



# Pay-at-the-Table Device Service Agreement

## Terms and Conditions

This Pay-at-the-Table Device Service Agreement ("**Service Agreement**") by and between Company Payments, LLC, our Affiliates, which as of the effective date of this revision include Harbortouch, LLC, Restaurant Manager, LLC, Positouch, LLC, and/or FuturePOS, LLC, (collectively, "**Company**") and Merchant, and consists of these Terms and Conditions and the Merchant Processing Agreement Terms and Conditions, all of which are incorporated herein by reference. The Service Agreement is binding on the parties on the date that Company approves Merchant for use of the Pay-at-the-Table Services.

**PLEASE READ THIS SERVICE AGREEMENT AND UNDERSTAND EACH PROVISION. IT REQUIRES YOU TO USE COMPANY'S PROCESSING SERVICES. SECTION 11.e REQUIRES ALL CLAIMS OR DISPUTES WITH COMPANY ABOUT ANY COMPANY PRODUCT OR SERVICE TO BE RESOLVED IN BINDING INDIVIDUAL ARBITRATION—NOT IN A CLASS ACTION, AND NOT IN COURT BEFORE A JUDGE OR JURY. SECTIONS 8 & 9 LIMIT COMPANY'S LIABILITY AND YOUR REMEDIES.**

### 1. DEFINITIONS.

- a. "Effective Date" means the Install Date.
- b. "Equipment" means the Company Pay-at-the-Table devices and related peripherals, including SkyTab and Tableside devices.
- c. "Install Date" means the earlier of (i) the date on which the Equipment is installed at the Merchant Location by Company or the date on which the Merchant starts using the Equipment, whichever occurs first, (ii) the date on which the Equipment is shipped to the Merchant Location, or (iii) 90 days from the Effective Date.
- d. "Merchant" means the business listed on the Merchant Processing Agreement.
- e. "Merchant Location" means the Merchant's address listed on the Merchant Processing Agreement.
- f. "Processing Services" means Company's credit, debit, electronic payment, and gift card processing services as provided for under the Company Merchant Processing Agreement.
- g. "Software" means the software programs installed on or made available through use of the Equipment, including any application programming interfaces, updates, enhancements, or modifications made by Company.

### 2. EXCLUSIVE PROCESSING REQUIREMENT

- a. **Company's Processing Services.** Merchant's use of the Equipment requires exclusive use of Company's Processing Services at all times. Merchant agrees not to use credit, debit, electronic payment, or gift card processing services from any provider except Company. By entering into this Service Agreement, and as a condition precedent to Company providing Equipment to Merchant, Merchant agrees to continue to abide by the terms of, and/or enter into, a Company Merchant Processing Agreement. The Processing Agreement consists of the Merchant Application and the Terms and Conditions, together with its addenda, attachments, and schedules.
- b. **Failure to Process with Company.** If at any time after the Install Date Merchant stops using Company's Processing Services, in whole or in part, Company reserves the right to terminate this Service Agreement or suspend Merchant's access to the Equipment and/or Software in Company's sole discretion.

### 3. TERM COMMITMENT

- a. **Term.** This Agreement will remain in effect for a period of one (1) years ("**Initial Term**") from the date the Addendum is executed (the "**Effective Date**"). At the expiration of the Initial Term, this Service Agreement automatically renews for additional one (1) year periods ("**Renewal Term**") unless Merchant provides Company with written notice of Merchant's intent not to renew the Service Agreement at least 30 days prior to the expiration of the Initial Term or any Renewal Term.
- b. **Term Commitment.** Merchant understands that it is receiving Equipment and Software from Company at favorable pricing in exchange for Merchant's term commitment. In addition to Merchant's rights set forth in Section 3(a), Merchant may terminate this Service Agreement subject to the following conditions:
  - i. Merchant may terminate this Service Agreement for any reason prior to the Install Date. All Equipment must be returned to Company within 15 days following termination. Upon completion of cancellation paperwork, Merchant shall be provided with shipping labels in order to return all equipment to Company.
  - ii. Merchant may terminate this Service Agreement upon Company's default of any material obligation to Merchant hereunder and the failure of Company to cure such default within thirty (30) days after written notice of such default is received. In the event Merchant terminates this Service Agreement for any other reason after the Install Date, Merchant shall be in material breach of this Service Agreement. Upon completion of cancellation paperwork, Merchant shall be provided with shipping labels in order to return all equipment to Company.

