

This Gift Card Services Agreement (“Agreement”) is made by and between Shift4 (“Company”), with its principal place of business at 2202 North Irving Street, Allentown, PA 18109, and the business indicated on the Gift & Loyalty Card Application (“Merchant” or “you”) on the date the Application is signed by Merchant (“Effective Date”). Company administers a gift and loyalty card processing program, either through e-gift cards or physical gift cards, depending on your selection. You desire to participate in the program by accepting cards from valid cardholders.

Therefore, in consideration of the mutual promises set forth below, the parties agree as follows:

I. DEFINITIONS

“**Application**” means the Gift & Loyalty Card Application signed by Merchant, which is incorporated into this Agreement.

“**Card**” means any valid unexpired card bearing the name or corporate logo of Company or Merchant or such other name or corporate logo authorized by Company from time to time.

“**Card Program**” means the gift card program operated by Company that allows Cardholders to purchase goods or services with Cards containing Stored Value.

“**Card Transaction**” means a transaction in which a Cardholder purchases goods or services from you with a Card.

“**Cardholder**” means a person possessing a Card.

“**Merchant Account**” means the deposit account designated and owned by you which will accommodate the transactions set forth in this Agreement.

“**Program Fees**” means all fees set forth on the Application.

“**Stored Value**” means the amount of money, in U.S. dollars, associated with a Card. You may redeem Stored Value for goods and services.

II. HONORING CARDS

2.1 **Transactions.** You will honor, in accordance with this Agreement, any Card properly tendered by a Cardholder for use in a Card Transaction. You will not discriminate as to price, service or other conditions of sale with respect to any attempted Card Transaction. You will not present for processing any Card Transaction not originated as a result of a transaction directly between you and the Cardholder. If applicable, you will check the signature and expiration date of each Card presented and will not complete a Card Transaction if the signature on the sales draft does not correspond with the signature on the Card, or if the Card is not valid or has expired. You will not request additional identification, or information, from a Cardholder unless such is necessary in order to complete the Card Transaction. All disputes between you and any Cardholder relating to any Card Transaction will be settled between you and the Cardholder. Company bears no responsibility for such transactions.

2.2 **Authorizations.** You will obtain a prior authorization via a Company-approved electronic terminal before completing any Card Transaction. Upon receipt of authorization, you may consummate only the transaction authorized. Authorizations are not a guarantee of payment, and will not validate a fraudulent transaction or a transaction involving the use of an expired Card.

2.3 **Sales Procedure.** You will enter the data related to a Card Transaction into a terminal approved by Company at the time of each Card Transaction. You will use a sales slip or other form approved by Company to document each Card Transaction. You will deliver a complete copy of the sales slip to the Cardholder at the time of the transaction. You will retain the “merchant copy” of the sales slip for at least 3 years following the date of completion of the Card transaction. If Company requests a copy of the sales slip, you will provide it within 3 business days following the request.

2.4 **Intra-Program Settlement (Chain Merchant).** If you issue a Card and that Card is used at a chain location, Company will credit the issuing location. Reloads at a location, other than the initiating issuing location, will be debited from the location that issued the reload. Any transaction thereafter using the Card will be credited to the location that issued the reload. If for some reason a merchant location closes and has outstanding card balances, those balances will be transferred to the merchant chain headquarters location. If any location of a chain is closed, all remaining active card balances will be transferred to the chain headquarters.

2.5 **Company Obligations.** In addition to other obligations set forth in this Agreement, Company will authorize and settle all Card Transactions. Company will provide training to your employees on the Card Program.

