

**SECTION 10 REQUIRES ALL DISPUTES WITH BANK OR COMPANY TO BE RESOLVED IN BINDING INDIVIDUAL ARBITRATION -- NOT IN A CLASS ACTION, AND NOT IN COURT BEFORE A JUDGE OR JURY. SECTION 9 LIMITS BANK AND COMPANY'S LIABILITY AND MERCHANT'S REMEDIES. BANK OR COMPANY CAN CHANGE THE FEES AT ANY TIME, INCLUDING IN CONNECTION WITH THE RIGHTS IN SECTION 12.7.**

This Merchant Processing Agreement contains the terms and conditions described in the Merchant Application (the "**Merchant Application**" or "**Application**") is entered into among Citizens Bank, N.A., whose principal place of business is One Citizens Plaza, Providence, Rhode Island 02903 ("**Bank**"), Shift4 Payments, LLC, whose principal place of business is 3501 Corporate Parkway, Center Valley PA 18034 ("**Company**"), and the person or entity identified on the Merchant Application ("**Merchant**"). Capitalized terms not defined in the body of the Agreement have the meanings set forth in the Definitions Section of this Agreement.

## 1. PARTICIPATION; SERVICES; TERM OF AGREEMENT.

- 1.1. **Binding Agreement.** This Agreement is binding on Merchant the earlier of Merchant's execution of the Agreement or the date Merchant first submits a Transaction to Company for processing (the "**Merchant Effective Date**"). Notwithstanding Company's earlier execution of this Agreement, this Agreement binds Company on the date Company issues a merchant identification number to Merchant (the "**Company Effective Date**").
- 1.2. **Term and Renewal.** This Agreement will remain in effect for a period thirty (30) months ("**Initial Term**"), and will renew for successive one (1) year terms (each, a "**Renewal Term**") (the Initial Term and Renewal Term, collectively, the "**Term**"), unless (i) either party gives written notice of its intent to not renew the Agreement at least 90 days before the then-current term expires, or (ii) the Agreement is terminated pursuant to its terms. If the renewal term in this Agreement violates the provisions of applicable law, the renewal term will be 30 days.

## 2. COMPLIANCE WITH THE RULES AND LAW; GATEWAY TERMS; FREE EQUIPMENT PROGRAM; AMERICAN EXPRESS TERMS.

- 2.1. **Compliance with Rules and Law.** Merchant shall at all times comply with the Rules and Rules Summary, which may be amended from time to time, and acknowledges receipt of the Rules Summary, available at <https://www.shift4.com/legal>. Merchant agrees to comply with all applicable state, federal, and local laws, rules, and regulations ("**Laws**"). Merchant shall completely and timely assist Company in complying with all Laws and Rules now or hereafter applicable to any Sale or this Agreement. Merchant shall execute and deliver to Company all such instruments that Company from time to time deem necessary. It is Merchant's responsibility to know all applicable Laws and the Rules that apply to Merchant's acceptance of Cards and to ensure that Merchant's equipment complies with all Laws and Rules.
- 2.2. **Gateway Terms.** Merchant shall comply with Company's Gateway Services Addendum, attached hereto. Bank is not a party to the Gateway Services Addendum. Until such time that Merchant terminates this Agreement, Company agrees to waive fees detailed in Company's Gateway Services Addendum.
- 2.3. **Free Equipment Program.** Merchants who are eligible for, and have been designated as participants in, the "Free Equipment Program," which is not applicable to all terminals or equipment types and requires a completed and accepted Account Setup/Placement Form, are subject to the FE Program Terms & Conditions located at <https://www.shift4.com/pdf/FE-Program-Terms-and-Conditions.pdf>. Bank is not a party to the FE Program Terms & Conditions.
- 2.4. **American Express Terms.** Merchant shall comply with all terms related to Merchant's acceptance of American Express Cards, including any terms governing participation in the OptBlue Program and participation as an American Express "Direct Merchant". In addition to any Merchant obligations in this Agreement, applicable American Express terms, which are incorporated into this Agreement by reference, are located here: <https://www.shift4.com/legal>.

## 3. CONFIDENTIALITY; DATA PROTECTION; SECURITY STANDARDS

- 3.1. **Confidentiality.** Merchant shall not disclose any Confidential Information to any third party, and (i) shall keep all Confidential Information in the strictest confidence and in accordance with the security obligations set forth in this Agreement, and (ii) shall comply with all confidentiality and security requirements of the Rules.
- 3.2. **Data Protection and Security Standards.**
  - 3.2.1. **Security of Systems; PCI Compliance.** Merchant shall secure all systems and media containing Confidential Information, or account, Cardholder, or Transaction information (physical or electronic, including but not limited to account numbers, Card imprints, and terminal identification numbers), and shall prevent the unauthorized access of any such systems or media. Merchant shall at all times be in full compliance with any rules, regulations, guidelines, and procedures adopted by any Card Brand relating to the privacy and security of Cardholder and Card Transaction data, including the most up-to-date version of the Payment Card Industry Data Security Standard (PCI-DSS), as amended from time to time by the Payment Card Industry Security Standards Council. Detailed information pertaining to these requirements may be found at <https://www.pcisecuritystandards.org>. Additional information regarding security requirements may be found on the Card Brands' websites.
  - 3.2.2. **Restrictions on Use.**
    - 3.2.2.1. **No Disclosure.** Merchant shall not disclose to any third party any Cardholder account information or other personal information except to its agent assisting in completing a Card Transaction, or as required by Laws or Rules. Additionally, Merchant shall not, under any circumstance, disclose, copy, distribute, release, make public, or transmit payment card information including account

number, expiration date, CVV2/CVC2 or other Card security codes, or any data element relating to the payment Card to any third party, person, company, recipient, or entity other than Company, Bank, or a Company or Bank authorized processing agent. Merchant shall not request or use Cardholder account number information for any purpose that Merchant knows or should know to be fraudulent or in violation of the Rules, or for any purpose that the Cardholder did not authorize.