- iii. Company may debit the fees derived from Merchant's termination of this Agreement from Merchant's bank account on file with Company within 30 days of the date this Service Agreement is terminated. Merchant is responsible for all additional fees and charges (including taxes) incurred under this Service Agreement.
- c. **Company's Termination Rights.** Company may, without notice, suspend Merchant's access to the Equipment and Software and/ or terminate this Service Agreement for any of the following reasons: (i) material breach of this Service Agreement; (ii) unlawful use of the Equipment, Software, or Processing Services; (iii) unauthorized modification of the Equipment or Software or installation of unauthorized third-party software; (iv) failure or refusal to pay fees or charges on time; (v) material breach of the Merchant Processing Agreement; or (vi) insolvency or bankruptcy. Company may, in its sole discretion, withhold Merchant's funds derived from use of the Processing Services in order to satisfy all fees and charges incurred under this Service Agreement. In the event that Company terminates this Agreement for any of the reasons stated above, the Limited Software License granted to Merchant in Section 7 of this Agreement shall immediately terminate.
- d. **Trial Period.** Merchant may cancel the Service Agreement without any penalty within thirty (30) calendar days from the Install Date ("Trial Period"). IF MERCHANT DOES NOT CANCEL BEFORE THE EXPIRATION OF THE TRIAL PERIOD THEN THIS AGREEMENT SHALL CONTINUE IN FULL FORCE AND EFFECT. Notwithstanding anything to the contrary herein, Merchant shall be responsible for the cost of shipping Equipment to and from the Merchant Location and any additional wiring completed. All fees and charges incurred by Merchant will be charged in accordance with the Service Agreement's Terms and Conditions. ALL CHARGES UNDER THE MERCHANT TRANSACTION PROCESSING AGREEMENT AND THE SERVICE AGREEMENT WILL APPLY DURING THE TRIAL PERIOD. If Merchant cancels, Merchant must make available to Company, in substantially as good condition as when received, the Equipment delivered to Merchant under the Service Agreement; or comply with the instructions of Company regarding the return shipment of the Equipment and add-ons as set forth in POS Exhibit A. ALL COSTS ASSOCIATED WITH THE RETURN OF EQUIPMENT TO COMPANY PAYMENTS SHALL BE BORNE BY THE MERCHANT. MERCHANT AUTHORIZES COMPANY PAYMENTS TO DEBIT MERCHANT'S ACCOUNT UPON RECEIPT OF NOTICE OF CANCELLATION. Additional Equipment added after the original Install Date will not be eligible for the 30 day Trial Period.

