

SKYTAB AGREEMENT
TERMS AND CONDITIONS

These Online Terms and Conditions (“OTC”) set out the contractual terms applicable to the SkyTab Services, offered by Shift4 (“Shift4”, “we”, “us”, “ours” as defined below) and accepted by you, Merchant, (each a “Party” and collectively “Parties”) upon execution of the Merchant Processing Agreement (“MPA”) for the provision of the Services as defined in clause 2.1.

“Shift4” means, for the purposes of the SkyTab Agreement, Shift4 Solutions Limited, company registration no. C103358 having its registered address at 80, Palazzo Homedes, Strait Street, Valletta VLT 1436, Malta OR Shift4 Solutions UK Limited, company registration no. 08460966 having its registered address at Suite 17.19 Heron Tower, 110 Bishopsgate, London, United Kingdom, EC2N 4AY (“Shift4”, “we”, “us”, “our”) for the provision of the Services as defined in clause 2.1 in Europe and UK respectively.

This Agreement is binding on the Parties on the execution date of the Agreement.

Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement.

1. Definitions

“**Acquirer**” means our Affiliated entity which is the financial entity providing you the Processing Services: Shift4 Limited, or Shift4 Payments UK Limited., as may be applicable, depending on your location.

“**Affiliate**” means any entity that controls, is controlled by, or is under common control with a Party, including its parents and subsidiaries.

“**SkyTab Agreement**” or “**Agreement**” means: (i) the MPA (ii) these Online Terms and Conditions (“OTC”), (iii) Acquiring Services - Applicable Terms, (iv) the online Data Processing Addendum (“DPA”), and (v) any other documentation, guidelines, amendments, or notifications that we provide to you.

“**Applicable Law**” means any laws, rules or regulations which are made by a public authority and are binding on and applicable to a Party. For you this may include such laws, rules, or regulations in both the country from which you offer your services and/or products and the country to which you provide such services and/or products.

“**Card Association**” means organizations such as VISA, Mastercard, Amex and any other scheme that license bank card programs and perform operational functions for their members, including transactional processing and authorizations, interchange settlements, and fee processing, and set the rules for how their card programs must be processed.

“**Cardholder**” means the person or entity authorized to use a card to purchase Merchant’s goods or services.

“**Cardholder Information**” means your buyer when using a credit, debit, private-label, check or gift card in a transaction. For the purposes of this Agreement, Cardholder also means your buyer when a payment instrument is used at a Point of Sale.

“**Confidential Information**” means: (i) all trade secrets; (ii) any commercial, marketing, technical or other confidential information exchanged between the Parties relating to the business activities of the Parties; and/or (iii) any other information of whatever nature made available to a Party by another Party which would reasonably be understood to be confidential, including

any information provided to you prior to entering the Agreement;

“**Effective Date**” means the date you sign the Agreement.

“**Equipment**” means the SkyTab POS System and related peripherals you select in the MPA or Equipment Amendment Form or other acceptance order form..

“**Gateway**” means the gateway connectivity provided by us to enable you to connect to Acquirer and process online payments.

“**Install Date**” means (i) the date on which the Equipment is installed at the Merchant Location or the date on which you start using the Equipment, whichever occurs first, or (ii) the date on which the Equipment is shipped to the Merchant Location.

“**Processing Services**” means payment processing and connectivity services provided by Acquirer for clearing and settlement of payment transactions provided for under the Acquiring Services - Applicable Terms found here . <https://www.shift4.com/s4i-otc>. The Processing Services are provided as an integral part of the SkyTab Services solution and are subject to separate terms and conditions.

“**Merchant Location**” means the Merchant's address listed in the MPA.

“**POS**” means Point of Sale system, a computer system where, among other operations, a payment is accepted and facilitates the transfer of goods or services between a Merchant and Cardholder. This system normally calculates the amount owed by the cardholder and provides options for payment. This system will also normally issue a receipt for the transaction. .

“**Software**” means the software programs installed on or made available through use of the Equipment, including any application programming interfaces, updates, enhancements, or modifications that we avail to you.

2. Services and Service Requirements

2.1. SkyTab Services:

SkyTab: We are providing you with POS Equipment, Software and Gateway, that enable you to manage orders, accept and process payments, via wi-fi and 4G connectivity.

Shift4 One: We are providing you with a standalone handheld payment terminal.

