

**SECTION 25 REQUIRES ALL DISPUTES WITH SHIFT4 TO BE RESOLVED IN BINDING INDIVIDUAL ARBITRATION—NOT IN A CLASS ACTION, AND NOT IN COURT BEFORE A JUDGE OR JURY. SECTIONS 7 & 8 LIMIT SHIFT4'S LIABILITY AND MERCHANT'S REMEDIES. PLEASE READ THEM.**

**SECTIONS 3.6 AND 24.10 PERMIT SHIFT4 TO CHANGE FEES AND CHARGES UPON 30 DAYS' WRITTEN NOTICE, WHICH WILL USUALLY APPEAR IN YOUR MONTHLY STATEMENT MESSAGE. PLEASE REVIEW YOUR STATEMENT EACH MONTH TO ENSURE ALL CHARGES ARE CORRECT AND TO LEARN OF ANY NEW OR CHANGED FEES OR CHARGES. YOU ACCEPT THESE NEW OR CHANGED FEES OR CHARGES BY CONTINUING TO USE THE GATEWAY SERVICES AFTER NOTICE OF THEM.**

This Gateway Services Agreement is entered into between SHIFT4 PAYMENTS, LLC ("**SHIFT4**"), whose principal place of business is 3501 Corporate Parkway, Center Valley, PA 18034, and MERCHANT ("**Merchant**" or "**you**"), whose personal name(s) (if a sole proprietorship or partnership), address, business organization name, and type of business are set forth below. This Gateway Services Agreement becomes effective only if SHIFT4 accepts it. SHIFT4's assignment of a merchant identification number to Merchant constitutes its acceptance. This Gateway Services Agreement is effective on the date SHIFT4 accepts it ("**Effective Date**"), but if Merchant submits a Transaction prior to the Effective Date, Merchant will be bound by this Gateway Services Agreement from the time of submission.

THIS DOCUMENT CONTAINS THE TERMS AND CONDITIONS YOU AGREED TO WHEN YOU SIGNED THE MERCHANT APPLICATION ("**Merchant Application**"; see its Section 11) OR GATEWAY SERVICES APPLICATION ("**Gateway Application**") or clicked "I Agree". The Merchant and Gateway Applications are collectively called the "Application." THIS GATEWAY SERVICES AGREEMENT TERMS AND CONDITIONS, THE APPLICATION, AND CARD BRANDS' RULES AND REGULATIONS, AS AMENDED FROM TIME TO TIME, COLLECTIVELY CONSTITUTE THE "Gateway Services Agreement."

This Gateway Services Agreement shall remain in full force and effect if your Merchant Processing Agreement with a Shift4 Affiliate (e.g., Shift4, Harbortouch, Future, POSitouch, or Restaurant Manager) is terminated. Under Section 3.10, if you terminate those Merchant Processing Agreements but continue to use SHIFT4 Gateway Services after doing so, you agree to pay five cents (\$.05) per Transaction (with a minimum of \$50 per month per location ("**Monthly Minimum**"), plus a Monthly Service Fee of \$25 per location, for each month you use them. See Section 5.11 for Early Termination if you terminate this Gateway Services Agreement early.

## RECITALS

**WHEREAS**, SHIFT4 owns, operates, and provides an online service, which is a Gateway between its Merchants' Payment Applications and financial institutions via their Credit Card Processors. SHIFT4 provides its online service for certain purposes, which include, but are not limited to, the authorization and settlement of credit, debit, private-label, check, and gift card transactions ("**SHIFT4 Gateway Services**"). SHIFT4 also provides a software-as-a-service ("**SaaS**") Internet-based financial transaction accounting application for auditing, editing, reporting, archiving, and retrieving of transactions for the above payment methods ("**SaaS Services**"). For the purpose of this Gateway Services Agreement, "**GATEWAY**" means the SHIFT4 Gateway Services, its Licensed Software, i4Go, 4Word, 4Res, the Merchant Link Hosted Payment Gateway, TransactionVault®, TransactionShield®, TransactionLink® (software or services), BizPortal™, mDirect™, and any accompanying Documentation, the SaaS Services; and any additional services or software provided by Shift4 to Merchant under this Agreement in order to provide the SHIFT4 Gateway Services;

**WHEREAS**, Merchant is desirous of using GATEWAY to utilize Gateway services and Third-Party Processor services through an interface Integration with Merchant's Point of Sale System or Merchant's Property Management System. Merchant also wishes to utilize GATEWAY's SaaS financial accounting functionality;

**NOW THEREFORE**, for good and adequate consideration, the parties agree as follows:

## 1. DEFINITIONS

The following are Definitions that are used throughout SHIFT4 contractual documents. This Gateway Services Agreement may or may not use all definitions set forth below. Definitions below include both the singular and plural noun forms as well as the adjective(s) derived therefrom unless otherwise defined in the provision where first used.

- 1.1. "**4Go®**" - means a patent-protected software product that operates as a credit card "firewall" that when implemented correctly and pursuant to all applicable PA DSS implementation guides, and in concert with the PCI DSS, can keep Cardholder Information out of the POS/PMS application at the moment of the swipe, thus providing a layered approach to pre-authorization security. 4Go is covered by the following patents and by other pending patent applications: U.S. Patent Nos 7,891,563, 7,841,523, 7,770,789, 8,328,095, 8,690,056, 9,082,120 and 9,495,680, and Canadian Patent No. 2,688,762.
- 1.2. "**4Word®**" - means a part of the GATEWAY service that is a web-based solution that permits a merchant who is not integrated with GATEWAY, but has been granted access to 4Word by a merchant who is, to obtain access to the Cardholder Information for a single payment card. This solution can be used to make payments against another payment system such as a stand-alone Payment Device. 4Word is patent pending.
- 1.3. "**Affiliate**" - means any individual, partnership, corporation, trust or other entity or association, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control of, a party.
- 1.4. "**Application Program Interface**" or "**API**" - See definition for SHIFT4 API.

- 1.5. **“Basic Enhancements”** - means changes or additions to GATEWAY, other than Error Corrections, which are functional improvements to existing features of the Licensed Software or Licensed Service as defined by SHIFT4 in SHIFT4’s sole discretion. Basic Enhancements may include those improvements generally made available at no additional cost to SHIFT4 customers from time to time.
- 1.6. **“Card Association”** - means organizations such as VISA and MasterCard, that license bank card programs and perform operational functions for their members, including transactional processing and authorizations, interchange settlements, and fee processing, and set the rules for how their card programs must be processed.
- 1.7. **“Cardholder”** - means a merchant’s customer when using of a credit, debit, private-label, check or gift card in a transaction with the merchant. For the purposes of this Gateway Services Agreement, Cardholder also means the customer of Merchant when a payment instrument is used at a Point of Sale.
- 1.8. **“Cardholder Data Environment” or “CDE”** - is the people, processes, and technology that store, process, or transmit Cardholder Information.
- 1.9. **“Cardholder Information” or “CHD”** - means information related to a holder (e.g., consumer, purchaser) of a credit, debit, private-label, check, or gift card who is identified on or in the credit, debit, private-label, check, or gift card, and can include the Cardholder name, magnetic stripe information, primary account number, expiration date, card security code (CSC) or service code. Notwithstanding the above, Cardholder Information may also include all data designated in the Payment Card Industry Data Security Standard by the Payment Card Industry Security Standards Council, whose website is currently located at <https://www.pcisecuritystandards.org>, as “Cardholder Data” or “Sensitive Authentication Data.”
- 1.10. **“Consumer”** - means a merchant’s customer when that customer enters any data, or interacts with that data, in an operational process at a merchant’s POS or PMS where the data in question is data that is not considered Cardholder Information as defined in this Gateway Services Agreement and that data is controlled by UTG, the merchant’s POS or PMS, or a combination of both.
- 1.11. **“Credit Card Processor”** - means a company that provides computer processing and communication services to supply connectivity to the various card associations and banks for authorization and settlement of credit card transactions. SHIFT4 is considered a Processor (if the capability is requested) to American Express, and for SHIFT4’s own gift card product, It’s Your Card. Shift4 is also considered a Processor for those merchants who enter into a Merchant Transaction Processing Agreement with Shift4 Payments, LLC.
- 1.12. **“Direct Competitor”** - means a company (a) that produces a virtually identical good or service that is offered for sale within the same or similar market as those produced by a second company and (b) where the loss of market share by the company places it at a competitive disadvantage to the second company.
- 1.13. **“Documentation”** - means written documents or other information provided in machine readable form that describes the operation of GATEWAY, UTG, UTG-Stub, 4Go and P2PE. SHIFT4 GATEWAY Alerts are Documentation. Notwithstanding anything to the contrary, however, marketing materials, proposals, or communications that were provided, or are available to Merchant, regarding the operations, products, and services of GATEWAY prior to the Effective Date are not Documentation.
- 1.14. **“GATEWAY Monthly Service Fees”** - means the fees set forth in your Application (or your pre-April 2018 SHIFT4 DOLLARS ON THE NET Service Agreement if still in effect), or the APPENDIX [SERVICE AND PAYMENT] and include but are not limited to: Transaction Fee, Monthly Service Fee, and Monthly Minimum Fee.
- 1.15. **“Downgrade”** - means an action whereby a Merchant Services provider informs Merchant in writing that particular transactions do not meet required Card Association rules for processing and for that reason the fees charged for processing will be higher.
- 1.16. **“Effective Date”** - means the date SHIFT4 accepts this Gateway Services Agreement. SHIFT4’s assignment of a merchant identification number to Merchant ordinarily constitutes its acceptance, but SHIFT4 may also accept by notice.
- 1.17. **“EMV”** - (acronym for Europay, MasterCard and Visa) means a technical specification for payment cards relating to integrated circuit cards, point-of-sale terminals and automated teller machines that use card embedded computer chips to authenticate chip-card transactions. The specification is presently managed by EMVCo, a consortium with control split among Visa, MasterCard, JCB, American Express, China UnionPay, and Discover.
- 1.18. **“Error”** - means any failure of GATEWAY to substantially conform to the specifications in the Documentation delivered with or in connection with GATEWAY.
- 1.19. **“Error Correction”** - means (i) a software modification or addition that, when made or added to GATEWAY, establishes material conformity to the specifications in the Documentation, or (ii) a procedure or routine that, in SHIFT4’s sole discretion, when observed in the regular operation of GATEWAY, eliminates the practical adverse effect of an Error in the use of GATEWAY.
- 1.20. **“Exhibit”** - means those certain documents attached hereto and incorporated herein by reference as Exhibit “A”, “B”, etc.
- 1.21. **“Gateway”** - means an organization that provides credit, debit, or gift card processing to merchants through a Processor or directly to a Card Association.
- 1.22. **“Hardware”** - means any device and its related software not manufactured or provided by SHIFT4.
- 1.23. **“i4Go®”** - means a part of the GATEWAY service that is a virtual card-data “firewall” for traditional e-commerce (e.g., web shopping cart) or browser-based applications (e.g., kiosk, SaaS). i4Go integrates into both card-present and card-not-present environments using a browser-embedded application at the point of sale. i4Go provides similar security and CHD protection

for e-Commerce environments that SHIFT4's 4Go does for traditional "brick-and-mortar," non-browser-based environments. i4Go intercepts CHD before it reaches Merchant's POS or PMS and immediately replaces it with a TrueToken.

- 1.24. **"Integration"** - means the development and implementation of the programmatic code required by Merchant's POS or PMS using the SHIFT4 API to send credit, debit, private-label card, gift card, or check authorization transactions to GATEWAY.
- 1.25. **"Licensed Service"** - means the right to use GATEWAY provided by SHIFT4.
- 1.26. **"Licensed Software"** - means SHIFT4's UTG, UTG-Stub, 4Go, and P2PE software. Licensed Software is to be used exclusively with the SHIFT4 Gateway Services or SaaS Services based on agreed Merchant's specific configuration(s) and need(s).
- 1.27. **"Merchant Service Provider" or "MSP"** - means a merchant bank, an agent for a merchant bank, or an independent sales organization (ISO) for a merchant bank, that provides Merchant with an account to accept credit cards and provides certain services related thereto.
- 1.28. **"Micros Secure Suite™"** - means SHIFT4 software products that provide Integration to GATEWAY, enhanced transaction security, and debit & EMV functionality to various versions of Micros® POS software. Micros versions are limited to those listed at [www.shift4.com](http://www.shift4.com).
- 1.29. **"Month" or "Monthly"** - means a calculation of 30.41667 days (i.e., 365 days per year / 12 calendar months = 30.41667 days) or, during leap years, Month or Monthly is defined as 30.5 days (366 days per year / 12 calendar months = 30.5 days).
- 1.30. **"Payment Agreement" or "PAY"** - means SHIFT4's Automated Clearing House agreement for payment.
- 1.31. **"PAY"** - See definition of Payment Agreement.
- 1.32. **"Payment Application"** - means computer software not written by SHIFT4 and that requests payment operations, including but not limited to, authorization and settlement of financial instruments (e.g., credit card authorizations) utilizing the SHIFT4 API. Payment Applications include, but are not limited to, Merchant's PMS and POS. A Payment Application may include, but may not be in its entirety, a Third-Party Interface, or Third-Party Software.
- 1.33. **"Payment Application Data Security Standard" or "PA DSS"** - is a standard subordinate to the PCI DSS that defines the requirements of a PCI SSC listed Payment Application and the obligations of the merchant and a Third-Party Software developer when implementing a Payment Application developed by a Third-Party into a merchant's PCI DSS-compliant environment. Use of a PA DSS-compliant application by itself does not make an entity PCI-DSS compliant.
- 1.34. **"Payment Devices"** - mean various devices in the payment space traditionally used by Payment Applications including, but not limited to, magnetic card swipes, PINned debit devices, EMV devices, P2PE devices, electronic signature capture devices, check readers, mobile payment entry devices, receipt printers, and pole mounted displays.
- 1.35. **"Payment Card Industry Data Security Standards" or "PCI DSS"** - means a set of industry security standards, to which all merchants, Processors, and Gateways must adhere, promulgated by the Payment Card Industry Security Standards Council. In the case of large merchants, Processors, and Gateways, annual audits with or without external assessment may be required.
- 1.36. **"Payment Card Industry Security Standards Council" or "PCI SSC"** - means the security standards organization that defines and controls the content of the PCI DSS. Its security standards are currently available at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org).
- 1.37. **"Point of Sale System" or "POS"** - means a computer system where, among other operations, a payment is accepted and facilitates the transfer of goods or services between a merchant and cardholder. This system normally calculates the amount owed by the cardholder and provides options for payment. This system will also normally issue a receipt for the transaction. This also includes the Payment Processing portion of Enterprise Resource Planning ("ERP") solutions.
- 1.38. **"Point to Point Encryption" or "P2PE"** - means a solution where cardholder data is encrypted at the swipe (at the point of sale) and is not decrypted until it is delivered to a secure datacenter. This requires that the acceptor of the cards does not have the ability to decrypt the data at the point of sale. This includes SHIFT4's P2PE solutions where encryption devices are connected to and controlled by SHIFT4's UTG or where encrypting magnetic stripe readers are connected to the PMS through SHIFT4's 4Go or i4Go.
- 1.39. **"POS/PMS"** - means collectively Merchant's POS or PMS or a combination of both
- 1.40. **"POS/PMS Breach"** - means an unauthorized acquisition of computerized data that materially compromises the security, availability, accessibility, or integrity of Cardholder Information maintained by Merchant's POS/PMS pursuant to this Gateway Services Agreement. For the purpose of this Gateway Services Agreement, the definition of whether a POS/PMS Breach occurred is based on a finding of the Card Associations or a relevant government agency and Merchant being informed of that finding.
- 1.41. **"POSibridge™"** - means a software product that integrates the POSitouch Restaurant System with GATEWAY. POSitouch versions supported are listed at [www.shift4.com](http://www.shift4.com).
- 1.42. **"Processing"** - means the use of GATEWAY to facilitate the movement of Transactions to and from a Credit Card Processor. The verbs Process and Processed as used herein have the same meaning.
- 1.43. **"Processor"** - See definition for Credit Card Processor.
- 1.44. **"Property Management System" or "PMS"** - means the system that manages some or all of the subsystems in a hospitality setting including but not limited to Point of Sale System operations at a hotel front desk.
- 1.45. **"Regulation Changes"** - means modifications to GATEWAY or Licensed Software required by PCI DSS, the Card Associations, or other industry standards.