#### 4. FEES AND PAYMENT

- a. **Device Fee.** Merchant shall pay the Device Fee as indicated by Company on the first business day of each month starting on the Install Date. Merchant permits Company to re-debit Merchant's bank account should any attempt to collect fees reject for any reason.
- b. **Shipping Fees.** Company will ship all Equipment via nationally recognized courier service (e.g., UPS). Merchant is responsible for all shipping costs and authorizes Company to debit Merchant's account. Company shall have no liability for failure of Equipment to reach its destination in a timely manner once it has delivered the Equipment to the carrier. Current shipping fees can be found in the fee section of the Merchant Processing Agreement.
- c. **Software Support Fee.** During the Term of this Agreement and the Merchant Processing Agreement Merchant shall pay a Software Support Fee per Equipment terminal as indicated on POS Exhibit A. The Software Support Fee will be debited on a monthly basis.
- d. **SkyTab Data Plan.** Merchant understands and agrees that the SkyTab Data Plan is not an unlimited data plan, and that Merchant may be subject to pro-rata surcharging in the event Merchant consumes in excess of 200 MB in any calendar month. The SkyTab Data Plan Fee shall be debited monthly per Merchant Location. Merchant must contact Company if Merchant wishes to disable its 4G LTE capabilities and suspend SkyTab Data Plan Fee billing.
- e. **Changes to Terms and Fees.** Company may change any terms, conditions, rates, fees, expenses, or charges incurred under this Service Agreement upon 30 days' written notice to Merchant. Using the Equipment or Service after a change takes effect constitutes acceptance of the change.
- f. **Billing, Payments, and Credit Authorization.** Merchant grants to Company Automated Clearing House ("ACH") Authorization to credit and debit Merchant's demand deposit account for all fees and charges incurred under this Service Agreement. Should any ACH debit made upon Merchant's demand deposit account for payment due under this Service Agreement reject for any reason, Merchant shall be charged a \$25.00 Non-Sufficient Funds Fee ("NSF Fee"). This authorization shall survive termination and last as long as Merchant owes any fees or charges, incurred under this Service Agreement.
- g. **Consumer Price Index.** 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%.

## 5. MERCHANT'S RESPONSIBILITIES

- a. **Equipment Failure.** Merchant must notify Company immediately upon Equipment or Software failure. Merchant must allow Company unrestricted and free access to the Equipment and Software to correct failures. Merchant must provide any necessary data communication facilities and equipment at no charge to Company.
- b. **Activation of Equipment.** Upon installation of the Equipment at the Merchant Location, Merchant represents and warrants that: (i) Merchant received and accepts the Equipment; (ii) customization of the Equipment and/or Software (for example, the menu was satisfactorily programmed to Merchants specifications; (iii) the Equipment is in good working order; and (iv) the Equipment was tested and is capable of performing Processing Services.
- c. **Title to Equipment.**
  - i. **Initial Term.** In the event Merchant materially breaches this Service Agreement, Company may demand return of the Equipment, and Merchant shall be required to return the Equipment to Company within 15 days of receiving Company's written request. Merchant agrees to continue to pay the Total Monthly Service Fee as indicated on Exhibit A until such calendar month that Merchant returns all equipment to Company. The requirement to return the Equipment to Company shall be in addition to and shall not preclude Company from exercising any other right or remedy under this Service Agreement or applicable law.
  - ii. **Security Interest.** Merchant hereby grants to Company a first priority purchase money security interest in the Equipment (including any replacements, substitutions, additions, attachments and proceeds). Merchant agrees that Company may file, on Merchant's behalf, a UCC-1 Financing Statement and/or other necessary documentation sufficient to protect and secure Company's security interest. Merchant will promptly execute any other required documents and/or records reasonably requested by Company for the purpose of securing Company's rights in the Equipment.
- d. **Taxes.** Merchant shall be responsible for all sales, use, excise, stamp, documentary, value added, and ad valorem taxes, license and registration fees, assessments, fines, penalties, and similar charges imposed on the ownership, possession, or use of the Equipment by any state, local, or federal governmental or regulatory authority and shall issue, where required and requested, a valid tax exemption certificate to Company. Merchant will reimburse Company for any of these taxes that Company pays or advances on behalf of Merchant.
- e. **Merchant's Maintenance Efforts.** Merchant shall maintain and protect the Equipment in good operating condition, repair, and appearance, and protect the Equipment from deterioration other than normal wear and tear; shall use the Equipment in the regular course of its business, within its normal operating capacity, without abuse, and shall comply with all laws, regulations, directives, requirements, and rules with respect to the use, maintenance, and operation of the Equipment and Software; Merchant shall use the Equipment and Software solely for business purposes; shall not make any modification, alteration or addition to the Equipment or Software without the written consent of Company; shall not affix, and shall not remove the Equipment from the Merchant Location without Company's written consent, which shall not be unreasonably withheld.
- f. **Equipment Condition and Return.** All Equipment must be returned to Company by Merchant within the timeframes specified by this Service Agreement in good operating condition other than normal wear and tear. Merchant will not change or remove any lettering or numbering on the Equipment. To extent permitted by applicable law, without demand or legal process, Company and its agents may enter into the premises, including the Merchant Location, where the Equipment may be found and take possession of and remove the Equipment, without incurring any liability for such retaking. To the extent liability arises, Merchant shall indemnify and hold harmless Company from any such liability. Any Equipment that is, in Company's sole discretion, damaged beyond normal wear and tear or is not returned when due will result in a charge to Merchant of the full cost of the Equipment to Company.
- g. **Merchant Security.** Merchant shall be responsible for (i) maintaining virus protection and security for all of its systems, data, and overall network access, and (ii) all risk of loss, theft, damage, or destruction of the Equipment from any cause whatsoever after taking possession of the Equipment. Merchant acknowledges that security and access to any Equipment located on its premises is solely Merchant's responsibility and agrees to notify Company immediately if Equipment is lost, destroyed, stolen, or taken by any other person. Merchant shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at Merchant's sole cost and expense. Merchant shall be solely responsible for storing and backing up Merchant's data stored on the Equipment. Company shall have no liability to Merchant for loss or destruction of Merchant's data.
- h. **Insurance.** While the Equipment is in Merchant's possession or control, Merchant shall insure the Equipment at its own cost and expense against loss or damage from fire, theft, bodily injury, or other casualty in an amount not less than thirty-six (36) times the Device Fee listed on the Pay-at-the-Table Addendum. At Company's request, Merchant shall provide a certificate of insurance to Company naming it as a loss payee or additional insured with respect to loss of or