2.2. You acknowledge and agree to the following:

- 2.2.1. Our Services are provided exclusively with our Processing Services, and you agree to use our Processing Services at all times.
- 2.2.2. The Services are to be used only with our Gateway and Processing Services offering provided by Acquirer unless agreed otherwise by the Parties in writing.
- 2.2.3. You shall not use credit, debit, electronic payment, or gift card processing services from any provider except Shift4. By entering into the MPA, you are also, as a condition precedent to us providing Equipment to you, entering into and agreeing to the terms of the Processing Service.
- 2.2.4. Where the Services include wireless data usage, which is not unlimited, you may be subject to additional surcharging in the event you consume in excess of 200 MB in any calendar month. You must contact us to determine if you are eligible for wireless data and/or if you wish to disable its 4G LTE capabilities and suspend data plan fee billing.

2.3. Failure to Process and Failure to Process with our Acquirer.

2.3.1. If at any time after the Install Date you stop using the Processing Services, in whole or in part, we may charge a fee, per Equipment terminal for each 30-day period that the Acquirer Processing Services are not used ("Inactivity Fee"). The Inactivity Fee is in addition to any other fees or charges.

2.3.2. Notwithstanding the above clause, we reserve the right to terminate this Agreement or suspend your access to the Equipment and/or Software for your intentional non-use of the Processing Services. For the avoidance of doubt, this includes where you have processed with an alternative acquirer, or are receiving payment for goods or services by cash and not meeting the minimum processing amount

2.4. We reserve the right to stop the Software from functioning or revoke the Software License in the event you do not utilize the Processing Services.

3. Fees and Taxes.

3.1. You agree to pay the fees specified in the MPA for receiving the Services. You agree that the fees will be debited from your funds that are available under the acquiring agreement that you have with Acquirer. You authorize us and Acquirer, to debit the Service fees from your funds in the acquiring agreement.

3.2. Taxes. The fees described above are exclusive of all taxes. You agree to pay all applicable taxes other than tax assessed on our income. You agree that the payment of fees shall be made without deduction or withholding for any taxes. If you are required to withhold any taxes, the amount you pay to us shall be increased to the extent necessary to yield to our (after withholding of such taxes) net amount equal to the amount we would have received had no such withholding been made. You bear the ultimate responsibility for the proper payment of taxes applicable to your sale of your products or services.

4. Term and Termination; Suspension of Services.

4.1. Term and Termination.

4.1.1. This Agreement shall commence on the Effective Date and will continue for a period of 12 months (the "**Initial Term**"). If you subscribe exclusively to Shift4 One only, the Initial Term shall commence on the Effective Date and will continue for a period of 18 months. The Initial Term for Shift4 One supersedes the term set out in the Termination Clause of the Acquiring Services - Applicable Terms.

4.1.2. The Agreement shall automatically renew for additional 12 months periods (each an "**Additional Term**").

4.1.3. **Termination for Convenience.** You may terminate the Agreement upon providing 60 days prior written notice to us. We may terminate the agreement upon providing you 90 days prior notice.

4.2. Immediate Suspension or Termination.

4.2.1. We may, without notice, immediately suspend your access to the Equipment and Software and/or immediately terminate this Agreement for any of the following reasons:

(i) termination of the Acquiring Services - Applicable Terms

(ii) material breach of this OTC, the Acquiring Services - Applicable Terms, or the Data Processing Addendum ;

- (iii) unlawful or fraudulent use of the Equipment, Software, Gateway or Processing Services, including where such use is proven or where we have reasonable belief that such use is unlawful or fraudulent;
 - (iv) unauthorized modification of the Equipment or Software or installation of unauthorized third-party software;
 - (v) failure or refusal to pay fees or charges on time; or
 - (vi) insolvency or bankruptcy.
- 4.2.2. We may, in our sole discretion, withhold and/or set-off your funds derived from use of the Processing Services in order to satisfy all fees, charges, fines and/or any other liability incurred as a result of your actions under this Agreement..
- 4.2.3. In the event that you materially breach this Agreement, we may demand return of the Equipment, and you shall be required to return the Equipment immediately following receipt of our written request.. You agree to continue paying the Fees as indicated in the fees schedule until the end of such calendar month that you return all equipment to us. The requirement to return the Equipment to us shall be in addition to and shall not preclude us from exercising any other right or remedy under this Agreement or Applicable Law.
- 4.3. You may terminate this Agreement subject to the following conditions:
- 4.3.1. Disconnection and Termination. You may terminate this Agreement for any reason prior to the Install Date. All Equipment must immediately be returned to a location as directed by us within the term as requested by us.
 - 4.3.2. If you terminate this Service for any reason, other than the Termination specified in Clause 4.1 after the Install Date, you shall be in material breach of this Agreement. Additional fees based on installation costs may be charged due to such termination.. Upon completion of cancellation paperwork, you will be provided with instructions to return all equipment to us.

