CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (hereinafter the "Agreement" or "Settlement Agreement") is entered into by Plaintiffs Colleen Sharp, Barbara M. Mize, Tracy Lynn Crenshaw, Shontelle Moore, and Angela Podnizhnyy ("Plaintiffs"), individually and on behalf of all members of the Settlement Class (as defined below) and the Class Members (as defined below), on the one hand, and Defendant Shiftsmart Inc. ("Defendant"), on the other hand, with all Released Parties as third-party beneficiaries, as defined below in Section II.24. Plaintiffs and Defendant will, at times, be collectively referred to herein as "the Parties."

I. RECITALS.

1. On May 15, 2023, Plaintiff Colleen Sharp filed a nonindividual and Private Attorneys General Act ("PAGA") complaint in the Superior Court of California for the County of San Diego entitled *Sharp, et al. v. Shiftsmart Inc., et al.,* Case No. 37-2023-00021163-CU-OE-CTL, asserting claims against defendants Shiftsmart Inc. and Aakashdeep Kumar on behalf of Plaintiff Sharp and other current and former employees. On July 24, 2023, the complaint was amended adding Plaintiff Barbara M. Mize as a named plaintiff (hereinafter, the "Sharp/Mize Complaint"). On October 6, 2023, the complaint was amended, adding individual claims under the PAGA. These claims include (a) failure to pay state minimum/regular/local wages; (b) failure to pay state overtime wages; (c) failure to make payments within the required time; (d) meal and rest break labor code violations; (e) failure to provide accurate wage statements; (f) failure to provide accurate wage statements; (g) failure to maintain records; (h) failure to reimburse work-related expenses; (i) failure to properly pay sick pay; (j) misclassification; (k) failure to maintain workers' compensation; and (l) violations of various miscellaneous provisions of the Labor Code via the PAGA.

2. On February 9, 2024, the Court granted Defendants' Motion to Compel Arbitration of the *Sharp/Mize* case and the case was stayed pending resolution of the outcome of the Sharp and Mize individual arbitrations.

3. On March 4, 2024, Plaintiff Colleen Sharp filed a demand for arbitration with the American Arbitration Association (AAA) entitled *Sharp v. Shiftsmart Inc., et al.,* which case was assigned AAA Case No. 01-24-0002-5074 against defendants Shiftsmart Inc. and Circle K Stores Inc. This arbitration case alleges similar claims as the claims asserted in the Sharp/Mize Complaint, except the claims are asserted as individual claims under the Labor Code.

4. On March 5, 2024, Plaintiff Barbara M. Mize filed a demand for arbitration with the AAA entitled *Mize v. Shiftsmart Inc./Circle K Stores Inc.,* which case was assigned AAA Case No. 01-24-0002-5258 against Defendants Shiftsmart Inc. and Circle K Stores Inc. This arbitration case alleged similar claims as the claims asserted in the Sharp/Mize Complaint, except the claims were asserted as individual claims under the Labor Code.

5. On March 5, 2024, Plaintiff Barbara M. Mize filed a demand for arbitration with the AAA entitled *Mize v. Shiftsmart Inc./Quik Stop Markets, Inc./ EG Retail (America), LLC,* AAA Case No. 01-24-0002-5273, against defendants Shiftsmart Inc., Quik Stop Markets, Inc., and EG Retail (America), LLC. This arbitration demand alleged similar claims as the claims asserted in the Sharp/Mize Complaint, except the claims were asserted as individual claims under the Labor Code.

6. On April 23, 2024, Plaintiffs Tracy Lynn Crenshaw and Caitlyn Crenshaw filed a nonindividual only representative action complaint pursuant to the PAGA in the Superior Court of California for the County of San Diego entitled *Crenshaw, et al. v. Shiftsmart Inc., et al.,* Case No. 37-2024-00019026-CU-OE-CTL (the "Crenshaw Complaint"). The Crenshaw Complaint asserts similar claims as the *Sharp/Mize* Complaint against defendants Shiftsmart Inc., Aakashdeep Kumar, and Circle K Stores Inc., and was deemed related to the Sharp/Mize Complaint by the Court.

7. The Parties agreed to put the aforementioned actions on temporary hold pending a private mediation scheduled for May 20, 2024 with Steven Serratore, Esquire, a private mediator. Defendant warrants and represents that it provided Plaintiffs true and correct documents and accurate information to counsel for Plaintiffs to review and analyze, including data for current and former Shiftsmart workers, current and former Shiftsmart worker counts, and a 20% random sampling of Shiftsmart worker pay and time entry data.

8. On May 20, 2024, the Parties, through counsel, attended a full day of mediation. The mediation was unsuccessful, and settlement negotiations ceased.

9. On September 26, 2024, Plaintiff Barbara M. Mize filed a demand for arbitration with the AAA entitled *Mize v. Shiftsmart Inc./AU Energy LLC,* AAA Case No. 01-24-0007-9516 against defendants Shiftsmart Inc. and AU Energy LLC. This arbitration demand alleged similar claims as the claims asserted in the

Sharp/Mize Complaint, except the claims were asserted as individual claims under the Labor Code.

10. On November 29, 2024, Plaintiff Shontelle Moore filed a demand for arbitration with the AAA entitled *Moore v. Shiftsmart Inc./United Pacific Industries, Inc*., AAA Case No. 01-24-0008-9212, against Defendants Shiftsmart Inc. and United Pacific Industries, Inc. This arbitration demand alleged similar claims as the claims asserted in the Sharp/Mize Complaint, except the claims were asserted as individual claims under the Labor Code.

11. On December 1, 2024, Plaintiff Shontelle Moore filed a demand for arbitration with the AAA entitled *Moore v. Shiftsmart Inc./Frito Lay, Inc.*, AAA Case No. 01-24-0008-9241, against Defendants Shiftsmart Inc. and Frito Lay, Inc. This arbitration demand alleged similar claims as the claims asserted in the Sharp/Mize Complaint, except the claims were asserted as individual claims under the Labor Code.

12. On December 31, 2024, Plaintiff Angela Podnizhnyy filed a complaint in the Superior Court of California for the County of San Diego entitled *Podnizhnyy v. Shiftsmart Inc.,* Case No. 24CL031407N (the "Podnizhnyy Complaint"). The Podnizhnyy Complaint asserted individual claims under the Labor Code.

13. On January 17, 2025, the Court granted Defendants' Motion to Compel Arbitration of the *Crenshaw* case and the case was stayed pending resolution of the outcome of the *Crenshaw* individual arbitrations.

14. On January 17, 2025, Plaintiff Shontelle Moore filed a complaint in the Superior Court of California for the County of San Diego entitled *Moore v. Circle K Stores Inc.*, Case No. 25CU003569N asserting individual claims under the labor code.

15. On March 19, 2025, Plaintiffs Angela Podnizhnyy, Vernell Price, and Leanna Neggesmith filed a class action complaint in the Superior Court of California for the County of San Diego entitled *Podnizhnyy, et al. v. Circle K Stores Inc.,* Case No. 25CU015722C (the "*Podnizhnyy* Class Action Complaint"). The *Podnizhnyy* Class Action Complaint asserted similar claims as the Sharp/Mize Complaint against Defendant Circle K Stores Inc., except the claims were alleged as class claims, not PAGA claims.

16. On April 4, 2025, the Court granted Plaintiffs Tracy Crenshaw and Caitlyn Crenshaw's Motion for Reconsideration of the Court's decision to grant Defendants' Motion to Compel Arbitration of the *Crenshaw* case, reversing its decision and lifting the stay of the *Crenshaw* case.

17. On April 11, 2025, Plaintiffs Shontelle Moore and Demitrious Market-Conley filed a nonindividual and PAGA complaint in the Superior Court of California for the County of San Diego entitled *Moore, et al. v. Shiftsmart Inc., et al.,* Case No. 25CU019054C (the "*Moore* Complaint"). The *Moore* Complaint asserted similar claims as the Sharp/Mize Complaint against Defendants Shiftsmart Inc., Aakashdeep Kumar, Richard Zicchino, Walmart, Inc., United Pacific Industries Inc., and Frito Lay, Inc.

18. Following the Parties' unsuccessful mediation on May 20, 2024, the aforementioned actions continued for more than a year during which time Class Counsel, on behalf of the Plaintiffs and other Shiftsmart workers, filed nine individual arbitrations with the AAA, actively engaged in arbitration discovery, obtained and reviewed large amounts of documents, interviewed more than 100 witnesses, and took no fewer than four depositions, three of which were Person Most Qualified depositions of various corporate representatives.

19. In late April 2025, the Parties recommenced settlement negotiations and Mediator Serratore made a mediator's proposal, which the Parties accepted on May 7, 2025.

20. This Settlement Agreement represents a compromise and settlement of all the disputed claims summarized herein. Nothing in this Settlement Agreement is intended or will be construed as an admission by Defendant and/or Released Parties that the claims in any of the actions contained herein have merit or that Defendant and/or Released Parties bear any liability to Plaintiffs or the proposed class in the *Podnizhnyy* Class Action Complaint on those or any other claims. The Parties agree to certification of the class in the Consolidated Action (as defined in Paragraph 21 below) for purposes of this Settlement only. If for any reason the Settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Consolidated Action. The payment by Defendant Shiftsmart required by this Agreement shall satisfy all claims there were or could have been alleged in the Consolidated Action and the seven aforementioned individual arbitrations with the AAA, including but not limited to claims for misclassification, unpaid wages, civil and statutory penalties, and interest, and shall include payment for PAGA penalties, individual settlement awards, attorneys' fees, litigation costs and expenses, and enhancement payments for the Class Representatives, and all settlement administration costs.

21. To facilitate this settlement, the Parties agree to enter a mutually agreeable stipulation to dismiss the aforementioned AAA arbitrations, consolidate the Sharp/Mize, Crenshaw, Podnizhnyy Class Action, Podnizhnyy and Moore Complaints into one case, and agree to allow Plaintiffs to file one amended Consolidated Complaint under the *Sharp/Mize* Case No. 37-2023-00021163-CU-OE-CTL (the "Consolidated Action"). Some plaintiffs in the Crenshaw, Podnizhnyy Class Action, and Moore Complaints shall be removed, and may enter individual confidential settlement agreements with the Defendant.

22. Additionally, regarding the aforementioned AAA arbitrations, the Parties agree to enter into a mutually agreeable stipulation where each of the aforementioned AAA arbitration matters will be immediately stayed pending Final Approval (defined in Section II.10) of the settlement in the Consolidated Action, with subsequent dismissal of all the aforementioned AAA arbitrations within seven (7) days of the Effective Date.

23. Because this is a putative class action, this Agreement must receive preliminary and Final Approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis. In the event the Court does not enter Final Approval, or in the event Preliminary Approval does not become final for any reason, or is modified in any material respect, or in the event the Effective Date, as defined herein, does not occur, this Agreement shall be deemed null and void *ab initio* and shall be of no force or effect whatsoever, and shall not be referred to or utilized for any purpose and the Parties shall return to the positions they each held as of the day prior to signing this Agreement.