- 1.46. **“SaaS”** – See definition for Software as a Service.
- 1.47. **“Secure Offline Stand-In®” or “SOS”** – means a component and feature set of UTG that allows merchants to continue processing payments even if they lose their connection to the Internet. The UTG securely encrypts and stores card data, returning false cardholder data or a localized TrueToken® depending on the merchant’s setup, and keeps checking until the Internet connection is re-established. Once Internet connectivity is regained, the encrypted data or TrueTokens are transmitted to SHIFT4’s data centers, and if possible or required, authorizations are obtained, and the payment process returns to its nominal state. All of this happens automatically within the UTG and provides a payment experience as a connection is re-established.
- 1.48. **“Security Breach”** – means an unauthorized acquisition of computerized data that materially compromises the security, availability, accessibility, or integrity of Cardholder Information maintained by SHIFT4’s GATEWAY pursuant to this Gateway Services Agreement. For the purpose of this Gateway Services Agreement, the determination of a whether a Security Breach occurred is based on a finding of the Card Associations or a relevant government agency and SHIFT4 being informed of that finding.
- 1.49. **“SHIFT4 API”** – means SHIFT4’s Application Program Interface, which provides a comprehensive set of data formats and directives that allows Integration to SHIFT4’s GATEWAY service.
- 1.50. **“SHIFT4 Application Program Interface”** – See definition for SHIFT4 API.
- 1.51. **“Software as a Service”** – means “on-demand software” which is normally supplied by a third-party application service provider and typically uses a software delivery model in which the software and its associated data are centrally hosted on a computer system, which may or may not be owned or managed by the Merchant. Software as Service resources are typically accessed by users or systems via Internet web browsers, but other onsite components or software may be necessary to fully realize a complete and comprehensive solution. Software as a Service is normally charged in a “pay-as-you-go” operational expense model as opposed to a capital expenditure model.
- 1.52. **“Statement”** – means a statement provided by SHIFT4 to Merchant detailing Merchant’s transactions after the end of each calendar month. Statement may include service updates and notice of fee changes, and amendments to this Gateway Services Agreement.
- 1.53. **“Third Party”** – means a party or person other than the Merchant or SHIFT4.
- 1.54. **“Third-Party Gift Card”** – means a gift card functionality not written by SHIFT4 and that is supplied to Merchant through an interface between SHIFT4’s GATEWAY and another company.
- 1.55. **“Third-Party Interface”** – means computer software not written by SHIFT4 and that uses formats and processes included in the Application Program Interface specification supplied by SHIFT4.
- 1.56. **“Third-Party Software”** – means software not written by SHIFT4 that is used or designed by Merchant for use at Merchant’s various physical points of sale, on the Internet, or via telephone.
- 1.57. **“Transaction”** – means any transmission from GATEWAY to a Credit Card Processor of transactions originating from a Payment Application. Depending on the type of transaction, transmissions include, but may not be limited to, authorization, refund, settlement, and batch. In the case of gift cards, a Transaction is any action by GATEWAY that issues, activates, puts money on, or takes money off, a gift card.
- 1.58. **“TrueTokenization®”** – means SHIFT4’s technology that replaces the Cardholder Information for a specific transaction with a unique 16- digit alphanumeric value operating under the system utilizing the SHIFT4 trademark TrueToken®. This TrueToken can be used for at-once, reoccurring, book-and-ship, and on-file transactions and other types of transactions where Cardholder Information must be normally maintained.
- 1.59. **“UTG® Stub” or “UTG Stub”** – means a software product that connects Payment Devices to the UTG via secure TCP/IP. It is used for certain Payment Application configurations where Payment Application Integration must take place at a back-office or remote location (e.g., a back-office POS server) and the Payment Devices must be connected to Merchant workstations at another location (e.g., the front of the house). While not all Integrations of GATEWAY to Merchant’s PMS or POS may require the UTG Stub, it is included in this Gateway Services Agreement in the eventuality that it may become necessary to control specialized equipment required for future use to integrate at-property-required-devices. (e.g., EMV devices, contactless devices, mobile devices, and signature capture devices).
- 1.60. **“UTG®” or “UTG”** – See definition for Universal Transaction Gateway®.
- 1.61. **“United States” or “U.S.” or “U.S.A.”** – means for the North American continental 48 States, Hawaii, Alaska, the District of Columbia, the Commonwealth of Puerto Rico, Territory of Guam, the Virgin Islands of the United States, and any other organized incorporated or unincorporated territory, possession or military base controlled or operated under the auspices and direct control of the United States of America.
- 1.62. **“Universal Transaction Gateway®”** – means a software product that operates only in conjunction with GATEWAY to provide Integration between GATEWAY and Merchant’s PMS and/or POS. The UTG acts as a software-VPN providing transaction security between Merchant’s PMS or POS and SHIFT4’s GATEWAY processing center; and provides assured-delivery technology assuring that transactions between Merchant’s PMS and/or POS and the GATEWAY processing center are not lost or duplicated by problems on the Internet. The UTG can facilitate the control of Payment Devices on behalf of the Merchant’s PMS or POS. UTG’s device control is limited to devices listed on SHIFT4’s website: [www.shift4.com](http://www.shift4.com). UTG can provide stand-in authorization during interruptions of Internet connectivity with the GATEWAY processing center. For most Integrations, UTG is

required to use the GATEWAY service. In the case of websites, UTG is suggested to use GATEWAY. While UTG is often used at an individual property connected to a Merchant's PMS or POS located on property, for the purpose of this Gateway Services Agreement, one or more UTG systems must be Merchant's PMS or POS to integrate to GATEWAY.

## 2. TERM

- 2.1. The **"Initial Term"** of this Gateway Services Agreement shall be for a period as defined in the Application, but if you did not sign an Application that defines the Initial Term, it shall be for three years from the Effective Date.
- 2.2. This Gateway Services Agreement shall commence on the Effective Date and continue until the end of the Initial Term unless terminated in accordance with Section 5 (Termination). **This Gateway Services Agreement shall automatically renew for successive two- (2) year periods (each, a "Successive Term" and together, the "Successive Terms") unless Merchant or SHIFT4 provides the other with thirty (30) days' written notice of non-renewal prior to a Successive Term taking effect, in compliance with Section 5.** The Initial Term and the Successive Terms shall be referred to herein collectively as the **"Term"**. Merchant agrees to utilize for the entirety of each Term all of the Shift4 services for which it has contracted.

## 3. PAYMENTS, FEES, TAXES, 30-DAY FEE DISPUTE PERIOD, AND FEE CHANGES

- 3.1. GATEWAY Initial Setup Fees are specified in the Gateway Application (or your pre-April 2018 SHIFT4 DOLLARS ON THE NET Service Agreement, if still in effect) or by the APPENDIX [SERVICE AND PAYMENT]. The Gateway Application or a separate agreement for Initial Setup Fees is the **"Initial Invoice"** covering those fees. Unless otherwise agreed in writing, Merchant must pay the GATEWAY Initial Setup Fees in full before SHIFT4 will begin to provide any services under this Gateway Services Agreement. Merchant authorizes SHIFT4 to debit these fees, via Automated Clearing House (**"ACH"**) to the bank account, or to the credit card account, listed on the Application (or SHIFT4 Payment Agreement).
- 3.2. GATEWAY Monthly Service Fees are specified in the Application (or your pre-April 2018 SHIFT4 DOLLARS ON THE NET Service Agreement, if still in effect) or the APPENDIX [SERVICE AND PAYMENT]. Each month, SHIFT4 will provide an electronic Statement of those fees to Merchant by posting it on <https://myportal.shift4.com>. The Statement is organized by Merchant location(s) or MID. SHIFT4 will provide the Statement in Comma Separated Value (**"CSV"**) form to assist Merchant. Merchant agrees to timely pay those fees via an ACH debit to the bank account, or a debit to the credit card account, listed on the Application (or SHIFT4 Payment Agreement). Merchant authorizes SHIFT4 to debit the listed account on or after the first day of each month (or as set forth in a separate agreement attached hereto, whichever is earlier) to pay the Statement for the previous month's GATEWAY Monthly Service Fees and any other fees or charges due under this Gateway Services Agreement.
- 3.3. Account Maintenance Fees will be charged for the following types of services: processor change, ownership change, additional locations, additional revenue centers, additional integrations, assistance with re-installation of GATEWAY systems, addition of gift card, addition of devices, and any new technologies not yet contemplated in the current solution. They are specified in the Application, an additional services addendum, the APPENDIX [SERVICE AND PAYMENT], or via amendment. Merchant agrees to pay these fees in advance by paying each invoice or Statement for those fees upon presentation, and authorizes SHIFT4 to debit the bank or credit card account listed in the Application (or SHIFT4 Payment Agreement) on the day the invoice or Statement is presented unless the Application or addendum gives a later date for a particular fee.
- 3.4. If Merchant must have a particular installation (go-live) date and Merchant has supplied the required forms fewer than ten (10) business days before the go-live date (**"Rush Installation"**), Merchant agrees to pay an expedited fee of five hundred dollars (\$500), which is due at completion of installation. If Merchant requires a Rush Installation and has supplied the required forms fewer than five (5) business days before the go-live date, Merchant agrees to pay an expedited fee of one thousand dollars (\$1,000), which is due at completion of installation. Merchant authorizes SHIFT4 to debit the bank or credit card account listed on the Application (or SHIFT4 Payment Agreement) on the day installation is completed.
- 3.5. **30-DAY FEE DISPUTE PERIOD** - As Merchant has access to at least twenty-four (24) months of its detailed Transactions, Merchant has the ability to self-audit its Statements. SHIFT4 agrees that all fees, charges, and expenses invoiced to Merchant with respect to the services provided hereunder shall be those contracted for by Merchant, or added or changed upon notice under Section 3.6 (Change in Fees). **Merchant has a limited period of thirty (30) days after the Statement is posted ("Dispute Period") to dispute in writing to [billing@shift4.com](mailto:billing@shift4.com) any fee or charge it believes was incorrect or improper.** If SHIFT4 agrees that Merchant was billed incorrectly or improperly, it will credit Merchant for that charge during the next billing cycle. **Merchant waives its right to dispute, and will not bring any claim or legal action for, any fee or charge it did not dispute in writing within the Dispute Period.**
- 3.6. **CHANGE IN FEES - SHIFT4 may, with thirty (30) days' written notice, change (including increase) fees and charges set forth on the Application or otherwise in effect, including adding fees for services Merchant utilizes. SHIFT4 may change fees in response to changes in Card Brand fees with less than thirty (30) days' notice. Notice of fee changes may be posted online or included in Merchant's Statement. You accept these new or changed fees or charges by continuing to use the Gateway Services after notice of them.**
- 3.7. TAXES - Merchant is obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this Gateway Services Agreement.
- 3.8. LATE FEE - A late fee of one and one-half percent (1.5%) per month will be charged to Merchant on Statement balances not paid by the end of the calendar month in which the Statement is posted.
- 3.9. **ACH AND CREDIT CARD PAYMENT AUTHORIZATION - Merchant authorizes SHIFT4 to initiate debit and credit entries to the bank and credit card accounts listed on the Application (or SHIFT4 Payment Agreement) or to any other account Merchant maintains at any institution, to pay fees, charges, and any other sums due under this Gateway Services Agreement.**

This authorization will remain in effect beyond termination of this Gateway Services Agreement if fees, charges, or any other sums due are owed post-termination. If Merchant changes any account listed, this authorization applies to the new account. You agree that this Gateway Services Agreement is not effective until you have provided a valid bank or credit card account on the Application (or SHIFT4 Payment Agreement).

- 3.10. **GATEWAY SERVICES FEES UPON TERMINATION OF MERCHANT PROCESSING AGREEMENT - If your Merchant Processing Agreement with a SHIFT4 Affiliate (e.g., Shift4, Harbortouch Payments, FuturePOS Payments, POSitouch Payments, or Restaurant Manager Payments) is terminated but you continue to use SHIFT4 Gateway Services after that, you agree to pay five cents (\$.05) per Transaction (with a minimum of fifty dollars (\$50) per month per location), plus a Monthly Service Fee of twenty-five dollars (\$25) per location, for each month you use them. These fees are subject to change under Sections 3.6 and 23.10. See Section 5.11 for Early Termination if you terminate this Gateway Services Agreement early.**
- 3.11. **MERCHANT COMPLIANCE/INDUSTRY COMPLIANCE FEE.** Merchant shall be charged a Semi-Annual Two Hundred Fifty (\$250) Dollar Industry Compliance Fee (charged in January and July of each year) per payment device and/or terminal ID (up to a maximum of two payment devices/terminal ID's).