- 2.6 **Cards.** Delivery of ordered Cards will be complete upon Company's delivery to the carrier. Following such delivery, Company will have no liability with regard to such Cards. Company will produce cards in conformity with applicable card production standards. Your sole remedy for a violation of the previous sentence shall be replacement of Cards. Cards will be shipped approximately within 15 to 20 business days from the time Company receives completed forms and your approval of artwork. Delivery time may vary based upon quantity, types of cards ordered and shipping method.
- 2.7 **Performance.** Company does not warrant or represent that its services will be uninterrupted or error free nor will it be liable for damages resulting therefore, except where any interruption or error is due to the gross negligence or willful misconduct of Company.
- 2.8 **Disclaimer of Warranties. THIS AGREEMENT IS A SERVICE AGREEMENT. COMPANY DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER INDIVIDUAL, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY SERVICES OR ANY GOODS PROVIDED BY A THIRD PARTY. THE SERVICES ARE PROVIDED "AS IS," "AS AVAILABLE," AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED BY COMPANY, INCLUDING BUT NOT LIMITED TO, THE DISCLAIMER OF ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY ERRORS OR OMISSIONS IN THE CONTENT. THIS AGREEMENT IS A SERVICE AGREEMENT AND THE PROVISIONS OF ARTICLE TWO THE UNIFORM COMMERCIAL CODE SHALL NOT APPLY.**
- 2.9 **Limitation of Liability. Any liability of Company under this Agreement, whether to Merchant or to any other person or entity, whatever the basis of liability, shall not exceed the fees paid by Merchant for the services during the previous twelve (12) months, or the average fees paid by Merchant in the previous three (3) months times twelve (12) for such lesser number of months as may have elapsed subsequent to the Effective Date of this Agreement. This shall be the extent of Company's liability arising out of or relating in any way to this Agreement, including alleged acts of negligence, breach of contract, or otherwise and regardless of the form in which any legal or equitable action may be brought, whether contract, tort, or otherwise, and the foregoing shall constitute Merchant's exclusive remedy. IN NO EVENT SHALL COMPANY OR ANY OF ITS RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, VIRUSES OR OTHER MALWARE, BUSINESS OR PROFITS, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF COMPANY AND MERCHANT, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
- 2.10 **A. Merchant's Duty to Report Asserted Errors or Claims. Merchant must promptly examine all statements relating to the services, and immediately notify Company in writing of any asserted errors or claims. Merchant's written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error or claim, (iii) a description of the asserted error or claim; and (iv) an explanation of why Merchant believes an error or claim exists and the cause of it, if known. That written notice must be received by Company within 30 calendar days after Merchant receives the periodic statement containing the asserted error or claim. Merchant's failure to notify Company of any error or claim within thirty (30) days constitutes a waiver of any claim relating to that error or claim. Merchant may not make any claim against Company relating to any asserted error or claim for 60 calendar days immediately following Company's receipt of Merchant's written notice. During that 60- day period, Company will be entitled to investigate the asserted error or claim.**
- 2.11 **LEGAL ACTION MUST BE BROUGHT WITHIN ONE YEAR. All legal action (including arbitration) between Merchant and Company must be commenced within one (1) year of the date the error or incident giving rise to such action occurred. OTHERWISE SUCH ACTION IS PERMANENTLY BARRED.**
- 2.12 **LAWSUIT AND CLASS ACTION WAIVER. Merchant and Company waive their rights to sue before a judge or jury and to participate in a class action, class-wide arbitration, private attorney general action, or any other proceeding in which a party acts in a representative capacity. Instead, any claim or dispute will be resolved on an individual basis by a neutral arbitrator whose decision (called an "award") will be final except for a limited right of review under the Federal Arbitration Act. The arbitrator may not consolidate proceedings or join them together without the consent of all parties to all proceedings.**

III. MERCHANT OBLIGATIONS

- 3.1 **Merchant Advertising.** You acknowledge that Company owns the copyright in all Company materials and to the extent that the Merchant would, but for this paragraph, own such copyrights, you hereby assign all such copyright to Company. Company will work with you to create the design of your Card for the fees set forth on the Application. Merchant owns its trademarks, name and logo, and grants to Company a license to use such intellectual property in Company promotional materials. While Company will use its best efforts to ensure the accuracy of all information used, Company shall not be held responsible for any error or omission relating to you.

