



# Oracle/Simphony Service Agreement

## Terms and Conditions

This POS System Service Agreement (the "**Agreement**") is by and between Shift4 Payments, LLC, Delaware limited liability company located at 3501 Corporate Parkway, Center Valley, PA 18034 ("**Company**"), and the business entity identified on the Order Form ("**Merchant**"). Company and Merchant may each individually be referred to as a "**Party**" and collectively as the "**Parties**". This Agreement becomes effective on the date of the last Party to sign hereto (the "**Effective Date**").

**PLEASE READ THIS AGREEMENT AND UNDERSTAND EACH PROVISION. IT REQUIRES YOU TO USE COMPANY'S PROCESSING SERVICES AND ALSO REQUIRES ALL CLAIMS OR DISPUTES WITH COMPANY ARISING IN CONNECTION WITH THIS AGREEMENT TO BE RESOLVED IN BINDING INDIVIDUAL ARBITRATION -- NOT IN A CLASS ACTION AND NOT IN COURT BEFORE A JUDGE OR JURY. PLEASE SEE COMPANY APPENDIX.**

### 1. DEFINITIONS.

- 1.1. "**Company Appendix**" means an Appendix attached hereto and which is incorporated into this Agreement by reference, and which sets forth general terms regarding Software, as well as region-specific terms, conditions, and rates.
- 1.2. "**Company Parties**" means Company, its affiliates, and each of their respective successors and assigns.
- 1.3. "**Equipment**" means the devices indicated on an Order Form that is incorporated into this Agreement.
- 1.4. "**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.
- 1.5. "**Merchant Agreement**" means a separate written contract for Processing Services among Merchant, Company, and, if applicable, Company's designated bank sponsor.
- 1.6. "**Merchant Location**" means the Merchant's address listed on an Order Form that is incorporated into this Agreement.
- 1.7. "**Non-Standard Services**" means training services, professional services and software customization, non-standard support and maintenance in instances where Equipment is not working properly as a result of a Merchant acts or omissions or the acts or omissions of third parties, and any other services not expressly set forth as obligations of Company under this Agreement.
- 1.8. "**Order Form**" means the Point of Sale System Service Agreement - Exhibit A, or such other Company-created form document that incorporates this Agreement by reference.
- 1.9. "**Processing Services**" means all merchant acquiring and related support services, which may include card present and/or card not present authorization services, fraud prevention and detection, merchant accounting and clearing, gateway services, ACH file preparation and submission, Merchant statement preparation, chargeback and retrieval processing, customer service, processing of transactions into interchange, and other services provided by Company from time to time.
- 1.10. "**Software**" means the software program(s) described in an Order Form or other document that is incorporated into this Agreement, and which is/are made available by or through Company. This may include software that is owned by a third-party and resold by Company to Merchant.

2. **TERM.** This Agreement becomes binding on the Parties on the Effective Date. The term of this Agreement begins on the Install Date and is coterminous with the most recent Merchant Processing Agreement ("MPA") that Merchant has entered into with Company and will remain in effect for the Initial Term and Renewal Terms of respective MPA. Upon termination of the MPA, this Agreement will simultaneously terminate.

### 3. ITEMS MADE AVAILABLE BY COMPANY.

- 3.1. **Limited Software License.** If Company is making Software available to Merchant in connection with this Agreement, Company grants to Merchant a limited, non-exclusive, non-transferable, royalty-free, revocable, non-sublicensable, non-assignable, and non-transferable license to use the Software during the Term in connection with the Merchant Services and any Equipment Provided herein. Merchant shall 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. Nothing contained in this Agreement shall give Merchant any ownership interest, or title to, the Software, source code, or 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 Agreement. This license is not a license to 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 this license upon notice to Merchant at any time. Using the Software after an amendment or modification takes effect constitutes acceptance of it.