#### 4. GRANT OF RIGHTS

- 4.1. SHIFT4 hereby grants to Merchant, subject to the limitations and permissions set forth in this Gateway Services Agreement, a nonexclusive, nontransferable, revocable, worldwide right (limited to Credit Card Processor availability as listed on SHIFT4's website [www.shift4.com](http://www.shift4.com)) to use SHIFT4 Gateway Services and SHIFT4's UTG (including any and all updates and modifications, Basic Enhancements and Error Corrections thereto), as well as all Documentation, throughout the Term, subject to the conditions, restrictions, and limitations set forth in this Gateway Services Agreement.
- 4.2. SHIFT4 hereby grants to Merchant, subject to the limitations and permissions set forth in this Gateway Services Agreement, a nonexclusive, nontransferable (except as otherwise provided herein), revocable, worldwide right to use SaaS Services, i4Go, 4Word, and the Licensed Software (including any and all updates, modifications, Basic Enhancements, and Error Corrections thereto), as well as all Documentation, throughout the Term. Merchant's use of GATEWAY is limited to acts that are consistent with this Gateway Services Agreement and the Documentation.
- 4.3. Merchant agrees that SHIFT4 retains all rights, title, and interest in the GATEWAY, and the Licensed Software, except as set forth in this Gateway Services Agreement. No rights to use, copy, display, or print the GATEWAY or Documentation, in whole or in part, are granted except as expressly provided in this Gateway Services Agreement.
- 4.4. Merchant agrees that this Grant of Rights does not allow Merchant to sublicense GATEWAY to any person or entity.

#### 5. TERMINATION and EARLY TERMINATION FEE

This Gateway Services Agreement may be terminated prior to its scheduled expiration at the times below, but each parties' rights to enforce the other's obligations as of the effective date of termination shall survive termination:

- 5.1. Immediately if SHIFT4 materially breaches any of the terms, conditions, or obligations in this Gateway Services Agreement and fails to cure the breach within thirty (30) days following SHIFT4's receipt of written notice of the breach. Merchant and SHIFT4 may agree in writing to extend this cure period. To be grounds for termination under Section 5.1: (i) the conduct constituting the breach must have been under SHIFT4's control, and not due in whole or part to a third party's conduct, and (ii) Merchant must have offered a written remediation plan for a cure that SHIFT4 failed to follow or was unwilling to follow; or
- 5.2. Immediately if Merchant materially breaches any of the terms, conditions, or obligations in this Gateway Services Agreement and fails to cure the breach within thirty (30) days following Merchant's receipt of SHIFT4's written notice of the breach. Merchant and SHIFT4 may agree in writing to extend this cure period. To be eligible to cure a breach, Merchant must be current in payment of its account or become current as part of the cure; or
- 5.3. At the end of the Initial Term or any Successive Term if Merchant or Shift4 provides the other with thirty (30) days' written notice of non-renewal prior to a Successive Term taking effect; or
- 5.4. Shift4 may terminate this Gateway Services Agreement immediately if a Card Association or any regulatory body requires it to do so; or
- 5.5. Upon receipt of written notice from the non-breaching party if the breaching party fails to strictly comply with the provisions of Section 21 (CONFIDENTIALITY); or
- 5.6. Upon the breaching party's receipt of written notice from the non-breaching party if the breaching party makes an assignment in violation of Sections 23.5 or 23.6; or
- 5.7. Upon Merchant's receipt of written notice from SHIFT4, if Merchant materially breaches Sections 4 (Grant of Rights) or 20 (Protection of Licensed Software and Services) and such breach, in SHIFT4's reasonable judgment, is not curable within thirty (30) days or causes SHIFT4 irreparable harm including, but not limited to, harm to SHIFT4's PCI compliance or data security capabilities; or
- 5.8. Upon Merchant's receipt of written notice from SHIFT4, if Merchant has not timely paid fees and charges as provided in Section 3 and the breach is not cured as provided in Section 5.2; or
- 5.9. Upon Merchant's receipt of ninety (90) days' written notice, if any third party who is a competitor of SHIFT4 directly or indirectly acquires or gains control of all or substantially all of Merchant's assets or stock; or
- 5.10. Upon receipt of written notice from Merchant to SHIFT4 if SHIFT4 fails to maintain its status as a PCI DSS-compliant Service Provider at the same or higher level as on this Gateway Services Agreement's Effective Date for more than sixty (60) days; or

- 5.11. **EARLY TERMINATION WITH EARLY TERMINATION FEE - Upon thirty (30) days' written notice from Merchant to SHIFT4 if Merchant pays all outstanding amounts due as of the effective date of termination plus an Early Termination Fee. The "Early Termination Fee" is the average of the GATEWAY Monthly Service Fees invoiced since this Gateway Services Agreement's Effective Date, multiplied by the number of months remaining in the current Initial Term or Successive Term. But if Merchant also terminates its Merchant Processing Agreement with a SHIFT4 Affiliate—see Section 3.10—the "Early Termination Fee," instead, is the average of the GATEWAY Monthly Service Fees that would have been invoiced under Section 3.10 if those rates had been in effect since this Gateway Services Agreement's Effective Date, multiplied by the number of months remaining in the current Initial Term or Successive Term.**
- 5.12. **EARLY TERMINATION FEE NOT A PENALTY - Merchant agrees that the Early Termination Fee is a not penalty, but rather is reasonable in light of the financial harm caused by Merchant's early termination. Merchant authorizes SHIFT4 to debit the Early Termination Fee to the account listed on the Application (or SHIFT4 Payment Agreement) upon termination.**
- 5.13. Upon termination of this Gateway Services Agreement: (i) SHIFT4 shall cease providing the GATEWAY service; (ii) all licenses terminate; (iii) Merchant's payment obligations under this Gateway Services Agreement, including any Early Termination Fee, become due immediately; (iv) within thirty (30) days from the effective date of termination, each party shall return or destroy all Confidential Information of the other party and will not retain any copies except as required by law; (v) Merchant shall cease all use of GATEWAY and destroy all full or partial copies of the Licensed Software and Documentation in Merchant's possession or under its control. And at no time will Cardholder Information be required to be returned in an unencrypted or unmasked state.
- 5.14. Either party can terminate this Gateway Services Agreement under Sections 23.1 (Force Majeure) and 23.8 (Sale to Competitor) upon the other party's receipt of written notice.

## 6. LIMITED WARRANTY

- 6.1. SHIFT4 warrants that GATEWAY shall substantially conform to the latest Documentation as supplied to Merchant or as available on [www.shift4.com](http://www.shift4.com), or another SHIFT4 site supplied in the future.
- 6.2. SHIFT4 warrants that, within thirty (30) days of receipt of a detailed, transaction-by-transaction Downgrade report from Merchant, SHIFT4 will supply to Merchant the potential reason for the Downgrade. SHIFT4 will determine, in its reasonable judgment, whether the Downgrade is Merchant's Processor's issue, Merchant's POS/PMS issue, Merchant's Merchant Services Provider's issue or whether the problem is a SHIFT4 issue. If the Downgrade is determined to be SHIFT4's, and the cause appears to be a setup issue, it will be corrected within one (1) business week; or should the Downgrade be a Processor interface issue, it will be corrected when SHIFT4 updates its systems on the Tuesday afternoon (Pacific Time), two weeks after the certification or acceptance of changes, final QA, and final software and security code review ("SHIFT4's Update Cycle") provided that Merchant's Processor will work with SHIFT4 to re-certify or accept the new GATEWAY processor change.
- 6.3. Merchant agrees that this warranty is available only for Downgraded transactions reported to SHIFT4 within sixty (60) days of the transaction. Merchant agrees to cooperate with SHIFT4 by promptly supplying SHIFT4 log files requested (i.e., SHIFT4 trace files) and following operational procedures as requested by SHIFT4. Merchant further agrees that this time-frame can be delayed in order to comply with PCI DSS as SHIFT4 must go through SHIFT4's Update Cycle (e.g., security code review).
- 6.4. SHIFT4 warrants that GATEWAY will have uptime availability as described in Section 13 (Service Level Standards); and notwithstanding anything to the contrary in this Gateway Services Agreement, all warranties and provisions in this Gateway Services Agreement are subject to (i) such service level standards, including the possible downtime acknowledged by such standards, and (ii) the provisions in this Gateway Services Agreement regarding information or services to be provided, or that can be provided, by or for the Merchant or others for whom SHIFT4 is not responsible, including without limitation as set forth in Sections 6.7, 8.3, 8.4, 8.5, and 8.6, and Sections 10, 11, and 13.
- 6.5. SHIFT4 warrants that its system and data centers meet or exceed the security requirements of the PCI DSS as defined by PCI SSC and pursuant to Section 18 (Data in SHIFT4's Care). SHIFT4 further warrants that it undergoes an annual security audit and at least a Monthly security scan to determine that its system and data centers meet or exceed the security requirements of the Card Associations' individual security program standards. Notwithstanding anything to the contrary in this Gateway Services Agreement, while SHIFT4 employs the industry's highest standards for security, SHIFT4 cannot warrant that its systems and data centers are 100% secure.
- 6.6. To the extent that SHIFT4's GATEWAY stores, processes, accesses, or transmits Cardholder Information belonging to one or more Card Associations on behalf of Merchant, SHIFT4 warrants that it stores, transmits, and processes such data in compliance with PCI DSS requirements. SHIFT4 warrants that, as SHIFT4 is a Level 1 Service and Hosting Provider as defined by the PCI SSC, it is SHIFT4's ongoing responsibility hereunder for securing Cardholder Information maintained by SHIFT4's GATEWAY in accordance with the PCI DSS.
- 6.7. SHIFT4 warrants that it maintains redundant links to the Internet for connectivity from the POS/PMS to SHIFT4. Merchant agrees that its firewalls must allow outbound access to all SHIFT4 GATEWAY IP addresses, as they may change from time to time, so that Merchant can take advantage of these redundant links. SHIFT4 does not warrant any Service Level or performance should Merchant not provide access from its POS/PMS to GATEWAY via all IP addresses as defined by SHIFT4 in its Documentation, on its websites, and Support Alerts.
- 6.8. SHIFT4 warrants that all payment applications developed for Merchant as part of GATEWAY SaaS are validated under the PCI PA-DSS and listed in <https://PCISecurityStandards.org>.
- 6.9. SHIFT4 warrants that it provides redundant links to each financial institution or the financial institutions' third-party Credit Card Processor where reasonably practicable. SHIFT4 provides connections to each of the financial institutions or institutions'

third-party Credit Card Processors' data centers if the financial institution or institutions' third-party Credit Card Processor maintains multiple data centers.

- 6.10. SHIFT4 warrants that it maintains multiple servers and multiple networks for each facet of the process to avoid a single point of failure.
- 6.11. For disaster recovery, all Merchant's data is replicated to a secondary SHIFT4 PCI DSS-validated data center.
- 6.12. Notwithstanding the warranty provisions set forth in this Section 6 (Limited Warranty), all of SHIFT4's obligations with respect to such warranties shall be contingent on Merchant's use of GATEWAY in accordance with this Gateway Services Agreement and in accordance with SHIFT4's instructions as provided by SHIFT4 in Documentation and Support Alerts. SHIFT4 is not responsible for and does not warrant any software or Hardware not produced, provided, or manufactured by SHIFT4.

## **7. DISCLAIMER/LIMITATION OF WARRANTIES**

- 7.1. EXCEPT THOSE WARRANTIES EXPRESSLY DESCRIBED IN THIS GATEWAY SERVICES AGREEMENT, SHIFT4 SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY, INCLUDING WITHOUT LIMITATION SECTIONS 23.20 AND 23.21, SHIFT4 DOES NOT WARRANT THAT GATEWAY WILL BE UNINTERRUPTED, ERROR FREE, OR COMPLETELY SECURE.

## **8. LIMITATION OF LIABILITY AND REMEDY, AND ONE-YEAR LIMIT TO BRING LEGAL ACTION**

- 8.1. EXCEPT AS OTHERWISE PROVIDED FOR IN THIS GATEWAY SERVICES AGREEMENT:

SHIFT4's ENTIRE LIABILITY AND MERCHANT'S EXCLUSIVE REMEDY FOR ANY BREACH OF THE WARRANTIES SET FORTH IN SECTION 6 (LIMITED WARRANTY) OR ANY SERVICE DEFECT OR FAILURE SHALL BE LIMITED TO: (1) SHIFT4'S CURING THE BREACH AND PERFORMING SERVICES UNDER THIS GATEWAY SERVICES AGREEMENT WITHIN A REASONABLE TIME; (2) PROVIDING ERROR CORRECTIONS; (3) REPLACING DEFECTIVE MEDIA OR DOCUMENTATION; OR (4) MERCHANT'S RIGHT TO TERMINATE THE GATEWAY SERVICES AGREEMENT UNDER SECTION 5 (TERMINATION).

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT OR REVENUE, COST OF SUBSTITUTES, LOST SAVINGS OR DAMAGES RESULTING FROM LOSS OF USE OF EQUIPMENT, OR LOSS OF CONTENT OR DATA, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATION OF LIABILITY AND REMEDY SHALL NOT APPLY IN THE EVENT THE CLAIM ARISES FROM THE GROSS NEGLIGENCE, CRIMINAL, FRAUDULENT, RECKLESS, OR WILLFUL MISCONDUCT OF THE OTHER PARTY.