II. DEFINITIONS.

The following are definitions applicable to this Agreement. Definitions contained elsewhere in the body of this Agreement shall also be effective.

1. "Actions" – means, collectively, the actions entitled *Sharp/Mize, et al. v. Shiftsmart Inc., et al.,* Case No. 37-2023-00021163-CU-OE-CTL; *Crenshaw, et al. v. Shiftsmart Inc., et al.,* Case No. 37-2024-00019026-CU-OE-CTL; *Podnizhnyy, et al. v. Circle K Stores Inc., et al.,* Case No. 25CU015722C; *Podnizhnyy v. Shiftsmart Inc.,* Case No. 24CL031407N; *Moore, et al. v. Shiftsmart Inc., et al.,* Case

No. 25CU019054C; *Moore v. Circle K Stores Inc.*, Case No. 25CU003569N; *Sharp v. Shiftsmart Inc., et al.,* AAA Case No. 01-24-0002-5074; *Mize v. Shiftsmart Inc./Circle K Stores Inc.,* AAA Case No. 01-24-0002-5258; *Mize v. Shiftsmart Inc./Quik Stop Markets, Inc./EG Retail (America), LLC,* AAA Case No. 01-24-0002-5273,; *Mize v. Shiftsmart Inc./AU Energy LLC,* AAA Case No. 01-24-0007-9516; *Moore v. Shiftsmart Inc./United Pacific Industries, Inc*.*,* AAA Case No. 01-24-0008-9212; *Moore v. Shiftsmart Inc./Frito Lay, Inc*.*,* AAA Case No. 01-24-0008-9241; *Price v. Shiftsmart, Inc./Zeus Living, Inc*., AAA Case No. 01-24-0008-9244; and *Price v. Airspace Technologies Inc./Shiftsmart Inc.,* AAA Case No. 01-24-0008-9246; and any other cases, charges, demands, or claims that are currently pending that pertain to or otherwise could arise from the claims and/or facts alleged in the Actions or Consolidated Action (defined in Section I.21 above) (including, but not limited to, claims for misclassification and wage and hour violations).

2. "Class Member(s)" – means all persons who provided services and/or performed tasks during at least one partial or complete shift via the Shiftsmart Application in California during the Settlement Class Period, including but not limited to, providing services and/or performing tasks for Defendant's Customers. The Parties agree that Defendant expressly denies that any such person was or is an employee of Defendant, Defendant's Customers, and/or the Released Parties during the time they provided services and/or performed tasks via the Shiftsmart Application. Defendant's Customers also expressly deny that any such person was an independent contractor of Defendant's Customers during the time they provided services and/or performed tasks via the Shiftsmart Application.

3. "Class Counsel" – means Thomas D. Rutledge, Esquire of the Law Office of Thomas D. Rutledge.

4. "Class Counsel Attorneys' Fees and Costs" means attorneys' fees agreed upon by the Parties and approved by the Court for Class Counsel's litigation and resolution of the Actions and Consolidated Action, and all out-of-pocket costs incurred and to be incurred by Class Counsel in the Actions and Consolidated Action, including but not limited to expert/consultant fees, investigation costs, and costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court's approval of the Settlement, administering the Settlement, and obtaining entry of a judgment terminating the Consolidated Action. Class Counsel will request attorneys' fees not in excess of one-third (1/3) of the Gross Settlement Amount. The Attorneys' Fees and Costs will also mean and shall include the additional reimbursement of any costs and expenses associated with Class Counsel's litigation and settlement of the

Actions and Consolidated Action, up to Forty Thousand Dollars ($40,000.00), subject to the Court's approval. Defendant has agreed not to oppose Class Counsel's request for fees and reimbursement of costs as set forth above.

5. "Class Representatives' Enhancement Payment" – means the sum to be paid to Plaintiffs in recognition of their effort and work in prosecuting the Consolidated Action on behalf of Class Members and for the release of those claims alleged in the operative Consolidated Complaint, Released Class Claims, and Released PAGA Claims, as defined below. Subject to the Court granting Final Approval of this Settlement Agreement and subject to the exhaustion of any and all appeals, Plaintiffs will request Court approval of a Class Representative Enhancement Payment of up to Ten Thousand Dollars ($10,000), which shall be paid from the Gross Settlement Fund.

6. "Court" means the Superior Court of California for the County of San Diego.

7. "Defendant" – means Defendant Shiftsmart, Inc. ("Shiftsmart");

8. "Defendant's Customers" – means Shiftsmart's clients who utilize or did utilize Shiftsmart's services in California during the PAGA Period and/or Settlement Period, including but not limited to the entities identified in Addendum A attached hereto, and all of their past, present and future officers, directors, shareholders, partners, customers, affiliates, managers, employees, agents, attorneys, trustees, investors, principals, heirs, representatives, accountants, auditors, consultants, insurers, reinsurers, and assigns, all of their past, present and future successors and predecessors in interest and assigns, subsidiaries, corporations, divisions, affiliates, parents and attorneys, if any, and all past, present and future officers, directors, shareholders, partners, managers, employees, agents, and assigns of such successors and predecessors in interest and assigns, subsidiaries, corporations, divisions, affiliates, parents and attorneys, if any.

9. "Effective Date" – means the later of: (a) the date that the deadline for seeking appellate review of the trial court's Final Approval of the settlement has passed without the filing of a timely appeal or timely request for review, or if any timely objections are withdrawn before Final Approval, then the date of Final Approval; or (b) if a Class Member files an objection to the Settlement, the Effective Date shall be the sixty-first (61) calendar day after the date of Final Approval, provided no appeal is initiated by an objector; or (c) if a timely appeal is initiated by an objector, then the Effective Date will be the date of final resolution of that appeal

(including any requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Settlement.

10. "Final Approval" – refers to the Court's order granting final approval of the Settlement Agreement after the filing of an appropriate motion by Plaintiffs and following appropriate notice to Class Members giving Class Members an opportunity to request exclusion from the class and settlement and to object to the settlement.

11. "Full Release Payment" – means the sum to be paid to Plaintiffs in consideration for their general release of all known and unknown claims, and waiver of any rights provided to them under California Civil Code § 1542.

12. "Gross Settlement Fund" – means the maximum amount Defendant shall pay in connection with this settlement. Subject to Court approval and the terms of this Agreement, the maximum Gross Settlement Amount Defendant shall be required to pay is Four Million One Hundred Seventy-Two Thousand Nine Hundred Dollars ($4,172,900), to be paid by Defendant in full satisfaction of all Released Class Claims and Released PAGA Claims, which includes all Individual Settlement Payments (as defined in Section VIII.1.c.), Attorneys' Fees and Costs, the Class Representative Enhancement Payment, the PAGA Settlement Amount, and Settlement Administration Costs. This Gross Settlement Fund has been agreed to by the Parties based on the aggregation of the agreed-upon settlement value of individual claims. In no event will Defendant be liable for more than the Gross Settlement Fund except as otherwise explicitly set forth herein. There will be no reversion of the Gross Settlement Amount to Defendant. Defendant will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions, which shall not be paid from the Gross Settlement Amount.

13. "Net Settlement Fund" – means the Gross Settlement Fund, less the Court-approved amounts for: (a) Class Counsel Attorneys' Fees and Costs; (b) Class Representatives' Enhancement Payment; (c) Full Release Payment; (d) Settlement Administration Expenses; and (e) the PAGA Settlement Payment.

14. "Notice" or "Notice Packet" – refers to the Notice of Pendency of Putative Class Action, Proposed Settlement and Hearing Date for Court Approval, and Settlement Allocation Form, which form will be prepared jointly by the Parties and included with the Motion for Preliminary Approval.

15. "Notice of Objection" means a Class Member's valid and timely written objection to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the objector's full name, signature, address, and telephone number; (b) a written statement of all grounds for the objection accompanied by any legal support for such objection; (c) copies of any papers, briefs, or other documents upon which the objection is based; and (d) a statement whether the objector intends to appear at the final fairness hearing.

16. "PAGA Member" – means all persons who provided services and/or performed tasks during at least one partial or complete shift via the Shiftsmart Application in California during the PAGA Period, including but not limited to, providing services and/or performing tasks for Defendant's Customers. The Parties agree that Defendant expressly denies that any such person was or is an employee of Defendant, Defendant's Customers, and/or the Released Parties during the time they provided services and/or performed tasks via the Shiftsmart Application. Defendant's Customers also expressly deny that any such person was an independent contractor of Defendant's Customers during the time they provided services and/or performed tasks via the Shiftsmart Application.

17. "PAGA Period" – means the period from May 15, 2022 to the date of preliminary approval.

18. "PAGA Settlement Payment" – means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency ("LWDA") and PAGA Members in connection with Plaintiffs' claims under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, et seq.) ("PAGA Settlement"). The PAGA Settlement Payment will be paid from the Gross Settlement Fund, and will be allocated such that Sixty-Five Percent (65%) of the PAGA Settlement Payment will be paid to the LWDA ("LWDA Payment"), and Thirty-Five Percent (35%) of the PAGA Settlement Payment will be disbursed to PAGA Members, regardless of whether they request to be excluded from the Settlement Class ("PAGA Class Payment"). One hundred percent (100%) of the PAGA Settlement Payment is in settlement of claims for penalties, and therefore shall not be subject to wage withholdings, and shall therefore be reported on IRS Form 1099.

19. "Parties" – means Plaintiffs and Defendant, collectively.

20. "Plaintiffs" – means Colleen Sharp, Barbara M. Mize, Tracy Lynn Crenshaw, Shontelle Moore, and Angela Podnizhnyy individually and in their

capacity as Class Representatives and quasi representatives of state government of California under the PAGA.

21. "Preliminary Approval" – means the date on which the Court enters an order granting preliminary approval of the Settlement Agreement.

22. "Released Class Claims" – means all claims, rights, demands, liabilities, and causes of action that were alleged, or could reasonably have been alleged, arising from or related to the same set of operative facts as those set forth in the operative complaints in the Actions during the Class Period and/or the Consolidated Complaint, including but not limited to: (a) all claims for unpaid minimum, regular, and/or local wages; (b) all claims for unpaid overtime; (c) all claims for meal and rest break violations; (d) all claims for the failure to reimburse for necessary business expenses; (e) all claims for the failure to timely pay wages upon termination; (f) all claims for wage statement violations; (g) all claims for the failure to properly pay sick pay; (h) all claims for employee misclassification; (i) all claims for failure to maintain workers' compensation insurance; (j) all claims for failure to provide and maintain records; (k) all claims for violations of the Investigative Consumer Reporting Agencies Act; (l) failure to make payments within required time; and (m) all claims asserted through California Business & Professions Code §§ 17200, et seq. The release of the Released Class Claims shall be effective as to all Settlement Class Members.