- 3.2.2.2. **Prohibited Data Storage.** Merchant shall not, and shall ensure that any type of software system used by Merchant, shall not, store, save, or retain, in whole or in part, either electronically, on paper or any other type of media, payment card magnetic stripe information, track data, or Card security codes (e.g., CVV, CVC, CID, CVV2 or CVC2) appearing or stored on the payment Card. Merchant shall destroy, in a manner that will render the data unreadable, all such media that Merchant no longer reasonably deems necessary or appropriate to store (except for Sales Drafts maintained in accordance with this Agreement, Laws, or Rules). Merchant shall not retain or store magnetic stripe, CVV2 or CVC2 data after authorization for any reason. Merchant shall not store, and shall ensure that all of Merchant's third-party providers that have access to Cardholder data do not store, magnetic stripe, CVV2 or CVC2 data after a Transaction for any reason.
- 3.2.3. **Merchant Providers.** If Merchant uses any third parties who will have access to Cardholder information or data ("**Merchant Provider(s)**"), or any third-party payment application(s) or software, Merchant shall immediately notify Company of the identity of the Merchant Provider(s) and the name and version of the payment application(s) or software. In addition, Merchant shall: (i) only allow Merchant Providers access to Cardholder data for purposes authorized by the Rules, (ii) ensure it has, and each Merchant Provider has, proper security measures in place for the protection of Cardholder data, and (iii) comply with and ensure that Merchant Providers comply with (a) the Payment Card Industry ("PCI") Data Security Standard, as amended from time to time, which may be referred to as the Visa Cardholder Information Security Program ("**CISP**") (found at [www.visa.com](http://www.visa.com)) and the MasterCard Site Data Protection Program ("**SDP**") (found at [www.mastercard.com](http://www.mastercard.com)), (iv) comply with and ensure that Merchant Providers comply with applicable PABP (Payment Application Best Practices) as set forth by the Payment Card Industry Security Standards Council (PCI-SSC) and the Card Brands, including by becoming PA-DSS certified, and (v) have written agreements with Merchant Providers requiring the compliance set forth herein. Merchant is responsible for demonstrating Merchant's and Merchant Providers' compliance with the CISP, SDP, DISC, DSOP, and PCI programs, and providing reasonable access to Merchant's locations and ensuring Merchant Providers provide reasonable access to their locations to verify Merchant's and Merchant Providers' ability to prevent security violations. Any fees, fines, or penalties resulting from non-compliance will be passed through to Merchant. All electronic commerce Merchants shall ensure Cardholders can transaction using a secure and encrypted transaction method that utilizes a valid Secure Sockets Layer (SSL) certificate provide Cardholders with a secure and encrypted transaction method, utilizing, at a minimum, a valid Secure Sockets Layer (SSL) certificate or 3D Secure.
- 3.2.4. **Other Obligations.**
- 3.2.4.1. **Notification Regarding Loss of Data.** Merchant will immediately notify Company of any suspected or confirmed data breach, unauthorized access to systems or information, or loss or theft of any Transaction information, including any loss or theft from a Merchant Provider. In addition, in the event of a suspected or confirmed loss or theft of information, Merchant agrees, at Merchant's cost, to provide all information requested by Company, a Card Brand, other financial institutions, or local, state, or federal officials in connection with such event and to cooperate in any ensuing investigation. Any information provided in response to such investigation will (as between Merchant and Bank) be considered Company's confidential information. Merchant agrees that Company may release to the Card Brands, Bank, other financial institutions, and regulatory, local, state, or federal officials, any information Merchant provides to Company in connection with a suspected or confirmed loss or theft of Transaction information. The requirements of this section apply to Cardholder data regardless of the medium in which the information is contained and regardless of whether Merchant processes Transactions via Internet, mail, phone, face-to-face, or any other method. Additional information regarding data security may be found at the Card Brands' websites.
- 3.2.4.2. **Electronic Terminals.** If Merchant provides its own Point-of-Sale electronic terminal or similar device ("**POS Terminal**"), such POS Terminals must comply with, and meet all requirements set forth by Company, any applicable processor, and directives set forth by the PCI-SSC, as amended from time to time, in order to submit Transactions. Information regarding a sales or credit Transaction transmitted with a POS Terminal will be transmitted by Merchant to Company or the applicable processing hosting the format Company from time to time specifies or that is required under the Rules. If Company requests a copy of a Sales Draft, credit voucher, or other Transaction evidence, Merchant will provide it within three (3) business days following the request. The means of transmission indicated in the Merchant Application shall be the exclusive means utilized by Merchant until Merchant has provided Company with at least thirty (30) days' prior written notice of Merchant's intention to change the means of such delivery or otherwise to alter in any material respect Merchant's medium of transmission of data to Company or processing host.
- 3.2.4.3. **Privacy Policy.** If Merchant sells goods or services on the Internet, Merchant's website must contain Merchant's consumer privacy policy and a description of Merchant's method of safeguarding consumer Transaction data. Merchant's consumer privacy policy must also comply with all applicable Rules, laws, and/or regulations governing the collection, storage, and/or sale of consumer data. Without limiting any rights of Company in this Agreement, Merchant acknowledges receipt of Company's privacy policy, which is available on Company's website.
- 3.2.4.4. **Endorsement.** The presentment of Sales Drafts to Company for collection and payment is Merchant's agreement to sell and assign its right, title, and interest in each Sales Draft and shall constitute an endorsement by Merchant of such Sales Draft. Merchant hereby authorizes Company to supply such endorsement on Merchant's behalf. Merchant agrees that this is a contract of financial accommodation within the meaning of Bankruptcy Code 11 U.S.C. § 365, as amended from time to time. Merchant acknowledges that its obligation to Company for all amounts owed under this Agreement arise out of the same Transaction as Company's obligation to deposit funds to the Account.
- 3.2.4.5. **Stand-In Service.** Stand-In Service is designed to facilitate the continued receipt of authorization, processing, and funding services in the event communication to the back-end processing host is lost for an extended period of time. Without limiting any other rights of Company under the terms of Merchant's Agreement with Company, and to the fullest extent permitted by law, Company is not liable for losses, delays, errors, discrepancies, or other issues arising out of the Stand-In Service, or for the interruption or unavailability of the Stand-In Service.

3.2.4.6 **3DS Services.** 3D Secure ("3DS" or "3DS Service(s)") is a feature designed to act as an additional layer of cardholder authentication for online card transactions, which enables issuing financial institutions to redirect cardholders to a 3DS page for additional verification in instances where a transaction is deemed suspicious. Merchant acknowledges that 3DS is made available by Company through its relationship with one or more Affiliates (the "3DS Affiliates"). "Affiliates" means any other legal entity that directly or indirectly controls, is controlled by, or is under common control with Company, where "control" means holding, directly or indirectly, a majority of the voting rights in it, or the power to direct or cause the direction of its management, policies or operations (whether through the holding of voting rights, by contract or otherwise). In connection with Merchant's receipt of 3DS, and without limiting any of Merchant's obligations in the Agreement, Merchant agrees as follows: (i) Merchant shall comply with all Laws and Rules, as well as any instructions and documentation, including any such requirements regarding enrollment and Strong Customer Authentication, and shall provide any documentation requested by Company; (ii) any Card Brand may decline, terminate, or suspend Merchant's enrollment, registration, or continued participation in 3DS in its sole discretion; (iii) 3DS is a proprietary software and technology developed by Company and/or the 3DS Affiliate and it shall not be copied or otherwise published, distributed, or modified by Merchant; and (iv) 3DS may involve the use of pre-defined algorithms, statistic models, and/or other methods ("AI") to make recommendations about transactions and the need for additional verification. Company, on behalf of itself and its affiliates, including the 3DS Affiliate, makes no representations, warranties, or covenants regarding the accuracy of any recommendation made available in connection with 3DS, including any recommendation generated from AI. Merchant acknowledges that the 3DS Services are provided on an "as is" and "as available" basis without warranties of any kind and that the 3DS Services may not be available to all Merchants. Company may choose whether to permit or deny 3DS at any time and with respect to any Merchant for any reason in its sole discretion. Without limiting any other rights of Company, Merchant authorizes Company to debit any account Merchant has with or through Company (e.g., Designated Account, Reserve Account, and/or any other account Merchant provided to Company) for any fees and other amounts that become due in connection with 3DS and/or to set-off any such amounts from amounts otherwise payable to Merchant. All warranties regarding the 3DS Services, whether express or implied, are expressly disclaimed, including any (a) warranties that the 3DS Services (b) will be interrupted or error free, or (c) are fit for a particular purpose, and (ii) implied warranties of merchantability or of non-infringement.

#### 4. DEPOSIT ACCOUNT.

- 4.1. **Establishment and Authority.** Merchant shall establish and maintain a demand deposit account at an ACH receiving depository institution approved by Company ("**Designated Account**"). Merchant shall maintain sufficient funds in the Designated Account to satisfy all obligations to Company, including fees and contemplated by this Agreement. Merchant irrevocably authorizes Company to debit the Designated Account for Chargebacks, fees, and any other penalties or amounts owed under this Agreement. This authority will remain in effect for at least two (2) years after termination of this Agreement whether or not Merchant has notified Company and Bank of a change to the Designated Account. Merchant must obtain prior written consent Company to change the Designated Account. If Merchant does not obtain consent, Company shall have a right to immediately terminate this Agreement and may take other action determined by them in their sole discretion.
- 4.2. **Deposit.** Subject to any and all rights of Company in the Agreement, Company will initiate deposits to the Designated Account in the amount of the Sales Drafts only after receiving funds from the Card Brands. Company typically initiates deposits 3 Business Days after Company's receipt of the Sales Draft for ordinary transactions, and 5 Business Days after Company's receipt of the Sales Draft for mail order/telephone order and electronic commerce Transactions. Merchant authorizes Company to initiate reversal or adjustment entries and initiate or suspend such entries, including as may be necessary to grant Merchant conditional credit for any entry. Company may grant Merchant provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Company and subject to all Chargebacks.
- 4.3. **Merchant's Duty to Report Asserted Errors or Claims.** Merchant shall promptly examine all statements relating to the Designated Account, and all statements from Company, including any reports and statements made available to Merchant via Company's portals, and immediately notify Company at the address in the Notice Section of this Agreement in writing of any asserted errors or claims. Merchant's written notice must include: (i) Merchant's 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. Merchant's failure to notify Company in writing of any error or claim within 30 calendar days (5 days for settlement) after Merchant receives the periodic statement containing the asserted error or claim constitutes a waiver of any claim relating to that error or claim. Following receipt of such notice, Company shall have a period of 60 days to investigate the asserted error or claim, and Merchant shall have no right to make a claim or bring an action against Bank or Company during such investigatory period.