damage to the Equipment during the Initial Term.

## 6. COMPANY'S RESPONSIBILITIES

### a. Installation.

- i. Merchant shall be entitled to a one-time installation of the Equipment at the Merchant Location. Merchant must make an installation appointment with Company and confirm that appointment at least 48 hours prior to the appointment. Merchant shall be billed a \$199.00 reschedule fee if (i) Merchant reschedules the installation less than 24 hours prior to the appointment; (ii) an authorized representative of the Merchant is not available to acknowledge the installation in writing; or (iii) the Merchant Location, in Company's reasonable discretion, is not suitable to conduct the installation ("Reschedule Fee").
- ii. Merchant agrees that the installation of the Equipment must be completed within 60 days from the date the Equipment is shipped by Company. Upon the expiration of the 60-day period, the Equipment will be deemed installed and the Install Date deemed to have occurred.

- b. **Equipment/Software Support and Maintenance.** Company shall provide Merchant with 24 hours a day, 7 days a week remote technical support for the Equipment and Software. Company will use commercially reasonable efforts to answer questions and resolve any problems related to the Equipment and Software, but does not guarantee resolution of the problems reported. Company shall provide remote support to determine if the Equipment is defective and, if so, at Company's sole discretion, it will: repair Equipment, send replacement parts, and/or replacement Equipment. Merchant must return all defective Equipment to Company within 15 days of receipt of the replacement Equipment. Merchant's failure to maintain the Equipment as set forth in Section 5.e shall result in additional charges for service and/or replacement of the Equipment.

- c. **Training.** Merchant shall receive complimentary access to Company's training materials. During the installation of the Equipment, Merchant shall receive a complimentary training session. Merchant may request additional onsite training, subject to Company's approval and technician availability; additional charges may apply.