23. "Released PAGA Claims" – means all claims for civil penalties under California Labor Code §§ 2698, *et seq.*, that were brought, or could reasonably have been brought, based on the facts alleged in Plaintiffs' LWDA letters during the PAGA Period, or as were alleged in Plaintiffs' operative complaints in the Actions and/or the Consolidated Complaint, including but not limited to: (a) failure to pay state minimum/regular/local wages; (b) failure to pay state overtime wages; (c) failure to make payments within the required time; (d) meal and rest break labor code violations; (e) failure to provide accurate wage statements; (f) failure to maintain records; (g) failure to provide and maintain accurate payroll records; (h) failure to reimburse business work-related expenses; (i) failure to properly pay sick pay; (j) misclassification; (k) failure to maintain workers' compensation; and (l) violations of California Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5, 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 245-249, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511,

513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the appliable Wage Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2751, 2800, 2801, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7 and the Applicable Wage Order. The release of the Released PAGA Claims shall be effective as to all PAGA Members, regardless of whether a PAGA Member submitted a request for an exclusion from the Class.

24. "Released Parties" – means Defendant and Defendant's Customers, all of their past, present and future officers, directors, shareholders, partners, customers, affiliates, managers, employees, agents, attorneys, trustees, investors, principals, heirs, representatives, accountants, auditors, consultants, insurers, reinsurers, and assigns, all of their past, present and future successors and predecessors in interest and assigns, subsidiaries, corporations, divisions, affiliates, parents and attorneys, if any, and all past, present and future officers, directors, shareholders, partners, managers, employees, agents, and assigns of such successors and predecessors in interest and assigns, subsidiaries, corporations, divisions, affiliates, parents and attorneys, if any.

25. "Request for Exclusion" –means a timely letter submitted by a Class Member indicating a request to be excluded from the Settlement Class. The Request for Exclusion must: (a) set forth the name, address, telephone number and last four digits of the Social Security Number of the Class Member requesting exclusion; (b) be signed by the Class Member; (c) be returned to the Settlement Administrator; (d) clearly state that the Class Member does not wish to be included in the Settlement; and (e) be faxed or postmarked on or before the Response Deadline.

26. "Response Deadline" – means the deadline by which Class Members must postmark or fax to the Settlement Administrator Requests for Exclusion, postmark or fax disputes concerning the calculation of Individual Settlement Payments, or postmark Notices of Objection to the Settlement Administrator. The Response Deadline will be forty-five (45) calendar days from the initial mailing of the Notice Packet by the Settlement Administrator, unless the forty-fifth (45th)

calendar day falls on a Sunday or State holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

27. "Settlement" – means the settlement of the Actions, Consolidated Action, and related claims effectuated by this Agreement.

28. "Settlement Administration Expenses" – means the costs payable from the Gross Settlement Fund to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Gross Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs will be paid from the Gross Settlement Fund, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement.

29. "Settlement Administrator" – means Phoenix Settlement Administrators, or any other third-party administrator selected by the Parties and approved by the Court to effectuate the Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

30. "Settlement Class" and/or "Settlement Class Members" – means all those persons who are Class Members and who have not properly and timely opted out of the Settlement.

31. "Settlement Class Period" – means the period from March 20, 2021 to the date of preliminary approval of this Agreement.

32. "Shiftsmart Application" – means the mobile and/or web-based software platform developed, owned, operated, or controlled by Defendant, through which individuals select, schedule, and are paid for tasks or shifts performed on behalf of Defendant or Defendant's Customers, and includes any version or iteration of the Shiftsmart Application during the Settlement Class Period.

33. "Workweeks" - means any seven (7) consecutive calendar day period during which a Class Member, PAGA Member, or both performed any compensable tasks for Defendant and/or for Defendant's Customers, regardless of the number of hours worked during that period. For purposes of this Settlement, a Class Member

and/or PAGA Member shall be credited with one Workweek for each such week in which they performed at least one compensable task, assignment, or job while classified as a non-employee (*e.g.,* independent contractor, freelancer, or gig worker) during the Settlement Class Period.

III. RELEASE OF CLAIMS.

1. Scope of Settlement Class Members' and PAGA Claims Release.

a. In exchange for the consideration described herein, this Settlement will resolve fully and finally all Released Class Claims and Released PAGA Claims against the Released Parties, and all wage and hour and related claims that were brought or could have been brought in the Actions against the Released Parties, including, but not limited to, any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, actions or causes of action which are alleged, or reasonably could have been alleged based on the facts and claims asserted in the Actions and/or Consolidated Action, including without limitation, claims for misclassification, failure to obtain workers' compensation insurance, restitution and other equitable relief, claims for unpaid minimum wages, wages, and overtime wages, failure to provide rest periods or meal periods or to provide compensation in lieu thereof, meal period penalties, rest period penalties, waiting time penalties, claims for incomplete payroll records and wage statements, failure to timely pay final wages, failure to reimburse for business expenses, unfair business practices, wage statement violations, failure to provide accurate wage statements, failure to maintain required records, sick pay violations, claims for declaratory relief, accounting, or injunctive relief, civil penalties brought under the PAGA on behalf of the LWDA, claims for penalties of any nature whatsoever arising out of the Settlement Class Members' Released Class Claims and Released PAGA Claims, or any other benefit claimed on account of allegations and claims which are reasonably related to the allegations and claims asserted in the Consolidated Action, including any amendment to the pleadings therein. The Settlement Agreement provides for the release of the Released Class Claims and Released PAGA Claims against the Released Parties only and contingent upon Final Approval and full funding of the Gross Settlement Fund.

b. **State of California**. Upon full funding of the Gross Settlement Fund, Defendant shall receive a release from the State of California of all PAGA claims for civil penalties under California Labor Code Sections 2698, *et seq*., predicated on the violations of the applicable California Labor Code sections and applicable Wage Orders as alleged in the LWDA Notices submitted by Plaintiffs and the Consolidated Complaint which occurred during the PAGA Period. The Released PAGA Claims will be released against all Released Parties. The Released PAGA Claims exclude any PAGA claims outside the PAGA Period. The release of the Released PAGA Claims shall be effective as to all PAGA Members, regardless of whether a PAGA Member submitted a Request for Exclusion. The Released PAGA Claims do not include other non-released PAGA claims, underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability and worker's compensation, and claims outside of the PAGA Period.

c. The scope of Settlement and the release of claims herein is intended by the Parties to be as broad as possible and include "all claims," which is expressly intended by the Parties to "includ[e] 'claims that are not expressly enumerated in the release'" as recognized by the Court of Appeal in *Villacres v. ABM Industries, Inc.,* 189 Cal. App. 4th 562, 587 (2010) (acknowledging broad waiver of potential claims, including PAGA-based claims). Thus, the Parties intend this release to cover all claims for relief of any kind based on the allegations raised by Plaintiffs in the Actions as defined in Section II.1 above, Consolidated Action, and the PAGA notices filed by Plaintiff(s) against Defendant and/or Defendant's Customers, and all transactions and occurrences upon which those claims were based, including all legal remedies and damages brought under state, local or federal law, any claim brought pursuant to the common law, all injunctive remedies and restitution, all statutory damages and civil penalties sought on behalf of the LWDA under the PAGA (including, but expressly not limited to relief demanded for alleged violations of Labor Code subdivision (k) of § 96, §§ 98.6, 200, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, 210, and 212, subdivision (d) of §§ 213, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225.5, 226, 226.3, 226.6, 226.7, 226.8, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, 231, subdivision (c) of § 232, subdivision (c) of § 232.5, §§ 233, 234, 245-249, 256, 351, 353, 403, subdivision (b) of § 404, §§ 432, 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 558, 558.1, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.3, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of § 1695.5, §§ 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of § 2673.1, §§ 2695.2, 2698, 2699, 2751, 2753, 2800, 2801, 2802, 2804, 2806, 2810, and 2810.3, subdivision (b) of § 2929, and §§ 3073.6, 3700-3715, 6310, 6311, and 6399.7 as well as alleged violations of IWC Wage

Orders, the California Labor Code, California Business & Professions Code § 17200 *et seq.*, or any other source thereof, and all costs and attorneys' fees related thereto, including those available under Code of Civil Procedure § 1021.5.

d. **Releases by Settlement Class Members.** Upon full funding of the Gross Settlement Fund, and except as to such rights or claims as may be created by this Settlement Agreement, each Settlement Class Member, together and individually, on their behalf and on behalf of their respective heirs, executors, administrators, agents, successors, assigns, representatives, and attorneys, shall fully and forever release and discharge all of the Released Parties, and/or any of them, from each of the Released Class Claims arising during the Settlement Class Period.

e. **Releases by PAGA Members.** Upon full funding of the Gross Settlement Fund, and except as to such rights or claims as may be created by this Settlement Agreement, each PAGA Member, together and individually, on their behalf and on behalf of their respective heirs, executors, administrators, agents, successors, assigns, representatives, and attorneys, shall fully and forever release and discharge all of the Released Parties, and/or any of them, from each of the Released PAGA Claims during the PAGA Period.

2. Class Certification for Settlement Purposes Only.

a. The Parties expressly note and agree to class certification for purposes of Settlement only. The Parties further agree that certification for the purposes of this Settlement is not an admission that class certification is proper under the standards applied to contested certification motions and that this Settlement Agreement will not be admissible in this or any other proceeding as evidence that either (a) a class action should be certified or (b) Defendant and/or Released Parties are liable to any Class Member(s), other than according to the Settlement's terms. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, Defendant reserves the right to contest certification of any class for any reason and Defendant reserves all available defenses to the claims in the Consolidated Action. Plaintiffs reserve the right to move for class certification on any grounds available to contest Defendant's defenses.

b. Any Class Member who elects to exclude himself/herself/themselves from the Agreement and the terms thereof will not be able to benefit from any of the terms of the Settlement and shall not have the benefit of the limited waiver on class and/or collective claims including, but expressly not limited to the Parties' waiver of any claims or defenses against class-wide and other collective relief, statute of limitations defenses, and defenses that would preclude the certification or establishment of any class of aggrieved or similarly situated claimants. The Parties expressly recognize there has been no finding in this action that class-wide or other collective relief is justified under the facts and circumstances relating to the allegations raised by Plaintiffs in the Consolidated Action. Indeed, there is a dispute between the Parties as to whether class-wide or other collective relief would be available or appropriate because the facts and circumstances relating to the allegations raised by Plaintiffs do not support class treatment because of questions of commonality, typicality, etc. No Class Member (including any who choose to exclude himself/herself/themselves from the Settlement) may rely on this Agreement or the terms thereof as they may be applied to other Class Members as a basis for seeking to bring any existing or future class allegation or other claim.

