

**ADDENDUM TO MERCHANT AGREEMENT**  
**PRODUCTS AND SUPPORT SERVICES**

THIS ADDENDUM, made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_ (“Effective Date”) between \_\_\_\_\_ (“Merchant”) and Pivotal Payments Inc. (“Pivotal”) modifies that certain Merchant Agreement (“Agreement”) of even date herewith, as follows.

1. Pivotal is a reseller of Poynt Co. (“Poynt”) products (“Authorized Products”) and Boomtown Network, Inc. (“Boomtown”) services (“Support Services”), listed in section 2 below.
2. Authorized Products and Support Services. The Authorized Products and Support Services include:
  - a. **PoyntOS:** part of the Poynt terminal and includes hosting and backup for account data, multi-terminal configuration (terminals in the same store share a configuration, catalog, and work together out of the box), Automatic network, PCI and EMV firmware and security updates, OS threat vector monitoring and upgrades, application notifications (for instance order ahead, buy online pickup in store), cloud integration with headless applications, developer SDK for 3 party customization, email receipts and processor integration.
  - b. **Poynt Mobile Application (“HQ”):** secure, mobile application available on both iOS and Android and provides real time access to the users’ terminal(s) in an easy to use interface. Information includes; real time transactions, customer information, summary reporting, real time mobile refunding and access to terminal accessory store. Additional functionality will be added from time to time.
  - c. **Poynt Terminal Application:** part of the Poynt terminal and includes terminal payment application which may include electronic cash register (ECR) functionality. The Poynt device is certified and approved as PCI/DSS compliant per the PCI SSC standards. Details of the Poynt certification are available at the following URL:  
[https://www.pcisecuritystandards.org/popups/pts\\_device.php?appnum=4-10187](https://www.pcisecuritystandards.org/popups/pts_device.php?appnum=4-10187).
  - d. **Poynt 3<sup>rd</sup> Party Store:** provides authorized developers the ability to extend the Poynt functionality through certified applications and services (“3rd Party Apps”) that build on the Poynt SDK.
  - e. **Training and Activation Services:** Full training and activation services are available remotely and are included with your merchant account. Onsite training is available at a premium rate. Training services are scheduled and initiated by Merchant using the following URL:  
[https://www.gboomtown.com/screens/signup/?integrations\\_id=BFB95K](https://www.gboomtown.com/screens/signup/?integrations_id=BFB95K)
  - f. **Technical Support Services:** 24/7 support is available to Merchant through Connect Live Support, an application installed on the Poynt equipment. Connect Live Support is also available for installation by Merchant through iTunes or Google Play Store for mobile devices. Additional terms and conditions may apply.
3. Equipment. Merchant is required to purchase, lease or rent Poynt equipment from Pivotal or its designated vendors in order to use the Authorized Products and Support Services (“Equipment”). Additional terms and conditions shall apply for the purchase, lease or rent of the Equipment.
4. Fees. a) Merchant agrees to pay all fees for the Authorized Products and Support Services set forth in Exhibit I, attached hereto (“Fees”) in accordance with the other payment terms for fees owing to Pivotal under the terms of the Agreement (including any applicable addenda or amendments); b) all shipping and handling fees shall be borne by Merchant as well as any increase in costs Pivotal incurs in connection to the Authorized Products and Support Services, and are payable in addition to the fees set forth in Exhibit 1, attached hereto; c) Notwithstanding any other provision of this Addendum or the Agreement, Pivotal reserves the right to modify the Fees upon thirty (30) days written notice to Merchant;
5. Deactivation. The Authorized Products and Support Services used by Merchant are subject to deactivation, without notice to Merchant, where: (i) Agreement is terminated, (ii) Merchant ceases to participate in using Authorized Products and Support Services or (iii) the Authorized Products and Support Services have been discontinued or Pivotal is no longer permitted to resell the Authorized Products and Support Services. Deactivation of the Authorized Products and Support Services shall also occur where payment of Fees are discontinued, in which case Merchant will be liable for all outstanding Fees owed to Pivotal and/or its vendors;
6. Ownership. Merchant acknowledges that title to, ownership of, and all proprietary rights in and to, the Authorized Products and the Support Services (including without limitation any proprietary electronics, software and technical information of Poynt or its licensor included in any terminals (collectively “Poynt Proprietary Materials”)) are reserved to and are the exclusive property of Poynt and its licensors for the Authorized Products and Boomtown and its licensors for the Support Services. Except for the limited sub-licenses set forth herein, no other right, title or interest in the Authorized Products and Support Services are conveyed to Merchant.
7. Sub-License to Access and Use Authorized Products. Subject to the terms and conditions of this Agreement, Pivotal hereby grants to Merchant the right, during the applicable Term of the Agreement for Authorized Products, to (a) access and use the Authorized Products in the United States of America for the purposes contemplated in this Addendum; (b) execute, download and display the features, functions and graphical interface components of Authorized Products to communicate, transfer and collect data; and (c) display, download, print and reproduce any documentation provided by Boomtown as reasonably required for the use of Authorized Products as contemplated in this Addendum. Merchant shall notify Pivotal immediately of any infringement or alleged infringement of the patents, copyrights, trade secrets, trademarks or other proprietary rights of Poynt or any of the Authorized Products and Support Services which Merchant becomes aware.
8. Further Restrictions. Merchant will not, and will not permit any third party to: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Poynt Proprietary Materials or any software, documentation or data related to the Poynt Proprietary Materials (provided that reverse engineering is prohibited only to the extent such prohibition is not contrary to