- d. **Software Customization.** Company shall provide reasonable Software customization based on the information requested by Company and provided by Merchant. Any additional customization after the Equipment has been shipped to Merchant is excluded from this Service Agreement and will be charged at Company's then current rate. COMPANY DOES NOT WARRANT THAT CUSTOMIZATION WILL BE FREE FROM DEFECTS OR MISTAKES. COMPANY EXPRESSLY DISCLAIMS AND MERCHANT AGREES TO HOLD COMPANY HARMLESS FOR ANY ERRORS IN THE EQUIPMENT AND SOFTWARE.

- e. **Software Updates.** Company may, in its sole discretion, make Software updates available to Merchant. Merchant must install all Software updates within 30 days. Company reserves the right not to provide support services, or charge Merchant additional fees for support, if Merchant does not install a Software update on time. Company will provide remote backup of the Software on a regular basis. Company will use commercially reasonable efforts, in the event of Software failure, to assist Merchant in recovering Software backup files to facilitate the successful operation of the Equipment.

- f. **Non-standard Support and Maintenance.** Company may, in its sole discretion and for additional charges, provide services and repair, redesign, reinstall, reconfigure, or replace the Equipment when either such services are required due to causes not attributable to normal wear and tear, including: (i) Merchant's failure to continually maintain the Merchant Location in conformance with commercially reasonable standards; (ii) impairments in the performance of the Equipment resulting from changes to the Equipment made by Merchant or mechanical, electrical, or electronic interconnections made by Merchant; (iii) damage caused by accidents, natural disasters, or the negligence of, or improper use or misuse of, the Equipment by Merchant; (iv) damage or necessity of repair resulting from unauthorized maintenance by Merchant or any third party other than Company or its authorized representative; (v) damage or repair necessitated as a result of relocation of the Equipment; (vi) change in laws or Card Association rules that require service, repair, or replacement beyond normal day-to-day maintenance; (vii) any third-party hardware or software in conjunction with the use of the Equipment without Company's express written consent; or (viii) theft of the Equipment.

## 7. LIMITED SOFTWARE LICENSE

Company grants to Merchant a non-exclusive, non-transferrable, royalty free license, without the right to sublicense, to use the Software internally in conjunction with the Equipment. Company reserves all rights not extended hereunder. Merchant may not alter, reverse engineer, decompile, or disassemble the Software, or otherwise attempt to derive source code from the Software. Merchant may not manufacture, copy, sublicense, distribute, replicate, transfer or otherwise dispose of any copies of the Software. Merchant shall not use the Equipment and/or Software in violation of any applicable law(s) (including but not limited to The General Data Protection Regulation 2016/679, The Financial Services Modernization Act of 1999, and the California Consumer Privacy Act), PCI DSS regulation(s), and/or any and all other applicable regulations. Nothing contained in this Service Agreement shall give Merchant

any ownership interest, or title to, the Software, source code, and the related documentation. Merchant acknowledges that the performance of the Software is conditioned on Merchant providing, at its sole cost and expense a continuously available and secure network. This license shall immediately terminate upon expiration or termination of this Service Agreement except if Merchant is still processing transactions through a Merchant Transaction Processing Agreement with Company and is paying the Device Fee. This license is not a license of any trademarks, service marks, trade names, or logos, and does not include any software other than the Software. Company reserves the right to amend or otherwise modify, including revoke, this license upon notice to Merchant at any time. Using the Software after an amendment or modification takes effect constitutes acceptance of it.