3. Scope of the Named Plaintiffs' Release.

a. **Plaintiffs' Waiver of Rights Under California Civil Code Section 1542**. As partial consideration for the Class Representatives' Enhancement Payment, and for the purpose of implementing a full and complete release of their claims against Released Parties (as agreed to in the concurrently executed Confidential Releases), Plaintiffs expressly acknowledge that the releases given in this Agreement are intended to include, without limitation, any and all claims that Plaintiffs may have against Released Parties, including but not limited to those claims that Plaintiffs did not know or suspect to exist in their favor at the time of the effective date of this Agreement, regardless of whether the knowledge of such claims, or the facts upon which they might be based, would have materially affected the settlement of this matter; and that the consideration given under this Agreement, including Defendant's agreement to the Full Release Payments to Plaintiffs, was also for the release of those claims and contemplates the extinguishment of all known, and any unknown, claims. Plaintiffs make this complete release of claims, waiving any rights provided to them under California Code of Civil Procedure § 1542, which provides as follows:

> **A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

b. As a condition of having the right to receive any Class Representatives' Enhancement Payment, Plaintiffs must file a notice of dismissal with prejudice of any of the Actions pending within 72 hours of the Effective Date.

c. Upon full funding of the Gross Settlement Fund, Plaintiffs generally, release and discharge the Released Parties from any and all claims, demands, rights, liabilities, and/or causes, of any form whatsoever, arising under federal, state, local, or common laws, rules, or regulations, whether known or unknown, unforeseen, unanticipated, unsuspected or latent, that have been or could have been asserted by Plaintiffs, or Plaintiffs' heirs, successors and/or assigns, whether directly, indirectly, representatively, derivatively or in any other capacity, against Defendant, Defendant's Customers, or any of the other Released Parties, arising at any time before entry of the Judgment, including but not limited to those claims raised or that could have been raised in the Actions and/or Consolidated Action, and those arising from or related to Plaintiffs' alleged employment with Defendant and Defendant's Customers ("Plaintiffs' Released Claims"). This release of Plaintiffs' Released Claims releases the Released Parties from any claim that Plaintiffs could maintain in any action against any Released Party that occurred during the Settlement Class Period. Notwithstanding the foregoing, this waiver and release of claims does not extend to any rights which as a matter of law cannot be waived and released by private agreement, including rights to sue to enforce this Agreement and rights to vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits and claims outside the Settlement Class Period.

d. Plaintiffs acknowledge that they may discover facts or law different from, or in addition to the facts or law that they know or believe to be true with respect to the claims and matters released by way of this Agreement and agrees, nonetheless, that this Agreement and the releases contained in it shall be and remain effective in all respects, notwithstanding such different or additional facts or the discovery of them. The Parties declare and represent that they intend this Agreement to be complete and not subject to any claim of mistake, and that the releases herein express full and complete releases, and that they intend that the releases herein shall be final and complete.

IV. ALLOCATION OF GROSS SETTLEMENT FUND.

The Gross Settlement Fund will be allocated as follows:

1. Net Settlement Fund.

The Settlement Administrator shall first deduct from the Gross Settlement Fund the amounts approved by the Court for the Class Counsel Attorneys' Fees and Costs, the Settlement Administration Expenses, Class Representatives' Enhancement and Full Release Payments, and the LWDA Payment. The remaining amount shall be known as the "Net Settlement Fund," which shall be distributed as described in Section VIII.1 of this Agreement.

2. PAGA Settlement Amount.

Subject to Court approval, the Parties agree that One Hundred Thousand Dollars ($100,000) from the Gross Settlement Fund will be allocated to the PAGA Settlement. Per Labor Code § 2699(m), sixty-five percent (65%), or $65,000, of the PAGA Settlement Amount will be paid to the LWDA. The remaining thirty-five percent (35%), or $35,000, will be disbursed to PAGA Members as the "PAGA Class Payment", regardless of whether they request to be excluded from the Settlement Class. One hundred percent (100%) of the PAGA Settlement Payment is in settlement of claims for penalties, and therefore shall not be subject to wage withholdings, and shall therefore be reported on IRS Form 1099.

3. Attorneys' Fees and Costs.

a. The Parties agree that Class Counsel will request an award of attorneys' fees not in excess of one-third (1/3), or $1,390,967 of the Gross Settlement Fund. Defendant agrees not to oppose Class Counsel's request for fees and reimbursement as set forth herein. Should the Court approve less than the requested amount, such reduced approval shall not be grounds for revocation or rescission of this Settlement. Class Counsel may elect to have the Settlement Administrator, directly or indirectly, disperse all or part of such attorneys' fees award in periodic payments, through a structured settlement. Class Counsel will be solely responsible for bearing any and all costs, fees, and expenses of administration for any periodic payments of such award and shall be fully responsible for any taxes, costs, liabilities, attorneys' fees, and/or penalties resulting from any issues, claims, and/or disputes arising out of, related to, or incurred in connection with any such periodic payments, including without limitation, any such issues, claims, and/or disputes brought by the state or federal government concerning the payment of taxes thereon. Class Counsel shall indemnify, defend, and hold Released Parties harmless for any and all taxes, costs, liabilities, attorneys' fees, and/or penalties resulting from any issues, claims, and/or disputes arising out of, related to, or incurred in connection with any such periodic payments. To the extent the Court approves any award for attorneys' fees that does not equal one third (1/3) of the Gross Settlement Fund, Class Counsel retains the right to appeal the Court's award. Should Class Counsel appeal the Court's award, the difference between the amount awarded and the amount disputed on appeal shall be retained by the Settlement Administrator pending Class Counsel's appeal. After resolution of any appeal, any funds not awarded to Class Counsel then in possession of the Settlement Administrator will be added to the Net Settlement Fund for distribution to Settlement Class Members by the Settlement Administrator on a proportional basis relative to the size of their settlement shares, in accordance with other administration and distribution requirements hereunder, and Class Counsel shall pay any additional costs incurred by the Settlement Administrator for this purpose. The Parties agree that the Court's approval of any request for attorneys' fees and costs is not a condition of the Agreement and that an award of less than the amounts requested would not give rise to a basis for Plaintiffs or their counsel to abrogate the Agreement. Plaintiffs acknowledge that they have been advised by this writing of the proposed award of fees associated with this Settlement and hereby consent thereto. Payroll tax withholding and deductions, if any, will not be taken from the Attorneys' Fees and Costs amount and instead one or more Forms 1099 will be issued to Class Counsel with respect to those payments. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Attorneys' Fees and Costs. This Settlement is not conditioned upon the Court awarding Class Counsel any particular amount of Attorneys' Fees or Costs.

b. Class Counsel may also request reimbursement of up to Forty Thousand Dollars ($40,000) in actual and/or anticipated costs and other expenses incurred in connection with this Consolidated Action and the achievement of this settlement. These amounts will cover any and all work performed and any and all costs incurred in connection with the Actions and Consolidated Action, including without limitation all work performed and all costs incurred to date, and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement, including any objections raised, responses to any intervenors and any appeals necessitated by those objections or intervenors. Should the Court approve less than the requested amount of costs, such reduced approval shall not be grounds for revocation or rescission of this Settlement Agreement.

c. **Class Representation Enhancement and Full Release Payments.** Up to Ten Thousand Dollars ($10,000), per Class Representative, shall be allocated from the Gross Settlement Fund in recognition of the contributions of Plaintiffs, as an Enhancement Payment. Defendant agrees not to oppose any application or motion for a Class Representative Enhancement Payment of up to Ten

Thousand Dollars ($10,000). Plaintiffs participated actively in the preparation and prosecution of this Consolidated Action, and the contributions in time and risk by Plaintiffs were instrumental in achieving the settlement result. The Class Representatives' Enhancement Payment will be paid from the Gross Settlement Fund**,** in addition to the payment to which Plaintiffs have the right to receive as a member of the Settlement Class. Plaintiffs will be solely and legally responsible to pay any and all applicable taxes on the Class Representative Enhancement Payment. Payroll tax withholding and deductions will not be taken from the Class Representative Enhancement Payment and instead a Form 1099 will be issued to the Plaintiffs with respect to any such payment, who will assume full responsibility and liability for the taxes, penalties, and/or any interest arising as a result of payment of the Class Representative Enhancement Payment. Court approval is required for any Class Representatives' Enhancement, and the Plaintiffs agree they will provide information and documentation to support the approval of the requested enhancement. However, even in the event that the Court reduces or does not approve the requested Class Representatives' Enhancement, Plaintiffs shall not have the right to revoke this Settlement Agreement for that reason, and the Agreement will remain binding. If the Court approves a Class Representative Enhancement Payment of less than Ten Thousand Dollars ($10,000), the remainder will be retained in the Net Settlement Fund for distribution to Settlement Class Members. In exchange for a general release of claims per Civil Code § 1542 provided herein by the Plaintiffs, each Plaintiff shall additionally receive a Full Release Payment of $10,000 apiece as they are waiving unknown claims against Released Parties.

4. Settlement Administration Expenses.

a. The Parties have agreed to engage a third-party administrator to administer this Settlement. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments from the Gross Settlement Fund, which is currently estimated to be Twenty Thousand Dollars ($20,000). Defendant shall make a one-time deposit of the Gross Settlement Fund into a Qualified Settlement Account to be established by the Settlement Administrator within sixty (60) calendar days of the date of the Court's Order granting Final Approval or, solely in the event that there are any objections to the settlement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (i) the last date on which any appeal might be filed or (ii) the successful resolution of any appeal(s)—including expiration of any time to seek reconsideration or further review. A separate amount for employer payroll taxes based on the amount allocated to wages will also be deposited by Defendant with the Settlement Administrator at the time above.

b. After the Effective Date, the Gross Settlement Fund will be used for: (a) Individual Settlement Payments; (b) the LWDA Payment; (c) the Class Representative Enhancement Payment; (d) Attorneys' Fees and Costs; and (e) Settlement Administration Costs. If no objection to the Settlement is made, then Defendant will deposit the Gross Settlement Amount and the employer's share of payroll taxes within sixty (60) calendar days after the Effective Date ("Funding Date"). If an objection to the Settlement is made but no appeal is filed, then Defendant shall fund the Gross Settlement Fund and the amount necessary to pay Defendant's share of payroll taxes within thirty (30) calendar days of the expiration of the appeal period. If an appeal is filed, then Defendant shall fund the Gross Settlement Fund and the amount necessary to pay Defendant's share of payroll taxes within thirty (30) calendar days of the date the Judgment is Final and no longer subject to appeal. All of the Gross Settlement Fund will be disbursed pursuant to this Settlement Agreement without the need to submit a claim form and none of the Gross Settlement Fund will revert to Defendant. If this Settlement is not finally approved by the Court in full, or is terminated, rescinded, canceled or fails to become effective for any reason, then no portion of the Gross Settlement Fund shall be paid.

c. All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Twenty Thousand ($20,000) will be drawn from the Gross Settlement Fund. These costs, which will be paid from the Gross Settlement Fund, will include, inter alia, the required tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing Notice Packets, calculating and distributing the Gross Settlement Fund, and providing necessary reports and declarations.

V. SETTLEMENT ADMINISTRATION PROCEDURE.

1. Conforming the Pleadings.

As a condition of this Settlement, the Parties agree to consolidate the *Crenshaw*, *Moore*, *Podnizhnyy* Class Action, and *Podnizhnyy* Complaints into the *Sharp* Complaint and proceed in the *Sharp/Mize* case by allowing Plaintiffs to consolidate the Actions and file a Consolidated Complaint in the Superior Court of California to conform the pleadings to the discussions of allegations and liabilities between the Parties, as described above in connection with the scope of the claims released (*see* Section III, *supra*) via stipulation. The Consolidated Action shall not be dismissed unless and until this Settlement becomes final.