- 8.2. IN NO EVENT WILL SHIFT4's LIABILITY FOR ANY DAMAGES (INCLUDING ATTORNEY'S FEES) TO MERCHANT, INCLUDING ITS OFFICERS, AGENTS, EMPLOYEES, AFFILIATES, SUCCESSORS, AND ASSIGNS, EXCEED THE FEES PAID BY MERCHANT TO SHIFT4 UNDER THIS GATEWAY SERVICES AGREEMENT FOR THE TWENTY-FOUR (24) MONTH PERIOD PRIOR TO THE DATE THAT THE CLAIM IS RECEIVED BY SHIFT4. THE LIMITS SET FORTH IN THE PRECEDING SENTENCE INCLUDE, BUT ARE NOT LIMITED TO, INACCURATE APPROVALS OR THE LOSS OR INACCURACY OF ANY DATA TRANSMITTED TO THE CREDIT CARD PROCESSOR.
- 8.3. SHIFT4's LIABILITY FOR ANY DAMAGES (INCLUDING ATTORNEY'S FEES) TO MERCHANT, INCLUDING ITS OFFICERS, AGENTS, EMPLOYEES, AFFILIATES, SUCCESSORS, AND ASSIGNS, (1) DIRECTLY RELATED TO CLAIMS BASED ON SHIFT4's BREACH OF SECTION 18 (DATA IN SHIFT4's CARE) OR (2) DIRECTLY RELATED TO CLAIMS UNDER SECTION 9 (INDEMNIFICATION), SHALL NOT EXCEED THE FEES MERCHANT PAID TO SHIFT4 UNDER THIS GATEWAY SERVICES AGREEMENT FOR THE TWELVE- (12) MONTH PERIOD PRIOR TO THE DATE THAT THE CLAIM IS RECEIVED BY SHIFT4 OR \$10,000 USD, WHICHEVER IS LESS.
- 8.4. Merchant acknowledges that SHIFT4 provides Merchant with the ability to back up its own authorization and settlement data. Merchant agrees that, Section 23.21 notwithstanding, SHIFT4 is not liable for any loss of Merchant's financial reporting data. Merchant agrees that SHIFT4 has provided Merchant with this backup functionality, and Merchant bears 100% responsibility for the protection of its data maintained by SHIFT4's GATEWAY. SHIFT4 represents that this financial reporting data does not contain any unencrypted or unmasked Cardholder Information.
- 8.5. SHIFT4 and its parents, Affiliates, subsidiaries, successors, or assigns are not liable for ANY additional discount, assessment, transaction, or interchange fees or fines for Downgrades. Merchant acknowledges and agrees that only Merchant and Merchant's MSP have access to the reports of Downgrades and SHIFT4 has no access to them. Merchant further acknowledges and agrees that setup at SHIFT4 and at the Credit Card Processor(s) Merchant or Merchant's MSP(s) selected can affect the Downgrade of transactions. Merchant further acknowledges and agrees that Merchant's business practices and operation of GATEWAY and Merchant's POS/PMS software can affect Downgrades.
- 8.6. SHIFT4 recommends that Merchant use the auditing and reporting functionality in GATEWAY to ensure that all Transactions sent for settlement are accurate in order to eliminate additional charges and fees from the Merchant's MSP(s). While SHIFT4 offers the ability to automatically settle Transaction batches, such settlement is not recommended and SHIFT4 is not responsible for any Downgrades, assessments, or additional fees of ANY kind, by any Third Party or SHIFT4, related to Merchant's choice to automatically settle Transactions.
- 8.7. THE LIMITATIONS OF LIABILITY AND REMEDY IN THIS SECTION 8 APPLY TO ALL DISPUTES, CLAIMS, AND CAUSES OF ACTION REGARDLESS OF THE THEORY UNDER WHICH THEY ARE BROUGHT, INCLUDING WARRANTY, CONTRACT, TORT, STATUTE, LAW, REGULATION, ORDINANCE, UNFAIR COMPETITION, UNJUST ENRICHMENT, OR ANY OTHER THEORY.
- 8.8. LEGAL ACTION MUST BE BROUGHT WITHIN ONE YEAR – All legal action (including arbitration) between Merchant and Shift4 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. See Section 3.5 for Merchant's duty to report all incorrect or improper charges within thirty (30) days of each Statement's posting or be permanently barred from bringing any claim or legal action about them.

## 9. INDEMNIFICATION

- 9.1. SHIFT4 shall indemnify, defend, and hold harmless Merchant from any claim or action of a third party alleging that GATEWAY infringes a patent, trade secret, copyright, or trademark held by such party (hereinafter "**Infringement Claim(s)**"). SHIFT4 shall not be liable for any damages awarded against Merchant for patent infringement to the extent that GATEWAY is not found to be the basis for the infringement. SHIFT4 shall pay all resulting costs, damages, losses, judgments, expenses, and reasonable attorney's fees, provided: (i) SHIFT4 is notified promptly in writing of an Infringement Claim; (ii) SHIFT4 has sole control over its defense and settlement; and (iii) Merchant cooperates with SHIFT4 in the defense of the same. The foregoing notwithstanding, Merchant may decide to employ counsel of its choosing and at its own expense and shall thereafter have reasonable control over the defense and settlement of any claim directly related to Merchant. If Merchant employs counsel of its choosing, SHIFT4 will contribute only to settlements it approves, but will not withhold approval unreasonably.
- 9.2. Following notice of an infringement claim, SHIFT4 may, at its expense, without obligation to do so however, procure for Merchant the right to continue to use the allegedly infringing GATEWAY, or any portion thereof, or without obligation to do so, may replace or modify GATEWAY, or any portion thereof to make it not infringing. If SHIFT4 elects to replace or modify GATEWAY, or any portion thereof, such replacement shall substantially meet the specifications as provided or referenced in the original functional specifications for any subsequent release of GATEWAY that Merchant has obtained pursuant hereto.
- 9.3. SHIFT4 shall indemnify, defend and hold harmless Merchant from any claim, action, damages, losses, judgments, costs, and expenses incurred by Merchant as a result of: (i) SHIFT4's or its employees' or agents' grossly negligent acts or omissions or (ii) a breach of SHIFT4's obligations under Section 21 (CONFIDENTIALITY).
- 9.4. Merchant shall indemnify defend, and hold harmless SHIFT4, its officers, agents, employees, Affiliates, successors, and assigns from and against any and all losses, liability, damages, claims, fines, causes of action, deficiencies, costs, and expenses (including reasonable attorney's fees) based upon, arising out of, or otherwise related to (i) a Merchant-caused Cardholder Information loss or POS/PMS Breach, as defined in Section 22, or (ii) caused by the grossly negligent or willfully improper acts or omissions of Merchant or its employees, agents, or third-party service providers.
- 9.5. Subject to the terms of the next sentence, the party seeking indemnification agrees to provide the other party with (i) prompt written notice of any such claim or action for which indemnification is sought, (ii) sole control and authority over the defense or settlement of such claim or action, and (iii) reasonable assistance to defend and settle any such claim or action. Notwithstanding anything to the contrary in this Gateway Services Agreement, the indemnifying party's authority to settle a claim or action is subject to the indemnifying party obtaining the other party's prior written consent to enter into any settlement that would materially affect the other party's rights or obligations.

## 10. INSTALLATIONS

- 10.1. Merchant shall coordinate and agree to project-manage the installation and setup of its location(s). Merchant agrees that setup operations, configuration, installation, and training will take place 7 a.m. to 7 p.m. Pacific Time via telephone, Monday through Friday, excluding banking holidays. Modification to Merchant's merchant information maintained by SHIFT4 that relate to any particular Credit Card Processor or MSP cannot be made on weekends due the unavailability of those entities.
- 10.2. Merchant agrees to provide, for each of its location(s), to SHIFT4 a complete New Account Setup Form to establish and maintain Merchant's accounts. This form may be accessed at [www.shift4.com/support/installations](http://www.shift4.com/support/installations). It contains the minimum information SHIFT4 requires.
- 10.3. Merchant agrees to (i) provide or (ii) with appropriate authorization, have its MSP, on the Merchant's behalf provide, SHIFT4 with a completed Profit Center Processor Setup Form, which is located and may be processed from [www.shift4.com/support/installations](http://www.shift4.com/support/installations), for each Profit Center location per Processor that will be set up hereunder. SHIFT4 requires that these forms be received by SHIFT4 at least ten (10) business days prior to the scheduled go-live date or Merchant's go-live may be delayed. Upon receipt of the forms, SHIFT4 will validate the information with Merchant's MSP or Merchant's MSP's Credit Card Processor. This process may take as many as 72 hours. Once validation is complete, without errors or omissions, Merchant's GATEWAY account will be established. If the information cannot be validated, the information will be returned to Merchant for correction, causing possible delays.
- 10.4. Merchant is responsible for corrections of merchant setup errors with MSP. However, SHIFT4 may help and send an advisement report to Merchant or Merchant's MSP to identify and assist in the correction of specific problems. SHIFT4 has no control over the length of time it will take Merchant's MSP to make required changes. Once SHIFT4 has received corrected information, the validation process will be repeated.
- 10.5. Merchant agrees that SHIFT4 is not responsible for the setup of merchant or terminal IDs with the Merchant's MSP(s). Merchant also agrees that this validation step is for verification and business optimization purposes only and does not guarantee successful processing by Merchant as this is out of SHIFT4's control.
- 10.6. Merchant acknowledges operation of GATEWAY requires the following minimum Hardware for the successful operation of SHIFT4's UTG: Intel Pentium III/Celeron processor or AMD Athlon 800 MHz processor or better; 256 megabytes RAM or greater; hard drive with 40 gigabytes or greater and 10/100 megabit network interface card or better.
- 10.7. Merchant agrees that GATEWAY supports Microsoft-supported Windows 32- or 64-bit operating systems. SHIFT4 does not warrant the use of a particular operating system for any specific purpose or guarantee an operating system's security or efficacy.

- 10.8. Merchant agrees that operation of GATEWAY does not support the following operating environments for the operation of UTG: Windows 95, 98, ME, XP (or any earlier Windows or MS-DOS version), Windows NT, Windows 2000, and 2003.
- 10.9. Merchant agrees that its use of GATEWAY requires that Merchant's location(s) provide a secure and stable operating environment for optimal performance and reliability. Merchant agrees to: (i) maintain all GATEWAY applicable computers, routers, firewalls etc., at the latest BIOS/firmware version recommended by the hardware manufacturers; (ii) maintain all applicable GATEWAY computer operating system software to the manufacturers' recommended update, patch, revision, or service pack level; and (iii) maintain all applicable device drivers at the latest version available from the manufacturer. Merchant acknowledges that SHIFT4 software is a critical business application in that it handles Merchant's business operations as it relates to electronic payment processing.
- 10.10. Merchant acknowledges that the latest version/build of SHIFT4 payment application(s) will be initially installed if done so by SHIFT4. Merchant agrees to continuously upgrade to the newest version/build of payment application(s) certified for Merchant's environment when released.
- 10.11. Pursuant to Section 11 (24/7 Operational Support for GATEWAY), Merchant agrees that support of the UTG system needed to facilitate the Integration of the Merchant's POS/PMS will not be performed unless upgraded to the most recent or supported version. Merchant also agrees that if Merchant loads software that impacts the UTG, or SHIFT4 determines that there may be a possible impact of loaded software, Merchant is responsible for any such impact and failure, and will work with SHIFT4 to rectify the issue. Merchant also agrees not to load any software onto the UTG server that has not been vetted by the UTG Technical Reference Guide. Merchant agrees that SHIFT4's GATEWAY requires the use of the Internet and thus must have access to the Internet. SHIFT4 will maintain and update the UTG system from time to time as needed, and when applicable, to maintain the Integration with Merchant's POS/PMS and make available the ability for Merchant to choose to automatically upgrade/download, if so configured.
- 10.12. Merchant agrees that it is Merchant's responsibility to acquire and configure all necessary Hardware and software required for the connection of any machine running applicable portions of GATEWAY (e.g., UTG) to the Internet, Virtual Private Network (VPN), or public/private network. Such Hardware includes, but, is not limited to, network interface cards (NICs), cables, hubs, switches, routers, bastion hosts, firewalls, third-party payment devices, modems, broadband hardware, channel banks, line conditioners, and connectors.
- 10.13. Merchant agrees that SHIFT4 is not responsible for any of Merchant's data communication connectivity as it relates to the local or long-distance phone company or Merchant's Internet Services Provider(s) (ISPs).
- 10.14. Merchant agrees that it is responsible to procure the appropriate EDC/EFT licensing from Merchant's POS/PMS to utilize GATEWAY. Merchant understands SHIFT4 is not responsible for any of Merchant's inability to procure this licensing, and Merchant acknowledges that at the time of execution of this Gateway Services Agreement it will have or is working to procure this licensing. Merchant understands that SHIFT4 has many PMS/PMS integrations as listed on [www.shift4.com](http://www.shift4.com) and can perform under this Gateway Services Agreement using any of these solutions if Merchant does not procure proper licensing.
- 10.15. Merchant acknowledges SHIFT4's UTG requires outbound-only TCP/IP port-level connectivity to the Internet when attached to Merchant's network. The following outbound ports are required: 26880 (6900 hex) "GATEWAY Routes" and 26881 (6901 hex) "GATEWAY OLTP." Inbound ephemeral ports must be allowed for TCP/IP socket-level connectivity to occur if Merchant's firewall or router fail to facilitate this automatically when an outbound policy is created. Merchant agrees not to lock down to specific IP addresses, but will open all IP addresses requested by SHIFT4, from time to time, as not having all IP addresses open will affect the transaction speed, service level, and optimal operation of GATEWAY. Notwithstanding the above, Merchant agrees that UTG can be located within Merchant's internal "trusted" segment as no inbound access communication is required or desired by UTG.
- 10.16. Merchant agrees that it must have, and will provide SHIFT4 with access to, a modern Internet-connected website browser. Merchant agrees that the website portion of GATEWAY will need outbound TCP/IP and UDP/IP port-level connectivity from the machine running the Internet browser (attached to the Merchant's network) to the Internet. The outbound ports required are TCP ports 80 (50 hex) and 443 (1BB hex) for normal HTTP and secured HTTPS web traffic, and UDP port 53 (35 hex) for DNS resolution (unless otherwise provided).
- 10.17. Merchant agrees that, when utilizing the web portion of GATEWAY, the Internet-based HTML browser chosen by Merchant should be the most recently patched version. Merchant agrees that SHIFT4 does not support versions of browsers that are not supported by the browser manufacturer (e.g., "sunsetted" versions). SHIFT4 supports the supported versions of the following browsers: the latest two officially released production versions of Microsoft Internet Explorer, Apple Safari, Opera, Mozilla Firefox, and Google Chrome. The SaaS Services portion of GATEWAY may not operate as defined by the Documentation, web pages may not display correctly, and security efficacy could be at risk if Merchant does not use one of the supported browsers indicated therein. SHIFT4 will in no way be responsible or liable for any failures or omissions on the part of any browser manufacturer.
- 10.18. SHIFT4 recommends when utilizing EMV that Merchant implement at least one (1) UTG locally per location to control the EMV devices, which will optimize transaction speeds, performance, and overall reliability of the EMV transaction process. Merchant acknowledges that hosting the UTG above property for EMV support is not recommended by SHIFT4, unless previously vetted with Merchant's POS/PMS integration. If Merchant insists on deploying UTGs above property, SHIFT4 is willing to test this deployment model with the merchant; however, if issues arise due to the above-property UTG deployment, merchant must follow SHIFT4's prescribed implementation path to install at least one (1) UTG locally per location. This may require additional development from the Merchant's POS/PMS vendor and Merchant will have to purchase additional hardware for the local UTG implementation. Merchant acknowledges SHIFT4 supports devices for EMV/P2PE as listed on SHIFT4's website under Third-Party Payment Devices.