#### **8. WARRANTY LIMITATION AND DISCLAIMER.**

**EXCEPT AS SPECIFICALLY SET FORTH IN THIS SERVICE AGREEMENT, COMPANY DOES NOT MAKE (AND EXPRESSLY DISCLAIMS) ANY REPRESENTATIONS AND WARRANTIES IN RESPECT OF THE EQUIPMENT, SOFTWARE, PROCESSING SERVICES, AND/OR OTHER SERVICES PROVIDED BY COMPANY UNDER THIS SERVICE AGREEMENT, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. COMPANY DOES NOT GUARANTEE THAT THE EQUIPMENT OR SOFTWARE WILL SATISFY MERCHANT'S REQUIREMENTS, OR THAT THE OPERATIONS OF SUCH WILL BE UNINTERRUPTED OR ERROR FREE. THE EQUIPMENT, SOFTWARE, AND PROCESSING SERVICES ARE PROVIDED WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT WILL BE WITH THE MERCHANT. SHOULD THE EQUIPMENT OR SOFTWARE PROVE DEFECTIVE, MERCHANT, AND NOT COMPANY, ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING OR REPAIR. COMPANY SHALL NOT BE LIABLE FOR ANY COSTS OR FOR PERFORMING ANY SERVICES HEREUNDER ARISING IN CONNECTION WITH MERCHANT'S NEGLIGENCE, ABUSE, MISUSE, OR FAILURE TO PERFORM ROUTINE MAINTENANCE OR STANDARD OPERATING PROCEDURES. COMPANY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, THAT AFTER THE INITIAL INSTALLATION OF THE EQUIPMENT AND SOFTWARE, THAT THE EQUIPMENT, SOFTWARE OR CUSTOMER'S DATA WILL REMAIN VIRUS-FREE. MERCHANT WAIVES ANY CLAIMS HEREUNDER AGAINST COMPANY ARISING FROM MERCHANT'S FAILURE TO HAVE OR MAINTAIN CURRENT VIRUS PROTECTION, OR FROM A FAILURE OR BREACH OF CUSTOMER'S SECURITY FOR MERCHANT'S SYSTEMS OR DATA, OR FROM ANY UNAUTHORIZED ACCESS TO MERCHANT'S SYSTEMS. COMPANY FURTHER DISCLAIMS ANY RESPONSIBILITY OR LIABILITY FOR PROBLEMS FROM MERCHANT'S DECISION TO USE A PARTICULAR INTERNET SERVICE PROVIDER OR MERCHANT'S ABILITY TO CONNECT TO THE INTERNET. MERCHANT ACKNOWLEDGES THAT ITS ABILITY TO ACCESS DATA, RECEIVE REMOTE TECHNICAL SUPPORT, AND OPERATE THE EQUIPMENT, MAY BE AFFECTED BY PROBLEMS WITH MERCHANT'S INTERNET CONNECTIVITY. ANY SUCH PROBLEMS ARE OUTSIDE OF COMPANY'S CONTROL. MERCHANT WAIVES ANY CLAIMS IT MAY HAVE AGAINST COMPANY DUE TO MERCHANT'S INABILITY TO ACCESS DATA OR CONNECT TO THE INTERNET WHICH IS BASED ON OR ARISING OUT OF ANY OF THE FOREGOING REASONS.**

#### **9. LIMITATION OF LIABILITY**

**COMPANY AND COMPANY'S AFFILIATES (INCLUDING PARENTS, SUBSIDIARIES, AND OTHER RELATED ENTITIES), SUCCESSORS, AND ASSIGNS SHALL NOT BE LIABLE TO MERCHANT OR MERCHANT'S OWNERS, PARTNERS, SHAREHOLDERS, AFFILIATES (INCLUDING PARENTS, SUBSIDIARIES, AND OTHER RELATED ENTITIES), SUCCESSORS, OR ASSIGNS, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, BUSINESS INTERRUPTION, OR ECONOMIC DAMAGES (INCLUDING THOSE ASSOCIATED WITH IMPROPER OR INADEQUATE TAXES CHARGED), OF ANY KIND, WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY ARISING OUT OF THIS SERVICE AGREEMENT, OR MERCHANT'S USE (OR INABILITY TO USE) THE EQUIPMENT OR SOFTWARE, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL THE MERCHANT BE ENTITLED TO RECOVER OR COLLECT ANY DAMAGES IN EXCESS OF THE FEES PAID UNDER THIS SERVICE AGREEMENT DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE OF MERCHANT'S FIRST CLAIM OF INJURY OR DAMAGE. IN NO EVENT SHALL COMPANY OR COMPANY'S AFFILIATES (INCLUDING PARENTS, SUBSIDIARIES, AND OTHER RELATED ENTITIES), SUCCESSORS, OR ASSIGNS, BE RESPONSIBLE FOR ANY LIABILITY OR DAMAGE INCURRED AS A RESULT OF DOWNTIME OF THE EQUIPMENT OR SOFTWARE.**

