cannot reasonably be modified to accommodate.
- b. **Termination Without Cause.** Either party may terminate this Agreement at the end of the Initial Term or any Renewal Term upon written notice of termination to the other party upon thirty (30) day's notice.
- c. **Termination For Cause.** Any party may terminate this Agreement immediately upon the occurrence of an Event of Default listed in Section 13.3. Company may terminate this Agreement immediately upon the occurrence of any Event of Default listed in section 13.3. If a cure period applies to a particular Event of Default, and such Default is not cured, termination shall be retroactive to the date that notice of default was given.

#### 13.3. **Default**

Each of the following will constitute an Event of Default:

- a. **Financial Instability.** Sales Partner: (i) files for bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or any similar proceeding, (ii) has a proceeding instituted against it and such proceeding is not dismissed within 60 days, (iii) makes an assignment for the benefit of its creditors or an offer of settlement, extension or composition to its creditors generally; or (iv) a trustee, conservator, receiver or similar fiduciary is appointed for that party or substantially all of that party's assets. (v) makes a representation of financial instability.
- b. **False Representation.** Any representation or warranty made by Sales Partner or any of its Affiliated Sales Personnel, employees, officers, or directors proves to have been false or misleading in any material respect as of the date made, or becomes false or misleading at any time, including representations regarding the referral of a prospective Merchant
- c. **Breach.** Either party fails to observe any material obligation specified in this Agreement. The party who is in breach shall have a cure period of 30 days of receipt of written notice thereof from the non-breaching party.
- d. **Sales Partner Action.** Sales Partner: (i) knowingly engages in activities which violate the Rules, federal or state laws and regulations or which cause Company to violate the same; (ii) operates in an unsound, unsafe, or negligent manner; (iii) engages in activities which in the reasonable discretion of Company may impose financial risk to Company or Sponsor, or which result in undue economic hardship and/or damage to the goodwill of Company, Sponsor, or Card Brands; (iv) the Sales Partners or its Associated Sales Personnel make any attempt to convert any Merchant from Company to any other entity performing services similar to Company; or (v) if in the sole discretion of Company, Company determines that Sales Partner is negatively affecting the business reputation of Company by the quality of services rendered by Sales Partner.
- e. **Sales Partner Business.** The occurrence of any material adverse change in the nature or conduct of Sales Partner's business as it exists on the Effective Date.

#### 14. **Company/Sales Partner Trademarks**

Neither party will use the other's name in any promotional or marketing materials nor will it promote the others programs in any way, without the other party's consent. Sales Partner acknowledges and agrees that the trademarks owned by Company are registered trademarks, or pending trademarks of Company and that it has no rights to use such trademarks without Company's consent. All correspondence, materials, and/or oral solicitations directed by Sales Partner's to customers, or produced by any third party, concerning Company or its affiliates' programs must prominently identify Company or its affiliates by name and the city in which Company is located.

#### 15. **Indemnification and Limitation of Liability**

- 15.1. **Indemnification.** Sales Partner will indemnify and hold Company, Sponsor and the Card Brands harmless from and against any and all claims, demands, loss, (financial or otherwise) damage, liabilities, costs, fees, increased taxes or expenses (including without limitation, court costs and reasonable attorneys' fees), which may be incurred or which may be claimed by any person or as a result of: (A) acts or omissions of Sales Partner, its directors, officers, employees, agents or Associated Sales Personnel, relating to the exercise of, or the failure to exercise, Sales Partner's obligations under this Agreement, (B) the decision by Company or Sponsor not to execute a Merchant Agreement with a prospective Merchant, (C) any breach of any agreement, whether written or implied, between Sales Partner and any Merchant or Company, or (D) any Merchant Loss.
- 15.2. **Limitation of Liability.** The liability, if any, of Company under this Agreement for any claims, costs, damages, losses and expenses for which it is or may be legally liable, whether arising in negligence or other tort, contract, or otherwise, will not exceed in the aggregate the amount of any compensation paid to Sales Partner for the preceding three (3) month period, measured from the date the liability accrues. In no event will Company or Sponsor or its agents, representatives or employees be liable for indirect, special, or consequential damages. All legal action (including arbitration) between Sales Partner and Company must be commenced within one (1) year of the date the error or incident giving rise to such action occurred otherwise such action is permanently barred.

#### 16. **General**

##### 16.1. **Assignability; Sale or Merger of the Parties.**

- a. **Assignment.** Sales Partner will have no rights to assign this Agreement or any rights under this Agreement without the prior written consent of Company and any unauthorized attempted assignment will be null and void. Company may assign its rights under this Agreement provided that any assignee will take subject to all of the obligations of Company.
- b. **Purchase.** If Sales Partner enters into a purchase or stock exchange agreement with a third party which would effectuate a sale or merger of Sales Partner's business or Sales Partner's rights to compensation under this Agreement, Company will have the right to terminate this Agreement immediately.

##### 16.2. **Notice**

All communications under this Agreement sent to either party will be in writing and will be delivered in person or by United States Postal Service, return receipt requested, courier service, posting on the Company website and/or portal or via email addressed to the following:

If to Company: Shift4 Payments, LLC, 3501 Corporate Parkway, Center Valley, PA 18034 attn: Legal.

If to Sales Partner: Company may post notice on the Interactive ISO System, or email Sales Partner at the most current e-mail address Company has on file.

The parties may, from time to time, designate different persons or addresses to which subsequent communications will be sent by sending a notice of such designations in accordance with this Section. Notice shall be deemed delivered by the sending party (i) immediately upon personal delivery, or (ii) one business day after the date which notice is dispatched.