## 11. 24/7 OPERATIONAL SUPPORT FOR GATEWAY

- 11.1. Telephone and email support of GATEWAY is included in the GATEWAY Monthly Service Fees. SHIFT4 provides operational support of GATEWAY via telephone, 24 hours a day, seven days a week, 365 days per year, to Merchant provided that the Merchant is current in payment of its accounts with SHIFT4. Merchant agrees that this support is for operational problems only and that it is not a substitute for training. SHIFT4 is not required to support inadequately trained Merchant personnel. If Merchant's personnel do not appear to be adequately trained, SHIFT4 can require that they be trained or re-trained at Merchant's expense.
- 11.2. SHIFT4's support personnel are available to answer Merchant's questions regarding the operation of GATEWAY. SHIFT4's support personnel are generally knowledgeable about both the Integrations of Merchant's POS/PMS and Merchant's Credit Card Processor, and often can determine with whom an issue resides. Should the call require intervention by Merchant's POS/PMS, Merchant's MSP, or Merchant's ISP, Merchant agrees that SHIFT4 cannot guarantee the amount of time a resolution will take. Merchant agrees to assist, and support SHIFT4's efforts with Merchant's POS/PMS vendors, Merchant's MSP, and Merchant's ISP, and Merchant agrees that SHIFT4 is not responsible to resolve issues beyond its control. Notwithstanding the above, Merchant agrees to implement and continue to use Merchant's POS/PMS pursuant to the deployment models agreed upon by the Merchant's POS/PMS vendor and SHIFT4 during integration engineering and memorialized by certification, if applicable and available.
- 11.3. Merchant agrees that support of GATEWAY is based on maintaining Hardware and equipment running SHIFT4's products as provided in Section 10 (Installations). Merchant agrees to contact SHIFT4's customer service department prior to making changes to the Merchant- accessible portions of GATEWAY, as these may cause system failures. Merchant will pay SHIFT4 for re-configuration of UTG if equipment is not maintained as provided in Section 10.
- 11.4. If Merchant believes it is experiencing an issue, it must first check the System Status Alerts posted on [www.shift4.com](http://www.shift4.com). As another option, many of these alerts are also posted via social media. If the status relates to the issue Merchant is experiencing (e.g., Credit Card Processor timeouts or outages, localized Internet outage, Card Association issues), Merchant acknowledges that a call to SHIFT4 support is unnecessary and that the System Status will be updated on all sources as soon as it changes. Merchant agrees that the resolution of certain problems is beyond SHIFT4's reasonable control and that it is unnecessary to call the SHIFT4 support department for them.
- 11.5. For problems within SHIFT4's reasonable control, the SHIFT4 customer support department provides service on a triaged basis. Triage call types are: (1) Merchant cannot authorize transactions; (2) Merchant cannot settle transactions; (3) Merchant's transactions are being downgraded; (4) Merchant needs assistance with reporting, archives, or research; and (5) any other issue.
- 11.6. SHIFT4 uses commercially reasonable efforts to promptly answers calls. During unusually high call volume, most often caused by support conditions as described in Section 11.5 above, Merchant will be given the option to leave a message. Messages will be answered first, in triage order; and second, in the order received. In the case of certain issues (e.g., Credit Card Processor-related batch settlement or authorization issues), once the cause is determined, the issue may resolve itself without Merchant involvement and a return call may not occur in these cases. SHIFT4 monitors such problems with Processors and remediates them without communicating with the Merchant. Merchant should monitor the System Status Alerts posted on [www.shift4.com](http://www.shift4.com) for further information. Merchant may also utilize social media, by selecting the supplied links at [www.shift4.com](http://www.shift4.com).
- 11.7. SHIFT4 based on Section 11.6 above will use commercially reasonable efforts to inform Merchant of the reason, resolution, or probable cause of Triage-type calls, providing the cause is within SHIFT4's direct control, within 5 business days. Notwithstanding the above, SHIFT4 reserves the right to work diligently to discover the issue with Merchant's involvement, which Merchant agrees not to withhold unreasonably.
- 11.8. Merchant agrees that SHIFT4 is not responsible to provide a reason, resolution, or probable cause in a timely manner for a problem that is the responsibility of any third party, including, but not limited to, Merchant's POS/PMS provider, merchant bank, MSP, Credit Card Processor, Credit Card Processor's communication provider, or Internet Service Provider.
- 11.9. Merchant acknowledges that the solution to a particular support problem may be resolved by an update to a newer version of GATEWAY or any of its components. Merchant further acknowledges that potential security vulnerabilities may be discovered from time to time and that the only way to correct the security vulnerability is to create a newer version of GATEWAY or its components. Merchant further acknowledges that credit card regulations may change from time to time or a particular Downgrade issue may be discovered by Merchant's Merchant Services Provider(s), merchant bank(s), or Credit Card Processor(s) and the only way to make these regulation changes or to correct these Downgrade issues is to create a newer version of GATEWAY or components. Notwithstanding the above,  
  
SHIFT4 acknowledges that Merchant, pursuant to regulation, standard or policy, may have a need to validate software installed in its environment and desire to delay installation of the newer version of portions of GATEWAY applicable to Merchant's environment (e.g., UTG). Once Merchant is informed of the availability of any of these newer versions, Merchant agrees that Merchant will not request support on the particular covered issue and SHIFT4 is not obligated to further trouble-shoot such issue. Further, Merchant will indemnify, defend, and hold SHIFT4 harmless for any damage or loss caused by an issue resolved in a newer version of the applicable portion of GATEWAY.
- 11.10. Merchant agrees that SHIFT4 is not responsible for the performance of payment terminals or devices, including their respective operating system, firmware, model and version, even if listed on SHIFT4's website as being approved by SHIFT4. Merchant acknowledges that SHIFT4 approval, or lack thereof, is not completely under SHIFT4 's control as such approvals are at least in part dependent on the payment terminal or device manufacturer, Federal, State, Provincial, or Local Government regulation, or Card Brand, PCI-SSC, or EMVCo standards or compliance programs. Based on the aforementioned, should a payment terminal or device not be approved and listed by SHIFT4, SHIFT4 is not responsible to trouble-shoot or provide

software upgrades or downgrades to work with the particular non-listed version of the payment terminal or device used by Merchant. Notwithstanding the above, SHIFT4 will evaluate and make commercially reasonable efforts to accommodate the use of newer versions, or replacements of such third-party supplied payment terminals or devices. During these efforts however, SHIFT4 is not responsible for any issues caused by such non-listed versions.

- 11.11. Notwithstanding anything in this Section 11 (24/7 Operational Support for GATEWAY), Merchant agrees that if an issue occurs in use of any service or subject matter provided by or for SHIFT4 hereunder, Merchant will follow the prescribed path of troubleshooting as directed by SHIFT4 support personnel and will work with SHIFT4 in a timely manner. SHIFT4 cannot be held in breach of this Gateway Services Agreement if Merchant does not follow SHIFT4's prescribed methods.

## 12. REMOTE INSTALLATION AND SUPPORT SERVICES

- 12.1. SHIFT4 does not normally offer or utilize remote installation or support services. If it is determined that Merchant requires such services, Merchant will pay the additional cost, must obtain SHIFT4's written permission, and must execute a separate hold-harmless agreement to protect SHIFT4 from any claimed loss, damage, or action arising out of or relating to those remote services.

## 13. SERVICE LEVEL STANDARDS

- 13.1. Merchant agrees that GATEWAY will be available 24/7/365 and be operational ninety-nine point seven percent (99.7%) of the time on an average Monthly basis, excluding scheduled downtimes for maintenance. Scheduled downtimes will commence when SHIFT4 has the lowest transaction-processing volume, and will be announced on the GATEWAY home page or alerted generally within three (3) business days before the scheduled downtime posted via social media. Downtimes will not be scheduled from 4:00 am PT to 12:00am PT on Friday, Saturday, or Sunday. SHIFT4 will make commercially reasonable efforts not to exceed thirty (30) minutes of scheduled downtime per Month, on average.
- 13.2. Merchant agrees that GATEWAY downtimes experienced in excess of one-half of one percent (0.5%) could be experienced due to one or all of the following Third-Party Outages, measured on an average Monthly basis: Merchant's ISP(s); Merchant's Credit Card Processor(s); Merchant's MSP(s); the telecommunications provider selected by the Merchant's Credit Card Processor(s); or any other relevant entity of which SHIFT4 has no control ("**Third-Party Outage**"). Merchant further agrees that downtimes attributable to any of the above are beyond SHIFT4's control and will not be included in calculating SHIFT4's Monthly uptime availability. Notwithstanding the foregoing, SHIFT4 agrees that GATEWAY downtimes that are not attributable to the causes expressly identified in this Section 13.2 shall be included in calculating SHIFT4's Monthly Uptime Availability.
- 13.3. Merchant agrees that the average time for a credit card authorization across all Credit Card Processors will be three (3) seconds or less from the time the transaction is received at SHIFT4's datacenter(s) until the transaction is transmitted back from SHIFT4 to Merchant (the "**Average Authorization Time**"). Merchant acknowledges that the Merchant's POS/PMS system components, network, hardware implemented, or any security-related hardware or software may add time at the POS/PMS and is beyond SHIFT4's control. This includes any security software even if supplied by SHIFT4 (i.e., 4Go, i4GO, SHIFT4's Point to Point Encryption (P2PE) solution) as that software must reside and run on hardware and over networks over which SHIFT4 has no control.
- 13.4. Merchant acknowledges that the Average Authorization Time can be affected by: Merchant's Credit Card Processor(s); Merchant's MSP(s); problems with the cardholder's bank; problems at the Credit Card Processing company(s) selected by or Merchant's MSP(s); problems with the telecommunications company selected by the Credit Card Processing Company; traffic on the Internet; problems at the Card Associations or any other relevant entity over which SHIFT4 has no control contractual or otherwise. Merchant agrees that high transaction times attributable to any of the above are beyond SHIFT4's control and will not be included in calculating SHIFT4's average authorization time.
- 13.5. Merchant acknowledges that in order to maintain SHIFT4's ninety-nine point seven percent (99.7%) average Monthly service level, GATEWAY is redundant as defined in Section 23.21 of this Gateway Services Agreement. However, due to today's highly technical telecommunications systems, SHIFT4 cannot predict how long a single Third-Party Outage might last. Notwithstanding the above, SHIFT4 will make commercially reasonable efforts to work with Third Parties to attempt to expedite resolution.
- 13.6. Merchant agrees that GATEWAY will be considered operational and available at any given time if GATEWAY is being provided by SHIFT4 to, at least, seventy-five (75%) of Merchant's location(s) during the specific measurement period.
- 13.7. Merchant agrees that the Licensed Software is subject to the availability and quality of the Merchant's environment, and SHIFT4 is not responsible for the Licensed Software's security, availability, or operational stability based on an environment not consistent with Sections 10 (INSTALLATIONS/Installations) and 11 (24/7 Operational Support for GATEWAY) or with the requirements outlined by the PCI DSS. Further, and based on the aforementioned, Merchant agrees that the Licensed Software cannot be adequately tabulated or counted for the purposes of this Section except for where and how otherwise specifically stated in Section 23 (Miscellaneous).
- 13.8. Merchant agrees that based on SHIFT4's robust product offerings including, but not limited to, multiple POS/PMS providers, carriers, processors, acquirers, devices, or feature sets, that Merchant will work with SHIFT4 using commercially reasonable efforts to resolve any outage of any kind using those offerings prior to seeking other protections that may or may not be afforded under this Gateway Services Agreement.
- 13.9. In the event of a service level failure under this Section 13 or under Sections 11.6 or 11.7, SHIFT4 shall promptly perform an analysis to determine the root cause of the service-level failure and adopt and implement an appropriate plan to correct the relevant flaws so as to mitigate the likelihood of a recurrence. To view system status alerts, Merchant must refer to the notifications given in Section 11.4.

#### 14. STAND-IN RIGHTS

- 14.1. Should SHIFT4's datacenter portions of GATEWAY not be available to Merchant based on the standards set forth in Section 13 (Service Level Standards), Merchant may utilize stand-in solutions, and take any action it deems necessary to temporarily provide a similar service for the duration of the outage.
- 14.2. Merchant agrees that the action contemplated above, because of the ubiquitous nature of GATEWAY and for security and confidentiality of third parties, cannot include any action or interference with the actual operation of GATEWAY.

#### 15. MAINTENANCE AND REGULATION CHANGES

- 15.1. SHIFT4 agrees to maintain and provide GATEWAY in compliance with Credit Card Association regulations and PCI DSS. Without limiting the foregoing, SHIFT4 agrees to: (i) implement and maintain reasonable security measures to protect Cardholder Information in SHIFT4's care and any records containing such information from unauthorized access, acquisition, destruction, use, modification, and disclosure, and (ii) in the event SHIFT4 experiences a Security Breach of SHIFT4's GATEWAY, and if allowed by contract, law, statute, or regulation, SHIFT4 shall provide Merchant with notification of such Security Breach. Such notification will be made, if allowed by contract, law, statute, or regulation, as promptly as reasonably practicable, so as to allow Merchant to meet applicable Security Breach notification laws, rules, and regulations as they may change from time to time. In the case of a Security Breach, SHIFT4 agrees to follow the process outlined in Sections 22.7 and 22.8.
- 15.2. Merchant will be supplied with any Error Corrections and Basic Enhancements at no additional cost, provided that Merchant is current in payment of its accounts with SHIFT4. Regulation Changes are provided at no additional cost, provided that, in the case of transactions passed to SHIFT4's GATEWAY via Third-Party Interfaces, incorrect information provided by the Third-Party POS/PMS or Merchant's Processor could raise interchange or processing fees.
- 15.3. SHIFT4 is not responsible to make Regulation Changes of which it is unaware. Merchant acknowledges that the text of regulations of the Merchant's MSP, or the Merchant's Credit Card Processor, are primarily available to those financial institutions, and that only those entities can adequately interpret such regulations. Therefore, Merchant will make commercially reasonable best efforts to ensure that its MSP keeps SHIFT4 informed of any Regulation Changes. Since Regulation Changes are communicated only to Merchant's MSP or Merchant's Credit Card Processor, if Merchant is made aware of those changes, Merchant is required to notify SHIFT4. Additionally, if Merchant has knowledge of, or receives notification of, local, state, or federal laws, regulations, or ordinances that apply to its processing of credit, debit, or gift card transactions, Merchant is required to notify SHIFT4.
- 15.4. Notwithstanding Section 23.16, SHIFT4 communicates system issues or status to Merchant via GATEWAY System Status Alerts posted on [www.shift4.com](http://www.shift4.com), or via email ("Support Alerts"). Due to the importance of these announcements, Merchant agrees not to "opt out" of SHIFT4 newsletters or other alert communications that are sent via email, even if those notifications include sales or marketing initiatives. Merchant agrees that communications through SHIFT4's web alerts are official notifications of system status.
- 15.5. Based on industry-standard process, if either party reasonably suspects that cardholder data loss or a Security Breach, as defined by any Card Association or relevant government agency, may have occurred, and the suspicion is confirmed by evidence, that party agrees, subject to the extent allowed by a Card Association, relevant government agency, or law enforcement, to cooperate in good faith with the other party in investigating the suspicion. Neither party will notify customers or the public of a suspected breach, but will give appropriate notice when a Security Breach has occurred according to the standards in Sections 1.47 and 15.1 above.