5. Your Responsibilities

- 5.1. Activation of Equipment. We shall provide the Equipment in good working condition and fit for your operational use. Upon installation of such Equipment, whether by us or a Shift4 Partner, you shall confirm that the Equipment has been satisfactorily programmed according to your specification and was tested to be capable of performing the Services.
- 5.2. Equipment Failure. You must notify us immediately upon Equipment or Software failure and must allow us unrestricted and free access to the Equipment and Software to correct failures. You must provide any necessary data communication facilities and equipment at no charge to us.
- 5.3. Your Equipment Obligations.
 - 5.3.1. You 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;
 - 5.3.2. you shall use the Equipment in the regular course of your business, within your 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;

- 5.3.3. you shall use the Equipment and Software solely for business purposes;
- 5.3.4. shall not make any modification, alteration or addition to the Equipment or Software without our written consent;
- 5.3.5. you shall not affix, and shall not remove the Equipment from the Merchant Location without our written consent, which shall not be unreasonably withheld.
- 5.3.6. You will not change or remove any lettering or numbering on the Equipment
- 5.3.7. You must return all Equipment within the timeframes specified by us in good operating condition other] than normal wear and tear.
- 5.3.8. To extent permitted by Applicable Law, without demand or legal process, we and our 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, you shall indemnify and hold us harmless from any such liability.
- 5.3.9. Any Equipment that is, in our sole discretion, damaged beyond normal wear and tear or is not returned when due will result in a charge to you of the full cost of the Equipment to us.

5.4. Security.

- 5.4.1. You shall be responsible for (i) maintaining virus protection and security for all of your 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.
- 5.4.2. You acknowledge that security and access to any Equipment located on your premises is solely your responsibility and agree to notify us immediately if Equipment is lost, destroyed, stolen, or taken by any other person.
- 5.4.3. You shall be solely responsible for storing and backing up your data stored on the Equipment. We shall have no liability to you for loss or destruction of your data.
- 5.5. Insurance. While the Equipment is in your possession or control, you are responsible for the Equipment against any loss or damage including from fire, theft, bodily injury, or other casualty and you shall reimburse us in full for any such loss or damage. We will have the right to debit any such losses from your acquiring account.

6. Our Responsibilities

- 6.1. Equipment / Software Support and Maintenance. We will use commercially reasonable efforts to answer questions and resolve any problems related to the Equipment and Software, but do not guarantee resolution of the problems reported.
- 6.2. Software Customization. We may provide reasonable software customization based on the information you provide to us. Any additional customization after the Equipment has been shipped to you is excluded from this Agreement and will be charged at our then current rate, or at any other rate as agreed between the Parties. We do not warrant that customization will be free from defects or mistakes. We expressly disclaim and you agree to hold us harmless for any errors in the Equipment and software.
- 6.3. Software Updates. We may, in our sole discretion, make Software updates available to you. You must install all Software updates within the requested period. We reserve the right not to provide support services, or to charge you additional fees for support,

if you do not install a Software update on time. We will provide remote backup of the Software on a regular basis. We will use commercially reasonable efforts, in the event of Software failure, to assist you in recovering Software backup files to facilitate the successful operation of the Equipment.

7. Limited Software License

7.1. We grant to you a non-exclusive, non-transferrable, royalty free license, without the right to sublicense, to use the Software and the Gateway (including any and all updates and modifications, basic enhancements and error corrections thereto), as well as all documentation, throughout the Term, subject to the conditions, restrictions, and limitations set forth in this Agreement, internally in conjunction with the Equipment.

7.2. Where applicable, we grant to you, subject to the limitations and permissions set forth in this Agreement, a nonexclusive, nontransferable (except as otherwise provided herein), revocable right to use SaaS Services, i4Go, 4Word, and the Licensed Software (including any and all updates, modifications, basic enhancements, and error corrections thereto), as well as all documentation, throughout the Term. Your use of our Gateway is limited to acts that are consistent with this Agreement and the documentation.

7.3. You agree that we retain all rights, title, and interest in the Gateway, and the Licensed Software, except as set forth in this Agreement. No rights to use, copy, display, or print the Gateway or documentation, in whole or in part, are granted except as expressly provided in this Agreement. You agree that this grant of rights does not allow you to sublicense the use of the Gateway to any person or entity.

