SHIFT④

ONLINE ORDERING PROGRAM
END USER LICENSE AGREEMENT
TERMS AND CONDITIONS

This Online Ordering Program End User License Agreement, ("Agreement"), is a binding agreement between Shift4 Payments, LLC, 3501 Corporate Parkway, Center Valley, PA 18034, 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) as the licensor of the Software, and the Individual and/or Entity utilizing the Online Ordering Program (which may vary depending on which of our Affiliates you contract with), as the licensee of the Software ("You" and/or "Merchant").

COMPANY PROVIDES THE SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT YOU ACCEPT AND COMPLY WITH THEM. BY CLICKING "I ACCEPT," OR BY UTILIZING THE ONLINE ORDERING SOFTWARE TO ACCEPT ELECTRONIC ORDERS AND TRANSACTIONS; YOU: (A) AGREE THAT YOU ARE LEGALLY BOUND BY THE TERMS HEREIN; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF MERCHANT ESTABLISHMENT IS A CORPORATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF MERCHANT AND BIND MERCHANT TO ITS TERMS. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, COMPANY WILL NOT AND DOES NOT LICENSE THE SOFTWARE TO YOU AND YOU MUST NOT USE THE SOFTWARE. EITHER PARTY MAY TERMINATE THIS AGREEMENT AT ANY TIME SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

YOUR CONTINUED USE OF THE SOFTWARE SHALL BE DEEMED OF THE BELOW TERMS AND CONDITIONS.

THIS AGREEMENT REQUIRES, AND YOU CONSENT TO, THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO A MERCHANT IN THE EVENT OF A DISPUTE (PLEASE SEE SECTION 13 FOR FURTHER DETAILS).

THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, INCLUDING ANY INTELLECTIUAL PROPERY RIGHTS CONCERNING ANY SOFTWARE THAT MERCHANT DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF COMPANY'S SOFTWARE.

COMPANY MAY AMEND THE TERMS OF THIS AGREEMENT UPON THIRTY (30) DAYS' NOTICE TO MERCHANT. MERCHANT'S USE OF THE SOFTWARE FOLLOWING SUCH NOTICE SHALL BE DEEMED BY COMPANY AS YOUR ACCEPTANCE OF THE AMENDMENT. THE MOST CURRENT FORM OF THIS AGREEMENT SHALL BE AVAILABLE AT **WWW.SHIFT4.COM/LEGAL**.

1. **DEFINITIONS**

   For purposes of this Agreement, the following terms have the following meanings:

   a. **"Authorized Users"** means the following individual persons authorized to use the Software pursuant to the license granted under this Agreement: Merchant and Merchant's employees.

   b. **"Intellectual Property Rights"** means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

   c. **"Person"** means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other legal entity.

   e. **"Software"** means the Company Online Ordering Program software solution for which Merchant is acquiring the right to use, subject to the terms and conditions of this Agreement. The Software will allow Merchant to accept customer orders and electronic payments from the internet and customize a website for the same.

   d **"Term"** has the meaning set forth in Section 9.

   e. **"Third Party"** means any Person other than Merchant or Company and its affiliates.

2. **LICENSE GRANT AND SCOPE**

   Subject to Merchant's strict compliance with all terms and conditions of this Agreement, Company hereby grants to Merchant a non exclusive, non-transferable, non-sublicensable, limited license during the Term to use, solely by and through its Authorized Users, the Software, subject to all conditions and limitations set forth in this Agreement.

   This license grants Merchant the right to:

   a. Use the Software, as provided by Company to Merchant under the terms and conditions of the Service Agreement.

   b. Use and run the Software as properly installed in accordance with this Agreement and solely for Merchant's internal business purposes.

   c. Use of the online ordering solution as set forth in this End User License Agreement.

3. **THIRD-PARTY MATERIALS**

   The Software may include software, content, data, websites, or other materials, including related documentation, that are owned by Persons other than Company and that are provided to Merchant on licensee terms that are in addition to and/or different from those contained in this Agreement (**"Third-Party Licenses"**). Merchant is bound by and shall comply with all Third-Party Licenses. Any breach by Merchant or any of its Authorized Users of any ThirdParty License shall also be deemed by Company to be breach of this Agreement.