#### **10. GENERAL INDEMNITY.**

Merchant agrees to indemnify, defend, and hold Company, Company's affiliates (including parents, subsidiaries, and other related entities), employees, contractors, subcontractors, successors, assigns, and agents (collectively the **"Company Indemnified Parties"**)



harmless from and against any and all costs, damages, penalties, claims, actions, suits (collectively “**Claims**”) of whatsoever kind and nature arising out of, related to, arising from, or in connection with Merchant's unauthorized modification or misuse of the Equipment or Software, or Merchant's breach of this Service Agreement, or from Merchant's negligent acts or omissions. Merchant's indemnification obligation includes payment of all reasonable attorneys' fees, costs and expenses. Merchant shall promptly notify Company in writing of any Claim and any such suit will not be settled without Company's consent, such consent not to be unreasonably withheld. Merchant shall retain counsel reasonably acceptable to Company and Company shall cooperate in the defense of such claim. Company may appear, in its sole discretion and at its own expense, through counsel it selects.

#### 11. MISCELLANEOUS TERMS INCLUDING BINDING ARBITRATION AGREEMENT

- a. **Assignment.** Merchant shall not have the right to assign or otherwise transfer its rights or obligations under this Service Agreement except with the written consent of Company. Company shall have the right to assign any or all of its interest, rights, and obligations in this Service Agreement without the need for consent from Merchant. Any prohibited assignment shall be null and void. This Agreement shall be binding upon the heirs, successors, and permitted assigns of the parties.
- b. **Amendments.** This Service Agreement may be amended by Company, Company's affiliates, or assigns, upon 30 days' written notice. Using the Equipment after a change takes effect constitutes acceptance of the amendment.
- c. **Notices.** Notices permitted or required to be given hereunder shall be deemed sufficient if given by First-Class Mail or electronic mail addressed to Merchant's address on Merchant Transaction Processing Agreement or Company's address in Section 11.e(iii) (or other addresses the parties may designate by like notice from time to time). Notices so given shall be effective as of the date received.
- d. **Severability.** In the event that any of the terms of this Service Agreement are in conflict with any rule of laws, regulations, provisions or otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed amended so that such term of provision complies with such applicable law or regulation, but such invalidity, unenforceability, or revision shall not invalidate any of the other terms of this Service Agreement and it shall continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of this Service Agreement. Section 11.e(viii) applies if any part of the Arbitration Agreement (Section 11.e) is found illegal or unenforceable and prevails over this section if inconsistent with it.
- e. **Binding Arbitration Agreement.** The term “Merchant” in this Section 11.e (“Arbitration Agreement”) includes Merchant and the Guarantor(s) listed on POS Exhibit A. This Arbitration Agreement binds all of them and Company.
  - 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 the 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 Payments, LLC Legal Department, 3501 Corporate Parkway, Center Valley, PA 18034. 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 11.e(iii). For information, visit [adr.org](http://adr.org) or call 1-800-778-7879. For disputes involving \$25,000 or less, any hearing will be telephonic unless the arbitrator finds good cause to hold an in-person hearing. Any in-person hearing will be held in the county of Merchant's principal place of business.
  - vi. For disputes involving \$75,000 or less, Company will pay all AAA and arbitrator's fees and will promptly refund Merchant's filing fee, unless the arbitrator finds the arbitration frivolous or brought for an improper purpose. For disputes involving more than \$75,000, AAA rules govern fees. 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 11.e(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 this 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 11.e(iii). The version of the Arbitration Agreement in force just before the rejected change will govern.
- f. **Binding Agreement.** This Agreement shall not become a binding Agreement between the Parties until it is approved by Company. The commencement of the transaction processing under this Agreement shall constitute Company's approval and its signature to this Agreement.
  - g. **Governing Law.** The laws of the State of Merchant's principal place of business govern this Service Agreement, including claims for its enforcement or breach, except that the Federal Arbitration Act governs all matters relating to arbitration.
  - h. **Privacy Policy.** By entering into this Service Agreement, you agree to abide by the terms of Company's Privacy Policy. The Privacy Policy can be found at <https://www.shift4.com/legal>. For avoidance of doubt, you give Company the permission to, but not limited to, collect and allow third parties to utilize: User-Provided Information, Service Information, Third-Party Software Information, and Transaction Data.
  - i. **One-Year Limit on Claims and Disputes.** Any claim or dispute must be filed in arbitration or small claims court (or in court if the Arbitration Agreement is found to be illegal or unenforceable so as to permit filing in court) within one (1) year of the date it first could be filed. Otherwise it is permanently barred.
  - j. **Conflicting Terms.** This Service Agreement shall prevail over any conflicting terms or oral statements that may be contained in any instructions or other communications Merchant submits to Company with respect to this Service Agreement.
  - k. **Independent Contractor.** Nothing in this Service Agreement or in its performance shall be construed to create any partnership, joint venture, or relationship of principal and agent or employer and employee between Company and Merchant or any of their respective affiliates or subsidiaries. Company and Merchant are and shall remain independent contractors. As such, neither Merchant nor any employees, agents, or affiliated persons of Merchant shall be entitled under any circumstances to maintain any action against Company for any bodily injury incurred by Merchant or any employees, agents, or affiliated persons of Merchant (including, but not limited to, the filing of claims under the workers' compensation laws of any state). Furthermore, Merchant acknowledges that Merchant shall be solely responsible for the purchase and maintenance of employment, and workers' compensation, and liability insurance coverage related to its employees, agents, or contractors, and that Company shall have no responsibility for any such coverage.
  - l. **Force Majeure.** Any delay or nonperformance of any provision of this Service Agreement (other than for payment of fees or charges incurred under this Service Agreement or the requirement to file claims or disputes within one (1) year) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Service Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to