#### 5. FEES AND OTHER PAYABLE AMOUNTS.

- 5.1. **Fees.** Merchant shall pay Company fees for Services, forms, and equipment in accordance with the fees and rates set forth on the Merchant Application and all other sums owed to Company for sales and Services set forth in this Agreement, as applicable. Merchant and its affiliated entities shall be jointly and severally liable for all fees, charges, and other sums owed to Company, and Merchant, on behalf of itself and any affiliated entities, authorizes Company to withhold funds from Merchant and/or any of Merchant's affiliated entities to satisfy any obligation of Merchant or any of Merchant's affiliated entities. Company has the right (i) to debit fees from the Designated Account once each business day or once each month for the previous business day or month's activity, and (ii) to deduct fees and amounts from funds otherwise payable to Merchant.
- 5.2. **Other Amounts Owed.** Merchant shall immediately pay Company any amount incurred by Company attributable to this Agreement, including Chargebacks, fines imposed by Card Brands, insufficient funds fees, and ACH debits that overdraw the Designated Account or Reserve Account or are otherwise dishonored. Merchant authorizes Company to debit the Designated Account, Reserve Account, or any other account Merchant has at Bank, Company, or at any affiliate of Bank or other financial institution for any fees as well as any other amount Merchant owes Company or Bank under this Agreement or under any other contract, note, guaranty, instrument, or dealing of any kind now existing or later entered into between Merchant and Company or Bank, whether Merchant's obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. This authorization will remain in effect beyond termination of this Agreement. In the event Merchant changes the Designated Account, this authorization will apply to the new account. If funds acquired do not fully reimburse Company and Bank for the amounts owed, Merchant shall immediately pay Company such amounts. Merchant agrees to pay an interest rate of the lesser of 18% per annum or the maximum lawful rate on any overdue funds to Company, or the greatest amount allowed by law, whichever is greater.
- 5.3. **Third-Party Fees and Assessments.** Third parties, including the Card Brands, may impose or assess amounts on or against Merchant, Bank, and/or Company in connection with this Agreement. Merchant shall be responsible for and shall pay Company all such amounts whether the

amounts have been imposed on or assessed against Merchant, Bank, and/or Company, and shall ensure the Designated Account has sufficient funds for the payment of such amounts. Third-party amounts include fees, fines, assessments, penalties, loss allocations, interchange, charged by Card Brands and other third parties, and such amounts shall automatically become effective upon notice to Merchant in accordance with Company's standard operating procedure and shall be immediately payable by Merchant when assessed by Company. Company has the right to calculate, round, and assess interchange and other fees and amounts, including on an allocation basis, and on return, chargeback, and other transactions, retain such amounts, in each case in accordance with Company's standard operating procedures.

#### 5.4. Other Fees.

- 5.4.1. **Regulatory Assurance Fee.** An annual \$189.99 regulatory compliance fee will be charged to Merchant each January per MID (billed on a per-TID basis, up to 2 TID) in connection with Company's tax reporting and other regulatory and security obligations.
- 5.4.2. **Inactivity Fee.** If at any time after the Effective Date Merchant fails to use Company's processing services for a period of 30 calendar days, Company shall have a right to charge Merchant \$15.00 per terminal identification number for each calendar month that Company's processing services were not used ("**Inactivity Fee**"). The Inactivity Fee, which is in addition to any other fees or charges, will be debited from Merchant's account in accordance with Company's standard billing practices.
- 5.4.3. **Rejections and Returns; DDA Changes.** Unless otherwise approved in writing by Company, Merchant agrees to pay \$25 for each debit or credit rejected or returned from the Designated Account and \$50 for each DDA change submitted to Company during the term of this Agreement.
- 5.4.4. **Voice Authorization.** Unless otherwise approved in writing by Bank, Merchant shall pay \$1.75 for each Voice Authorization for AVS.
- 5.4.5. **American Express ESA Fee.** A fee of 0.25% on transaction volume (in US dollars) applies to Merchant's participating in the American Express ESA program.

#### 6. BUSINESS INFORMATION.

**6.1. Warranties of Merchant.** Merchant represents and warrants to Company at the time of execution and during the Term of this Agreement, the following:

- 6.1.1. All information contained in the Merchant Application, including any documents delivered to Company, is true, complete, and accurate, and properly reflects Merchant's business, tax identification number, and financial condition, as well as its principal partners, owners, or officers, including the name, address, date of birth, and Social Security Number for the beneficial owners in the Beneficial Ownership Addendum of the Merchant Application (e.g., natural persons owning 25% or more of the shares of an entity and individuals with significant responsibility for managing such entity);
- 6.1.2. Merchant is a Corporation, Limited Liability Company, Partnership, Sole Proprietorship, or other legitimate and legally organized organization validly existing and organized in the United States;
- 6.1.3. This Agreement is duly authorized, and will not violate any Laws, or conflict with any other agreement to which Merchant is subject, and Merchant and the individuals signing the Merchant Application (and thus this Agreement) have the power and authority to execute, deliver, and perform this Agreement;
- 6.1.4. Merchant has all licenses required to conduct its business and is qualified to do business in every jurisdiction where it operates;
- 6.1.5. Merchant is not engaged or affiliated with any businesses, products, or methods of selling other than those set forth on the Merchant Application;
- 6.1.6. There is no action, suit, or proceeding at law or in equity now pending or, to Merchant's knowledge, threatened by or against or affecting Merchant that would substantially impair Merchant's right to carry on its business as now conducted or that would adversely affect its financial condition or operations;
- 6.1.7. All Transactions are bona fide, and no Transaction involves the use of a Card for any purpose other than the purchase of goods or services from Merchant;
- 6.1.8. Merchant has performed and will perform all of its obligations to the Cardholder in connection with the Card Transactions evidenced thereby;
- 6.1.9. Merchant, and its principals or sales agents, have not been terminated from depositing Sales with any member of the Card Brands, have never been placed on the MasterCard Match system, or on the Combined Terminated Merchant File except as disclosed in writing to Company; and
- 6.1.10. Merchant: (i) has the right to assign Sales to Company and does by this reference assign all its rights, title, and interest to payment for such Sales to Company so that Company may process Sales under this Agreement; (ii) has no knowledge of any fact that would impair the collectability of the Sales; and (iii) represents that each Sale represents (a) a valid obligation of the Cardholder in the amount indicated; and (b) merchandise actually sold and delivered or services rendered to the Cardholder by the Merchant and does not involve any element of credit for any other purpose.

**6.2. Certain Regulatory Requirements.** To help the government fight the funding of terrorism and money laundering activities, the USA PATRIOT Act requires all financial institutions to obtain, verify, and record information that identifies each person (including business entities) who opens an account. What this means: When Merchant opens an account, Bank and/or Company will ask for information, which may include the applicant's name, physical address, date of birth, taxpayer identification number, and other information that will allow Bank to identify the

applicant. Bank and/or Company may also ask to see the applicant's driver's licenses or other identifying documents, and may inquire with the Office of Foreign Assets Control if Merchant, its principal owner(s), proprietor(s), officer(s), or Guarantor(s) are present on any lists maintained by OFAC prior to accepting Merchant.