2. <u>Motion for Preliminary Approval.</u>

Within a reasonable time after execution of this Settlement Agreement by the Parties and the filing of the Consolidated Complaint in Court, Plaintiffs shall promptly apply for a hearing before the Court to request the Preliminary Approval of the Settlement Agreement, and for the entry of a Preliminary Approval Order:

a. Conditionally certifying the Settlement Classes for purposes of this Settlement Agreement only;

b. Appointing Thomas D. Rutledge, Esquire of the Law Office of Thomas D. Rutledge as Class Counsel;

c. Appointing Plaintiffs as the Class Representatives;

d. Approving Phoenix Settlement Administrators, as Settlement Administrator;

e. Preliminarily approving this Settlement and its terms as fair, reasonable, and adequate;

f. Approving the form and content of a Notice Packet and directing the mailing of same; and

g. Scheduling a Final Approval hearing.

3. <u>Appointment of Settlement Administrator.</u>

After obtaining quotes from mutually acceptable and qualified settlement administrators, the Parties have mutually agreed to ask the Court to appoint Phoenix Settlement Administrators as the qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Settlement Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include (i) translating the Class Notice into Spanish; (ii) preparing, printing, and mailing the Notice Packet to all Class Members; (iii) conducting a National Change of Address search to update Class Member addresses before mailing the Notice Packets; (iv) re-mailing Notice Packets that are returned to the Class Member's new address; (v) setting up a toll-free telephone number to receive calls from Class Members; (vi) receiving and reviewing for validly completed Requests for Exclusion; (vii) providing the Parties with weekly status reports about the delivery of Notice Packets and receipt of completed Requests for Exclusion; (viii) calculating Individual Settlement Payments; (ix) issuing the checks to effectuate the payments due under the Settlement; (x) issuing the tax reports required under this Settlement; (xi) keeping the Parties timely apprised of the performance of all Settlement Administrator responsibilities required by the Settlement; and (xii) otherwise administering the Settlement pursuant to this Settlement Agreement. The Settlement Administrator will have the authority to resolve all disputes concerning the calculation of a Settlement Class Member's Individual Settlement Payment, subject to the dollar limitations and calculations set forth in this Settlement Agreement. The Settlement Administration Expenses, including the cost of printing and mailing the Notice Packet, will be paid out of the Gross Settlement Fund.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation § 468B-1.

4. <u>Administration Process</u>.

The Parties agree to cooperate in the administration of the settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement. The Parties also have the right to monitor and review the administration of the Settlement to verify that the monies allocated under the Settlement are distributed in the correct amount, as provided for in this Settlement Agreement.

5. <u>Preliminary Approval Hearing</u>.

The Preliminary Approval Order will provide for the Notice Packet to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiffs will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed Notice of Class Action Settlement, attached hereto as **Exhibit 1** ("Notice Packet"). Plaintiffs via Class Counsel will be responsible for drafting all documents necessary to obtain preliminary approval. The Parties agree that provisional certification of the class is for settlement purposes only and is in no way an admission by Defendant in the

Actions, Consolidated Action, and/or in any other proceeding that class certification is proper. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear and support the granting of the motion. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Settlement Class Members or the binding effect of the Settlement on Settlement Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval.

VI. NOTICE TO SETTLEMENT CLASS.

1. Notice Timing and Distribution.

Submitted with the motion for preliminary approval will be draft Notice documents intended to provide efficient notice to members of the Settlement Class as follows: Within ten (10) calendar days after entry of an order preliminarily approving this Agreement, Defendant and Released Parties will provide the Settlement Administrator with the names, last known addresses, email addresses, phone numbers, social security numbers, the dates of when tasks were performed, and the number of workweeks worked by each Settlement Class member during the Settlement Period (the "Class Data"). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator. To protect Class Members' privacy rights, the Settlement Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Settlement Administrator employees who need access to the Class Data to effect and perform under this Settlement Agreement. Defendant has a continuing duty to immediately notify Plaintiffs via Class Counsel if they discover that the Class Data omitted class member identifying information and to provide a corrected or updated Class Data as soon as reasonably feasible. If any or all of the Class Data is unavailable to Defendant, Defendant will so inform Plaintiffs via Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. Within five (5) calendar days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members; (ii) update the addresses of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class Data, and retain proof of mailing. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member**.**

a. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed promptly (i.e., no later than seven (7) business days after receipt of the undelivered Notice Packet) via regular First-Class U.S. Mail to the forwarding address affixed thereto. The Settlement Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace”, sending an email to the Class Member’s last known email address to obtain an updated mailing address, or other search using the name and/or address of the Class Member involved within five (5) calendar days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall immediately resend the Notice Packet to the Settlement Class member. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. It will be conclusively presumed that, if an envelope so mailed has not been returned within thirty (30) days of the mailing, the Settlement Class member received the Notice Packet. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have twenty (20) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member’s Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or the Defendants’ attorneys to provide notice of the proposed settlement.

b. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement’s principal terms; (c) the Settlement Class and PAGA Member definitions; (d) the total number of Workweeks each respective Class Member and PAGA Member worked for Defendant or Defendant’s Customers during the Class Period and PAGA Period; (e) each Class Member’s and PAGA Member’s estimated Individual Settlement Payment as defined in Section VIII.1.C of this Agreement and the formula for calculating Individual Settlement Payments, as set forth in Section VIII.1.C of this Agreement; (f) the dates which comprise the Class Period and PAGA Period; (g) instructions on how to submit Requests for Exclusion or Notices of Objection; (h) the deadlines by which the Class Member must postmark or fax Request for Exclusions, or postmark Notices of Objection to the Settlement; and (i) the claims to be released.

c. If the procedures detailed in this Settlement Agreement are followed, notice to Class Members shall be deemed to have been fully satisfied, and if the intended recipient of the Notice Packet does not receive the Notice Packet, the intended recipient shall nevertheless remain a Class Member and shall be bound by all terms of the Settlement and the judgment.

2. Options Upon Notice.

The Notice to Settlement Class will inform members of the Settlement Class of their options, including the following:

a. **Notice of Settlement Award and Deadline to Dispute.** Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Class Member's estimated Settlement Award as well as the Class Member's number of workweeks worked during the Relevant Time Period. Class Members will have the opportunity, should they disagree with these records regarding the information stated in the Notice of Settlement Award, to provide documentation and/or an explanation to show contrary information. Defendant's records will be presumed correct, but the Settlement Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith to resolve it. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline, and will be decided within twenty (20) business days after the Response Deadline. The postmark date for the dispute shall be the exclusive means used to determine whether a dispute has been timely submitted. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. Any dispute as to this allocation shall be resolved by the Settlement Administrator. If a Notice Packet is re-mailed less than fifteen (15) days prior to the Response Deadline, the response date for disputes will be extended an additional thirty (30) days. The Court shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement, if the Parties cannot reach an agreement.

b. **Defective Submissions**. If a Class Member's Request for Exclusion is defective as to the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter within ten (10) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have until (a) the Response Deadline or (b) twenty (20) calendar days from the date of the cure letter, whichever date is later, to postmark or fax a revised Request for Exclusion. If the revised Request for Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

c. **Requests for Exclusion.** Any Class Member who wishes to opt-out of the class settlement must complete and mail a Request for Exclusion to the Settlement Administrator within forty-five (45) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline").

(1) The Notice Packet shall state that Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Class Member; (2) contain a statement that the Class Member wishes to be excluded from the class settlement; (3) be signed by the Class Member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will be deemed invalid for exclusion from the class settlement, except a Request for Exclusion not containing a Class Member’s telephone number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. If a Notice Packet is re-mailed less than fifteen (15) days prior to the Response Deadline, the response date for opt-outs will be extended an additional thirty (30) days. If a question is raised about the authenticity of a signed Request for Exclusion, the Settlement Administrator will have the right to demand additional proof of the Class Member’s identity. Any Class Member who requests to be excluded from the class settlement will not have the right to any recovery under the Settlement provisions and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon. Because this Settlement resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as proxies and as Private Attorneys General of, and for, the State of California and the LWDA, the PAGA settlement and release provisions will apply to each PAGA Member without any option for exclusion, and each such individual shall have the right to his/her/their share of the PAGA Distribution. Defendant will remain free to contest any claim brought by any Class Member that would have been

barred by this Settlement Agreement, and nothing in this Settlement Agreement will constitute or be construed as a waiver of any defense Defendant and/or Defendant's Customers has or could assert against such a claim. Persons who submit a Request for Exclusion shall not be permitted to file objections to the settlement or appear at the Final Approval hearing to voice any objections to the settlement. Any Class Member who does not submit a Request for Exclusion is automatically deemed a Settlement Class Member and will be bound by all of its terms, including those pertaining to the Released Class Claims, as well as any judgment that may be entered by the Court if it grants Final Approval of the Settlement; there is no requirement that any claim form be submitted.

(2) **Report**. Not later than ten (10) calendar days after the deadline for submission of Requests for Exclusion, the Settlement Administrator will provide the Parties' Counsel with a complete and accurate list of all Settlement Class Members and all non-Settlement Class Members.

(3) If ten percent (10%) or more of the Settlement Class Members validly request exclusion from the class settlement, the Defendant may, at its sole discretion, elect to revoke, withdraw, and void this Settlement and its stipulation to class certification, at any time before Final Approval, by communicating that decision to both the Settlement Administrator and Class Counsel, provided however, the Defendant will be responsible for any costs and fees incurred by the Settlement Administrator. Defendant must exercise this right of rescission in writing to Plaintiffs via Class Counsel within fourteen (14) calendar days after the Response Deadline. However, the Parties will have no further obligations under the Settlement Agreement, including any obligation by Defendant to pay the Gross Settlement Fund, or any amounts that otherwise would have been owed under this Settlement Agreement. If the number of workweeks between the start of the Settlement Class Period through the date of filing the motion for preliminary approval increases by more than 10% from the estimates Defendant provided to Plaintiffs to induce this settlement, which was 45,352 workweeks, there will be a pro rata increase to the Settlement Amount for any additional workweeks from the start of the Settlement Class Period through the date of filing the Motion for Preliminary Approval.

(4) The Parties and their counsel agree not to take any action to initiate any contact with any Class Member to opt out of and/or object to the Settlement. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with, and to advise, Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

d. **Objections.** To object to the Settlement Agreement, a Class Member may fax, email, or mail a valid Notice of Objection to the Settlement Administrator on or before the Response Deadline, or appear in person at the Final Approval Hearing. Settlement Class members who do not request exclusion may object to this Settlement Agreement within forty-five (45) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline"), as explained in the Class Notice, by submitting a written objection with the Settlement Administrator (who shall serve all objections as received on Parties’ counsel, as well as file all such objections with the Court). Counsel for Defendant and Class Counsel shall file any responses to objections before the Final Approval Hearing. To be valid, any objection must: (1) contain the objecting Class Member’s full name, last four digits of his or her Social Security Number, telephone number and current address; (2) include all objections and the factual and legal bases for same; (3) include all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. Class Members who fail to object either by submitting a valid Notice of Objection or appearing in person at the Final Approval Hearing will be deemed to have waived all objections to the Settlement and will be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement Agreement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement Agreement or appeal from the Final Approval order and judgment. Class Counsel will not represent any Class Members with respect to any such objections to this Settlement. If a Class Member timely submits both a Notice of Objection and a Request for Exclusion, the Request for Exclusion will be given effect and considered valid, the Notice of Objection shall be rejected, and the Class Member shall not participate in or be bound by the Settlement. Class Members who do not submit written objection(s) or appear at the Final Approval Hearing to explain their objection(s) shall be deemed to have waived any objection(s) and shall be foreclosed from making any objection(s) (whether by appeal or otherwise) to the Settlement Agreement.