- 3.2. **Equipment.** Company will make the Equipment available to you during the Term of this Agreement on the terms and conditions set forth herein.
- 3.2.1. **Shipping.** Company will ship all Equipment to Merchant via a nationally recognized courier service (e.g., UPS). 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. Merchant is responsible for shipping costs. An estimate of such shipping costs can be found in the Company Appendix.
- 3.2.2. **Installation.** Company will perform 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 reschedule fee if (i) Merchant reschedules or cancels the installation less than 24 hours prior to the appointment, (ii) an authorized representative of 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. The amount of the reschedule fee can be found in the Company Appendix.
- 3.2.3. **Title to Equipment; Security Interest.** Except for purchases of Equipment where a transfer of title is expressly documented in a signed writing connection with this Agreement, in the event this Agreement terminates or expires for any reason, Company may, in addition to exercising any other rights and/or pursuing any other remedies, demand return of the Equipment, and Merchant shall be required to return such Equipment to Company within 60 days of receiving Company's request. 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 a UCC-1 Financing Statement and/or other necessary documentation, including any equivalent documentation in any non-US jurisdiction (e.g., under the Personal Property Security Act in Canada, etc.), 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 security Company's rights in the Equipment.
- 3.3. **Support.**
- 3.3.1. **Remote and On-Site Support.** Company will make its remote technical support services available to Merchant 24 hours per day, 7 days per week, for questions and problem resolution involving the Equipment and Software. Additionally, Company will make its onsite technical support team available to Merchant for problems that Company, in its reasonable discretion, believes are better suited for in-person servicing. If Company determines that Equipment is defective, Company will, in its sole discretion, repair the Equipment, send replacement parts, and/or replacement Equipment. Merchant shall return all defective Equipment to Company within 15 days of receipt of any replacement Equipment. Merchant's failure to maintain the Equipment as set forth in this Agreement shall result in additional charges for service and/or replacement of the Equipment.
- 3.3.2. **Limitations.** Merchant acknowledges and agrees that (i) Company cannot guarantee the resolution of any problem requiring remote and/or on-site servicing, and (ii) Company reserves the right to limit the deployment of its onsite technical support services for any reason, including in instances where (a) such services result or would result in more than 2 visits in any calendar week, (b) in Company's discretion Merchant's processing volumes do not warrant the deployment of onsite resources, (c) Merchant has failed to meet its obligations in this Agreement, including its obligation to maintain and keep the Equipment in good working order. In addition to the Company's right to limit the deployment of its onsite technical support services as set forth in this Section, Company may choose to make such services available to Merchant, but at additional cost, which cost is presented to and accepted by Merchant.

#### 4. MERCHANT OBLIGATIONS.

- 4.1. **Processing Services.** As a condition to being permitted to use any Software and/or Equipment in connection with this Agreement, Merchant agrees that it shall enter into a Merchant Agreement with Company, which shall require

Merchant's exclusive use of Company's Processing Services at all times.

- 4.2. **Merchant's Maintenance Efforts.** Merchant shall (i) maintain and protect the Equipment in good operating condition, repair, and appearance, and protect the Equipment from deterioration other than normal wear and tear; (ii) use the Equipment in the regular course of its business, within its normal operating capacity, without abuse, (iii) comply with all laws, regulations, directives, requirements, and rules with respect to the use, maintenance, and operation of the Equipment and Software; (iv) use the Equipment and Software solely for business purposes; (v) not make any modification, alternation, or addition to the Equipment or Software without the written consent of Company, and (vi) not affix Equipment to, or remove Equipment from, the Merchant Location without Company's prior written consent, such consent not to be unreasonably withheld.
- 4.3. **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 and agrees 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, damaged, stolen, or taken by another 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 data, including any Merchant data.
- 4.4. **Insurance.** While the Equipment is in Merchant's possession or control, Merchant shall, at its own cost and expense, have and maintain commercially reasonable insurance on the Equipment, which protects against loss or damage from fire, theft, bodily injury, or other casualty. At Company's request, Merchant shall provide Company with a certificate of insurance naming Company as a loss payee or additional insured with respect to loss of or damage to the Equipment during the Initial Term.

## 5. OTHER TERMS.

- 5.1. **Non-Standard Services.** In the event Company agrees to provide Non-Standard Services to Merchant in connection with this Agreement, Company shall be permitted to charge Merchant its then-prevailing rates for any such Non-Standard Services.
- 5.2. **Software Updates.** Company may, in its sole discretion, make Software updates available to Merchant. Merchant shall install all Software updates within 30 days.
- 5.3. **Installation.** 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 the Merchant's specifications; (iii) the Equipment is in good working order; and (iv) the Equipment was tested and is capable of performing Processing Services. In the event Merchant requires Company to re-program or re-install any Equipment after installation, Merchant understands and agrees that Company may, in its discretion, bill Merchant a re-program or re-install fee. Merchant shall be responsible for (a) site preparation, including adequate electrical power and sufficient number and type of electrical outlets, and working space for Company's personnel to perform installation services, if any, (b) ensuring a suitable environment exists for the operation of the installed system, and (c) all network infrastructure.
- 5.4. **Compliance with Laws.** Merchant shall comply with all applicable federal, state, and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies in any manner affecting the performance of this Agreement, including without limitation, privacy laws, and any licensing laws and regulations.