**6.3. Notification of Business Changes; Credit Inquiries.** Merchant and Guarantor(s) acknowledge that all documents submitted in conjunction with this Agreement are being submitted in order to induce a federally insured financial institution to extend them credit, and that submission of any false information may subject them to criminal prosecution, fine, and imprisonment. Accordingly:

- 6.3.1. **Business Changes.** Merchant shall provide Company with immediate notice if Merchant intends to: (i) transfer, sell, or liquidate any substantial part of its total assets or equity; (ii) change the basic nature of its business, including changes that would affect Merchant's MCC; (iii) change ownership or transfer control of its business; (iv) enter into any joint venture, partnership, or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant's business; or (v) modify Merchant's monthly processing volume or average ticket size as approved by Company (collectively known as "**Business Changes**"). Notice to Bank and Company must be made in accordance with the Notice Section of this Agreement. Failure to provide notice of Business Changes may result in termination of this Agreement. In event of Business Changes, Company may, in its discretion, terminate this Agreement. Merchant acknowledges that it is responsible for promptly notifying Company in connection with the sale or assignment of its business or any change of control or in beneficial ownership, and expressly agrees that Company shall be entitled to rely on the statements of any party purporting to be a successor or purchaser of all or any of Merchant's business, business interests, and/or any rights in connection with Merchant's business under this Agreement or any other agreement, including if such reliance results in changing the Designated Account.
- 6.3.2. **Change in Financial Condition.** Merchant shall notify Company, within one business day, in the event bankruptcy, receivership, insolvency, or similar condition or action is identified by or initiated by or against Merchant or any of its principals, and shall immediately cease Card acceptance. Merchant shall include Company and Bank as creditors in Merchant's bankruptcy proceedings if Merchant has funds due to Company or Bank for any reason including fees, Chargebacks, or ACH rejects.
- 6.3.3. **Separate Notification.** Separate notification regarding changes to account information, including those to the Designated Account, must be made to outside services used by Merchant including but not limited to American Express and any leasing company.
- 6.3.4. **Financial Information.** Merchant, its signing officers, owners, partners, and principals, and any Guarantors, authorize Company, its affiliates, and each of their respective agents and/or assigns, to make, from time to time, any business and/or personal credit and other inquiries Company considers necessary to review the acceptance and continuation of this Agreement. Merchant authorizes persons or entities contacted by Company or its affiliates in relation to this Agreement to release the credit information requested by Company or any affiliate. By executing this Agreement, Merchant, its signing officer/owner/partner/principal and any Personal Guarantor acknowledge that Company has a legitimate business need for the information contained in any business and/or personal credit report that may be obtained in connection with this Agreement, and that this Agreement is a business Transaction that was initiated by the Merchant and any Personal Guarantor identified in the Merchant Application. The authority granted in this Section survives the termination of this Agreement. Such inquiries shall include a credit check of the business, its proprietor, principal owners, and/or officers. If requested to do so by Company, Merchant shall provide the written consent of any individual for whom an inquiry has been or is to be made if such individual did not sign the Merchant Application.
- 6.3.5. **Delivery of Services; Merchant Exclusivity.** Company will make the Services available in accordance with this Agreement. During the Term, Merchant agrees to submit, on an exclusive basis, all Sales from Cards to Company for processing, and unless otherwise agreed in writing, shall participate in each Card Brand and Debit Network supported by Company. During the Initial and any Renewal Term of this Agreement, Merchant shall not enter into an agreement with any other entity that provides Card processing services similar to those made available by Company as contemplated by this Agreement without Company's written consent. Company may issue one or more MID's to Merchant in connection with the Services hereunder, and Merchant assumes responsibility for all such MID's and agrees that the obligations of Merchant herein, and Company's rights herein, shall apply to each issued MID.

## 7. SECURITY INTEREST; RESERVE ACCOUNT; RECOUPMENT AND SET-OFF.

- 7.1. Security Agreement.** This Agreement is a security agreement under the Uniform Commercial Code. Merchant grants to Company a security interest in and lien upon: (i) all funds at any time in the Designated Account, and Reserve Account regardless of the source of such funds; (ii) present and future Sales Drafts; (iii) Merchant's electronic terminal, printer, imprinter and imprinter plate; (iv) all accounts, regardless of source, wherever found, standing in the name of Merchant and/or Guarantor(s), including any affiliated companies of Merchant and/or Guarantor(s), whether established or designated and maintained pursuant to this Agreement or not; and (v) any and all amounts which may be due to Merchant under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively the "**Secured Assets**"). Merchant agrees to provide other collateral or security to Company to secure its obligations under this Agreement upon Company's request. These security interests and liens may be used to secure Merchant obligations under this Agreement and any other agreements now existing or later entered into between Merchant and Company and/or Bank. This security interest may be exercised by Company without notice or demand of any kind by making an immediate withdrawal or freezing the Secured Assets.
- 7.2. Perfection.** Upon request of Company, Merchant will execute one or more financing statements or other documents to evidence this security interest. Merchant represents and warrants that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, Company will have all rights afforded under the Uniform Commercial Code, as well as under any applicable law and in equity. Merchant shall obtain written consent from Company prior to granting a security interest of any kind in the Secured Assets to a third party. In addition to any setoff rights in the Agreement, Merchant agrees that this is a contract of recoupment and neither Company nor Bank are required to file a motion for relief from a bankruptcy action automatic stay for Company or Bank to realize on any of its collateral (including any Reserve Account). Nevertheless, Merchant agrees not to contest or object to any motion for relief from the automatic stay filed by Company or Bank. Merchant hereby authorizes and appoints Company and Bank as Merchant's attorney-in-fact to sign Merchant's name to any financing statement used for the perfection of any security interest or lien granted hereunder.
- 7.3. Guaranty.** As a primary inducement to Company to enter into this Agreement with Merchant, the undersigned Guarantor(s), whether by signing the Merchant Application or by acknowledging consent by electronic means, jointly and severally, unconditionally and irrevocably,



guarantee(s) the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to Company pursuant to this Agreement, as well as any other agreements entered into by Guarantor and/or Merchant, as they now exist or are amended from time to time, with or without notice. Guarantor(s) understand(s) further that Company may proceed directly against Guarantor(s) without first exhausting any remedies against any other individual or entity responsible to it or any security held by Bank, Company, or Merchant. This Guaranty will not be discharged or affected by the death of Merchant or the Guarantor(s); will bind all heirs, administrators, representatives and assigns of Merchant and Guarantor(s); and may be enforced by or for the benefit of any successor of Bank or Company. Guarantor(s) understand(s) that the inducement to Company to enter into this Agreement is consideration for this Guaranty, and that this Guaranty remains in full force and effect even if Guarantor(s) receive(s) no additional benefit from the Guaranty.

- 7.4. Establishment and Use of Reserve Account.** Company has a right to establish and maintain, and/or to require Merchant to establish and maintain, a non-interest bearing deposit account ("**Reserve Account**") at Bank and/or Company initially or at any time in the future as requested by Company, with sums sufficient to satisfy Merchant's current and future obligations as determined by Company. Merchant authorizes Company to debit the Designated Account or any other account Merchant has at Bank, Company, or any other financial institution to establish or maintain funds in the Reserve Account. At any time, Company may (i) deposit into the Reserve Account funds otherwise payable to Merchant for the purpose of establishing, maintaining, or increasing the Reserve Account, if Company determines such action is necessary to protect its interests, or (ii) establish a separate reserve of funds from amounts payable to Merchant. Funds in the Reserve Account will remain in the Reserve Account until one (1) year following the latest of termination of this Agreement, Merchant's last transmission of a Sales Draft or Credit Voucher to Bank, or a Chargeback submitted by Cardholder; provided, however, that Merchant will remain liable to Company for all liabilities occurring beyond such one-year period. Company may, without notice to Merchant, collect from the Reserve Account any amounts due to Bank or Company under this Agreement or any other agreement, including by exercising rights of set-off and recoupment. Merchant shall not use funds in the Reserve account or attempt to access the Reserve Account without Company's permission.
- 7.5. Assurance.** In the event of a bankruptcy proceeding, neither Bank nor Company consent to assumption of this Agreement. Nevertheless, in the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under the Bankruptcy Code (11 U.S.C. § 365), as amended from time to time, Merchant must establish or maintain a Reserve Account in an amount satisfactory to Company. Assumption will be made under terms and conditions that are acceptable to Bank and Company and comply with applicable Laws governing such assumption.
- 7.6. Chargebacks.** Company has a right to: (i) make an immediate debit/charge via the ACH system (code CCD) to any personal and/or commercial deposit account standing in the name or names of Merchant or Guarantor(s), without notice or demand of any kind, (ii) interrupt the electronic transmission of funds to any account through the ACH system, (iii) freeze the Designated Account and Reserve Account, without notice or demand of any kind; (iv) take possession of any or all of Merchant's Sales Drafts; (d) take possession of any and all of Merchant's electronic terminals, printers, imprinters, and imprinter plates; (v) place a receiver within Merchant's place of business without notice or bond to intercept and collect all income derived from Merchant's operations until such time as any indebtedness owed to Bank or Company arising under this Agreement has been satisfied in full; (vi) obtain a writ of attachment or a writ of possession without bond pertaining to Merchant or Guarantor(s)'s personal property upon a showing of reasonable ground to believe that Merchant has committed an act of fraud or is about to misappropriate funds to which it is not entitled. Merchant shall provide any statement or notice that Company determines to be necessary to preserve and protect the security interest in this Agreement. The granting of this security interest by Merchant and Guarantor(s) in no way limits Merchant's liabilities to Company under this Agreement.
- 7.7. Account Monitoring.** Merchant agrees that Company may, each in its sole discretion, suspend Merchant's Transaction deposits for any reasonable period of time required to investigate suspicious or unusual Transaction activity, including in response to fluctuations in monthly volume and average ticket size. Merchant shall pay \$25.00 for each release of funds suspended by Company, and shall pay a 5% fee on all funds processed over any approved monthly volume. In the event of suspension of Transaction deposits by Company, Merchant agrees that a Security Processing Fee not to exceed 110% of the Transaction activity may be assessed. If a batch is suspended by Company, Merchant shall deliver the purchaser's product or service just as if the Merchant has been paid. If Company, in its sole discretion, deems Merchant's type of business a compliance risk to Company, Company may enroll Merchant in a third-party risk monitoring service ("**Monitoring Service**") at Merchant's sole expense. Merchant will either be notified in advance of underwriting approval of enrollment in a Monitoring Service and related expenses, or notified no less than 30 days in advance if Merchant has an open merchant account with Bank. Merchant's refusal to enroll in a Monitoring Service when mandated by Company may result in termination of this Agreement.