#### 16. TOKENIZATION AND CERTIFICATION

- 16.1. SHIFT4 warrants that its implementation of tokenization (TrueTokenization) meets the PCI DSS Tokenization Guidelines ("**Guidelines**") and generally accepted standards for cardholder security, provided that it has been implemented within Merchant's PMS or POS to utilize only TrueTokens and to never store Cardholder Information within the POS/PMS. Through GATEWAY, a TrueToken can be used for virtually any process for which an actual card can be used. Any variation of terminology between the Guidelines and those used by SHIFT4 arise from methodology differences of TrueTokenization versus the generic tokenization processes contained within the Guidelines. TrueTokenization predates the Guidelines and other tokenization product offerings, has the largest number of tokenized transactions in the industry, and has been validated in countless QSA, PCI DSS, and PA-DSS assessments.
- 16.2. SHIFT4 requires a certification for all Merchant Integrations to Merchant's POS/PMS systems. This certification assures that the Merchant's Integration to its POS/PMS can perform transactions with GATEWAY to support all certified transaction types necessary for its successful operation within a property pursuant to the limitations outlined by SHIFT4's certification of the particular POS/PMS. Merchant is advised to secure a copy of the certification from its POS/PMS provider or Third-Party Interface vendor ("**Vendor**"). SHIFT4 grants Merchant permission to obtain the certification letter from Merchant's Vendor, as the letter is covered by non-disclosure. Merchant acknowledges that SHIFT4's standard process is that once an Integration has been certified by SHIFT4, that the Vendor must issue a GATEWAY INTERFACE SELF-ATTESTATION document ("**Attestation**") to SHIFT4 each year whether or not any changes to the Integration have occurred. Once executed by SHIFT4, the Integration is certified for one (1) year from the date of the Attestation. Further, if changes have been made to the Integration post-certification, SHIFT4 requires that the Vendor provide SHIFT4 with an Attestation, including version and change information stating what has been modified. If in SHIFT4's sole judgment, the Integration has had sufficient modification that could compromise its security or compliance efficacy, a recertification will be required. The prior certification status of the Integration will remain in effect so no Merchant interruption of service should occur, but a date certain of the re-certification requirement will be established, and after that date the Vendor may be subject to suspension or removal of certification. SHIFT4 takes no responsibility and accepts no liability whatsoever if any issues, no matter the type, arise from the modifications of the aforementioned modified Integration.

- 16.3. If Merchant or Vendor requires or produces a customized or “white labelled” version of a SHIFT4 certified Vendor’s Integration on behalf of Merchant, SHIFT4 requires that the Vendor issue an Attestation listing the differences (material to the API and otherwise) in order to determine if the Vendor’s Integration has not introduced any modifications that could compromise the Integration’s security or compliance efficacy. If in SHIFT4’s sole judgment, the Integration has had sufficient modification that could compromise its security or compliance efficacy, a recertification will be required. If at any time, the aforementioned custom Integration requires certification or a new Attestation, the Merchant, or whoever required the custom version, will be informed of the state of the Integration so that Merchant can take any action it deems necessary with the Vendor. If no recertification is required, the new Attestation will serve as an official certification for the aforementioned custom Integration and will be listed as such by SHIFT4.

## 17. INTEGRATED GIFT CARD

- 17.1. SHIFT4 provides the Processing of gift cards by GATEWAY at a per-transaction rate. If the Processing of gift cards is provided by SHIFT4, SHIFT4 will charge and Merchant will pay an additional fee. SHIFT4 will charge and Merchant will pay an additional minimum for the processing of Third-Party Gift Cards. The Minimum and Transaction Fees will be based on SHIFT4’s current price model at the time of the implementation. If Merchant wishes to utilize gift cards, a separate addendum to this Gateway Services Agreement will be required.
- 17.2. If the Processing of gift cards is provided by SHIFT4, and if Merchant chooses to use a Third-Party Gift Card Processor supported by the GATEWAY Service, functionality will be limited to that provided by the Third-Party Gift Card Processor based on its certification with SHIFT4.
- 17.3. If the Processing of gift cards is provided by SHIFT4, and if Merchant chooses to use SHIFT4’s IT’S YOUR CARD, SHIFT4 will provide all the functionality of IT’S YOUR CARD along with Unlimited gift card issuance for card generation (this is for use in tandem with electronic or plastic gift cards provider), a “Self-Serve” customizable SHIFT4-hosted website on www.privatelabelcard.com for balance inquiry and sale of IYC gift cards, full Integration with Merchant’s POS/PMS if available from provider, and training. SHIFT4 will not charge an additional minimum should Merchant utilize SHIFT4’s IT’S YOUR CARD® functionality.
- 17.4. If the Processing of gift cards is provided by SHIFT4, Merchant agrees that SHIFT4 does not provide plastic gift cards, but will provides a card-issuance batch that provides specifications so that Merchant’s card provider can create cards that will work using SHIFT4’s IT’S YOUR CARD. SHIFT4 can validate test cards to ensure card encoding is correct at no additional charge.
- 17.5. If the Processing of gift cards is provided by SHIFT4, and while SHIFT4’s IT’S YOUR CARD provides the functionality to produce e-Certificates, Merchant acknowledges that the sending of e-Certificates via email over the public Internet can expose the e-mailed information to interception by an unauthorized recipient, so Merchant agrees to take full responsibility for the use of e-Certificates.

## 18. DATA IN SHIFT4’S CARE

- 18.1. SHIFT4 agrees that Cardholder Information will not be used for any other purpose than to support (i) SHIFT4 in its general business requirements and support of GATEWAY, and (ii) Merchant in the activities contemplated by its and other merchants’ use of GATEWAY. All Cardholder Information will be maintained according to the rules in the security requirements of the Payment Card Industry Data Security Standards as defined by the Payment Card Industry Security Standards Council, Visa’s Cardholder Information Security Program (CISP), Master Card’s Site Data Protection (SDP), American Express’ Data Security Operating Policies (DSOP), Discover Network’s DISC, and other requirements as defined by the Card Associations from time to time. If the Card Associations’ security and data protection requirements conflict, SHIFT4 will conform to the most stringent.
- 18.2. SHIFT4’s systems used to store, process, transmit, or access Cardholder Information utilized for Merchant’s United States locations will be located within the United States. SHIFT4’s systems used to store, process, transmit or access Cardholder Information utilized for Merchant’s locations in other countries or territories outside of the United States may or may not be located within the United States, but will be in accord with the host country’s regulations, laws, or statutes pertaining to the handling of Cardholder Information, if applicable.
- 18.3. Merchant acknowledges that the UTG is listed as a PA-DSS compliant payment application by the PCI-SSC, and as listed, the UTG is developed using commercially reasonable efforts in a manner that is consistent with the PA-DSS guidelines and practices. SHIFT4 agrees to develop UTG using commercially reasonable efforts in a manner consistent with the PCI DSS, PA-DSS, or via a Software Development Life Cycle (“SDLC”) using industry-standard secure coding practices (collectively “**Development Controls**”). SHIFT4 agrees that when the UTG is utilized to manage or perform a Consumer-facing process, certain data other than Cardholder Information might be considered by the Parties to be Public, Non-public, Personally Identifiable, or Proprietary Information (“**Other Data**”). SHIFT4 will use commercially reasonable efforts to protect Other Data and prevent the SHIFT4-released distribution of UTG from containing “time-bombs,” “worms,” “viruses,” “trojan horses,” “protect codes,” “data destruct keys,” or other programming devices or code that might, or might be used to, access, modify, delete, damage, deactivate, or disable any of Merchant’s software, or computer hardware. For the sake of clarity, SHIFT4 will only be responsible for: (i) Other Data when UTG is under sole, operational, direct, and interactive control of that data; (ii) Development Controls that relate to the production of UTG. Notwithstanding the above, SHIFT4 will only be responsible for the Other Data based on i, and ii above and not based on any Merchant environmental component (e.g., Merchant’s POS or PMS), software, or hardware within Merchant’s environmental control either directly or through a Merchant vendor or contractor. Further, any claim within the scope of Section 8 (Limitation of Liability and Remedy) or Section 9 (Indemnification) is limited by this Section 18’s restrictions and limitations.
- 18.4. Notwithstanding anything to the contrary in this Section 18, Merchant agrees that SHIFT4 may share Confidential Information with its parents, subsidiaries, Affiliates, or assigns who shall be subject to the restrictions in SECTION 21 (Confidentiality).

## 19. SPECIAL SECURITY REPORTING RIGHTS

- 19.1. Merchant acknowledges that GATEWAY is primarily controlled under the auspices of the Payment Card Industry Security Standards Council, which defines SHIFT4's GATEWAY as, and therefore is assessed as, a level-one service and hosting provider.
- 19.2. Merchant acknowledges that SHIFT4 is audited annually for PCI DSS compliance and is scanned Monthly by at least one PCI SSC-approved scanning vendor ("**ASV**"). Merchant (i) agrees that the PCI DSS-scanning requirement is to be scanned quarterly by a single ASV and (ii) acknowledges that SHIFT4 far exceeds that requirement. SHIFT4 shall make available the attestation of such scans at <http://www.shift4.com/>.
- 19.3. Merchant acknowledges that SHIFT4 is defined by and registered as a third-party agent ("**TPA**") of VISA USA, a registered third-party provider/data storage entity ("**TPP/DSE**"), of MasterCard and a third-party processor for American Express.
- 19.4. Merchant acknowledges that SHIFT4 is TRUSTe validated for privacy.
- 19.5. Merchant acknowledges that, as a result of Section 18 (Data in SHIFT4's Care), SHIFT4'S PCI SSC Qualified Security Assessor (QSA) prepares, and SHIFT4 signs, an annual Report on Compliance ("**ROC**").
- 19.6. As SHIFT4 complies with the PCI SSC and its registered and contractual agreements with the Card Associations, and because SHIFT4 is privately held, SHIFT4 does not provide reporting under Sarbanes-Oxley Act of 2002 or SSAE-16. Notwithstanding the above, nothing within GATEWAY will impact Merchant's ability to comply with Sarbanes-Oxley or SSAE-16 regulations or reporting requirements. Notwithstanding the foregoing, in the event that SHIFT4 obtains any of the aforementioned reporting, from any outside, non-PCI auditor, consultant, or other third party (collectively "**Security Assessments**"), SHIFT4 shall make that information available to Merchant under the same conditions as contained in Section 19.5 covering the ROC. SHIFT4 may provide any such reporting (e.g., SSAE-16 audit report, ISO 27000 framework certification) directly to Merchant that does not disclose any information that it would not supply to other clients. Merchant shall treat all Security Assessment reporting as SHIFT4's confidential or trade secret information.

## 20. PROTECTION OF LICENSED SOFTWARE AND SERVICES

- 20.1. Except as otherwise permitted in this Gateway Services Agreement, Merchant may not do any of the following:
  - A. Download or transmit the Licensed Software electronically (either by direct connection or telecommunication transmission) from one computing device to another, except as specifically allowed in using the Licensed Software on a computer network; or
  - B. Rent, lease, time-share, lend, or transfer (except as provided herein) any portion of GATEWAY or its Documentation to any third party; or
  - C. Modify, alter, adapt, merge, de-compile, or reverse-engineer the Licensed Software; or
  - D. Copy or otherwise reproduce the Licensed Software in whole or in part or remove any SHIFT4 intellectual property, copyright, or trademark notice, with the sole exception that Merchant may make one (1) back-up copy for security and archival purposes.
- 20.2. Merchant agrees that GATEWAY constitutes and contains valuable proprietary products and trade secrets of SHIFT4. Accordingly, Merchant agrees to treat (and take precautions to ensure that its employees treat) GATEWAY as confidential in accordance with the confidentiality requirements and conditions set forth in Section 21 (CONFIDENTIALITY).

## 21. CONFIDENTIALITY

- 21.1. If Merchant has signed a separate SHIFT4 non-disclosure agreement ("**NDA**"), Merchant agrees that the following language does not supersede such NDA or any other similar, separate intellectual property agreement. If there is a conflict of language between this Section 21 and any such NDA or intellectual property agreement for purposes of performance under this Gateway Services Agreement, the more stringent and restrictive language prevails.
- 21.2. From time to time, SHIFT4 or Merchant may find it necessary to provide to the other party certain confidential information that the disclosing party considers, and the receiving party should consider, confidential or proprietary ("**Confidential Information**"). Confidential Information may be identified in writing as confidential by the disclosing party before disclosure to the recipient. Each party, as a receiving party, agrees to keep confidential all Confidential Information disclosed to it by the other party, as a disclosing party, in accordance herewith and to protect and maintain the confidentiality thereof in strict confidence while in possession of such Confidential Information, provided that information will not be deemed Confidential Information hereunder if the receiving party can clearly show that the information: (i) is now or becomes part of the public domain through no fault of the receiving party, (ii) was already known by the receiving party at the time of disclosure and was not obtained pursuant to an obligation to maintain such information as confidential, (iii) is independently developed by the receiving party by persons having no access to the other party's Confidential Information, or (iv) is lawfully obtained from a third party not under an obligation to keep such information confidential. Notwithstanding the above, SHIFT4 may require the use, but not the disclosure or sharing, of certain Confidential Information to improve its service and performance for the benefit of all its merchants.
- 21.3. If the receiving party is subpoenaed or ordered by any court or governmental agency to disclose Confidential Information of the other party, it will provide prompt written notice to the other party to allow such party to seek a protective order or confidential treatment of such information. The receiving party may disclose Confidential Information to the extent it is legally compelled to do so, but will promptly notify the other party as soon as reasonably practicable. Each party will take reasonable measures to inform those of its employees, agents, or contractors that have access to Confidential Information of its confidential and proprietary nature and the confidentiality terms of this Gateway Services Agreement.

- 21.4. Merchant acknowledges that for the purposes of this Gateway Services Agreement Cardholder Information is not Confidential Information.