- 3.2 **Rules.** You will comply with all rules and instructions provided to you by Company. You are responsible for ensuring that your Card Program complies with all applicable state and federal laws and regulations, including but not limited to laws relating to gift and loyalty cards. You will indemnify and hold Company harmless from any claim by any third party or government agency that such program violates any law. You will redeem Stored Value only for goods or services provided by you, and will not redeem Stored Value for cash. During the term of this Agreement you will not participate in any program similar to the Card Program.
- 3.3 **Financial Information and Errors.** You will provide Company with financial information as requested from time to time. You will notify Company immediately of any duplicative or erroneous Card Transactions.
- 3.4 **Card Program Promotion.** You will display materials provided by Company promoting the Card Program. You will cease displaying, and will return to Company or destroy, such materials immediately upon termination of the Agreement for any reason. You understand that the Card Program is wholly-owned by Company, and that your participation in the Card Program does not grant to you any rights in the Card Program.
- 3.5 **Representations.** In addition to the representations and warranties provided in the Agreement, you represent and warrant to Company that: (A) all sales slips represent a bona fide Card Transaction; and (B) all sales slips are in compliance with this Agreement and all of the applicable laws and regulations governing the same.
- 3.6 **Indemnification.** Merchant shall hold harmless and indemnify Company and its affiliates, officers, directors, agents, representatives and their employees harmless from: (i) any claim relating to a dispute between Merchant and a Cardholder; (ii) all claims by third parties arising out of this Agreement; (iii) any damages of, or losses that Company may incur as a result of Merchant's breach of this Agreement; (iv) any act or omission by Merchant (including its employees, agents, and representatives; whether or not acting within the scope of their duties) which violates any laws, or the rights of another person or otherwise injures any third party; (v) for all attorneys' fees and other costs and expenses paid or incurred by Company in the enforcement of this Agreement, including but not limited to those resulting from any breach by Merchant of this Agreement, any fines, losses, or other amounts incurred as a result of a cyber security incident, and those related to any bankruptcy proceeding and (vi) any claim, counterclaim, complaint, dispute or defense, including without limitation, claims brought by Merchant, whether or not well founded, with respect to this Agreement or any transaction. Merchant shall be solely responsible for losses and chargebacks incurred as a result of, or arising out of, any fraud including laundering, negligence, or willful misconduct on the part of Merchant, or Merchant's employee(s) or agent(s). Merchant is responsible for any electronic virus or other malware that may be encountered and is responsible for routinely scanning its computers and storage media using a reliable antivirus product to detect and remove any viruses or other malware found.

IV. PAYMENTS, MERCHANT ACCOUNT, MONTHLY STATEMENT

- 4.1 **Payment.** You will owe to Company the Program Fees and you authorize Company to withhold from your deposits or to debit the Merchant Account for such amount. You will pay any taxes on the services provided under this Agreement. **Company reserves the right, with thirty (30) days' notice, to change the fees and charges billed for the services, including adding fees for additional services utilized by Merchant.** Merchant is obligated to pay all taxes, and other charges imposed by any governmental authority on the Services provided under this Agreement.
- 4.2 **Merchant Account.** Company will credit or debit the Merchant Account via ACH the net amount due to you. All sales slips are subject to audit and final checking by Company, and may be adjusted for inaccuracies. You authorize Company to debit via ACH the Merchant Account for any amounts owed under this Agreement. You will provide Company with 5 days advance notice of any change to the Merchant Account.
- 4.3 **Monthly Statement.** Company will provide you with a monthly statement or online access to such information upon request.
- 4.4 **Reporting Fee.** At Merchant's request, gift card numbers may be unmasked on Merchant's liability reports. The fee for unmasked reports will be \$1,000.00. This Reporting Fee will be billed on a per-request basis, and shall be debited from the Merchant Account on file upon the request from Company.

V. INFORMATION

- 5.1 **Company Systems and Information.** You acknowledge that you have no rights in any software, systems, documentation, guidelines, procedures and similar materials or any modifications provided by Company, except with respect to your use of the same during term of this Agreement. You will not use, sell, exchange, or provide to any third party, and will keep strictly confidential, any information related to the Card Program, including but not limited to sales slips, monthly statements, Company documents, and this Agreement. You acknowledge that Company is the sole owner of, and that you have no rights in, all transaction data. The processing and use of any data shall be in conformance with Company's privacy policy, as amended from time to time and available at <https://www.shift4.com/privacy-policy>.
- 5.2 **Information Security.** You shall be responsible for maintaining security for your own systems, servers, and communications links as necessary to: (A) protect the security and integrity of Company's systems and servers on which Card Transaction information is stored; and (B) protect against unauthorized access to or use of Company's systems and servers on which Card Transaction information is stored.