## **8. TERMINATION EVENTS; EFFECT OF TERMINATION.**

- 8.1. Termination by Merchant.** Merchant may terminate this Agreement as follow upon Company's default of any material obligation to Merchant hereunder and the failure of Company to cure such default within thirty (30) days (or another mutually agreeable timeline) after written notice of such default is received.
- 8.2. Termination by Company.** Company may terminate this Agreement and/or any portion of the Services immediately without prior notice if (i) Company reasonably believes that fraudulent Card Transactions or other activity prohibited by this Agreement is occurring or has occurred at any Merchant location; (ii) Company is required to take action to prevent loss to Bank, Company, or Card Issuers; (iii) any circumstances exist that could or do create harm or loss of goodwill to Company, Bank, or any Card Brand; (iv) Merchant appears on any Card Brand's security or termination reporting; (v) Company's merchant acceptance criteria or Laws relating to Merchant's business change; (vi) Merchant fails to pay any fees or charges when due; (vii) Merchant has misrepresented or omitted any material information provided to Company; (viii) Merchant is in breach of this Agreement or the Rules; (ix) Merchant, after Company's request, fails to send copies of Sales Drafts to Company, or fails to send any other information reasonably requested by Company; (x) Merchant submits Sales that were not originated as a result of a direct Sale Transaction between a Cardholder and Merchant in the normal course of business ("**Laundering**"); (xi) a material change of Merchant's business as described in the Merchant Application occurs; (xii) one of the Card Brands identifies Merchant, its principal(s), Guarantor(s), or associated persons or entities under any program designed to monitor merchants; (xiii) Merchant is inactive for ninety (90) days and is not a seasonal Merchant; (xiv) a Guarantor (if designated) gives notice of its intention to withdraw its Guaranty; or (xv) Merchant has an Insolvency Event. Company has a right to immediately terminate or suspend Merchant's access to any Card Brand or Debit Network if required by the Card Brand or Debit Network, if Company no longer supports such Card Brand or Debit Network, or for any other reasonable reason.

**8.3. Bankruptcy.** If any case or proceeding is commenced by or against Merchant under any Laws dealing with an Insolvency Event, this Agreement shall simultaneously and automatically terminate, and any amounts due to Bank and Company shall accelerate and become immediately due and payable, without the necessity of any notice, declaration or other act whatsoever by Bank or Company. Merchant shall notify Company and Bank in writing within five (5) days of any voluntary or involuntary bankruptcy filing. Merchant shall send notification by certified mail, return receipt requested, to Bank and Company at the addresses in the Notice Section of this Agreement. Credits to Merchant's Designated Account and other payments to Merchant are provisional. Bank, Company, and Merchant acknowledge this Agreement is an agreement whereby Bank is extending financial accommodations to Merchant within the meaning of 11 U.S.C. § 365(c)(2) of the Bankruptcy Code, as amended from time to time. The right of Merchant to receive any amounts due or to become due from Bank or Company is expressly subject and subordinate to the Chargeback, recoupment, setoff, lien, and security interest rights of Bank and Company under this Agreement, without regard to whether such Chargebacks, recoupment, setoff, lien, or security interest rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured, or unmatured.

**8.4. Curative Regulatory Right; Gaming.** Company has a right to suspend or cease providing any service or to terminate this Agreement if (i) Company believes that the continued provision of such service or performance of the Agreement violates or would violate the Rules, Laws, or regulations, including, where applicable, any ordinance or Tribal law or statute, (ii) Merchant is accused by any federal, state, or local jurisdiction (including, where applicable, a Tribal government), of a violation of any applicable statute or ordinance or any regulation, directive, or order of any governmental agency or court, or (iii) Company reasonably believes, which may be based upon the opinion of Company's legal counsel, that Merchant is in violation of any of the foregoing. If Merchant engages in gaming, Merchant represents and warrants that it is, or will be, duly licensed and/or authorized, as appropriate, to conduct and support gaming and gambling in each jurisdiction where it makes gaming and/or gambling available. Merchant shall (a) not submit gaming or gambling transactions in any new jurisdiction without Company's express written consent, (b) provide any documents or other information Company requests (e.g., licenses, legal opinions, controls, regulatory orders, etc.) to confirm Merchant has all rights and permissions to engage in gaming and/or gambling activity, and (c) notify Company of any changes in the operation of Merchant's activities and/or changes in the law that affect or could affect Merchant's gaming and/or gambling activities.

**8.5. Effect of Termination; General Terms Regarding the Return of Equipment.**

**8.5.1. Discontinuation of Services.** In the event of termination or expiration of the Agreement for any reason, Merchant authorizes Company to withhold and discontinue the disbursement of funds arising from any Cards and/or other payment Transactions of Merchant in the process of being collected and deposited. Upon termination for any reason, Merchant shall immediately cease requesting and will cease transmitting Sales Drafts to Company. In the event Merchant obtains any Authorization after termination, Merchant acknowledges and agrees that the fact that any Authorization was requested or obtained shall not operate to reinstate this Agreement.

**8.5.2. Maintaining Reserves.** Collected funds will be placed in a Reserve Account until Merchant pays any equipment and processing cancellation fees and any outstanding charges, losses, or amounts for which Merchant is liable under this Agreement (including other Merchant Processing Agreements entered into by Merchant with Bank or Company). Further, Company reserves the right to require Merchant to deposit additional amounts into the Reserve Account based upon Merchant's processing history or anticipated risk of loss to Company. The Reserve Account shall be maintained for a minimum of one year after the termination date and for a reasonable time thereafter during which Cardholder disputes may remain valid under the Rules. The provisions of this Agreement relating to the debiting and crediting of the Account shall be applied to the Reserve Account and shall survive termination of this Agreement until Company terminates the Reserve Account. Any remaining balance after Chargeback rights have expired and all other expenses, losses, and damages have been paid will be disbursed to Merchant upon written request.

**8.5.3. Designated Account.** All Merchant obligations regarding accepted Sales Drafts will survive termination. Merchant must maintain in the Designated Account and the Reserve Account enough funds to cover all Chargebacks, deposit charges, refunds and fees incurred by Merchant for a reasonable time, but in any event not less than the time specified in this Agreement. Merchant authorizes Company to charge those accounts, or any other account maintained under or specified in this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not adequate, Merchant will pay Company the amount owed to Company upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.