VII. <u>FINAL ORDER AND JUDGMENT.</u>

1. Upon expiration of the deadlines to postmark Requests for Exclusion or Notices of Objection to the Settlement Agreement, and with the Court’s permission, a final fairness hearing will be conducted to determine the Final Approval of the Settlement Agreement along with the amounts properly payable for: (a) Attorneys’ Fees and Costs; (b) the Class Representative Enhancement Payment; (c) Individual Settlement Payments; (d) the LWDA Payment; and (e) all Settlement

Administration Costs. The final fairness hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Plaintiffs via Class Counsel will be responsible for drafting all documents necessary to obtain Final Approval. Plaintiffs via Class Counsel will also be responsible for drafting the attorneys' fees and costs application to be heard at the Final Approval hearing. If the Court does not grant Final Approval of the Settlement or grants Final Approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Settlement Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the PAGA Class Payment, Class Representative Enhancement Payments, or the Attorneys' Fees and Costs, will not constitute a material modification to the Settlement within the meaning of this paragraph.

2. Additionally, no later than ten (10) days before the date by which the Plaintiffs file the motion for Final Approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Settlement Agreement and detailing the Requests for Exclusion it received (including the numbers of valid and deficient Requests) and objections received. Prior to the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. Upon Final Approval of the Settlement, a Final Order and Judgment shall be entered by the Court which shall, among other things:

a. Grant Final Approval to the Settlement as fair, reasonable, adequate, in good faith and in the best interests of the Class as a whole, and to order the Parties to carry out the provisions of this Agreement.

b. Award amounts for Class Counsel Attorneys' Fees and Costs, the Class Representatives' Enhancement and Full Release Payments, and Settlement Administration Expenses.

c. Adjudge that the Settlement Class Members are conclusively deemed to have released the Defendant and the Released Parties of and from any and all rights, claims, demands, liabilities, causes of action, liens, judgments, and PAGA Claims released by PAGA Members arising out of or in any way related to the matters within the scope of the Consolidated Action, consistent with the release provisions herein.

d. Bar and permanently enjoin each Settlement Class Member from prosecuting against the Defendant and Released Parties any and all of the Released Class Claims and Released PAGA Claims which the Settlement Class Members and PAGA Members have arising out of, based upon, or otherwise related to the Consolidated Action.

e. Confirm that the Parties' resolution of claims under the PAGA meets all required standards and that the release of such claims as set forth in this Settlement precludes the State of California or any other representative thereof (including any other PAGA Member) from pursuing claims released herein on behalf of itself or any PAGA Member affected by this Settlement and its release terms.

f. Except for the PAGA claims, dismiss this action without prejudice as to all putative Class Members who are not Settlement Class Members.

g. Dismiss the Actions and Consolidated Action to all Released Parties with prejudice as to all Settlement Class Members and PAGA Members on all claims.

4. In the event that this Agreement is disapproved by the Court, fails to become effective, or is reversed, withdrawn, or modified by the Court or any other court with jurisdiction, this Agreement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, further proceedings. In the event of the Court's disapproval, as stated above, Plaintiffs and Defendant agree to timely meet and confer in good faith to address any reasons the trial court may have declined to approve the settlement to achieve approval of the settlement upon re-submission to the Court. Failure of the Court to grant approval will be grounds for the Parties to terminate this Settlement Agreement and the terms of this Settlement Agreement, except that the Parties shall each be responsible for 50% of the costs of, and any payments due to the Settlement Administrator for non-cancellable services performed up to that time.

5. In the event an appeal is filed from the Final Approval Order for any reason, or any other appellate review is sought, the duties and obligations of the Parties to this Agreement include the duty to defend the approval on any appeal. Notwithstanding the foregoing, Defendant shall have no obligation to defend, support, or advocate for any award of attorneys' fees, costs, or expenses to Class Counsel.

6. Judgment and Continued Jurisdiction.

Upon Final Approval of the Settlement by the Court or after the final fairness hearing, the Parties will present the judgment to the Court for its approval. After entry of the judgment, the Court will have continuing jurisdiction under Code of Civil Procedure § 664.6 solely for purposes of addressing: (a) the interpretation, implementation. and enforcement of the terms of the Settlement and all orders and judgments entered in connection therewith, (b) Settlement administration matters, and (c) such post-judgment matters as may be appropriate under court rules or applicable law or as set forth in this Settlement Agreement. Further, upon the Court's Final Approval of the Settlement, the Settlement Administrator shall post a copy of the judgment on its website within seven (7) calendar days of entry of the judgment.

VIII. DISTRIBUTION OF SETTLEMENT PROCEEDS.

1. Net Settlement Fund.

a. The entire Net Settlement Fund will be distributed to Settlement Class Members. No portion of the Net Settlement Fund will revert to or be retained by Defendant. As noted above, Settlement Class Members are not required to submit a claim form to receive a payment from the Settlement.

b. Allocation of the Net Settlement Fund: The Net Settlement Proceeds will be distributed to each Settlement Class Member based on each Settlement Class Member's pro rata share of the total number of Workweeks within the Settlement Class Period he/she/they performed tasks via the Shiftsmart Application.

c. For each individual, their share is calculated as the number of Workweeks heshe/they performed tasks via the Shiftsmart Application within the Settlement Class Period divided by the total number of Workweeks worked by all Settlement Class Members during the Relevant Time Period. To determine each Settlement Class Member's estimated "Individual Settlement Payment" from the Net Settlement Fund, the Settlement Administrator will use the following formula: The Net Settlement Fund will be divided by the aggregate total number of Workweeks, resulting in the "Workweek Value." Each Settlement Class Member's "Individual Settlement Payment" will be calculated by multiplying each individual

Settlement Class Member's total number of Workweeks by the Workweek Value. The Individual Settlement Payment will be reduced by any required deductions for each Settlement Class Member as specifically set forth herein. The entire Net Settlement Fund will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payment for each Settlement Class Member according to the number of Workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund. The Settlement Administrator's determination of the eligibility for and amount of each Individual Settlement Payment shall be binding upon the Class Member and the Parties, yet subject to review by Class Counsel and, Defendant's Counsel. If and only if Class Counsel and Defendant's Counsel cannot agree, then they will seek input from the Court. In the absence of fraud or gross negligence, Defendant's records shall be presumed accurate.

2. <u>PAGA Payment to PAGA Members.</u>

a. $100,000 of the Gross Settlement Fund has been designated as civil penalties under the PAGA, of which 25% ($25,000) shall be distributed to PAGA Members, as part of the Net Settlement Fund. Each PAGA Member shall receive a portion of the PAGA Class Payment proportionate to the number of Workweeks that he/she/they performed tasks via the Shiftsmart Application during the PAGA period, which shall be calculated by multiplying the PAGA Class Payment by a fraction, the numerator of which is each individual's number of Workweeks he/she/they performed tasks via the Shiftsmart Application during the PAGA Period, and the denominator of which is the total number of Workweeks that all PAGA Members performed tasks via the Shiftsmart Application during the PAGA Period. If the Court approves a PAGA Settlement Amount of less than the amount provided herein, the remainder will be retained in the Net Settlement Fund for distribution to Settlement Class Members. All PAGA Members will be sent their share of the PAGA Settlement Amount and will be subject to the release of the Released PAGA Claims as set forth herein, whether or not they opt out of the Settlement. One hundred percent (100%) of the PAGA Settlement Amount is in settlement of claims for penalties and is not subject to wage withholdings, and therefore shall be reported on an IRS Form 1099.

b. The entire PAGA Class Payment will be distributed to all PAGA Members. No portion of the PAGA Class Payment will revert to or be retained by Defendant. The Settlement Administrator's determination of the eligibility for and amount of each PAGA Member's Individual Settlement Payment shall be binding upon the PAGA Member and the Parties, yet subject to review by Class Counsel and Defendant's counsel. If and only if Class Counsel and, Defendant's Counsel cannot agree, then they will seek input from the Court. In the absence of fraud or gross negligence, Defendant's records shall be presumed accurate.

3. Distribution, Timing and Reporting.

a. Within ten (10) calendar days following the deposit of $4,172,900 by the Defendant of the Gross Settlement Fund with the Settlement Administrator, the Settlement Administrator shall: (i) calculate Settlement Award amounts and provide the same to counsel for review and approval; (ii) upon approval by counsel, prepare and mail settlement awards, less applicable taxes and withholdings, to participating Settlement Class Members and PAGA Members; and, (iii) pay the withholdings to the applicable authorities with the necessary reports, submitting copies to counsel for the Defendant.

b. For purposes of calculating applicable taxes and withholdings, each Individual Settlement Payment shall be allocated as follows: 45% as penalties, 45% as interest; and 10% as wages. PAGA Class Payments will be classified as 100% penalties. The Settlement Administrator will be responsible for issuing to participating Settlement Class Members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Accordingly, the Wage Portion is subject to wage withholdings, and the Non-Wage Portion shall not be subject to wage withholdings. Note: The Settlement Administrator will also calculate the amount of employment taxes owed by the Defendant on the wage portion of the distribution, and the Defendant will provide the amount of such employment taxes separate and apart from the Gross Settlement Fund; this is the only element of costs or other expenses that is not taken from the Gross Settlement Fund. The Settlement Administrator will handle submission of employer-side employment taxes on behalf of the employer through a suitable power of attorney. The Settlement Administrator will also be responsible for forwarding all payroll taxes and penalties to the appropriate government authorities in a timely manner.

c. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiffs and Class Members are not relying on any statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard. Class Members and Class Counsel understand and agree that they shall be responsible for the payment of all taxes and penalties assessed on the payments specified herein, and shall hold the Parties, Released Parties, Class Counsel, and Defendant's Counsel free and harmless from and against any claims resulting from treatment of such payments as non-taxable, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.

d. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

e. Class Representatives' Enhancement, Full Release Payments, and the LWDA payment shall be paid within ten (10) calendar days of the deposit made by Defendant, which shall be delivered to Class Counsel at an address he provides to the Settlement Administrator.

f. Certification of Completion. Upon completion of administration of the Settlement, and no later than ten days after final disbursement of all funds from the Gross Settlement Fund, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties, which will include a final report on the disbursements of all funds from the Gross Settlement Fund.