##### 16.3. **Entire Understanding, Amendment**

This Agreement, including the attached Schedules which are incorporated by reference, sets forth the entire understanding of the parties relating to its subject matter. Company may amend this Agreement and the attached Schedules in accordance with its reserved rights at any time upon notice to the Sales Partner.

**16.4. Severability**

If any provision of this Agreement is illegal, the invalidity of such provision will not affect any of the remaining provisions, and this Agreement will be construed as if the illegal provision is not contained in the Agreement. This Agreement will be deemed modified to the extent necessary to render enforceable the remaining provisions hereunder, and to comply with the Rules.

**16.5. No Waiver of Rights**

No failure or delay on the part of any party in exercising any right under this Agreement will operate as a waiver of that right, nor will any single or partial exercise of any right preclude any further exercise of that right.

**16.6. Successors and Assigns**

This Agreement will inure to the benefit of and will be binding upon the parties and their respective permitted successors and assigns. This Agreement will not be deemed to be for the benefit of any third party.

**16.7. Independent Contractors.**

Company and Sales Partner will be deemed to be independent contractors and will not be considered to be agent, servant, joint venturer or partner of the other. Neither Sales Partner nor any of its Affiliated Sales Personnel shall have the authority to sign any contract or incur any obligation, on behalf or in the name of Company.

**16.8. Construction.**

The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. All sections mentioned in the Agreement reference section numbers of this Agreement. The language used will be deemed to be the language chosen by the parties to express their mutual intent and no rule of strict construction will be applied against any party.

**16.9. Force Majeure.**

Neither party will be liable to the other for any failure or delay in its performance of this Agreement in accordance with its terms if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party.

**16.10. Survival.**

All agreements that by their context are intended to survive the termination of this Agreement, including but not limited to Section 3(c) will survive termination of this Agreement.

**16.11. Governing Law, Lawsuit and Class Action Waiver**

- a. **Governing Law and Place to Resolve Disputes.** This Agreement and all claims or disputes arising out of or relating to any aspect of the relationship between Company and Sales Partner will be governed by the laws of Pennsylvania, without regard to its conflict-of-laws principles, and applicable federal law, if brought against Company, except that the Federal Arbitration Act governs everything relating to arbitration. Company and Sales Partner consent to the exclusive jurisdiction and venue for any action relating to a claim or dispute that is brought in court (except small claims court or arbitration—see Article VII) Lehigh County Common Pleas Court, Pennsylvania, or the United States District Court for the Eastern District of Pennsylvania.
- b. Sales Partner and Company waive their rights to sue before a judge or jury and to participate in a class action, class-wide arbitration, private attorney general action, or any other proceeding in which a party acts in a representative capacity. Instead, any claim or dispute will be resolved on an individual basis by a neutral arbitrator whose decision (called an “award”) will be final except for a limited right of review under the Federal Arbitration Act. The arbitrator may not consolidate proceedings or join them together without the consent of all parties to all proceedings.
- c. **ALL CLAIMS AND DISPUTES COVERED.** Sales Partner and Company agree to resolve all claims and disputes of every kind between them or their respective owners, partners, shareholders, affiliates (including parents, subsidiaries, and other related entities), predecessors, successors, assigns, or Independent Sales Representatives only through binding individual arbitration before the American Arbitration Association (“AAA”). This arbitration agreement is to be broadly interpreted. It includes:
  - i. all claims or disputes arising out of or relating to any aspect of the relationship between Bank or Company (including its Independent Sales Representatives) and Merchant including, without limitation, this Agreement, the Services provided, any Bank or Company product or service, and any discount, fee, charge, assessment, or payment, whether based in contract, tort, statute, regulation, fraud, misrepresentation, omission, or any other

theory;

- ii. all claims or disputes that arose before this Agreement became effective (including claims or disputes relating to advertising);
  - iii. all claims or disputes that are the subject of purported class action litigation on the date this Agreement's Effective Date but Merchant is not a member of a certified class on that date; and
- d. **NOTICE OF DISPUTE.** Before seeking arbitration, Sales Partner or Company must first send to the other(s), by certified mail return receipt requested or a courier service that requires a signature upon delivery, a written Notice of Dispute ("Notice"). A Notice to Sales Partner must be addressed to its address in Company's records. A Notice to Company must be addressed to: Shift4 Payments, LLC Legal Department, 2202 N. Irving Street, Allentown, PA 18109. The Notice must: (A) describe the nature and basis of the claim or dispute; and (B) set forth the specific relief sought. If Merchant and Bank or Company do not reach an agreement to resolve the claim or dispute within 30 days after the Notice is received, Merchant, Bank, or Company may commence an arbitration.
- e. **ARBITRATION PROCEDURE. Rules.** The AAA's Commercial Arbitration Rules, as modified by this Agreement, apply. To commence an arbitration, submit a Demand for Arbitration with the required fee to the AAA and send a copy to Company at its address in Notice Section. For information, visit [adr.org](http://adr.org) or call 1-800-778-7879. For disputes involving \$25,000 or less, any hearing will be telephonic unless the arbitrator finds good cause to hold an in-person hearing. Any in-person hearing will be held in the county of Merchant's principal place of business.
- f. **Arbitrator's Authority.** The arbitrator exclusively decides all issues, and has the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or the arbitrability of any claim or counterclaim, and has the power to determine the existence or validity of a contract of which an arbitration clause forms a part, except that a court has exclusive authority to enforce the prohibition on class-wide or representative arbitration.
- g. **Relief.** The arbitrator may award the same relief as a court could but may award declaratory or injunctive relief only to the individual party and only to the extent necessary to provide relief for that party's individual claim. Any court with jurisdiction may enforce the arbitrator's award.