## 6. ACH AUTHORIZATION; FEES.

- 6.1. **Payment Authorization.** Merchant shall provide Company with a designated bank account for Company to debit and/or credit in connection with this Agreement, and authorizes Company to initiate pre-authorized debits, EFTs, and/or Automated Clearing House transfer entries to credit and/or debit Merchant's account on file with Company for all rights or obligations arising out of the Agreement, including for the payment of any fees and amounts arising in connection with this Agreement. This authorization shall remain in effect unless and until Company has received written notification from Merchant that this authorization has been terminated in such time and manner to allow Company to act.
- 6.2. **Fees.** Merchant shall pay all fees and amounts arising under this Agreement, including those listed in any Order Form(s), and Company shall have a right to debit Merchant's account for such fees and amounts on the date such fees

are due (or earlier for any up-front fees) or earned, or on a periodic basis determined by Company. Additionally, Merchant is responsible for all shipping costs and authorizes Company to debit Merchant's account for such costs. For any fee or shipping cost that is not paid by Merchant within 30 days of the date of invoice, Company reserves the right to assess interest to such unpaid amounts at a rate of 1.5% per month or the maximum amount allowed by law, whichever is greater. Merchant expressly agrees that Company shall have a right to recover any amounts due under this Agreement from amounts payable to Merchant under this or any other agreement with Company and/or its Affiliates, including from amounts payable under the Merchant Agreement. With respect to any amounts paid or payable in connection with this Agreement, Company reserves the right to specify the applicable currency and to adjust fees and amounts based on Company's processes for determining applicable exchange rates. 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 "CPI-U") plus 1%, or (ii) 4%.

7. **Confidentiality.** During the Term of this Agreement, each Party (a "**Disclosing Party**") may disclose, under this Agreement, to the other Party (a "**Receiving Party**"), confidential and/or proprietary materials and information of the Disclosing Party ("**Confidential Information**"). All materials and information disclosed by Disclosing Party to the Receiving Party under this Agreement and identified at the time of disclosure as "Confidential" or bearing a similar legend, and all such other information that the Receiving Party reasonably should have known was the Confidential Information of the Disclosing Party, will be considered Confidential Information. Receiving Party will maintain the confidentiality of the Confidential Information and will not disclose such information to any third party without the prior written consent of Disclosing Party. Receiving Party will only use the Confidential Information internally for the purposes contemplated under this Agreement. The obligations in this Section will not apply to any information that: (i) is made generally available to the public without breach of this Agreement, (ii) is developed by the Receiving Party independently from the Disclosing Party's Confidential Information, (iii) is disclosed to Receiving Party by a third-party without restriction, or (iv) was in the Receiving Party's lawful possession prior to the disclosure to the Receiving Party and was not obtained by the Receiving Party either directly or indirectly from the Disclosing Party. Receiving Party may disclose Confidential Information as required by law or court order; provided that, Receiving Party provides Disclosing Party with prompt written notice thereof and uses its best efforts to limit disclosure. At any time upon Disclosing Party's request, Receiving Party will return to Disclosing Party all Disclosing Party's Confidential Information in its possession, including, without limitation, all copies and extracts thereof. Notwithstanding the foregoing, Receiving Party may disclose Confidential Information to any third party to the limited extent necessary to exercise its rights, or perform its obligations, under this Agreement, or to any prospective acquirer of Receiving Party; provided that, all such third parties are bound in writing by obligations of confidentiality and non-use at least as protective of the Disclosing Party's Confidential Information as this Agreement.

