

MERCHANT INFORMATION	
Merchant "Doing Business As" Name	Merchant Full Legal Name
Merchant Legal Address	
Merchant Contact:	
Telephone Number:	Fax Number:
Email Address:	

Effective Date: _____

This Equipment Rental Contract ("**Contract**") is entered into between PayFacto Payments Inc., a corporation constituted under the *Business Corporations Act of Quebec*, having an establishment at 1 Place du Commerce, Suite 401, Montréal, QC, H3E 1A2 ("**PayFacto**") and the merchant identified above ("**Merchant**") (each a "Party" and collectively the "**Parties**") as of the Effective Date.

Whereas on (**Date**) Merchant has entered into a Merchant Agreement (as amended, as the case may be) with PayFacto for the purpose of processing payment card transactions (the "**Merchant Agreement**") and PayFacto agrees to rent payment equipment to Merchant that enables Merchant to process such payment card transactions ("**Equipment**") in accordance with the Standard Terms and Conditions attached hereto.

Merchant agrees that it has read and agrees to the terms contained in the Standard Terms and Conditions attached hereto and caused this Contract to be duly executed as of the Effective Date.

The Parties agree that this Contract may be executed by facsimile or email and in counterparts, which taken together shall form one legal instrument.

ACCEPTANCE:

By Merchant:
Merchant Signature (by a duly authorized person)
Print Name, Title, Date (DD/MM/YY)
By PayFacto:
PayFacto Company Signature (by a duly authorized person)
Print Name, Title, Date (DD/MM/YY)

EQUIPMENT RENTAL AGREEMENT STANDARD TERMS AND CONDITIONS

1. **PREAMBLE.** The Parties agree that the preamble is an integral part of this Contract;
2. **RENTAL.** Subject to the terms and conditions agreed to herein, PayFacto hereby agrees to rent the Equipment to the Merchant in exchange for monthly rental fees for each piece of Equipment, said fees having been agreed to in the Merchant Agreement, plus all applicable taxes (“Rental Fees”).
3. **LATE FEES.** The Merchant agrees that any lateness in the payment of any sum arising from this Contract shall result in annual interest of 6.00% on the outstanding amount.
4. **RENTAL TERMS AND CONDITIONS.** The Merchant agrees that the Rental Fees cover use of the Equipment, support in the event of malfunction, and maintenance of the Equipment, the whole as described in more detail in this Contract.
5. **DEPOSIT.** The Merchant agrees to provide a security deposit equivalent to two (2) months of Rental Fees for the Equipment (the “Deposit”). This Deposit shall be held by PayFacto and shall be credited to the Merchant only upon the return by the Merchant of the Equipment to PayFacto in the condition in which it was provided (subject to normal wear and tear). The Deposit shall be credited upon the return of the Equipment unless the Equipment is returned within the first six (6) months following delivery, in which case the Merchant shall be deemed to have waived the Deposit.
6. **USE OF THE EQUIPMENT.** The Merchant agrees to maintain the Equipment in good condition and in good working order at its own expense. Merchant shall not install or attempt to install any software other than that expressly authorized by PayFacto. Merchant may not open, modify, repair, reverse engineer, disassemble, alter, deface or remove its serial number, or perform any similar acts on the Equipment, including any software in or component of the Equipment. PayFacto shall at all times retain title to the Equipment and all related software, and Merchant shall not create, incur or suffer to exist any mortgage, lien, pledge or other encumbrance of attachment of any kind whatsoever upon, affecting or with respect to the Equipment or any of PayFacto’s interests therein. The Merchant agrees that it shall be solely responsible for the proper use of the Equipment and shall indemnify PayFacto from any claim arising from a malfunction of the Equipment that is the result of its improper or illegal use by any user whomsoever. Merchant shall notify PayFacto in writing of any subsequent change in location of the Equipment from the last shipping address provided to PayFacto.

Examples of improper or abusive use of Equipment include (but is not limited to) : Merchant abuse, fire, spillage or flood, power surge or any electrical incident or Equipment that have been connected to peripherals that are not authorized by Payfacto.

Abusive use of Equipment include (but is not limited to) incidents requiring repair that are not resulting of damage due to normal usage and service. For example, a forced pulled pen cable from the connector, damaged glass screen from external blunt force, cracked terminal covers, repairs needed due to environmental stress such as hurricane, earthquake, flood, accident, liquid spillage such as soft drinks, and loss or damage in transit are not considered normal usage and service.

No maintenance of warranty shall be provided on Equipment that has been opened by unauthorized repair centers or security seal is broken or destroyed. The serial number must be visible and not altered in any way and must match the electronically stored serial number in the terminal.

No maintenance or warranty shall be provided by Payfacto in case of repairs resulting from; or damage resulting from negligence, accident, or environmental stress; any Merchant or third party

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supplied software or supplies; unauthorized repair or modification, improper site preparation or configuration, improper use, operation or implementation outside of the Equipment original specifications.