**8.5.4. Equipment Fee; Early Termination Fees.** Upon completion of cancellation paperwork, Merchant shall be provided with shipping labels in order to return all equipment to Company. If Company does not receive Merchant's equipment within sixty (60) days of Merchant's request for a replacement device or the termination or expiration of the Term, then, in addition to any other applicable fees and amounts, and any other remedies of Company under this Agreement or any other agreement, Merchant authorizes Company to debit Merchant for each unreturned payment processing terminal (measured by terminal identification number) provided by Company in an amount equal to Company's reasonable replacement costs for such terminal(s) and/or device(s), which, depending on terminal or device type, typically range from \$200 to \$1,000 USD per terminal or device. In addition to any other rights of Company in the Agreement, in the event Company makes free terminals or equipment (PIN pads, POS systems) available to Merchant, including through a swap, Company reserves the right to charge Merchant \$79.00 per MID, per year for such terminals and/or equipment.

**8.5.5. If this Agreement terminates** during the Term for any reason other than as a result of an uncured breach by Company, Merchant shall be liable to Company for liquidated damages in the amount equal to the base monthly termination fee amount, as determined by the table in the section below, multiplied by the number of terminal IDs. This new amount will then be multiplied by the number of months then remaining in the Term of the Agreement. Merchant expressly agrees that the liquidated damages payable under this Agreement are in addition to any other amounts owed and/or payable by Merchant and do not constitute a penalty, and that the Parties, having negotiated in good faith for such specific liquidated damages, agree that the amount of such liquidated damages is fair and reasonable in light of the anticipated harm caused by the breach related thereto and the difficulties of proof of loss and inconvenience of obtaining any adequate remedy. In the event Merchant's actual monthly volume differs materially from the estimated monthly volume entered on the Merchant Application (and for purposes of the liquidated damages calculation above), Company reserves the right to utilize the average monthly processing volume of Merchant's prior three months activity in lieu of the table below multiplied by the number of months then remaining in the Term of the Agreement.

8.5.6.

Processing Volume Tier (as determined by estimated monthly volume entered on the application)	Base Monthly Termination Fee (per TID)
<\$10k	\$100
\$10k – \$25k	\$250
\$25k – \$50k	\$300
\$50k – \$75k	\$350
\$75k – \$100k	\$400
\$100k – \$125k	\$450
\$125k – \$250k	\$500
>\$250k	\$750

## 9. NO WARRANTIES; LIMITATION OF LIABILITY; INDEMNIFICATION.

- 9.1. Service Agreement.** BANK AND COMPANY DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER INDIVIDUAL, INCLUDING 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 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 BANK, COMPANY, THE CARD BRANDS, AND THE CARD BRANDS' CONTRACTORS, INCLUDING THE DISCLAIMER OF ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. BANK AND COMPANY ASSUME 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. FOR AVOIDANCE OF DOUBT, MERCHANT MAY ENTER INTO A POINT OF SALE SYSTEM SERVICE AGREEMENT WITH COMPANY. BANK IS NOT A PARTY TO SUCH POINT OF SALE SYSTEM SERVICE AGREEMENTS, AND THEY ARE NOT GOVERNED BY THIS AGREEMENT.
- 9.2. Limitation of Liability.** Any liability of Bank or Company under this Agreement, whether to Merchant or to any other person or entity, whatever the basis of liability, shall not exceed in the aggregate the difference between: (i) the amount of fees paid by Merchant to Bank or Company, as applicable, during the first month in which the event out of which the liability arose occurred; and (ii) assessments, Chargebacks, and any offsets authorized under this Agreement against such fees which arose during such month. In the event more than one month was involved, the aggregate amount of Bank's and Company's liability shall not exceed one month's average charge paid by merchant hereunder (exclusive of interchange fees, assessments, and any other fees or costs that are imposed by a third party in connection with Merchant's payment processing) for the services during the previous twelve (12) months of such lesser number of months as shall have elapsed subsequent to the Effective Date of this Agreement. This shall be the extent of Company's and Bank'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 BANK, COMPANY, OR ANY OF THEIR 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 THE BANK, COMPANY, AND MERCHANT, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LEGAL ACTION MUST BE BROUGHT WITHIN ONE YEAR. ALL LEGAL ACTION (INCLUDING ARBITRATION) BETWEEN MERCHANT AND BANK OR 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.
- 9.3. Indemnification.** Merchant shall indemnify, defend, and hold harmless the Card Brands, Bank, Company, each of their respective affiliates, officers, directors, agents, representatives and their employees from and against any and all claims, proceedings, demands, fees, fines, expenses (including attorneys' fees), losses, liabilities, and damages (including any fines, fees, assessments, audit fees, card replacement costs, or penalties levied against Bank or Company by a Card Brand) resulting from or arising out of: (i) Services; (ii) any breach of any term of this Agreement, including any representation or warranty; (iii) actions taken by Bank or Company in connection with a Change in Ownership; (iv) any act or omission by Merchant (including its employees, agents, and representatives; whether or not acting within the scope of their duties), including acts or omissions that violate Laws, the Rules, or the rights of another person or otherwise injures any third part; (v) the exercise by Bank and/or Company of its/their rights under this Agreement, including actions taken against the Designated Account or the Reserve Account; and (vi) Merchant's business.

## 10. BINDING ARBITRATION AND CLASS ACTION WAIVER.

- 10.1. Merchant Waivers.** Merchant, on behalf of itself and its owners, partners, officers, directors, shareholders, principals, and Guarantor(s) (the "**Waiving Parties**"), agrees (i) to submit any unresolved dispute arising in connection with this Agreement to binding arbitration in lieu of litigation or other court or administrative proceedings, and (ii) that all arbitration arising in connection with this Agreement shall be on an individual basis. **AS AN EXPRESS INDUCEMENT FOR COMPANY ENTERING INTO THIS AGREEMENT, THE WAIVING PARTIES AGREE THAT CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATIONS WITH OTHER CLASS ACTIONS ARE WAIVED AND NOT PERMITTED.** All claims or disputes shall be resolved on an individual basis by a neutral arbitrator before the American Arbitration Association ("AAA") 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. Before seeking arbitration, Merchant shall first send a written Notice of Dispute ("**Notice**"). The Notice shall describe the nature and basis of the claim or dispute and set forth the specific relief sought. If the parties do not reach an agreement to resolve the claim or dispute within 30 days after the Notice is received, Merchant may commence an arbitration.



## 10.2. Procedural Items.

- 10.2.1. **Arbitration Rules.** The AAA's Commercial Arbitration Rules, as modified by this Agreement, apply. To commence an arbitration, submit a Demand for Arbitration with the required fee to the AAA and send a copy to Bank and Company. 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 Lehigh County, Pennsylvania. The parties shall share the costs, fees, and expenses of the arbitration and the arbitrators equally.
- 10.2.2. **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. The arbitrator may award the same relief as a court, 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, and nothing in this Agreement prohibits a party from applying to a court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other equitable relief.
- 10.2.3. **Enforceability.** If any part of this Section is found to be illegal or unenforceable, the remainder will remain in effect, except that if a finding of partial illegality or unenforceability would allow class-wide or representative arbitration, Section 10 will be unenforceable in its entirety. The statute of limitations is a defense to the commencement of an arbitration proceeding, and the limitations of liability in this Agreement apply to any arbitration commenced under this Agreement. Company's Independent Sales Representatives are third-party beneficiaries of this Section 10.