8. **DEFAULT AND TERMINATION.**

- 8.1. **Termination.** This Agreement may be terminated by an aggrieved Party if the other Party (i) commits a material breach of this Agreement and such breach is not cured within 30 days after receiving written notice specifying the nature and extent of such breach; provided, however, that if such matter is a non-monetary breach and is not reasonably susceptible of cure within such 30 day period, such period shall be extended and the Party shall not be in default hereunder so long as it commences a cure with such 30 day period and diligently pursues to cure to completion within 90 days after such notice, or (ii) commits numerous breaches of its duties or obligations, which collectively constitute a material breach of this Agreement, or (iii) has a petition filed by or against it under applicable bankruptcy law seeking the liquidation of such Party's assets, which petition is not dismissed within thirty (30) days, then the other Party may, by giving written notice, elect to terminate this Agreement without liability. Additionally, Company has a right to suspend or cease providing any service or to terminate this Agreement if (a) Company believes that the continued provision of such service or performance the Agreement violates or would violate the card brand rules or applicable laws or regulations, including, where applicable, any ordinance or statute, (b) Merchant is accused by any federal, state, or local jurisdiction, of a violation of any applicable statute or ordinance or any regulation, directive or order of any governmental agency or court, (c) 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, (d) Merchant has not paid or is late on any required payment hereunder, or (e) Merchant is not honoring its commitment to receive Processing Services from Company.
- 8.2. **Effect of Termination.** Subject to any surviving terms, upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the Parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including any payment obligations. Upon termination of this Agreement for any reason, Merchant shall immediately return all Equipment to Company at Merchant's cost and expense using a nationally recognized courier service. If Company does not receive Merchant's equipment within sixty (60) days of Merchant's request for a

replacement device (if the Agreement has not expired or terminated) or the termination or expiration of the Term, then, in addition to any other applicable fees and amounts and any other remedies of Company, Merchant authorizes Company to debit Merchant for each unreturned payment processing terminal (measured by terminal identification number) provided by or through Company in an amount equal to Company's reasonable replacement costs for such terminal(s) and/or devices(s). Estimated replacement costs for such terminal(s) can be found at in the Company Appendix.

**9. DISCLAIMER OF WARRANTIES; LIMITATIONS OF LIABILITY.**

9.1. **Disclaimer of Warranties.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, COMPANY DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY REPRESENTATIONS AND WARRANTIES IN RESPECT OF THE EQUIPMENT, SOFTWARE, PROCESSING SERVICES, AND/ OR ANY OTHER SERVICES PROVIDED BY OR THROUGH COMPANY IN CONNECTION WITH THIS 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, PROCESSING SERVICES, AND ANY NON-STANDARD SERVICES ARE PROVIDED WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT WILL BE WITH 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 FAILURE TO OBSERVE STANDARD OPERATING PROCEDURES. COMPANY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, THAT AFTER THE INITIAL INSTALLATION OF THE EQUIPMENT AND SOFTWARE, 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. 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 COMPANY'S CONTROL. MERCHANT WAIVES ANY CLAIM IT MAY HAVE AGAINST COMPANY DUE TO MERCHANT'S INABILITY TO ACCESS DATA OR CONNECT TO THE INTERNET. IN NO EVENT WILL COMPANY OR THE COMPANY PARTIES BE RESPONSIBLE FOR ANY LIABILITY OR DAMAGE INCURRED AS A RESULT OF DOWNTIME OF THE EQUIPMENT OR SOFTWARE.

9.2. **Limitations on Liability.** The Company Parties shall not be liable to any party, including Merchant, Merchant's owners, partners, shareholders, affiliates, successor, 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 in connection with this Agreement, or Merchant's use of, or inability to use, the Equipment or Software, even if advised in advance of the possibility of such damage(s). Company's maximum aggregate liability arising in connection with this Agreement shall not exceed the total amount of fees paid by Merchant to Company in connection with this Agreement in the 3 month period immediately preceding the event giving rise to such liability. Any claim or dispute must be brought within one (1) year of the date of the event giving rise to such claim. Otherwise such claim is permanently barred.

10. **Indemnity.** Merchant shall indemnify, defend, and hold harmless the Company Parties and each of their respective employees, contractors, subcontractors, successors, assigns, and agents (the "**Company Indemnified Parties**") from and against any and all costs, damages, penalties, claims, actions, suits (collectively "**Claims**") of whatsoever kind and nature, arising out of, related to, or in connection with Merchant's (i) breach of this Agreement, (ii) acts or omissions, or (iii) unauthorized modification of, or misuse of, the Equipment or Software. Merchant's indemnification obligation includes payment of all reasonable attorneys' fees, costs, and expenses. Merchant shall retain counsel reasonably acceptable to Company and Company shall cooperate in defense of such Claim. Company may appear, in its sole discretion and at its own expense, through counsel it selects.