- 5.3 **Data Backup.** You shall maintain adequate records for at least 10 business days including backup on magnetic tape or other electronic media where transactions are being transmitted to Company, from which reconstruction of lost or damaged items or data may be possible, but is in no way guaranteed. You assume all responsibility and liability for any loss or damage resulting from failure to maintain such records.
- 5.4 **Transmission of Data.** The responsibility and expense for transportation of Cards and transmission of data between Company and you, and the risk of loss for, data and media transmitted between Company and you, shall be borne by you. Data lost by Company following receipt shall either be restored by Company from its backup media or shall be reprocessed from your backup media at no additional charge to you.
- 5.5 **Reliance on Data.** Company will provide the Card Program on the basis of information furnished by you. Company shall be entitled to rely upon any such data, information or instructions as provided by you. If any error results from incorrect input supplied by you, you shall be responsible for discovering and reporting such error and supplying the data necessary to correct such error to Company for processing at the earliest possible time. Company shall be relying on your instructions and directions in administering the Card Program, and shall not be responsible for any liability arising from Company's proper performance in accordance with your instructions.

VI. TERM AND TERMINATION

- 6.1 **Term.** This Agreement shall become effective on the Effective Date and shall remain in effect for 1 year ("Initial Term"). Unless terminated as set forth below, this Agreement shall automatically renew for successive 1 year periods ("Renewal Term"). Either party may terminate this Agreement effective at the end of a Term upon 30 days prior written notice to the other.
- 6.2 **Suspension.** Company may suspend or terminate the Card Program and take such other steps as it deems necessary: (A) if you breach this Agreement; (B) upon the commencement of bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against you, or you are insolvent; or (C) if you damage the goodwill of Company.
- 6.3 **Termination Assistance.** Upon termination of this Agreement, you will immediately cease selling Cards. Following such termination, Company shall provide you, at your expense, reasonable assistance in its sole discretion to facilitate the orderly transition of the stored value services to you or its designee ("Termination Assistance"). Before providing any Termination Assistance, Company will deliver to you a good faith estimate of all transition charges including charges for custom programming services. Further, for 120 days following termination of this Agreement, you will maintain the Merchant Account with sufficient funds to cover all trailing activity.

VII. GENERAL

- 7.1 **Assignability.** Merchant may not assign this Agreement to any third party without Company's prior written consent, and any unauthorized assignment will be null and void. Company may assign its rights under this Agreement provided that any assignee will take subject to all of the obligations of Company. Company will notify you of an assignment within 60 days after the date of the assignment.
- 7.2 **Notices; Consent to Electronic Communications.** By agreeing to these terms, Merchant agrees to the receipt of electronic communications by email or by the posting of such information by Company at one or more of their sponsored websites, such as www.shift4.com. Such communications may pertain to the Services delivered by Company, the use of information Merchant may submit to Company, changes in laws or rules impacting the services or other reasons, including amendment of this Agreement. In addition, all notices and other communications required or permitted under this Agreement by Company to Merchant may also be delivered by Company 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 Agreement by Merchant to Company shall be delivered by Merchant to Company 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 the purposes of notices and other communications hereunder which may be changed by written notice in accordance with this section: (i) If to Company, **Shift4 Payments, LLC Legal Department, 2202 N. Irving Street, Allentown, PA 18109, Fax: (973) 630-9029;** (ii) 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.**
- 7.3 **Entire Understanding, Amendment.** This Agreement, including the Application which is incorporated by reference, sets forth the entire understanding of the parties relating to its subject matter. Company may amend this Agreement and the attached Application upon notice to you. Such notice may be provided in your monthly statement.
- 7.4 **Severability.** If any provision of this Agreement is illegal, the invalidity of such provision will not affect any of the remaining provisions, and this Agreement will be construed as if the illegal provision is not contained in the Agreement. This Agreement will be deemed modified to the extent necessary to render enforceable the provisions hereunder.
- 7.5 **No Waiver of Rights.** No failure or delay on the part of any party in exercising any right under this Agreement will operate as a waiver of that right, nor will any single or partial exercise of any right preclude any further exercise of that right.

7.6 **Successors and Assigns.** This Agreement will inure to the benefit of and will be binding upon the parties and their respective permitted successors and assigns. This Agreement will not be deemed to be for the benefit of any third party. Company and you will be deemed to be independent contractors and will not be considered to be agent, servant, joint venturer or partner of the other.