## 11. MARKS; MARKETING; COMMUNICATIONS; TITLE TO THE SERVICES.

- 11.1. **Marketing.** Merchant grants Company and Bank a license to its trademarks and trade names in conjunction with Company and/or Bank's marketing materials and/or website. Additionally, Merchant authorizes Company to use any reviews, feedback, submissions, surveys, and other similar material ("**Content**") in Company's marketing materials as well as on any websites of Company and its third-parties. Merchant shall, if requested by Company, take such additional steps as may be required for Company to register Merchant and/or display its Content on any applicable Company or third-party sites. Merchant authorizes Company to make public the execution of this Agreement and/or the provisions of Services under this Agreement, including by sharing Merchant's name and logo on a list of our customers that may be shared with the public.
- 11.2. **Communication.** Notwithstanding any current or prior elections made by Merchant, Merchant authorizes Bank, Company, and their respective affiliates and third parties to communicate with, solicit, or market to Merchant via regular mail, telephone, e-mail, facsimile, and SMS messages (including text messages). Merchant shall hold Company, Bank, and each of their respective affiliates and third parties harmless from and against any and all claims pursuant to the federal CAN-SPAM ACT of 2003, 15 U.S.C. § 7701, the Telephone Consumer Protection Act, 47 U.S.C. § 227, and any and all other Laws relating to transmissions or solicitations by any of the methods described above. Further, Merchant understands and agrees that any telephone conversation between Merchant, Company, or Bank may be monitored and recorded.
- 11.3. **Title to the Services.** The Services are licensed and not sold. As a result, Merchant acquires only a nontransferable, revocable, non-exclusive right to use the Services during the term, and only for the purpose of facilitating Transactions. Company retains all right, title, and interest in and to the Services, and anything arising in connection with the Services, including any materials provided to Merchant, feedback related to the Services, products or services developed in connection with the Services, and any data of any kind derived from Transactions, which Company can use, share, sell, and/or otherwise disclose for any purpose not prohibited by Laws, including in furtherance of providing any Services. Notwithstanding anything to the contrary any Privacy Policy or notice or in this Agreement, we have the right to use, disclose, share, and retain any information you provide or that arises out of the Services in this Agreement, during the term and thereafter: (i) with your franchisor or franchisees, associations you belong to or belonged to at the commencement of this Agreement; (ii) with your affiliates; (iii) in response to subpoenas, warrants, court orders or other legal processes; (iv) in response to requests from law enforcement agencies or government entities; (v) to comply with applicable Laws or Rules; (vi) with our affiliates, business partners and agents; (vii) to Card Associations and/or Card Brands and their designees; (viii) with Merchant Providers and their designees; (ix) to any other referral source or processor, including the applicable referrer; (x) to perform analytic services for you, us, and/or others, including analyzing, tracking, and comparing transaction and other data to develop and provide insights for those parties as well as for developing, marketing, maintaining and/or improving our products and services; and/or (xi) to offer or provide Services under this Agreement.

## 12. MISCELLANEOUS.

- 12.1. **Entire Agreement; Counterparts.** This Agreement, including the Merchant Application, the Rules, and any exhibits to this Agreement, expresses the entire understanding of the parties with respect to its subject matter and except as provided herein, all prior or other agreements or representations, written or oral, are superseded. Reference to "this Agreement" also includes all documents incorporated into this Agreement by reference. If the Merchant Application (and thus this Agreement) or any amendments are physically signed, this Agreement may be executed and delivered in several counterparts and transmitted by facsimile, a copy of which will constitute an original and all of which taken together will constitute a single agreement.
- 12.2. **Governing Law and Place to Resolve Disputes.** Without limiting Company or Bank's right to enforce the arbitration provisions in this Agreement, and subject to the next sentence, the Waiving Parties agree (i) on an exclusive basis, to bring any legal suit, action, or proceeding arising out of or relating to this Agreement or pertaining in any way to this relationship in a State or Federal Court in Lehigh County, Pennsylvania and waive any objection to venue, and (ii) that this Agreement and all claims or disputes arising out of or relating to any aspect of the relationship between Bank or Company shall be governed by the laws of the State of Pennsylvania, without regard to its conflict-of-laws principles, and applicable federal law, if brought against Company, except that the Federal Arbitration Act governs everything relating to arbitration. If a claim is brought solely against Bank, it will be governed by the laws of the State of Rhode Island, without regard to its conflict-of-laws principles, except that the Federal Arbitration Act governs everything relating to arbitration.
- 12.3. **Construction.** The typographical headings used in this Agreement are inserted for reading convenience only and do not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement.

- 12.4. Assignability.** This Agreement shall not be assigned by Merchant directly or by operation of law without the prior written consent of Bank or Company. If Merchant nevertheless assigns this Agreement without consent, Merchant shall remain liable and the Agreement also shall be binding upon the assignee. Original Merchant and Guarantor(s) shall be held personally liable in the event such assignee incurs Chargebacks, retrievals, ACH rejects, losses, fines, or any other liabilities under this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors, and assigns. Each of Bank and Company may assign this Agreement, or otherwise assign, delegate, or subcontract, any interest therein, without Merchant's consent.
- 12.5. Notices; Consent to Electronic Communications.** By signing the Merchant Application, Merchant confirms 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 Bank or Company at one or more of their sponsored websites, such as [www.shift4.com](http://www.shift4.com). Such communications may pertain to the Services delivered by Bank or Company, the use of information Merchant may submit to Bank or 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 Bank or Company to Merchant may also be delivered by Bank or 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 Bank or Company (except Notices of Dispute and Demands for Arbitration) shall be delivered by Merchant to Bank or 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 (except Notices of Dispute and Demands for Arbitration), which may be changed by written notice in accordance with this section: (a) If to Bank, addressed and transmitted as follows: (a) If to Bank, Citizens Bank, N.A., One Citizens Plaza, Providence, RI 02903; (b) If to Company, Shift4 Payments, LLC Legal Department, 3501 Corporate Parkway, Center Valley PA 18034, Fax: (973) 630-9029 (c) 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.
- 12.6. Force Majeure.** Any delay in or failure of performance by Bank or Company under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond their reasonable control, including, but not limited to, acts of God, power outages, failures of the Internet, failures of banking, ACH, or payment networks not under direct control of Bank or Company.
- 12.7. Amendments.** Bank or Company may amend this Agreement, including by adding new terms or fees or increasing fees, at any time. Company may substitute Bank with another bank at any time. Amendments due to changes in Card Brand fees, interchange, assessments, Rules, or any Laws or judicial decision may become immediately and notice may follow such effectiveness. Company and/or Bank reserve the right to decide where to route a Transaction.
- 12.8. Taxes.** Merchant is obligated to pay all taxes, and other charges imposed by any governmental authority in connection with the Services provided under this Agreement.
- 12.9. Severability and Waiver.** If any provision of this Agreement is found to be illegal or unenforceable, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal or unenforceable provision is not contained in this Agreement. Neither the failure nor delay by Bank or Company to exercise, or partially exercise, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be in writing and signed by the waiving party.
- 12.10. Remedies Cumulative.** All rights and remedies conferred upon Bank or Company in this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.
- 12.11. Relationship of Parties.** The parties are independent contractors and nothing in this Agreement shall make them joint venturers, partners, employees, agents, or other representatives of another party.
- 12.12. Survival.** All sections of this Agreement that by their nature should survive termination or expiration will survive, including, without limitation, accrued rights to payment, indemnification obligations, confidentiality obligations, warranty disclaimers, limitations of liability, arbitration, dispute resolution, and other matters in Sections 4, 6, 7, and 10.
- 12.13. Audits and Reviews.** Merchant acknowledges and agrees that the Card Brands and Card Associations require Bank and Company to have rights to inspect Merchant locations and audit Merchant's records, systems, processes, or procedures to confirm compliance with this Agreement, as amended from time to time. Merchant shall cooperate with Bank and Company in their exercise of any such inspections and audits, and in performing periodic financial reviews by presenting up-to-date financial statements (including accountant-prepared statements), tax returns, bank statements, and other documents and information as required by Company in order to assure Bank and Company that Merchant maintains a favorable capital position, liquidity, stability, business practices, and general financial condition to fulfill the responsibilities in this Agreement. Such periodic reviews will be conducted on a cadence determined by Company.
- 12.14. Attorneys' Fees.** Merchant will be liable for and will indemnify and reimburse Bank and Company for all attorneys' fees (internal and external) and other costs and expenses paid or incurred by Bank, Company, or their agents in the enforcement of this Agreement, or in collecting any amounts due from Merchant or resulting from any breach by Merchant of this Agreement.
- 12.15. Other Rights.** For purposes of this Agreement, the rights of Company in this Agreement are also rights of Bank. Except with respect to settlement, which is the sole responsibility of Bank, each of Bank and Company may exercise any right or remedy individually or jointly, and may likewise exchange or allocate the duties and obligations each may owe to Merchant. Any notice Merchant delivers to Company shall also be delivered to Bank. Company reserves the right, but does not have an obligation, to provide stand-in processing for Merchant at times when any other participant is unable to authorize Transactions. Without limiting any other rights of Company, beginning on the one year anniversary following the earlier of the signature date or the Effective Date, Company 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%.