**11. MISCELLANEOUS.**

11.1. **Governing Law.** This Agreement and the rights and obligations of the Parties under this Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the principles thereof relating to the conflicts of laws. Company and Merchant hereby agree to the exclusive jurisdiction in the Federal or State courts located in the State of Delaware.



- 11.2. **Binding Arbitration.** See Company Appendix.
- 11.3. **Independent Contractor.** Nothing in this Agreement or in its performance shall be construed as creating any partnership, joint venture, or relationship of principal and agent or employer and employee between Company and Merchant. Company and Merchant are and shall remain independent contractors.
- 11.4. **Amendments.** Company may amend this Agreement, including by adding new terms or fees or increasing fees, at any time, including in instances where (i) Merchant is not meeting its obligations under this Agreement (e.g., Software updates, etc.), (ii) Merchant's use or requested use of Company's support services are deemed by Company to call for a level of support not contemplated by this Agreement, or (iii) Company makes such amendment in response to the requirements of a third-party, including any third-party licensor. Except as otherwise set forth in this paragraph, no change, waiver, or discharge relating to the terms of this Agreement, including any Schedules or attachments, shall be valid unless in writing and signed by an authorized representative of Company.
- 11.5. **Survival.** Provisions contained in this Agreement that expressly or by their sense and context are intended to survive the expiration or termination of this Agreement shall so survive such expiration or termination.
- 11.6. **Severability.** If any provision of this Agreement is found void or unenforceable, it will not affect the validity of the balance of this Agreement, which shall remain valid and enforceable according to its terms.
- 11.7. **Entire Agreement.** This Agreement, and any documents it incorporates by reference, constitutes the entire Agreement between Company and Merchant. Any prior discussions or prior communications, written or oral, not included herein are not part of this Agreement.
- 11.8. **Export Control.** Applicable export control and economic sanctions laws and regulations ("Export Laws") of the United States and any other relevant local export laws apply to the Equipment and services arising in connection with this Agreement. Merchant agrees to comply with all such Export Laws, including "deemed export" and "deemed re-export" regulations).
- 11.9. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original as against any Party whose signature appears thereon and all of which together shall constitute one and the same instrument.
- 11.10. **No Waiver.** The failure of a Party to enforce any of the provisions of this Agreement shall not be construed to be a waiver of the right of such Party thereafter to enforce such provisions.
- 11.11. **Privacy Policy.** By entering into this Agreement, Merchant agrees to abide by the terms of Company's privacy policy, which is located at [www.shift4.com/legal](http://www.shift4.com/legal).
- 11.12. **Notices.** All legal notices required hereunder must be given in writing in accordance with this Section. Notices will be deemed effectively given when they are sent by Federal Express or similar overnight service to the address on page one of this Agreement. Such communication shall be effective when the addressee receives it or upon refused delivery. A courtesy copy of all notices shall be delivered to the receiving Party's General Counsel or Chief Legal Officer. Notwithstanding anything to the contrary in this Agreement, Company shall be permitted to use its service delivery system for the issuance of notices affecting Merchant involving the Services (e.g., web portals, email, etc.).
- 11.13. **No Joint Venture.** Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between the Parties. Neither Party by virtue of this Agreement is authorized as an agent, employee, or legal representative of the other Party, and the relationship of the Parties is, and at all times will continue to be, that of independent contractors.
- 11.14. **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.
- 11.15. **Further Assurances.** Each Party agrees to cooperate fully with the other Party and to execute such further instruments, documents, and Agreements, and to give such further written assurances as may be reasonably requested by the other Party, to better evidence and reflect the transactions described in and contemplated by this Agreement, and to carry into effect the intents and purposes of this Agreement.
- 11.16. **Performance.** Neither Party shall be liable for failure to perform hereunder where such failure is due to a condition that constitutes legal impossibility or force majeure, including an act of war, hostility, or sabotage; act(s) of God, including weather-related events; pandemic; government restrictions; strikes or labor-related difficulties; or other event outside the

reasonable control of the obligated Party. Each Party will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may terminate the Agreement. Nothing in this Section excuses either Party from its obligation to take reasonable steps to follow normal disaster recovery procedures or Merchant's obligation to pay amounts due Company in connection with this Agreement.