7. **TERM.** Term of this Contract shall be aligned and shall be renewed in accordance with that of the Merchant Agreement.

8. **TERMINATION.**

8.1 Either party shall have the right to terminate this Contract at any time if:

- a. the other party breaches any of the provisions of this Contract or the Merchant Agreement and fails to cure such breach within thirty (30) days of its receipt of written notice thereof from the non-breaching party; or
- b. the other party (i) fails to pay its debts or perform its obligations in the ordinary course of business as they mature; or (ii) becomes the subject of any voluntary or involuntary proceeding in bankruptcy, liquidation, dissolution, receivership, attachment or assignment or composition for the benefit of creditors.
- c. If a card brand, or any federal, provincial or other type of regulatory agency having jurisdiction over the subject matter of this Contract or the Merchant Agreement makes a demand that discontinues or substantially modifies any of PayFacto's services, upon written notice to the other, in which case neither party shall be deemed to be in default by reason of such termination.

8.2 Notwithstanding the foregoing, PayFacto may terminate this Contract with or without cause, without any compensation whatsoever, by providing Merchant with ninety (90) days prior notice.

8.3 PayFacto may immediately terminate this Contract for any material default knowingly or intentionally caused by the Merchant with respect to its obligations hereof. If PayFacto reasonably determines that the default is of such a serious nature that an opportunity to cure such default is not practical or warranted, PayFacto may, at its sole discretion, effect such termination upon delivery of written notice to Merchant without regard to any provisions for cure of default or prior notice.

9. **EFFECT OF TERMINATION.**

9.1 In the event of a termination of this Contract or the Merchant Agreement by PayFacto before the end of the first Term or a renewal period (the "Early Termination"), with or without reason, the Merchant shall return the Equipment to PayFacto at its own expense within fifteen (15) business days of receiving notice of such termination, in its original condition, subject to normal wear and tear. Should the Merchant fail to return the Equipment within that period, the Merchant agrees to pay PayFacto immediately a sum of \$1,500 for each Equipment in its possession. The Merchant shall remain liable for all fees, losses and obligations.

9.2 Other than in case of a Termination stated in paragraph 8.1 herein, in the event of an Early Termination of this Contract or the Merchant Agreement by the Merchant, the Merchant hereby agrees to pay the Rental Fees in full for the remaining period of such first Term or renewal period (as the case may be) and undertakes to return the Equipment to PayFacto at its own expense within fifteen (15) business days of such termination, in its original condition, subject to normal wear and tear. Should the Merchant fail to return the Equipment within that period, the Merchant agrees to pay PayFacto immediately a sum of

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\$1,500 for each Equipment in its possession. The Merchant shall remain liable for all fees, losses and obligations.

10 **MAINTENANCE.** During the Term of this Contract, PayFacto shall provide telephone support in the event of Equipment malfunction, subject to sections 5 and 6 herein. This support shall be provided via telephone number (1 (888) 800-6622), available 24 hours/7 days/365 days per year. In the event that the Equipment malfunction cannot be resolved through telephone support, PayFacto will reclaim the defective Equipment to determine the source of the malfunction and proceed with repair and/or replacement of any defective part with an equivalent part. In the event it is impossible to repair the Equipment, PayFacto will replace it with another piece of Equipment.

During the Term and subject to Sections 5 and 6 herein, PayFacto shall assume all costs of labour and replacement parts to repair the Equipment. The Merchant shall be responsible for the cost of shipping of replacement or repaired Equipment to Merchant by PayFacto and for return of any malfunctioning Equipment to PayFacto.

For the purpose of the application of this article, the Merchant agrees that PayFacto shall not be held to any warranty, of any sort, at the expiry of the Term, for any reason whatsoever. Moreover, the Merchant agrees that the warranty set out in this paragraph constitutes the only warranty made with respect to the Equipment and shall replace all other implicit or legal warranties. PayFacto's only obligation under this warranty is limited to the repair or replacement of the Equipment or its parts.

11 **DISCLAIMER.** Subject to the maintenance obligations set out in the preceding paragraph, PayFacto makes no statement and gives no warranty whatsoever, expressed or implied, written or verbal, with respect to the merchantability, fitness for a specific purpose or non-infringement of any equipment, and explicitly disclaims any liability in this regard.

12 **INSTALLATION.** Should the Merchant proceed to the installation of the Equipment, this installation shall be at its own expense and the Merchant shall not hold PayFacto liable for any claim that may arise from said installation.

13 **INSURANCE.** The Merchant agrees to be liable for the Equipment and accepts all risk of loss, damage or theft of the Equipment. It agrees to keep the Equipment adequately insured against any risk of loss, damage or loss of use thereof. Any insurance required for the purpose of this Contract shall name PayFacto as the beneficiary in the event of loss. PayFacto may require and receive proof of insurance (such as a certificate of insurance) at any time.