4. **USE RESTRICTIONS**

   Merchant shall not, and shall require its Authorized Users not to, directly or indirectly:

   a. Use (including make any copies of) the Software beyond the scope of the license granted under Section 2;

   b. Provide any other Person, including any subcontractor, independent contractor, affiliate or service provider of Merchant with access to or use of the Software;

   c. Copy, modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Software or any part thereof;

   d. Combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;

   e. reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;

   f. remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices provided on or with the Software, including any copy thereof;

   g. rent, lease, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Software, or any features or functionality of the Software, to any Third- Party for any reason;

   h. use the Software in violation of (i) any law, regulation or rule; or (ii) any right of a Third-Party; or use the Software for purposes of competitive analysis of the Software, the development of a competing software product or service or any other purpose that is to Company's commercial disadvantage.

5. **RESPONSIBILITY FOR USE OF SOFTWARE**

   a. **Exclusive Use of Company's Processing Services.** Merchant's use of the Software 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 (unless prior written consent has been granted by Company) from any provider except Company. By entering into this Agreement, and as a condition precedent to Merchant's use of the Software, Merchant agrees to the terms and conditions set forth in the Merchant Processing Agreement which can be found at https://www.shift4.com/legal. Merchant agrees to the fees and charges associated with the Company Merchant Processing Agreement.

   b. Merchant is responsible and liable for all uses of the Software through access thereto provided by Merchant, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Merchant is responsible and liable for all actions and failures to take required actions with respect to the Software by its Authorized Users or by any other Person to whom Merchant or an Authorized User may provide access to or use of the Software, whether such access or use is permitted by or in violation of this Agreement. Merchant is responsible and shall comply at all times with all applicable federal, state, and local law, regulations and/or rules, including but not limited to such laws pertaining to the sale of alcohol on the internet.

   c. Merchant is responsible for all content that is publicly displayed or otherwise made publicly available in the course of using online ordering portal in conjunction with the Software. Merchant understands and agrees that Company is not responsible for the content posted on the online ordering portal. Merchant agrees that Company may remove or restrict access to any content made publicly available upon receipt of a take-down notice given pursuant to the terms and conditions of the Digital Millennium Copyright Act and reasonably believed by Company to be valid. Merchant further understands and agrees that Company may remove or restrict access to any content that Merchant has made publicly available in the course of using the online ordering portal that Company reasonably believes may infringe the copyright of a third party, misrepresents the Online Ordering Program, misuses a Company trademark or copyright material or is offensive, profane, unlawful, defamatory or obscene at Company's sole discretion.

   d. Merchant understands that in order to accept orders from the online ordering portal the Merchant's system on which the Software is installed must be turned on and connected to the internet.

6. **ONLINE ORDERING PROGRAM FEES**

   a. Merchant shall pay any/all fees relating to the Online Ordering Service Program, 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. Merchant may cancel the 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. ALL CHARGES UNDER THE MERCHANT TRANSACTION PROCESSING AGREEMENT AND THE SERVICE AGREEMENT WILL APPLY DURING THE TRIAL PERIOD.**

7. COLLECTION AND USE OF INFORMATION

a. Merchant acknowledges that Company may, directly or indirectly through the services of Third Parties, collect and store information, including personally identifiable information and/or transaction related information, regarding Merchant's and Merchant's customer's use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used. Information collected may include, but is not limited to: Merchant's location, items Merchant's customers ordered, number and dollar amount of Merchant's customer's orders, dates and items of sales, and other information obtained as a result of transactions made through the Software.

b. Company's use of information collected from Merchant shall be subject to Company's Privacy Policy, which is accessible at https://www.shift4.com/legal. Notwithstanding the foregoing, Merchant agrees that Company may use such information, and share such information with Third Parties, for any purpose related to any use of the Software by Merchant or Merchant's customers, including but not limited to:

    i. improving the performance of the Software or developing Updates;

    ii. verifying Merchant's compliance with the terms of this Agreement and enforcing the Company's rights, including all Intellectual Property Rights in and to the Software; and

    iii. as market research and/or for commercial marketing purposes.

8. INTELLECTUAL PROPERTY RIGHTS

Merchant acknowledges and agrees that the Software is provided under license, and not sold, to Merchant. Merchant does not acquire any ownership interest in the Software under this Agreement, or any other rights thereto other than to use the same in accordance with the license granted, and subject to all terms, conditions and restrictions, under this Agreement. Company, and its licensors and service providers, reserve and shall retain their entire right, title and interest in and to the Software and all Intellectual Property Rights arising out of or relating to the Software, except as expressly granted to the Merchant in this Agreement. Merchant shall safeguard all Software from infringement, misappropriation, theft, misuse or unauthorized access. Merchant shall promptly notify Company if Merchant becomes aware of any infringement of the Company's Intellectual Property Rights in the Software and fully cooperate with Company in any legal action taken by Company to enforce its Intellectual Property Rights. Company shall be solely responsible for the investigation, defense, settlement and discharge of any claim that the Software infringes any Third Party's Intellectual Property Rights. Should the Software be found to be infringing, Merchant's sole remedy will be to cease using the Software or use a non-infringing version of the Software should Company provide one.

Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to Licensee or any Third Party any Intellectual Property Rights or other right, title, or interest in or to any of the Software or documentation or any other Company property.

9. TERM AND TERMINATION

a. This Agreement and the license granted hereunder shall remain in effect until terminated as set forth herein (the "Term").

b. Either Party may terminate this Agreement upon thirty (30) days' notice to the other Party.

c. Company may terminate this Agreement, effective upon written notice to Merchant, if Merchant breaches this Agreement and such breach remains uncured thirty (30) calendar days after Company provides written notice thereof.

d. Company may terminate this Agreement, effective immediately, if:

    i. Company discontinues or stops providing the Software and/or the Company Online Ordering Program; or

    ii. If Merchant fails to pay any fees due pursuant to this Agreement, and such balance has not paid within thirty (30) days.

    iii. If Merchant files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

    iii. If Merchant fails to use Company merchant services in conjunction with the Company Online Ordering Program.

e. Upon expiration or earlier termination of this Agreement, the license granted hereunder shall also terminate, and Merchant shall cease using and destroy all copies of the Software.

10. DISCLAIMER OF WARRANTY

THE SOFTWARE AND ANY DOCUMENTATION ARE PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, COMPANY, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SOFTWARE AND ANY DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, COMPANY PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE SOFTWARE WILL MEET THE

MERCHANT'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

11. **LIMITATION OF LIABILITY**

    TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

    a. **IN NO EVENT WILL COMPANY AND/OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO MERCHANT OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY OR INABILITY TO USE THE SOFTWARE, LOST REVENUES OR PROFITS, DELAYS, INTERRUPTION OR LOSS OF SERVICES, BUSINESS OR GOOD-WILL, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION OR BREACHES IN SYSTEM SECURITY, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

    b. **IN NO EVENT WILL COMPANY'S AND/OR ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO COMPANY PURSUANT TO THE MERCHANT PROCESSING AGREEMENT FOR THREE (3) MONTHS OF THE SERVICES.**

    c. **THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF THE MERCHANT'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.**

12. **TRADEMARKS**

    Company may use Merchant's name and trademarks as part of Company's marketing efforts. Company shall cease using Merchant's trademarks upon the termination of this Agreement.

13. **LAWSUIT AND CLASS ACTION WAIVER**

    Merchant and Company waive their rights to sue before a judge or jury and to participate in a class action, classwide arbitration, private attorney general action, or any other proceeding in which a party acts in a representative capacity. Instead, any claim or dispute will be resolved on an individual basis by a neutral arbitrator whose decision (called an "award") will be final except for a limited right of review under the Federal Arbitration Act. The arbitrator may not consolidate proceedings or join them together without the consent of all parties to all proceedings.

14. **MISCELLANEOUS**

    a. **Governing Law.** This Agreement is governed by and construed in accordance with the internal laws of the State of Pennsylvania without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Pennsylvania. Any legal suit, action or proceeding arising out of this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Pennsylvania in each case located in the city of Allentown and the County of Lehigh, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

    b. **Limitation of Time to File Claims. ANY CAUSE OF ACTION OR CLAIM MERCHANT MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SOFTWARE MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED**.

    c. **Force Majeure.** Company will not be responsible or liable to Merchant, or deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning or Licensee equipment, loss and destruction of property or any other circumstances or causes beyond Company's reasonable control.

    d. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when received by the addressee if sent by a nationally recognized overnight courier; (b) on the date sent by facsimile or e---mail; or (c) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

    e. **Entire Agreement.** This Agreement constitutes the sole and entire agreement between Merchant and Company with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

    f. **Assignment.** Merchant shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Company's prior written consent, which consent Company may give or withhold in its sole discretion.

Any purported assignment, delegation or transfer in violation of this Section is void. Company may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Merchant's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

g. **Third Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

h. **Amendment and Modification.** Merchant may not amend, modify or supplement this Agreement, unless in writing signed by each Party. Company may amend the terms of this Agreement upon thirty (30) days' notice to Merchant. Merchant's use of the Software following such notice shall be deemed by Company as Merchant's acceptance of the amendment. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

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%.

i. **Illegality.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

j. **Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.