- 11.17. **Rights of Third Parties.** Except as otherwise expressly set forth in this Agreement, this Agreement is entered into solely between, and may be enforced only by, Company and Merchant. This Agreement shall not be deemed to create any rights in third parties.
- 11.18. **Cumulative Remedies.** Except as otherwise expressly provided herein, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity, or otherwise.
- 11.19. **Assignment.** This Agreement shall be binding on the Parties and their respective successors and permitted assigns. Neither Party shall transfer or assign this Agreement or any rights or obligations arising hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 11.20. **Language.** The parties hereby acknowledge that they have required these agreements and all related documents to be drawn up in the English language. Les parties reconnaissent avoir demandé que le présent contrat ainsi que les documents qui s'y rattachent soient rédigés en langue anglaise.
- 11.21. **Additional Software Terms.** Please see Company Appendix on next page.

## COMPANY APPENDIX TO POS SYSTEM SERVICE AGREEMENT

This is a Company Appendix to the POS System Service Agreement (the "Agreement") is by and between Shift4 Payments, LLC, Delaware limited liability company located at 3501 Corporate Parkway, Center Valley, PA 18034 ("Company"), and the business entity identified on the Order Form ("Merchant").

1. **Affiliates.** Company may choose to perform some or all of its obligations and/or exercise any of its rights under this Agreement through one or more Company Affiliates. An "Affiliate" of Company 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).
2. **Trial Period.** Except for excluded bundles ("**Excluded Bundles**"), Merchant may cancel the Agreement without penalty within 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 in the Agreement, Merchant shall be responsible for the cost of shipping Equipment to and from the Merchant Location and for any additional wiring completed. All fees and charges incurred by Merchant apply during the Trial Period, and all fees and costs associated with Merchant's return of Equipment to Company shall be borne by Merchant. Merchant authorizes Company to debit Merchant's account upon receipt of notice of cancellation. Any additional Equipment added after the original Install Date will not be eligible for the 30 day Trial Period. Excluded Bundles means any Equipment that is coupled with third-party Software, such as Oracle Symphony POS Software, and any other Equipment and/or Software as determined by Company from time to time.
3. **Certain Fees and Amounts Referenced in the Terms and Conditions.**

| FEES & AMOUNTS               |   |  |
|------------------------------|---|--|
| Description                  | US Price/Cost (US Dollars)                | Canadian Price/Cost (Canadian Dollars)   |
| Reschedule Fee               | \$400                                     | \$535                                    |
| Re-Program or Re-Install Fee | Quoted                                    | Quoted                                   |
| Terminal Replacement Costs   | \$200 - \$1,000, depending on device type | \$275 - \$1350, depending on device type |
| Non-Sufficient Funds Fee     | \$34                                      | \$45                                     |

|   |                    |                    |
|---|--------------------|--------------------|
| Shipping and Company Handling Fees  | Quoted or Invoiced | Quoted or Invoiced |
| Merchant agrees to pay for any non-specified product or service ("Non-Specified Service") Company provides to Merchant at Merchant's request or on Merchant's behalf and authorizes Company to debit Merchant's account for such Non-Specified Service in connection with Merchant's invoice. |                    |                    |

4. **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.

5. **Arbitration.**

5.1. **Region-Specific Terms.**

5.1.1. **Binding Arbitration in Canada.** For Merchants located in Canada, the following terms apply: Company and Merchant agree, to the maximum extent allowed under applicable law, 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. Company and Merchant may adopt arbitrations rules from JAMS in Ontario or from the ICC in other jurisdictions. This Arbitration Agreement is to be broadly interpreted. It includes (i) claims or disputes relating to any aspect of the relationship between Company and Merchant, including claims or disputes relating to this Agreement, the Equipment, the Software, the Merchant 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 this Agreement), whether based in contract, tort, statute, fraud, misrepresentation, omission, or any other theory; (ii) claims or disputes that arose before this Agreement or any other agreement became effective (including claims or disputes related to advertising); (iii) claims or disputes that are the subject of purported class action litigation on the date this Agreement becomes effective but Merchant is not a member of a certified class on that date; and (iv) claims or disputes that arise after the termination of this Agreement, but related to it or the Equipment or Software. Company or Merchant may bring an individual suit in a small claims court instead of sending a Notice or arbitrating. Company and Merchant may sue in the small claims court in the Province of Merchant's principal place of business. This Arbitration Agreement does not preclude Merchant from bringing issues to the attention of federal, provincial, or local agencies. Such agencies can, if the law allows, seek relief against Company on Merchant's behalf. Company and Merchant may adopt arbitration rules from JAMS in Ontario or from the ICC in other jurisdictions. 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 Province of Merchant's principal place of business.