applicable law); (b) modify, translate, or create derivative works based on the Poynt Proprietary Materials; (c) use of the Poynt Proprietary Materials for timesharing or service bureau purposes or for any purpose other than for the internal benefit of Merchants; (d) use the Poynt Proprietary Materials other than in accordance with this Agreement or in compliance with all applicable laws and regulations, including but not limited to any privacy laws, and laws or regulations concerning intellectual property, consumer and child protection, obscenity or defamation; or (e) use or access the Poynt Proprietary Materials outside the United States of America.

9. Derived Data. Subject that it is done in a way which is PCI-DSS compliant, Merchant acknowledges that Poynt may collect and share with partners data from Merchants' transactions, with any sharing in aggregate and anonymous form only (for statistical and other purposes) (collectively, "Derived Data"); in any event Derived Data shall not (a) include any "cardholder data" under Payment Card Industry Security Standard's Council rules, (b) any personally identifiable information, (c) any financial information or (d) any other data that Poynt may be prohibited from collecting or sharing under applicable laws, including privacy laws, and regulations.
10. Warranties. SAVE AND EXCEPT THE WARRANTIES EXPRESSLY SET FORTH IN SECTION 10 BELOW, WITH REGARDS TO THE AUTHORIZED PRODUCTS, SUPPORT SERVICES OR EQUIPMENT, PIVOTAL EXPRESSLY EXCLUDES AND DISCLAIMS ANY WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. THE AUTHORIZED PRODUCT OR SERVICE IS PROVIDED TO MERCHANT "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

With respect to Equipment only, Pivotal shall pass-through the following warranty to Merchant, commencing on the day of shipment of Equipment: Poynt warrants for a period of twelve (12) months that the Equipment shall be free from defects and manufacturing faults and shall function in accordance with

applicable specifications ("Warranty for Equipment"). Poynt shall, at its sole discretion and option, repair or replace Equipment that does not comply with existing warranties. Warranty for Equipment does not apply to Equipment for malfunctions attributable to the following causes: (a) natural disasters including fire, smoke, water, earthquakes or lightning; (b) electrical power fluctuations or failures; (c) failure by Pivotal or Merchant to comply with the conditions, storage and transportation instructions given by Poynt or otherwise specified in the applicable documentation, loss or damage in transit, or other abuse, misuse, accident, unauthorized alteration, or liquid spillage, in each case not caused by Poynt, its employees, agents or subcontractors; (d) repair, correction or modification not provided or authorized by Poynt, its employees, agents or subcontractors; (e) the combination or use of the Equipment with software not provided or previously authorized by Poynt in writing where the failure or defect would not have occurred but for such combination or use; and Pivotal's or Merchant's gross negligence or willful misconduct.

Merchant agrees and understand that, at Pivotal's choice, Merchant or Pivotal will ship the nonconforming Equipment to the address specified by Pivotal and the repaired or replaced Equipment will be returned to an address specified by Pivotal.

11. Indemnification. In addition to the indemnification obligations set forth in the Agreement, Merchant agrees to hold, indemnify, and defend Pivotal, and its employees, officers, directors, representatives, and agents from and against any and all claims and losses resulting from:
  - a. Any negligent act, omission, or intentional or willful misconduct of Merchant or any of its affiliates, employees, representatives, or contractors ("Merchant Personnel") related to or arising from this Addendum;
  - b. Merchant's misuse, improper use, alteration or damage of any Pivotal or third party technology;
  - c. Merchant's or Merchant Personnel's infringement or misappropriation of any third party's intellectual property rights.
12. All capitalized terms not otherwise defined herein shall have the meaning given to it in the Agreement. Other than as specifically amended herein, all other terms and conditions of the Agreement shall remain in full force and effect.

**EXHIBIT I (FEES):**

<b><u>Monthly Service Fees</u></b>	
Poynt Monthly Service Fee (first terminal)	\$
Poynt Monthly Service Fee (each additional terminal)	\$
<b><u>Training and Activation Fees</u></b>	
Training and Activation (Onsite)	\$ /hr plus materials
Training and Activation (Onsite Premium)	\$ /hr plus materials

**PIVOTAL PAYMENTS INC.**

**MERCHANT:** \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Signature/Title: \_\_\_\_\_

Signature/Title: \_\_\_\_\_