### 13. DEFINITIONS.

- 13.1. **"ACH"** means the Automated Clearing House paperless entry system operated by the Federal Reserve.
- 13.2. **"Agreement"** means these Terms & Conditions, the Merchant Application, the Rules and any requirements of Bank, each as amended from time to time, and any other documents or exhibits incorporated into this Agreement.
- 13.3. **"Authorization"** means a computerized function or a direct phone call to a designated number to examine individual Transactions to obtain credit approval from the Card Issuer.
- 13.4. **"Business Day"** means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York.
- 13.5. **"Card"** means (i) a valid card in the form issued under license from Visa U.S.A., Inc., Visa International, Inc., or Mastercard International, Inc. ("Bank Card" or "Bankcard") or (ii) any other valid card accepted by Merchant by agreement with Bank, such as those issued by, or under license of, Discover Financial Services, Inc. or (iii) any valid card issued under license of a regional or national Debit Network.
- 13.6. **"Card Association"** means Visa, MasterCard, Discover, and other companies that regulate and manage their respective brands of Cards that are accepted by Merchant by agreement with Bank.
- 13.7. **"Card Brands"** means Visa, Mastercard, ATM or Debit Networks, and the other financial service Card Associations.
- 13.8. **"Cardholder"** means the person whose name is embossed upon the face of the Card presented to Merchant.
- 13.9. **"Card Issuer"** means the financial institution or company that provided a Card to a Cardholder.
- 13.10. **"Chargeback"** means the procedure by which, and the value of, a Sales Draft (or disputed portion thereof) is returned to Bank by a Card Issuer.
- 13.11. **"Confidential Information"** means (i) any information related to Company's operations, including the Transactions herein, and any techniques, devices, and programs of Company, Bank, or any third party who participates in the performance of this Agreement, (ii) any data derived from Transactions, (iii) this Agreement, and (iv) any other information Company discloses or otherwise makes available to you in connection with this Agreement.
- 13.12. **"Credit Card"** means a plastic, metal, or digital card that allows payments to be offset against a special-purpose account associated with a revolving line of credit and requiring some form of installment-based payment.
- 13.13. **"Credit Voucher"** means a document executed by a Merchant evidencing any refund or price adjustment credited to a Cardholder account.
- 13.14. **"Debit Card"** means a plastic or metal card linked to a checking or savings account.
- 13.15. **"Debit Network"** means a network upon which transactions linked to checking or savings accounts are routed.
- 13.16. **"Designated Account"** means a bank account maintained by Merchant for the crediting of collected funds and the debiting of fees, charges, and other amounts pursuant to the terms of this Agreement.
- 13.17. **"Discover"** means Discover Network or Discover Financial Services.
- 13.18. **"Effective Date"** means with respect to Merchant, the Merchant Effective Date, and with respect to Company, the Company Effective Date.
- 13.19. **"Imprint"** means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping a Card through a terminal and electronically printing a Sales Draft.
- 13.20. **"Insolvency Event"** means any of the following: (i) Merchant is (a) insolvent, (b) is in receivership, (c) subject to any voluntary or involuntary bankruptcy, (ii) Merchant makes an assignment of some or all of its assets for the benefit of Merchant's creditors, (iii) any part of Merchant's assets are or become subject to any levy, seizure, assignment, or sale for or by any creditor or governmental agency without being released within thirty (30) days thereafter.
- 13.21. **"MasterCard"** means Mastercard International, Inc. or MasterCard Worldwide, Inc. "MCC" means Merchant Category Code and indicates the Merchant's category classification by Visa and MasterCard describing specifically the type of business the Merchant operates.
- 13.22. **"Retrieval"** means a Card Issuer's or Cardholder's request for a Transaction receipt.
- 13.23. **"Rules"** means the rules and regulations of any Card Brand or ATM or Debit Network, as amended from time to time, and includes any rules or rule summaries attached to this Agreement.
- 13.24. **"Rules Summary"** means a summary of Card Brand, Bank, and Company requirements and operating terms related to Merchant's receipt of the Services.
- 13.25. **"Sales Draft"** means the paper form, approved in advance by Bank, whether such form is electronically or manually imprinted, evidencing a sale Transaction.
- 13.26. **"Services"** means any service described in this Agreement or provided by Company.
- 13.27. **"Transaction"** means any sale of goods and services, or credit for such, from a Merchant for which Bank makes payment through the use of any Card and which is presented to Bank for collection.

# GATEWAY ADDENDUM

## 1. SCOPE.

Merchant acknowledges and agrees that the Gateway Services set forth herein are between Company and Merchant, that Bank is not a party to the Gateway Services terms and is not liable for any events arising from the Gateway Services, and that nothing herein limits any right(s) of Company under the Agreement. "Gateway Services" means those services that are designed to facilitate a gateway connection between Merchant's payment applications and financial institutions, which may be through one or more intermediaries, and which may include one or more of the following features:

- a. **Account Updater:** Facilitates, upon registration, automatic updates to primary account numbers used by Merchant customers in connection with recurring payment or billing systems. Merchant is responsible for pass-through fees and a \$0.20 per account update fee.
- b. **"i4Go®":** A virtual card-data "firewall" for traditional e-commerce (e.g., web shopping cart) or browser-based applications (e.g., kiosk, SaaS) that integrates with both card-present and card-not-present environments using a browser-embedded application at the point of sale.
- c. **"Point to Point Encryption" or "P2PE":** A solution designed to encrypt cardholder data at the point of sale and decrypt it at the endpoint (secure data center) in instances where the card acceptor is not able to decrypt cardholder data at the point of sale.
- d. **"Universal Transaction Gateway®" or UTG:** Software designed to act as a software-VPN, which provides transaction security between Merchant's point of sale or property management system and Company's processing center. UTG will only function with the devices supplied by, and with device encryption keys provided by SHIFT4.

## 2. ACCESS.

Subject to the terms herein, Company will make its Gateway Services available to Merchant during the Term in accordance with Company's standard operating procedure. Merchant acknowledges that certain features of the Gateway Services, including UTG, may involve software ("**Licensed Software**"), and that Company retains all rights to such software. To the extent any Licensed Software is made available to Merchant, Merchant agrees that it is only acquiring a limited, nonexclusive, nontransferable, non-sublicensable, revocable right to use such Licensed Software during the Term.

## 3. OTHER TERMS AND LIMITATIONS.

- a. Merchant shall ensure its firewalls permit outbound access to all Company IP addresses associated with the Gateway Services, as updated from time to time. Merchant shall comply with all Payment Card Industry Data Security Standards and Payment Application Data Security standards, and shall immediately notify Company of any data security incident involving Merchant or any of its third parties. Merchant shall share any information requested by Company in connection with a data security incident.
- b. Merchant shall use the Gateway Services in accordance with the Agreement and any instructions provided by Company, and shall not (i) download or transmit the Licensed Software electronically (either by direct connection or telecommunication transmission) from one computing device to another; (ii) rent, lease, time-share, lend, or transfer (except as provided herein) the Gateway Services or any portion or feature thereof any third party; (iii) modify, alter, adapt, merge, de-compile, or reverse-engineer the Licensed Software; or (iv) copy or otherwise reproduce the Licensed Software in whole or in part or remove any Company intellectual property, copyright, or trademark notice (with the sole exception that Merchant may make one (1) back-up copy for security and archival purposes).
- c. Merchant agrees to assume all liability for offline processing and/or for any remote installation or support services, including those performed by Company, and shall indemnify, defend, and hold Company, its affiliates, and each of their respective officers, directors, employees, and agents from and against any and all claims arising from any or all of the following (i) Merchant's acceptance of offline transactions, (ii) and/or remote installation or support services arising in connection with the Gateway Services, or (iii) any data security incident arising in connection with the Gateway Services (except for a confirmed data security incident occurring on Company's proprietary systems).
- d. If Company's TrueTokenization feature has been certified with Merchant's point of sale or property management system, Merchant agrees to (i) enable and always utilize the tokenization features of such Gateway Services, and (ii) disable storage of cardholder data.
- e. Company may post certain notices and system status alerts at <https://shift4payments.statuspage.io/>, or via email ("Support Alerts"), and Merchant shall monitor such notices and alerts and comply with any requirements therein. Notwithstanding any assignment consented to by Company, Company reserves the right to withhold cardholder data in connection with an assignment for any reasonable reason, and/or to require such assignee to enter into a direct relationship with Company. Company reserves the right to terminate the Gateway Services and/or to add or change fees for the Gateway Services if at any time Merchant is no longer receiving Merchant processing services from Company (e.g., acquiring services).