5.1.2. **Binding Arbitration in the United States and Other Jurisdictions.** For Merchants located in the United States or in any other jurisdiction, the following terms apply (all amounts specified herein are in US Dollars): 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 Agreement, the Equipment, the Software, the Merchant 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 Agreement), whether based in contract, tort, statute, fraud, misrepresentation, omission, or any other theory; (B) claims or disputes that arose before this 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 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 Agreement but relate to it or to the Equipment or Software. 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. 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 the Agreement. 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.

- 5.2. **General Terms.** Before seeking arbitration, Company or Merchant must first send to the other, by certified mail, return receipt requested or a courier services that requires a signature upon delivery, a written Notice of Dispute ("Notice"). A Notice to Company must be addressed to: Shift4 Payments, LLC, Attn: 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 (i) describe the nature and basis of the claim or dispute; and (ii) 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 arbitration. For disputes involving \$75,000 or less, Company will pay all 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, the applicable arbitration rules govern fees. Company will not seek its attorneys' fees or expenses in any arbitration. 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. If any class action waiver in this Agreement 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. 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. The version of the Arbitration Agreement in force just before the rejected change will govern.
- 5.3. **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.
6. **Additional Software Terms.** The following terms apply to Merchant's use of any Oracle Simphony POS Software made available by Company in connection with this Agreement.
- 6.1. **Third-Party Beneficiary.** For any Software made available in connection with Company's relationship with Oracle, Oracle America, Inc. shall be a third-party beneficiary of the terms set forth in this "Additional Software Terms" section of the Company Appendix and entitled to exercise the rights of Company herein.
- 6.2. **Acceptable Use.** For any Software or Services (collectively, "Services") Merchant receives in connection with this Agreement, Merchant shall not, and shall not cause or permit others to: (a) use the Services to harass any person; cause damage or injury to any person or property; publish any material that is false, defamatory, harassing or obscene; violate privacy rights; promote bigotry, racism, hatred or harm; send unsolicited bulk e-mail, junk mail, spam or chain letters; infringe intellectual or other property rights; sell, manufacture, market and/or distribute any product or service in violation of applicable laws; or otherwise violate applicable laws, ordinances or regulations; (b) perform or disclose any benchmarking or availability testing of the Services, except as permitted in the Service Specifications; (c) perform or disclose any performance or vulnerability testing of the Services without Company's prior written approval, except as permitted in any Service specifications, or perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking or remote access testing of the Services; or (d) use the Services to perform cyber currency or crypto currency mining ((a) through (d) collectively, the "Acceptable Use Policy"). In addition to other rights Company has in this Agreement, Company has the right to take remedial action if the Acceptable Use Policy is violated, and such remedial action may include removing or disabling access to material that violates the policy.
- 6.3. **Granting of Rights.** Merchant has the authority to, and grants Company the right to host, use, process, display and transmit Merchant content and to provide the Services pursuant to and in accordance with this Agreement. Merchant has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of any Merchant content, and for obtaining all rights related to such content required by Company to perform the Services.

- 6.4. **Indemnification.** Without limiting any other rights of Company under the Agreement, if a third-party makes a claim that any information, content, design, specification, instruction, software service, data, hardware, or material furnished by or through Merchant infringes a third party's intellectual property rights, Merchant shall indemnify, defend, and hold Company harmless from any and all claims, proceedings, damages, losses, fees, fines, and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Merchant.
- 6.5. **Suspension of Services.** Company may suspend Merchant's and/or Merchant's users' access to, or use of, the Services if Company believes that (a) there is a significant threat to the functionality, security, integrity, or availability of the Services or any content, data, or applications in the Services; (b) Merchant or its users are accessing or using the Services to commit an illegal act; (c) there is a violation of the Acceptable Use Policy; or (d) Merchant provided false account or payment information or its digital payment method is refused. Any suspension under this Section shall not excuse Merchant from its payment obligations.
- 6.6. **Data.** Company may (a) compile statistical and other information related to the performance, operation and use of the Services, and (b) use data from the Services in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (above clauses (a) and (b) are collectively referred to as "Service Analyses"). Company retains all intellectual property rights in Service Analyses.
- 6.7. **Responsibility for Users.** Merchant is responsible for its and its users compliance with this Agreement and any Service specifications. Any access to, or use of, the Services shall be solely for Merchant's internal business purposes. Company reserves the right to audit Merchant's compliance with this Agreement and Merchant will reasonably cooperate with such audit.