4. Non-Reversionary Settlement.

a. Each member of the Settlement Class who receives a settlement award, and all recipients of a PAGA Payment, must cash such checks within one hundred eighty calendar days (180) from the date of mailing by the Settlement Administrator. Any funds payable to Settlement Class Members or PAGA Members whose checks were not cashed within one hundred eighty calendar days (180) after mailing will be distributed in accordance with California law, including Code of Civil Procedure § 384. Any monies remaining in the distribution account shall be distributed to the Unclaimed Property Fund with the California State Controller's Office. The Defendant and Settlement Administrator shall not bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks.

b. If any check issued to a Settlement Class Member or PAGA Member is returned as undeliverable, the Settlement Administrator shall make reasonable efforts to locate the individual by conducting a National Change of Address Search and re-mail the check. After one hundred eighty calendar days (180) from the date of first issuance, all the checks shall become null and void, and any monies remaining in the distribution account shall be distributed to the Unclaimed Property Fund with the California State Controller's Office in the name of and for the benefit of the individual who did not cash their check, and the Class Member will remain bound by the Settlement. The Parties agree that this disposition results in no “unpaid residue” under California Code of Civil Procedure § 384, as the entire Net Settlement Fund will be paid out to Settlement Class Members, regardless of whether they all cash their Settlement Checks. Therefore, Defendant will not be required to pay any interest on said amount.

IX. MISCELLANEOUS TERMS.

1. Prior to Motion for Preliminary Approval.

Prior to Plaintiff filing a motion for preliminary approval of the Settlement, the Settlement Administrator shall provide the Parties with a statement detailing the Settlement Administration Expenses to date. The Parties agree to cooperate in the Settlement Administration process and to make all reasonable efforts to control and minimize Settlement Administration Expenses.

2. No Effect on Other Benefits.

Neither the payments provided under this Agreement, nor their tax allocations, are intended to, nor shall be construed to, establish an employment relationship between Defendant, any Released Party, and any Plaintiff or Class Member. The settlement shares will not result in any additional benefit payments typically afforded to employees (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiffs or Settlement Class Members, and Plaintiffs and Settlement Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.

3. No Admission of Liability or Class Certification for Other Purposes.

This Settlement Agreement represents a compromise and settlement of highly disputed claims. The Parties expressly agree that Defendant and Released Parties continue to deny that any Plaintiff or Class Member was or is an employee of Defendant, Defendant's Customers, and/or any Released Party during the time they provided services and/or performed tasks via the Shiftsmart Application. Nothing in this Settlement Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Consolidated Complaint have merit or that Defendant and/or Defendant's Customers and/or Released Parties have any liability for any claims asserted therein; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Consolidated Action have merit. In entering into this Settlement, Defendant, Defendant's Customers, and Released Parties do not admit, and specifically deny, that they "employed" any Plaintiff or Class Member during the time they provided services and/or performed tasks via the Shiftsmart Application; violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to their independent contractors. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, is intended to be or should be construed as an admission or concession by Defendant, Defendant's Customers, or the Released Parties of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant, Defendant's Customers, or the Released Parties, or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law. The Parties have entered into this Settlement with the intention of avoiding further disputes and litigation with the attendant inconvenience, expenses and risks.

Whether or not the judgment becomes final, neither the Settlement, this Settlement Agreement, any document, statement, proceeding or conduct related to the Settlement or the Settlement Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiffs or Defendant, Defendant's Customers, or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Consolidated Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Settlement Agreement.

This section and all other provisions of this Settlement Agreement notwithstanding, any and all provisions of this Settlement Agreement may only be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Settlement Agreement or defending any claims released or barred by this Settlement Agreement.

4. <u>Waiver and Amendment.</u>

The Parties may not waive, amend, or modify any material provision of this Settlement Agreement except by a written agreement signed by all the Parties, and subject to any necessary Court approval. Nonmaterial amendments or modifications to this Agreement, however, may be made in writing between Class Counsel and

Defendant's Counsel without the need to seek the Court's approval or additional signatures of the Parties. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

5. Notices.

All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as any Party may designate in writing from time to time:

a. If to Plaintiffs and the Class:

Thomas D. Rutledge
Attorney-at-Law
16956 Via De Santa Fe, Suite 1847
Rancho Santa Fe, California 92091
Telephone: (619) 886-7224
thomasrutledgelaw@gmail.com

b. If to the Defendant:

Mona Hanna, Esq.
Marc Jacobs, Esq.
Michelman & Robinson, LLP
17901 Von Karman Avenue, 10th Floor
Irvine, California 92614
Telephone: (714) 557-7990
mhanna@mrllp.com
mjacobs@mrllp.com

6. Stay.

All proceedings in this action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement, including moving for preliminary approval and Final Approval of this Settlement, are hereby stayed upon execution of this Settlement Agreement.

7. Entire Agreement.

This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated herein. No other prior or contemporaneous written or oral agreements, representations, warranties, covenants or inducements may be deemed binding on the Parties. The Parties expressly recognize California Civil Code § 1625 and California Code of Civil Procedure § 1856(a), which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or contradict the terms of this Settlement Agreement.

8. Counterparts.

This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts, by electronic signature (such as via DocuSign) and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Settlement Agreement.

9. Authorization, Cooperation, and Modifications.

Class Counsel warrant and represent that they are authorized by Plaintiffs, for whom they are the attorneys of record, and the attorneys of record for the Defendant warrant and represent that they are authorized by the Defendant, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate any nonmaterial terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties agree to seek the assistance of the Mediator, and if agreement remains out of reach, the Court. In all cases, all such documents, supplemental provisions and assistance of the Court shall be consistent with this Agreement.

10. Successors.

This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of each of the Parties.

11. California Law.

All terms of this Agreement and its Exhibits shall be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

12. Representation by Counsel.

The Parties have each been represented by counsel and have cooperated in the drafting and preparation of this Agreement. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement. This Agreement shall not be construed against any party on the basis that the party was the drafter or participated in the drafting. Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

13. No Prior Assignments.

The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged in this Settlement.

14. Nullification of Settlement Agreement.

In the event that: (a) the Court does not finally approve the Settlement as provided herein; or (b) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning, and this Settlement Agreement and any documents related to it shall not be used by any Class Member or Class Counsel to support any claim or request for class certification in the Action, and shall not be used in any other civil, criminal, or administrative action against Defendant, Defendant's Customers, or any of the other Released Parties. In the event an appeal is filed from the order granting Final Approval or judgment, or any other appellate review is sought, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review. Any fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from the judgment, or any other appellate review, shall be split 50/50 by Plaintiffs and Defendant and paid to the Settlement Administrator.

15. Release by Class Counsel.

Upon full funding of the Gross Settlement Amount, and except as otherwise provided by this Settlement Agreement and the judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against Defendant and/or Defendant's Customers arising from or related to the Consolidated Action.

16. Exhibits Incorporated by Reference.

The terms of this Settlement Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

17. Acknowledgement that the Settlement is Fair and Reasonable.

The Parties believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

18. Invalidity of Any Provision.

Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

19. <u>Waiver of Certain Appeals.</u>

Provided that the judgment is consistent with the terms and conditions of this Settlement Agreement, Plaintiffs and Settlement Class Members who did not timely submit an objection to the Settlement, and Defendant hereby agree to: (1) waive any and all rights to appeal from the judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ; and (2) stipulate to class certification for purposes of this Settlement only; except, however, that Plaintiffs or Class Counsel may appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court, and either party may appeal any court order that materially alters the Settlement Agreement's terms. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the judgment becomes final.

20. <u>Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.</u>

If, after a notice of appeal, a petition for review, or a petition for certiorari, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Settlement Class Members), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court not later than fourteen court days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Enhancement Payments or the Attorneys' Fees and Costs will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.

21. No Public Comment.

The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about the fact, amount or terms of the Settlement before filing the motion for preliminary approval. With the exception of the LWDA, before the date of the filing of the motion for preliminary approval, Plaintiffs will not initiate any contact with Settlement Class Members or anyone else about the settlement, except that: (a) Plaintiffs may respond that a settlement has been reached and that the details will be communicated in a forthcoming Court-approved notice; and (b) Plaintiffs, if contacted by a Class Member, may respond only that the Class Member should contact Class Counsel. If Plaintiffs or Defendant or Defendant's Counsel receives an inquiry about the settlement from the media, they may respond only after the Motion for Preliminary Approval has been filed and only by confirming the accurate terms of the Settlement. Nothing in this provision shall prevent Defendant or Plaintiffs from making any required disclosures. If Plaintiffs violate this paragraph, including without limitation, by making a disclosure to any non-party that (a) a settlement has been reached; or (b) any of the terms of the Settlement, before the Court has preliminarily approved the settlement, Defendant may request the Court to impose liquidated damages in the amount of $5,000 against the offending Plaintiff for each instance he/she violated this condition.

22. Confidentiality Before Preliminary Approval.

With the exception of the LWDA, Plaintiffs and Defendant separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Settlement Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Settlement Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs and Defendant separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Settlement Agreement or the matters giving rise to this Settlement Agreement except to respond only that "the matter was resolved," or words to that effect.

23. <u>Confidential Materials Subject to Protective Order.</u>

The Parties agree that all documents, materials, or information produced or obtained in these Actions and designated as "Confidential", "Attorneys' Eyes Only", or "Subject to Protective Order" pursuant to any stipulated or court-entered protective order shall remain subject to the terms and restrictions of that protective order. Nothing in this Settlement Agreement shall be construed to permit the use, dissemination, or disclosure of such materials for any purpose outside of this litigation. Plaintiffs, Class Counsel, and any agents or representatives thereof shall not use or disclose such confidential materials, or any information derived therefrom, in any other litigation, arbitration, regulatory matter, or public forum, except as expressly authorized by court order or as required by law. Within thirty days after the Defendant fully funds the Gross Settlement Amount, Plaintiffs via Class Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data. In the event of any subpoena, court order, or legal process requesting disclosure of such confidential information, Class Counsel agrees to promptly notify Defendant's Counsel to allow the opportunity to object or seek appropriate relief.

24. <u>Enforcement Actions.</u>

In the event that any Party institutes a legal action or other proceeding to enforce the material terms of this Settlement Agreement following a breach, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection with such enforcement action. For purposes of this provision, "prevailing Party" shall mean only a Party that obtains a judicial determination or stipulated resolution substantially in its favor on the specific enforcement issue(s) presented. This provision shall not apply to disputes arising in good faith concerning the interpretation or implementation of the Settlement unless a material breach is found.

25. <u>All Terms Subject to Final Court Approval.</u>

All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.

26. Headings.

The descriptive heading of any section or paragraph of this Settlement Agreement is inserted for convenience of reference only and does not constitute a part of this Settlement Agreement.

27. Binding Agreement.

The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties and all Class Members, subject to the terms and conditions hereof and the Court's approval, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

28. Binding Nature of the Class Action Settlement.

The Parties agree that, given the numerosity of the Class, it is not feasible to obtain signed Settlement Agreements from each individual Class Member. Accordingly, upon Final Approval of the Settlement by the Court, and subject to the terms of the Class Notice and the rights of Class Members to opt out as provided therein, the Settlement shall be binding upon all Class Members who do not timely and validly request exclusion, and those Class Members shall be deemed to have released the Released Claims, as set forth in this Agreement and the Court's Final Approval Order.