the duration of the conditions preventing performance.

- m. **No Waiver of Rights.** Unless expressly provided herein, no failure or delay on the part of any party in exercising any right under this Service 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.
- n. **Survival of Some Terms.** Sections 2, 3, 4, 5(d), 7, 8, 9, 10, and 11, and any other provision that by its terms survives termination, shall survive the termination of this Service Agreement and continue to bind Company and Merchant.
- o. **Entire Agreement.** Company'S REPRESENTATIVES MAY HAVE MADE ORAL STATEMENTS REGARDING THE EQUIPMENT, SOFTWARE, OR SERVICES. NONE OF THE ORAL STATEMENTS CONSITUTE WARRANTIES, MERCHANT SHALL NOT RELY ON ANY OF THEM, AND THEY ARE NOT PART OF THIS SERVICE AGREEMENT. THIS SERVICE AGREEMENT, INCLUDING ITS EXHIBITS, CONSTITUTES THE ENTIRE AGREEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, AND SUPERSEDES ALL PREVIOUS PROPOSALS, ORAL OR WRITTEN, AND ALL NEGOTIATIONS, CONVERSATIONS, OR DISCUSSIONS HERETOFORE HAD BETWEEN THE PARTIES RELATED TO THIS SERVICE AGREEMENT. MERCHANT ACKNOWLEDGES THAT IT HAS NOT BEEN INDUCED TO ENTER INTO THIS SERVICE AGREEMENT BY ANY REPRESENTATIONS OR STATEMENTS, ORAL OR WRITTEN, NOT EXPRESSLY CONTAINED IN THIS SERVICE AGREEMENT.