14 **DEFAULT.** The Merchant shall be in default if:

- a) it fails to pay any amount arising from this Contract and/or the Merchant Agreement;
- b) it fails to comply with any obligation arising from this Contract and/or Merchant Agreement;
or
- c) the Equipment, in whole or part, is lost, stolen, damaged or destroyed and the insurance policy to which this Contract refers denies the claim.

In the event of a default that the Merchant is unable to resolve without a period of ten (10) days following receipt of notice from PayFacto to that effect, PayFacto may require from the Merchant that any amount outstanding to the end of the ten (10) day period becomes due and payable and that the Equipment be returned immediately to PayFacto. In said case, the Merchant shall be deemed to have waived the Deposit.

15 **INDEMNIFICATION.** The Merchant agrees to indemnify and save harmless PayFacto from all liability and to cover all of PayFacto's defense costs, including all legal fees, with respect to all claims,

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obligations, damages, losses or costs that may be related to the Equipment or to which the Equipment may give rise, including costs related to the recovery and/or return of the Equipment.

- 16 **LIMITATION OF LIABILITY.** Merchant will compensate PayFacto for any lost, damage (except for normal wear and tear) or stolen Equipment. Save and except for Section 6, PayFacto shall not hold the Merchant liable, under any warranty, contract, offence, strict liability, or other instrument, for any amount beyond the replacement cost of the Equipment.
- 17 **EXCLUSION OF LIABILITY - DAMAGES.** In no event shall PayFacto be liable to Merchant for any special, incidental, consequential, punitive, treble or other indirect damages and interest, and with respect to damages and interest related to a loss of profit or shortfall, loss of data or loss of use, arising from the manufacture, sale, supply, delay in the supply or failure to supply the Equipment, whether said liability is based on a warranty, contract, offence, strict liability or other instrument, even if Merchant is aware of the possibility of such damages or losses.
- 18 **NON-ASSIGNIBILITY.** The Merchant agrees that it cannot assign this Contract. It further agrees that cannot transfer, sub-rent, assign or cede possession of the Equipment, in whole or in part, without the written authorization of the PayFacto, which may refuse at its discretion. The Merchant agrees that PayFacto may assign this Contract at its sole discretion, without the Merchant's prior consent.
- 19 **EXCLUSIVITY.** Nothing in this Contract confers any exclusivity of any nature on either of the Parties.
- 20 **BUSINESS CONTRACT.** The Parties being independent contractors, this Contract does not mutually bind them except for the purposes set out herein. Consequently, the clauses of this Contract may not be interpreted in any way as creating any association or business between the Parties or as conferring any mandate from one to the other. Furthermore, neither of the Parties may bind the other in any manner whatsoever or to anyone, other than in accordance with the clauses of this Contract.

21 GENERAL

- 21.1 **Entire agreement.** This Contract, with all of the documents that must be remitted under the terms thereof, constitutes the entirety of the agreement between the Parties with respect to the subject of this Contract and replaces, in whole, any agreements, accords, negotiations and discussions, either verbal or written, entered into previously by the Parties.
- 21.2 **Severability.** Should any article, paragraph or clause (or part of any article, paragraph or clause) of this Contract be held to be illegal or invalid, it shall not affect the validity of any other articles, paragraphs or clauses of this Contract, nor the remainder of said article, paragraph or clause, unless otherwise indicated in the document.
- 21.3 **Notice.** Any notice intended for one of the Parties is deemed to have been validly given on the date of its receipt if personally delivered or sent by courier, email, facsimile and the sender obtains a fax or email confirmation receipt charges prepaid, to said Party at the address indicated at the beginning of this Contract, or any other address that the Party concerned may provide by similar notice to the other Party.
- 21.4 **No waiver.** The failure or neglect by a party to exercise, or a delay in exercising, a right or remedy under this Contract shall not be interpreted as a waiver of that right or remedy.
- 21.5 **Entirety of agreement.** This Contract constitutes the entire and complete agreement between the Parties. No statement, representation, promise or condition

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not contained herein can or shall be allowed to contradict, modify or affect in any way the terms of this Contract.

- 21.6 **Passage of time.** If a Party is required to fulfill an obligation under this Contract within an establish time limit, the simple passage of that time shall result in that Party being in default.
- 21.7 **Governing Law.** This Contract shall be governed by the laws of the Province of Quebec and interpreted exclusively in accordance therewith, and the Parties hereto irrevocably submit to this jurisdiction.
- 21.8 **Language.** The Parties hereto have expressly required that this Agreement and all documents and notices relating thereto be drafted in the English language. *Les Parties ont expressément exigé que ce Contrat et tous les documents et avis s'y rapportant soient rédigés en langue anglaise*
- 21.9 **Amendment of the Contract.** Any amendment of this Contract must be made in a written instrument signed by both Parties.