29. Use and Return of Documents and Data.

All originals, copies, and summaries of documents and data provided to Plaintiffs, via Class Counsel, by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty days after the Defendant fully funds the Gross Settlement Amount, Plaintiffs via Class Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data.

30. ADEA Release.

Potential Plaintiff has been advised of and acknowledges the following: (a) this Agreement is written in a manner that Potential Plaintiff understands; (b) Potential Plaintiff is receiving valid consideration for this Agreement in addition to anything of value to which Potential Plaintiff is already entitled; (c) this Agreement does not waive rights or claims that may arise after it is executed; (d) by signing this Agreement, Potential Plaintiff is waiving rights under the Age Discrimination in Employment Act; (e) Potential Plaintiff has been advised to consult with an attorney before signing this Agreement; (f) Potential Plaintiff has twenty-one (21) days to consider this Agreement before signing it, but may sign it earlier if Potential Plaintiff so chooses; and (g) Potential Plaintiff may revoke this Agreement at any time up to seven (7) days after Potential Plaintiff signs it. The Agreement shall not become effective until the revocation period has expired ("Binding Date"). To revoke this Agreement, Potential Plaintiff must deliver a written notice of revocation to Potential Defendant within the seven (7) day period.

____
COLLEEN SHARP

____
BARBARA M. MIZE

Signed by:
Tracy Lynn Crenshaw
7B81D3F10BC6416...
____
TRACY LYNN CRENSHAW

____
SHONTELLE MOORE

Representative Plaintiffs

Dated: ________________

____
COLLEEN SHARP individually and for the putative Class

Dated: ________________

____
BARBARA M. MIZE, individually and for the putative Class

Dated: 7/29/2025

Signed by:
Tracy Lynn Crenshaw
7B81D3F10BC6416...

TRACY LYNN CRENSHAW, individually and for the putative Class

Dated: _______________

SHONTELLE MOORE, individually and for the putative Class

Dated: _______________

ANGELA PODNIZHNYY, individually and for the putative Class

Defendant SHIFTSMART INC.

Dated: _______________

For Defendant SHIFTSMART INC.

30. ADEA Release.

Potential Plaintiff has been advised of and acknowledges the following: (a) this Agreement is written in a manner that Potential Plaintiff understands; (b) Potential Plaintiff is receiving valid consideration for this Agreement in addition to anything of value to which Potential Plaintiff is already entitled; (c) this Agreement does not waive rights or claims that may arise after it is executed; (d) by signing this Agreement, Potential Plaintiff is waiving rights under the Age Discrimination in Employment Act; (e) Potential Plaintiff has been advised to consult with an attorney before signing this Agreement; (f) Potential Plaintiff has twenty-one (21) days to consider this Agreement before signing it, but may sign it earlier if Potential Plaintiff so chooses; and (g) Potential Plaintiff may revoke this Agreement at any time up to seven (7) days after Potential Plaintiff signs it. The Agreement shall not become effective until the revocation period has expired ("Binding Date"). To revoke this Agreement, Potential Plaintiff must deliver a written notice of revocation to Potential Defendant within the seven (7) day period.

____
COLLEEN SHARP

Signed by:
Barbara Mize
B1397C9A0D904DD...
____
BARBARA M. MIZE

____
TRACY LYNN CRENSHAW

____
SHONTELLE MOORE

Representative Plaintiffs

Dated: ________________

____
COLLEEN SHARP individually and for the putative Class

Dated: 7/29/2025

Signed by:
Barbara Mize
B1397C9A0D904DD...
____
BARBARA M. MIZE, individually and for the putative Class

Dated: _______________

____
TRACY LYNN CRENSHAW, individually and for the putative Class

Dated: _______________

____
SHONTELLE MOORE, individually and for the putative Class

Dated: _______________

____
ANGELA PODNIZHNYY, individually and for the putative Class

Defendant SHIFTSMART INC.

Dated: _______________

____

____
For Defendant SHIFTSMART INC.

30. ADEA Release.

Potential Plaintiff has been advised of and acknowledges the following: (a) this Agreement is written in a manner that Potential Plaintiff understands; (b) Potential Plaintiff is receiving valid consideration for this Agreement in addition to anything of value to which Potential Plaintiff is already entitled; (c) this Agreement does not waive rights or claims that may arise after it is executed; (d) by signing this Agreement, Potential Plaintiff is waiving rights under the Age Discrimination in Employment Act; (e) Potential Plaintiff has been advised to consult with an attorney before signing this Agreement; (f) Potential Plaintiff has twenty-one (21) days to consider this Agreement before signing it, but may sign it earlier if Potential Plaintiff so chooses; and (g) Potential Plaintiff may revoke this Agreement at any time up to seven (7) days after Potential Plaintiff signs it. The Agreement shall not become effective until the revocation period has expired ("Binding Date"). To revoke this Agreement, Potential Plaintiff must deliver a written notice of revocation to Potential Defendant within the seven (7) day period.

____
COLLEEN SHARP

____
BARBARA M. MIZE

____
TRACY LYNN CRENSHAW

Signed by:
Shontelle Moore
047A1587888549B...
____
SHONTELLE MOORE

Representative Plaintiffs

Dated: ________________

____
COLLEEN SHARP individually and for the putative Class

Dated: ________________

____
BARBARA M. MIZE, individually and for the putative Class

Dated: _______________

____
TRACY LYNN CRENSHAW, individually and for the putative Class

Dated: 7/29/2025

Signed by:
Shontelle Moore
047A1587888549B...
____
SHONTELLE MOORE, individually and for the putative Class

Dated: _______________

____
ANGELA PODNIZHNYY, individually and for the putative Class

Defendant SHIFTSMART INC.

Dated: _______________

____

____
For Defendant SHIFTSMART INC.

30. ADEA Release.

Potential Plaintiff has been advised of and acknowledges the following: (a) this Agreement is written in a manner that Potential Plaintiff understands; (b) Potential Plaintiff is receiving valid consideration for this Agreement in addition to anything of value to which Potential Plaintiff is already entitled; (c) this Agreement does not waive rights or claims that may arise after it is executed; (d) by signing this Agreement, Potential Plaintiff is waiving rights under the Age Discrimination in Employment Act; (e) Potential Plaintiff has been advised to consult with an attorney before signing this Agreement; (f) Potential Plaintiff has twenty-one (21) days to consider this Agreement before signing it, but may sign it earlier if Potential Plaintiff so chooses; and (g) Potential Plaintiff may revoke this Agreement at any time up to seven (7) days after Potential Plaintiff signs it. The Agreement shall not become effective until the revocation period has expired ("Binding Date"). To revoke this Agreement, Potential Plaintiff must deliver a written notice of revocation to Potential Defendant within the seven (7) day period.

____
COLLEEN SHARP

____
BARBARA M. MIZE

____
TRACY LYNN CRENSHAW

____
SHONTELLE MOORE

Representative Plaintiffs

Dated: ________________

____
COLLEEN SHARP individually and for the putative Class

Dated: ________________

____
BARBARA M. MIZE, individually and for the putative Class

Dated: ________________

____
TRACY LYNN CRENSHAW, individually and for the putative Class

Dated: ________________

____
SHONTELLE MOORE, individually and for the putative Class

Dated: 7/29/2025

DocuSigned by:
Angela Podnizhnyy
B7425AF3A1C3434...

____
ANGELA PODNIZHNYY, individually and for the putative Class

Defendant SHIFTSMART INC.

Dated: ________________

____

____
For Defendant SHIFTSMART INC.

30. ADEA Release.

Potential Plaintiff has been advised of and acknowledges the following: (a) this Agreement is written in a manner that Potential Plaintiff understands; (b) Potential Plaintiff is receiving valid consideration for this Agreement in addition to anything of value to which Potential Plaintiff is already entitled; (c) this Agreement does not waive rights or claims that may arise after it is executed; (d) by signing this Agreement, Potential Plaintiff is waiving rights under the Age Discrimination in Employment Act; (e) Potential Plaintiff has been advised to consult with an attorney before signing this Agreement; (f) Potential Plaintiff has twenty-one (21) days to consider this Agreement before signing it, but may sign it earlier if Potential Plaintiff so chooses; and (g) Potential Plaintiff may revoke this Agreement at any time up to seven (7) days after Potential Plaintiff signs it. The Agreement shall not become effective until the revocation period has expired ("Binding Date"). To revoke this Agreement, Potential Plaintiff must deliver a written notice of revocation to Potential Defendant within the seven (7) day period.

Signed by:
2FCCAC736AE54DD...
COLLEEN SHARP

____
BARBARA M. MIZE

____
TRACY LYNN CRENSHAW

____
SHONTELLE MOORE

Representative Plaintiffs

Dated: 7/29/2025

Signed by:
2FCCAC736AE54DD...
COLLEEN SHARP individually and for the putative Class

Dated: ______________

____
BARBARA M. MIZE, individually and for the putative Class

Dated: ________________

____
TRACY LYNN CRENSHAW, individually and for the putative Class

Dated: ________________

____
SHONTELLE MOORE, individually and for the putative Class

Dated: ________________

____
ANGELA PODNIZHNYY, individually and for the putative Class

Dated: 7/31/2025

Defendant SHIFTSMART INC.

Signed by:
Richard Zicchino
2230D6926F4F46E...

Chief Compliance Officer
For Defendant SHIFTSMART INC.

ADDENDUM A

- Airspace Technologies, Inc.
- Applause App Quality, Inc. (Facebook)
- Apro, LLC d/b/a United Pacific
- AU Energy, LLC
- Banzai International, Inc.
- C19 Safety First, Inc.
- Chevron Stations, Inc.
- Circle K Stores Inc.
- Culmen International, LLC
- Deloitte Consulting, LLP (Chic-fil-A)
- Dynata, LLC
- EG Retail (America), LLC
- Eventus Solutions Group, LLC (Solutran)
- Frito-Lay, Inc.
- GPM Investments, LLC
- Google LLC
- Gregory N. Parker, Inc.
- IRB Holding Corp.
- K&G Petroleum, LLC
- Kasa Living, Inc.
- Liveops Agent Services, LLC
- MTX Group, Inc.
- Opinion Services LLC
- Party City Holdings, Inc.
- PepsiCo, Inc.
- Quik Stop Markets, Inc.
- Retail Services & Systems, Inc.
- Rolling Frito-Lay Sales, LP.
- Sam's West, Inc.
- Signia LTD
- SpeedList, LLC
- Starbucks Coffee Company
- Swift Health Systems, Inc.
- Top Golf USA, Inc.
- Two Farms, Inc.
- United HealthCare Services, Inc.

- Vintners Distributors, Inc.
- Walmart Inc.
- Wal-Mart Associates, Inc.
- Wallis Companies
- West Coast Convenience, LLC
- Worldwide Express, LLC
- Zeus Living, Inc.