7.4. We reserve all rights not extended hereunder. You may not alter, reverse engineer, decompile, or disassemble the Software, or otherwise attempt to derive source code from the Software. You may not manufacture, copy, sublicense, distribute, replicate, transfer or otherwise dispose of any copies of the Software. Nothing contained in this Agreement shall give you any ownership interest, or title to, the Software, source code, and the related documentation. You acknowledge that the performance of the Software is conditioned on you providing, at your sole cost and expense a continuously available and secure network. This license shall immediately terminate upon expiration or termination of this Agreement, or the termination of the acquiring agreement. 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. We reserve the right to amend or otherwise modify this license upon notice to you at any time. Using the Software after an amendment or modification takes effect constitutes acceptance of it.

8. Warranty Limitation and Disclaimer

8.1. Except as specifically set forth in this service agreement, we do not make (and expressly disclaim) any representations and warranties in respect of the equipment, software, processing services, and/or other services provided by us under this Agreement, whether express, implied, or statutory, including any implied warranties of client ability, 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. We do not guarantee that the equipment or software will satisfy your 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 you. Should the equipment or software prove defective, you, and not us, assume the entire cost of all necessary servicing or repair. We shall not be liable for any costs or for performing any services hereunder arising in connection with your negligence, abuse, misuse, or failure to perform routine maintenance or standard operating procedures.

8.2. We disclaim any warranty, express or implied, that after the initial installation of the equipment and software, that the equipment, software or your data will remain virus-free. You waive any claims hereunder against us arising from your failure to have or maintain current virus protection, or from a failure or breach of your security for your systems or data, or from any unauthorized access to your systems. We further disclaim any responsibility or liability for problems from your decision to use a particular internet service provider or your ability to connect to the internet. You acknowledge that your ability to access data, receive remote technical support, and operate the equipment, may be affected by problems with your internet connectivity. Any such problems are outside of our control. You waive any claims you may have against us due to our inability to access data or connect to the internet which is based on or arising out of any of the foregoing reasons.

8.3. Gateway Warranties.

8.4. We warrant that our system and data centers meet the security requirements of the Payment Card Industry Data Security Standards as defined by Payment Card Industry Security Standards Council. We further warrant that we undergo an annual security audit and at least a monthly security scan to determine that our system and data centers meet the security requirements of the Card Associations' individual security program standards. Notwithstanding anything to the contrary in this Agreement, while we employ the industry's highest standards for security, we cannot warrant that our systems and data centers are 100% secure.

8.5. To the extent that our Gateway stores, processes, accesses, or transmits Cardholder Information belonging to one or more Card Associations on your behalf, we warrant that we store, transmit, and process such data in compliance with Payment Card Industry Data Security Standard requirements. We warrant that, as we are a Level 1 Service and hosting provider as defined by the Payment Card Industry Data Security Standard, it is our ongoing responsibility for securing Cardholder Information maintained by our Gateway in accordance with the Payment Card Industry Data Security Standard.

8.6. You agree and undertake that your firewall must allow outbound access to all our Gateway IP addresses, as they may change from time to time, so that you can take advantage of these redundant links. We do not warrant any service level or performance should you not provide access from your POS to the Gateway. Notwithstanding the warranty provisions set forth in this clause, all of our obligations with respect to such warranties shall be contingent on your use of the Gateway in accordance with this Agreement and in accordance with our instructions as provided in our documentation. We are not responsible for and do not warrant any Software or Hardware not produced, provided, or manufactured by us.

9. Limitation of Liability

9.1. We and our Affiliates (including parents, subsidiaries, and other related entities), successors, and assigns shall not be liable to you or your 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 your use (or inability to use) the Equipment or Software, even if advised in advance of the possibility of such damage. In no event shall you be entitled to recover or collect any damages in excess of the fees paid under this Agreement during the twelve (12) months immediately preceding the date of your first claim of injury or damage. In no event shall we or our 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.

9.2. You agree to indemnify, defend, and hold us, our affiliates (including parents, subsidiaries, and other related entities), employees, contractors, subcontractors, successors, assigns, and agents (collectively the "Shift4 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 your unauthorized modification or misuse of the Equipment or Software, or your breach of this Agreement, your causing a Cardholder Information loss or POS breach, or from your negligent acts or omissions or your employees, agents, or third-party service providers. Your indemnification obligation includes payment of all reasonable attorneys' fees, costs and expenses. You shall promptly notify us in writing of any Claim and any such suit will not be settled without our consent, such consent not to be unreasonably withheld. You shall retain counsel reasonably acceptable to us and we shall cooperate in the defense of such claim. We may appear, in our sole discretion and at our own expense, through counsel we select.

9.3. Further, you agree to assume all liability for offline processing and/or for any remote installation or support services, including those performed by us including our off-line solution, and shall indemnify, defend, and hold us, our affiliates, and each of our respective officers, directors, employees, and agents from and against any and all claims arising from any or all of the following (i) your 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 our proprietary systems). For the avoidance of doubt, we are not liable for any losses, delays, errors, discrepancies, or other issues arising out of your use of offline processing, or for the interruption or unavailability of such use, nor use of our off-line solution.