## 22. RELEASE FOR MERCHANT-CAUSED POS/PMS BREACH

- 22.1. Merchant is responsible to maintain Merchant's CDE(s) in a PCI DSS-compliant state at all times and to prevent internal and external threats from exploiting any vulnerability that may exist in same or in Merchant's POS/PMS that may lead to the compromise, destruction, or theft of Cardholder Information. For the purposes of this Section, internal and external threats has the meaning of malware that includes, but is not limited to, remote access trojan, ransomware, network "sniffers", memory scrapers, worms, other destructive computer viruses, and variations thereof, distributed denial of service attacks, and individuals attempting to breach Internet defenses in order to obtain access to Merchant's internal trusted networks.
- 22.2. Merchant agrees that when it uses a POS/PMS, and that POS/PMS is not used in conjunction with SHIFT4's True P2PE™, TrueTokenization®, or i4Go®, the POS/PMS may not comply with the standards set forth by the PCI SSC, and that Sections 22.5 and 22.6, below, apply.
- 22.3. Merchant agrees that if Merchant's Payment Application is not compliant with the Payment Application Data Security Standard ("PA- DSS") and listed by the PCI SSC, Sections 22.5 and 22.6, below, apply.
- 22.4. If SHIFT4's TrueTokenization feature has been certified with Merchant's POS/PMS system, Merchant agrees to enable and always utilize the tokenization capabilities of GATEWAY any time the POS/PMS is in use. Merchant further agrees, even if the POS/PMS system has the ability to store CHD subsequent to the initial authorization, and if that ability allows the storage of CHD in a PCI DSS-compliant manner, that it will disable storage of CHD when using SHIFT4's GATEWAY with TrueTokenization. If Merchant has allowed CHD to be stored after the initial authorization, Merchant agrees that Sections 22.5 and 22.6, below, apply. The limitations of this subsection shall only apply to Merchant's locations that are currently utilizing GATEWAY, and as merchants "ramp up" (convert) to GATEWAY it is expressly understood and agreed that, for some period of time not all of Merchant's locations will be serviced by SHIFT4's GATEWAY and the provisions of this Gateway Services Agreement shall not apply to, and SHIFT4 will have no liability for, those locations until they utilize GATEWAY and comply with this Section 22.
- 22.5. Merchant agrees that if it fails to maintain its CDE(s) in a PCI DSS-compliant state at all times, and a POS/PMS Breach results in the loss of control of Cardholder Information, or if fraudulent transactions occur from Cardholder Information under Merchant's care, that paragraphs 22.6, 22.7, and 22.8, below, apply. Merchant agrees to assume full responsibility and all liability for the POS/PMS Breach unless it can be forensically proven the POS/PMS Breach was not caused by direct or indirect action, inaction, or failure by Merchant. Merchant agrees to provide SHIFT4 a full disclosure of the details of the POS/PMS Breach and any fraudulent transactions that result from Cardholder Information based on its failure to maintain a its CDE in a PCI DSS-compliant manner. For the sake of clarity, SHIFT4 is a registered TPA/TPP of the Card Brands, a PCI DSS Level 1 Service Provider, and a participant in the payment processing flow, and is obligated by those aforementioned parties to be aware of the status of app parties in said flow and as a requirement SHIFT4 must confirm, and Merchant must provide, the status of Merchant's PCI DSS efficacy and the status of the Merchant PCI DSS remediation plan, if any.
- 22.6. If any or all of the scenarios described in Sections 22.1, 22.2, 22.3, or 22.4 are in effect, and the Merchant's CDE, including, but not limited to, its third-party POS/PMS system, is in any way connected with a loss of CHD without the consent of the person or entity that owns or that has ownership rights to that information through, from, or caused by the POS/PMS software or a failure on the Merchant's part to provide a PCI DSS-compliant environment, **Merchant, on its own behalf and on behalf of its Affiliates, owners, shareholders, members, managers, partners, assigns, and successors, hereby releases, absolves, and discharges SHIFT4 from any Liability arising out of or in any way connected with a Cardholder Information loss or POS/PMS Breach.** For the purpose of this Section, SHIFT4 has the meaning "itself and its successors and assigns, subsidiaries, and sister and Affiliate entities, past and present, as well as its and their respective trustees, directors, officers, shareholders, members, managers, agents, attorneys, insurers, employees, and consultants, past and present, and each of them." For the purpose of this Section "Liability" has the meaning "with respect to and from any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, wages, obligations, debts, expenses, attorney's fees, damages, judgments, orders, and liabilities of whatever kind or nature in law, equity, or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, that Merchant or its Affiliates, owners, shareholders, members, managers, partners, assigns, or successors, now owns or holds or at any time hereafter owns or holds."
- 22.7. If it has been determined that Merchant is responsible for a POS/PMS Breach of Merchant's CDE(s), Merchant agrees to:
- Immediately notify SHIFT4 and provide preliminary information regarding the POS/PMS Breach.
  - Provide SHIFT4 a full accounting of the events leading up to and including the POS/PMS Breach.
  - If a third-party forensic investigator was engaged, provide SHIFT4 a copy of the unaltered and non-redacted final report ("Forensic Report").
- 22.8. In addition to, and notwithstanding the above, if it is difficult to determine, or the parties are in dispute whether a POS/PMS Breach is caused by Merchant, or a Security Breach is caused by SHIFT4, the parties agree to adhere to the following process:
- Each party will conduct its own assessment, in good faith and to best of each party's ability, to determine the cause and the findings will be memorialized in a findings report ("Internal Assessment Report").
  - SHIFT4's Internal Assessment Report may be provided by SHIFT4 to Merchant if allowed by an applicable contract, agreement, law, statute, or regulation.
  - Merchant will provide the Forensic Report to SHIFT4 if Merchant has not done so already.

- D. Merchant's Internal Assessment Report will be provided by Merchant to SHIFT4 if not specifically disallowed by law, statute, or regulation.
- E. The parties may meet to discuss the results of the assessments and use good faith efforts to mutually agree upon a conclusion.
- F. In the event the parties are unable to mutually agree upon a conclusion, the parties will mutually agree upon an independent Third Party to conduct an independent assessment and provide a final report to be disseminated to the parties. The fees for the Third-Party services will initially be split evenly between the parties.
- G. If any additional services of the aforementioned Third Party are requested by either of the parties, the requesting party will be responsible for the cost of those additional services.
- H. If the parties dispute the final report provided by the agreed-upon independent Third Party, the final determination will be made by an arbitrator (or court of competent jurisdiction if not within the agreement to arbitrate in Section 23.4, below).
- I. If the final determination is in favor of Merchant, SHIFT4 will reimburse Merchant for the fees associated with the initial Third-Party assessment; if the ultimate determination is in favor of SHIFT4, Merchant will reimburse SHIFT4 for the fees associated with that assessment.
- J. If the Third Party cannot determine a cause for the POS/PMS Breach or Security Breach, or if the cause is determined to be external to the parties and occurred through no fault of the parties, then no change to the fee split pursuant to this Section 22, will be required.

### 23. ACCOUNT UPDATER

- 23.1. Account Updater is a service offered by SHIFT4 as part of our gateway services that allows a merchant to automatically update any credit card Account they have on file for a customer in association with a recurring payment system being utilized. Account refers to the Primary Account Number associated with a consumer credit card inclusive of the expiry information. Merchant must register said credit card Account(s) in a Token Store for which the service is enabled. For each Account in the Token Store(s), there shall be a twenty-cents (\$0.20) per Account update fee billed monthly based on information supplied by the card brands and associated Issuing banks during that period. There is no setup fee for this service.

### 24. MISCELLANEOUS (INCLUDING GOVERNING LAW AND PLACE TO RESOLVE DISPUTES)

- 24.1. **Force Majeure** - Neither party nor any of its Affiliates will be liable for any failure or delay in performing an obligation under this Gateway Services Agreement that is due to causes beyond its reasonable control such as natural catastrophes, governmental acts or omissions, wars in the operational region, terrorist acts, laws or regulations, labor strikes or difficulties, telecommunications interruptions, natural resource, energy or fuel rationing, transportation stoppages or slowdowns, or the inability to procure parts or materials ("**Force Majeure Event**"). Should the Force Majeure Event affect GATEWAY and remain in effect for fifteen (15) days or more, Merchant has the right to terminate this Gateway Services Agreement. Should Merchant exercise this right, Sections 7 (Disclaimer/Limitation of Warranties), 8 (Limitation of Liability and Remedy), 18 (Data in SHIFT4's Care), 20 (Protection of Licensed Software and Services), 21 (Confidentiality), 22 (RELEASE FOR MERCHANT-CAUSED POS/PMS BREACH Release for Merchant-Caused POS/PMS Breach), 23 (Miscellaneous), and 24 (Binding Arbitration and Class Action Waiver) remain in force. Should Merchant choose to exercise this right, SHIFT4 no longer has an obligation to process transactions for Merchant and Merchant has no responsibility to pay the Early Termination Fee. Merchant must, however, pay any amounts owed prior to the Force Majeure Event. Should the Force Majeure Event affect Merchant's performance under this Gateway Services Agreement but not lead to termination, this Gateway Services Agreement will remain in effect with the Term suspended until the Force Majeure Event is resolved or the Gateway Services Agreement is terminated. During a Merchant-experienced Force Majeure Event, Monthly Minimums will not be payable as the Term of the Gateway Services Agreement will be extended by the duration of the Force Majeure Event.
- 24.2. **Europay, MasterCard and Visa (EMV)** - Merchant agrees to work with SHIFT4 for the implementation of EMV and holds SHIFT4 harmless if Merchant properties are unable to meet EMV capabilities. SHIFT4 will charge Merchant accordingly to change to a certified EMV Processor, to configure terminals, and other related EMV charges. All Merchant EMV charges will be on a separate Addendum to this Gateway Services Agreement.
- 24.3. **Export Controls** - Merchant agrees that it will not, without prior written consent of SHIFT4, export directly or indirectly GATEWAY or any portion thereof to anyone outside the United States or outside the national jurisdiction in which the Merchant is located. Merchant will not export or transfer, whether directly or indirectly, GATEWAY or any portion thereof, or any system containing GATEWAY to anyone outside the United States, without first complying with all export controls that may be imposed on GATEWAY by the any United States agency or any country or organization of nations within whose jurisdiction Merchant operates or is doing business.
- 24.4. **Governing Law and Place to Resolve Disputes** - This Gateway Services Agreement and all claims or disputes arising out of or relating to any aspect of the relationship between SHIFT4 and Merchant (including without limitation (A) this Gateway Services Agreement, the Services provided, any SHIFT4 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; (B) that arose before this Gateway Services Agreement became effective (including claims or disputes relating to advertising); or (C) that arise after the termination of this Gateway Services Agreement but relate to one of the matters this Gateway Services Agreement covers), will be governed by the laws of the state of Merchant's principal place of business, without regard to its conflict-of-laws principles, and applicable federal law, if brought against SHIFT4, except that the Federal Arbitration Act governs everything relating to arbitration. **SHIFT4 and Merchant 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 Section 25) in the federal or state courts located in Clark County, Nevada.**

- 24.5. **SHIFT4 Assignment** – SHIFT4 may, without Merchant’s consent, assign, transfer, delegate, or pledge this Gateway Services Agreement and any of its rights or obligations hereunder (i) to any of its Affiliates or (ii) in connection with a consolidation, merger, sale, divestiture, or spin-off of substantially all of its assets, provided that the assignee or successor in interest assumes in writing the obligations of SHIFT4 hereunder. Subject to the provisions set forth above in this Section, this Gateway Services Agreement and the covenants and agreements herein contained shall inure to the benefit of and be binding on the parties hereto and their respective permitted successors and assigns. Any assignment in violation of Sections 23.5 or 23.6 is void.
- 24.6. **Merchant Assignment/Ownership Transfer** – Upon ninety (90) days’ written notice to SHIFT4, Merchant may, with the consent of SHIFT4 which will not be unreasonably withheld, assign, transfer, delegate, or pledge this Gateway Services Agreement and any of its rights or obligations hereunder (i) to any of its Affiliates or (ii) in connection with a consolidation, merger, sale, divestiture, or spin-off of substantially all of its (or any of its Affiliates’, business units’ or business lines’) assets or voting stock, provided that the assignee or successor in interest assumes in writing the obligations of Merchant hereunder. Merchant will provide SHIFT4 with proof that assignee or successor in interest has assumed the obligations of Merchant hereunder. Merchant holds SHIFT4 harmless in the event of a misappropriation of funds in connection with an ownership transfer transaction between assignee and Merchant. In the event of assignment or ownership transfer, Merchant agrees that all or a portion of the Early Termination Fee may be waived, provided that appropriate assignment notice has been given and the assignee or new ownership entity executes a new GATEWAY Service Gateway Services Agreement or portion thereof (e.g., PAY addendum) with SHIFT4 prior to the next billing cycle. Subject to the provisions set forth above in this Section, this Gateway Services Agreement and the covenants and agreements herein contained, shall inure to the benefit of and be binding on the parties hereto and their respective permitted successors and assigns. Any assignment in violation of Sections 23.5 or 23.6 is void.
- 24.7. **Assignment of CHD** – Notwithstanding Section 23.6 for any assignment consented to by SHIFT4, the assignee may not have the right to Merchant’s CHD due to financial regulations, PCI DSS, or SHIFT4’s duty to protect Merchant’s CHD. If SHIFT4 receives notice that Merchant does not wish to share the CHD with assignee, then assignee must create a new SHIFT4 GATEWAY account and remit required fees at SHIFT4’s current rate on the date of assignment notice.
- 24.8. **Sale to Competitor** – Should Merchant sell a majority or its assets or shares or other voting control to a Direct Competitor of the other, SHIFT4 may terminate this Gateway Services Agreement at any time without penalty or prejudice. Merchant agrees to pay all outstanding fees due under this Gateway Services Agreement up to the date of termination.
- 24.9. **Entire Agreement** – This Gateway Services Agreement, its attached EXHIBITS, APPENDICES, or ADDENDUMS, and the Merchant Application or Gateway Application, and the Care Brand Rules and Regulations, as amended from time to time constitutes the entire agreement between the parties and supersedes all prior or contemporaneous proposals, negotiations and agreements, whether written or oral, addressing the subject matter of this Gateway Services Agreement.
- 24.10. **Amendment and Changes** – **SHIFT4 may amend this Gateway Services Agreement, including by adding new terms or fees, or changing (including increasing) fees and charges—see Section 3.6—upon thirty (30) days’ notice to Merchant.** Amendments due to changes in Card Associations’ fees, interchange, assessments, Rules, or any Laws or judicial decision may become effective on such shorter period of time as SHIFT4 may reasonably specify if necessary to comply with the applicable Rule, Laws, or decision. You accept these amendments and changes by continuing to use the Gateway Services after notice of them. See Section 25.8 for how to reject future arbitration changes. It prevails over this Section. Without limiting any other rights of Shift4, beginning on the one year anniversary following the earlier of the signature date or the Effective Date, Shift4 shall have a right to increase the aggregate fees payable by Merchant by an amount equal to the greater of (i) the average annual change (expressed as a percentage) for the prior calendar year in the Consumer Price Index for All Urban Consumers – All Items (seasonally unadjusted) (collectively the “CPI-U”) plus 1%, or (ii) 4%.
- 24.11. **Counterparts** – This Gateway Services Agreement may be executed in any number of counterparts, each of which shall be an original as against any party whose signature appears thereon and all of which together shall constitute one and the same instrument. A facsimile shall be the same as an original.
- 24.12. **No Waiver** – The failure of any party to enforce any of the provisions of this Gateway Services Agreement shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions.
- 24.13. **Severability** – If any term or provision of this Gateway Services Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Gateway Services Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Gateway Services Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible. SEE SECTION 25.7 FOR WHAT HAPPENS IF SECTION 25 (BINDING ARBITRATION AND CLASS ACTION WAIVER) IS FOUND TO BE ILLEGAL OR UNENFORCEABLE. SECTION 25.7 PREVAILS OVER THIS SECTION.
- 24.14. **Survival** – Any provision of or obligation under this Gateway Services Agreement that contemplates performance or observance subsequent to any termination or expiration of this Gateway Services Agreement shall survive any such termination or expiration, and shall continue in full force and effect. In addition, all provisions of this Gateway Services Agreement shall survive the termination or expiration of this Gateway Services Agreement to the fullest extent necessary to give the parties the full benefit of the bargain expressed herein and of the intent contemplated hereunder. Such provisions include, without limitation, Sections 8 (LIMITATION OF LIABILITY AND REMEDY), 9 (INDEMNIFICATION), 21 (CONFIDENTIALITY), 23 (MISCELLANEOUS), and 24 (BINDING ARBITRATION AND CLASS ACTION WAIVER).