7.7 **Binding Arbitration Agreement & Class Action Waiver.**

- (i) Company and Merchant agree to resolve all claims and disputes of every kind between them or their respective owners, partners, shareholders, affiliates (including parents, subsidiaries, and other related entities), predecessors, successors, or assigns only through binding individual arbitration before the American Arbitration Association (“AAA”). This Arbitration Agreement is to be broadly interpreted. It includes:
 - (A) Claims or disputes relating to any aspect of the relationship between Company and Merchant including claims or disputes relating to this Service Agreement, the Equipment, the Software, the Processing Agreement, any Company product or service, and any agreement to which Merchant and Company are parties (even if the claim or dispute does not involve the Service Agreement), whether based in contract, tort, statute, fraud, misrepresentation, omission, or any other theory;
 - (B) Claims or disputes that arose before this Service Agreement or any other agreement became effective (including claims or disputes relating to advertising);
 - (C) Claims or disputes that are subject of purported class action litigation on the date this Service Agreement becomes effective but Merchant is not a member of a certified class on that date; and
 - (D) Claims or disputes that arise after the termination of this Service Agreement but relate to it or to the Equipment or Software.
 - (ii) **Class Action Waiver. Merchant and Company waive their rights to sue before a judge or jury and to participate in a class action, class-wide arbitration, private attorney general action, or any other proceeding in which a party acts in a representative capacity. Instead, any claim or dispute will be resolved on an individual basis by a neutral arbitrator whose decision (called an “award”) will be final except for a limited right of appeal under the Federal Arbitration Act. The arbitrator may not join or consolidate proceedings together without the consent of all parties to all proceedings.**
 - (iii) Before seeking arbitration, Company or Merchant 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 Company must be addressed to: Shift4’s Legal Department, 2202 N. Irving Street, Allentown, PA 18109. A Notice to Merchant must be addressed to its address in Company’s records. The Notice must (A) describe the nature and basis of the claim or dispute; and (B) set forth the specific relief sought. If Company and Merchant do not reach an agreement to resolve the claim or dispute within 30 days after the Notice is received, Merchant or Company may commence an arbitration.
 - (iv) Company or Merchant may bring an individual suit in a small claims court instead of sending a Notice or arbitrating. Merchant may sue in the small claims court in the county of Merchant’s principal place of business or Lehigh County, Pennsylvania; Company may sue in the small claims court in Merchant’s principal place of business. This Arbitration Agreement does not preclude Merchant from bringing issues to the attention of federal, state, or local agencies (including an attorney general or the Office of the Comptroller of the Currency). Such agencies can, if the law allows, seek relief against Company on Merchant’s behalf.
 - (v) The AAA’s Commercial Arbitration Rules, as modified by this Arbitration Agreement, apply. To commence an arbitration, submit a Demand for Arbitration with the required fee to the AAA and send a copy to Company at the address in Section 7.7(iii). For information, visit 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. (vi) For disputes involving \$75,000 or less, Company will pay all AAA and arbitrator’s fees and 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. Company will not seek its attorney’s fees or expenses in any arbitration.
 - (vii) 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.
 - (viii) If the class action waiver in Section 7.7(ii) is found to be illegal or unenforceable as to all or any part of a claim or dispute, then the Arbitration Agreement is null and void as to that part, which shall proceed in court with the rest proceeding in individual arbitration. If any other provision of the Arbitration Agreement is found to be illegal or unenforceable, that provision shall be severed and the rest will continue to apply in individual arbitration.

- (ix) Notwithstanding any provision to the contrary, if Company makes any future change to the Arbitration Agreement (other than address changes) during the Initial Term or a Renewal Term, Merchant may reject that change by sending Company written notice within 30 days of receiving notice of the change to the address in Section 7.7(iii). The version of the Arbitration Agreement in force just before the rejected change will govern.

- 7.8 **Applicable Law.** The Agreement will be deemed to be a contract made under the laws of the Commonwealth of Pennsylvania, and will be construed in accordance with the laws of Pennsylvania without regard to principles of conflicts of law. The exclusive forum and venue for the adjudication of any rights, claims or disputes arising out of or in connection with this Agreement shall be the federal or state courts of Pennsylvania.
- 7.9 **Force Majeure.** Neither party will be liable to the other for any failure or delay in its performance of this Agreement in accordance with its terms if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party.
- 7.10 **Survival.** All agreements that by their context are intended to survive the termination of this Agreement.
- 7.11 **Counterparts/Facsimile Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument. The signatures to this Agreement may be evidenced by facsimile copies reflecting the party's signature, and any such facsimile copy shall be sufficient to evidence the signature of such party as if it were an original signature.