10. Indemnification.

10.1. You shall be liable for and shall indemnify, defend, and hold us harmless, including our affiliates, employees, directors, and agents against:

10.2. any and all claims made by third parties threatened, asserted, or filed against any Indemnified Party arising out of any of your acts or omissions under this Agreement; and

10.3. any and all liabilities or claims raised due to your misrepresentations, fraudulent, or criminal activity.

10.4. We shall indemnify, defend, and hold you harmless from any claim or action of a third party alleging that Gateway infringes a patent, trade secret, copyright, or trademark held by such party (hereinafter "Infringement Claim(s)"). We shall not be liable for any damages awarded against you for patent infringement to the extent that Gateway is not found to be the basis for the infringement. We shall pay all resulting costs, damages, losses, judgments, expenses, and reasonable attorney's fees, provided: (i) We are notified promptly in writing of an Infringement Claim; (ii) We have sole control over the defense and settlement; and (iii) You cooperate with us in the defense of the same. The foregoing notwithstanding, you may decide to employ counsel of your choosing and at your own expense and shall thereafter have reasonable control over the defense and settlement of any claim directly related to you. If you employ counsel of your choosing, we will contribute only to settlements we approve, but will not withhold approval unreasonably.

10.5. Following notice of an infringement claim, we may, at our expense, without obligation to do so however, procure for you the right to continue to use the allegedly infringing Gateway, or any portion thereof, or without obligation to do so, may replace or modify Gateway, or any portion thereof to make it not infringing. If we elect to replace or modify Gateway, or any portion thereof, such replacement shall substantially meet the specifications as provided or referenced in the original functional specifications for any subsequent release

of Gateway that you have obtained pursuant hereto.

10.6. We shall indemnify, defend and hold you harmless from any claim, action, damages, losses, judgments, costs, and expenses incurred by you as a result of: (i) our or our employees' or agents' grossly negligent acts or omissions or (ii) a breach of our obligations under the Confidentiality clause 11.

10.7. We shall not be liable for any claims made due to any access to information, platforms, or otherwise, granted to third parties at your behest. To the extent that a claim is made against us for the provision of such access, you shall be liable and shall fully indemnify us for any damages, fees, and/or costs associated with such a claim. This clause shall not be limited by any limitation of liability agreement that may be agreed between us.

11. Miscellaneous Terms

11.1. SkyTab Partner. If you receive the SkyTab Services through a Shift4 Partner, you instruct us to grant the partner access to your data, software, and terminals. You confirm you have authorized this access as per your agreement with the Shift4 Partner. As such you waive your right to bring any claims against us for such access. You acknowledge and agree to have all equipment delivered to you by your Shift4 Partner. You further acknowledge and agree that any and all claims relating to the provision of such equipment, and the quality in which it is received, shall be raised against your Shift4 Partner and not Shift4.

11.2. The following terms shall apply as indicated in the ACQUIRING SERVICES - APPLICABLE TERMS:

11.2.1. Changes to Term and Fees.

11.2.2. Assignment.

11.2.3. Confidentiality

11.2.4. Data Protection

11.2.5. No Waiver of Rights

11.2.6. Severability.

11.2.7. No Waiver of Rights.

11.3. Survival of Terms. Any provision that by its terms survives termination, shall survive the termination of this Agreement and continue to bind you and us.

11.4. Entire Agreement. Our representatives or your Shift4 Partner may have made oral statements regarding the Equipment, Software, or Services. None of the oral statements constitute warranties, you shall not rely on any of them, and they are not part of this Service. This 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. You acknowledge that you have not been induced to enter into this Service Agreement by any representations or statements, oral or written, not expressly contained in this Service Agreement.

11.5. Governing Law. If you are an **EU/EEA Merchant**, which means a Merchant legally incorporated in an EU or in an EEA country, this Agreement is governed by the laws of Malta, without regard to its conflict of laws principles, and any dispute arising from this Agreement shall be brought exclusively before the courts of Malta; If you are a **UK Merchant**, which means a Merchant legally incorporated in the UK, this Agreement is governed by the laws of England, without regard to its conflict of laws principles, and any dispute arising from this Agreement shall be brought exclusively before the courts of London.

- 11.6. Notices. Notices permitted or required to be given hereunder shall be deemed sufficient if given by electronic mail: to you - to the email address that you provided us; to us - our electronic mail address: support.europe@shift4.com (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.