- 24.15. **Attorneys' Fees** - The prevailing party in any suit brought to enforce a provision of this Gateway Services Agreement shall be entitled to an award of reasonable costs and attorneys' fees.
- 24.16. **Notices; Consent to Electronic Communications** - By signing the Merchant Application or the Gateway Application, Merchant is confirming to SHIFT4 that it has the means to access the Internet through its own service provider and download or print electronic communications. Merchant agrees to the receipt of electronic communications by email or by the posting of such information by SHIFT4 at one or more of its sponsored websites, including [www.shift4.com](http://www.shift4.com). Such communications may pertain to GATEWAY delivered by SHIFT4, the use of information Merchant may submit to SHIFT4, changes in Laws or Rules impacting GATEWAY, or other reasons, including amendment of this Gateway Services Agreement or changes in fees or charges. In addition, all notices and other communications required or permitted under this Gateway Services Agreement by SHIFT4 to Merchant may also be delivered by SHIFT4 to Merchant by fax, overnight carrier, or first class mail, postage prepaid, addressed as set forth below. All notices and other communications required or permitted under this Gateway Services Agreement by Merchant to SHIFT4 (except Notices of Dispute and Demands for Arbitration—see Section 25.4) shall be delivered by Merchant to SHIFT4 by overnight carrier or certified mail, return receipt requested, postage prepaid, addressed as set forth below. Notice by fax or e-mail shall be deemed delivered when transmitted. Notice by mail or overnight carrier shall be deemed delivered on the third business day after mailing or the first business day after delivery to the overnight carrier. Following are the addresses for notices and other communications hereunder (except Notices of Dispute and Demands for Arbitration—see Section 25.4), which may be changed by written notice in accordance with this Section: (a) If to SHIFT4, SHIFT4 Legal Department, 3501 Corporate Parkway, Center Valley, PA 18034, Fax: 973-630-4283, (b) If to Merchant, at the address provided as the billing address, or the fax number or e-mail address, and to the contact listed on the Merchant Application or Gateway Application.
- 24.17. **Independent Contractors** - Nothing contained in this Gateway Services Agreement shall be deemed or construed as creating a joint venture or partnership between the parties. Except as expressly set forth in this Gateway Services Agreement, no party by virtue of this Gateway Services Agreement is authorized as an agent, employee, or legal representative of another party, and the relationship of the parties is, and at all times will continue to be, that of independent contractors. Additionally, the parties shall have sole and full responsibility for each of their actions and omissions (including, but not limited to, any breaches of this Gateway Services Agreement) of any and all personnel employed by each (or its subcontractors, if any) who are involved in the performance hereof, and for any and all losses arising therefrom.
- 24.18. **Further Assurances** - Each party agrees to cooperate fully with the other party and to execute such further instruments, documents, and agreements, and to give such further written assurances as may be reasonably requested by the other party to better evidence and reflect the transactions described in and contemplated by this Gateway Services Agreement, and to put into effect the intents and purposes of this Gateway Services Agreement.
- 24.19. **Taxes and Fees** - Merchant shall be responsible for all sales tax, excise tax, use tax, and any other similar taxes, duties, or vendor application fees that must be collected or are assessed under state, federal, provincial, or tribal law on any amounts payable by Merchant hereunder; provided that in no event shall Merchant pay or be responsible for any taxes imposed on, or with respect to, SHIFT4's income, revenues, gross receipts, personnel, real or personal property, or other assets.
- 24.20. **Regarding Cardholder Information** - While SHIFT4 has informed Merchant's Third-Party Software providers of the need to conform to PCI DSS, Visa's Cardholder Information Security Program (CISP), MasterCard's Site Data Protection (SDP), American Express' Data Security Operating Policies (DSOP), to encrypt and tokenize the credit card numbers and expiration dates and to not maintain, any longer than is necessary for the authorization event, the card swipe data or the CVV2 [Visa], CVC2 [MasterCard], or CID [American Express and Novus/Discover] in their databases, Merchant should remind its Third-Party Software providers of the need to conform with these programs and the minimum security necessary to protect Merchant's Cardholder Information.
- 24.21. **Redundancy** - SHIFT4's GATEWAY utilizes multiple data centers and redundant technology to ensure the availability of the system and Merchant's data. Redundancy includes the following: multiple divergent carrier connections to the Internet, multiple connections to the Credit Card Processors (as provided by the various Credit Card Processors), multiple networks, and multiple computers performing each function of the service. Redundant power is provided through the use of Uninterrupted Power Supplies (UPS) backed up by a generator.
- 24.22. **Joint Marketing** - After receiving Merchant's advance written approval, which will not be unreasonably withheld, SHIFT4 may list and announce Merchant as a user of SHIFT4's service, but will make public announcements of Merchant's use or describe Merchant's use of service only for marketing purposes.
- 24.23. **Transaction History Retention Period** - Subject to Section 18 (Data in SHIFT4's Care), SHIFT4 will store Merchant's financial reporting data for a maximum of twenty-four (24) months post-settlement; this will be a rolling period where the most recent months will be maintained and the data for any month earlier than twenty-four (24) will be deleted. If Merchant is no longer authorizing and settling Transactions, the oldest month will continue to be purged each month until no historical Transaction data remains. This financial reporting data when used with SHIFT4's GATEWAY will allow access to the TrueTokens to necessitate subsequent Transactions. If Merchant wishes to increase or decrease its Transaction History Retention Period, Merchant may ask to do so at an additional fee, but the ability to do so is subject to Merchant's particular Integration and business requirements and may not be practicable (e.g., decrease desired but using TrueTokens on file).
- 24.24. **Transition Assistance** - Upon termination of this Gateway Services Agreement by Merchant, SHIFT4 shall, upon Merchant's reasonable request, allow access to your GATEWAY accounts and TrueTokens for the Transaction History Retention Period at a reasonable Transition Assistance Fee to be negotiated. For avoidance of doubt, upon termination of this Gateway Services Agreement Merchant shall have no right to, and SHIFT4 shall have no obligation to provide, your Transaction History or

TrueTokens unless Merchant pays the Transition Assistance Fee. SHIFT4 will not develop any software to facilitate the transfer of CHD or data to any Direct Competitor as any such development may impact the intellectual property of others or SHIFT4, and would in any event, at that time, be considered “work-for-hire” and as such, not covered by this Gateway Services Agreement. Merchant acknowledges that if it wishes Transition Assistance, it will ask for it and negotiate a Transition Assistance Fee promptly because time is of the essence. SHIFT4 will retain historical data for a limited time only and has no obligation to retain historical data without compensation.

- 24.25. **Insurance** - SHIFT4, because of the nature of its business and the data within its care, at all times during the Term of this Gateway Services Agreement, agrees to maintain and keep in full force and effect all appropriate levels of insurance based on the recommendations of, including but not limited to, its members, managers, business advisors, counsel, accountants, and insurance consultants and underwriters. As it would interfere with the business of all existing SHIFT4 Merchants and be burdensome to SHIFT4, it is not practical to add Merchant or its respective officers, directors, employees, or agents as additional insureds to SHIFT4’s insurance policies, and SHIFT4 is not required to do so.
- 24.26. **Definitions Not Covered in this Gateway Services Agreement** - Merchant agrees that any term not defined in this Gateway Services Agreement but mentioned in it or its exhibits or addenda, that exists as a service, trade, or registered trade, mark of SHIFT4, has the description and definition attributed to it as relayed in the published Documentation for those products and services, and are subject to the feature set, requirements, or restrictions contained therein. The general descriptions on SHIFT4’s website and in other marketing and informational collateral can change from time to time based on feature enhancement or modification. The specific Merchant’s requirements must be assessed by Merchant, Merchant’s POS/PMS vendor, or Merchant’s PCI Qualified Security Assessor and once determined, Merchant must refer to the Documentation and not rely solely on any public-facing marketing or collateral. The suitability of any SHIFT4 products based on those general descriptions for Merchant’s specific needs may be based on the Merchant’s understanding of those descriptions but the descriptions, feature set, performance, and capability outlined in the Documentation of the products and services provided by SHIFT4 prevail. Notwithstanding the above, any definition not covered by the above limitations or elsewhere in this Gateway Services Agreement is to be considered the legal or common definition of those words, as appropriate.
- 24.27. **Transaction Data Retention** - Merchant acknowledges that SHIFT4 will store Merchant’s Transaction data based on a rolling calendar, which means that Transaction data will be purged after the period stated in Section 23.23. The disposition of those data is covered in Sections 23.23 and 23.24.
- 24.28. **Secure Offline Stand-In® Functionality** - Merchant acknowledges that SHIFT4 offers as a portion of its UTG’s Secure Offline Stand-In® (“SOS”) feature set that must be enabled to support offline transaction processing of most transactions when Internet connectivity cannot be made with SHIFT4’s datacenters. Merchant further acknowledges that UTG must be configured properly, based on its documentation and on Merchant’s requirements, by Merchant in order for SOS to operate optimally. There is no guarantee that SOS will meet Merchant’s needs. SHIFT4 shall use commercially reasonable efforts to process transactions stored by UTG as a result of the activation of SOS. Notwithstanding the above, Merchant agrees that SHIFT4 shall not be responsible for the processing of any transactions controlled by SOS if SOS is unable to operate as a failure of Merchant’s environment, or the actions or inactions of Merchant’s employees or third parties, inconsistent with UTG’s documentation or SHIFT4’s recommendation.
- 24.29. **Critical System** - In the event that Merchant experiences financial insolvency or enters into bankruptcy proceedings of any kind, Merchant agrees that GATEWAY is a critical financial system and SHIFT4 is a critical vendor, and will be represented by Merchant or Merchant’s agent(s) as such.

## 25. BINDING ARBITRATION AND CLASS ACTION WAIVER

- 25.1. **PARTIES BOUND** - The term “Merchant” in this Section 25 (Binding Arbitration and Class Action Waiver) includes Merchant, its owners, partners, officers, directors, shareholders, principals, Affiliates, guarantor(s), predecessors, successors, and assigns, including without limitation those listed in the Merchant Application or Gateway Services Application. Section 25 binds all of them, SHIFT4, and SHIFT4’s Affiliates, resellers, referral partners, and Independent Sales Representatives (sometimes called “ISOs”).
- 25.2. **LAWSUIT AND CLASS ACTION WAIVER** - Merchant and SHIFT4 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.
- 25.3. **ALL CLAIMS AND DISPUTES COVERED** - Merchant and SHIFT4 agree to resolve all claims and disputes of every kind between them or their respective owners, partners, officers, directors, shareholders, principals, Affiliates, guarantor(s), predecessors, successors, assigns, resellers, referral partners, 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:
- A. All claims or disputes arising out of or relating to any aspect of the relationship between SHIFT4 (including its resellers, referral partners, and Independent Sales Representatives) and Merchant including, without limitation, this Gateway Services Agreement, the GATEWAY provided, any other SHIFT4 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;
  - B. All claims or disputes that arose before this Gateway Services Agreement’s Effective Date (including claims or disputes relating to advertising);

- C. All claims or disputes that are the subject of purported class action litigation on this Gateway Services Agreement's Effective Date but Merchant is not a member of a certified class on that date; and
- D. All claims or disputes that arise after the termination of this Gateway Services Agreement but relate to one of the matters this Gateway Services Agreement covers.
- 25.4 **NOTICE OF DISPUTE** – Before seeking arbitration, Merchant or SHIFT4 must first send to the other, 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 Merchant must be addressed to its address in SHIFT4’s records. A Notice to SHIFT4 must be addressed to: SHIFT4 Legal Department, 3501 Corporate Parkway, Center Valley, PA 18034. The Notice must: (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought. If Merchant and SHIFT4 do not reach an agreement to resolve the claim or dispute within 30 days after the Notice is received, Merchant or SHIFT4 may commence an arbitration.
- 25.5 **SMALL CLAIMS COURT OPTION** – Merchant or SHIFT4 may bring an individual suit in a small claims court instead of sending a Notice or arbitrating, if the case meets the court’s requirements. Merchant may sue in the small claims court in the county of its principal place of business, or Clark County, Nevada (if against SHIFT4); SHIFT4 may sue in the small claims court in Merchant’s principal place of business.
- 25.6 **ARBITRATION PROCEDURE**
- A. **Rules:** The AAA’s Commercial Arbitration Rules, as modified by this Gateway Services Agreement, apply. To commence an arbitration, submit a Demand for Arbitration with the required fee to the AAA and send a copy to SHIFT4 at its address in Section 25.4. 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.
- B. **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.
- C. **Fees:** For disputes involving \$75,000 or less, SHIFT4 will pay all AAA and arbitrator’s fees and will promptly refund Merchant’s filing fee, unless the arbitrator finds the arbitration frivolous or brought for an improper purpose. For disputes involving more than \$75,000, AAA rules govern fees. Notwithstanding anything in this Gateway Services Agreement, SHIFT4 will not seek its attorney’s fees or expenses from Merchant in any arbitration.
- D. **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.
- 25.7 **SEVERABILITY** – If any part of this Section 25 (Binding Arbitration and Class Action Waiver) is found to be illegal or unenforceable, the remainder will remain in effect (with an arbitration award issued before any court proceeding begins), except that if a finding of partial illegality or unenforceability would allow class-wide or representative arbitration, Section 25 will be unenforceable in its entirety.
- 25.8 **REJECTING FUTURE ARBITRATION CHANGES** – Merchant may reject any change SHIFT4 makes to Section 25 (except address changes) by sending SHIFT4 notice within 30 days of the change by U.S. Mail to the address in Section 25.4. If Merchant does, the most recent version of Section 25 before the change it rejected will apply.
- 25.9 **RESELLERS, REFERRAL PARTNERS, and ISOs AS THIRD-PARTY BENEFICIARIES** – SHIFT4’s Affiliates, resellers, referral partners, and Independent Sales Representatives are third-party beneficiaries of this Section 25. They agree to do everything it requires SHIFT4 to do.