

FREE EQUIPMENT ORDER FORM

Merchant:	Contact:
E-Mail:	Phone:
Address:	
Hardware:	QTY:
	QTY:
	QTY:
	QTY:
	QTY:

This Free Equipment Order Form (“Order Form”) is effective as of _____ (the “Effective Date”) between PayArc, LLC, and the Merchant listed above. By signing below, Merchant agrees to this Order Form and the attached Equipment Terms and Conditions which are incorporated by reference.

Important Note: Free placements may be used or new.

PayArc, LLC

_____ Merchant Name

By: _____
 Name: _____
 Title: _____

By: _____
 Name: _____
 Title: _____

EQUIPMENT TERMS AND CONDITIONS IMPORTANT - READ CAREFULLY

1. FREE EQUIPMENT AGREEMENT –

Subject to these terms and conditions (this “Agreement”), PayArc, LLC (“Company”) agrees to provide Merchant listed in the attached free equipment order form (the “Order Form”) the hardware described in the Order Form (the “Equipment”) solely for the purpose of processing transactions in accordance with the merchant agreement entered into between Merchant and Company (the “Merchant Agreement”). So long as Merchant is not in breach of this Agreement or the Merchant Agreement, the Equipment will be provided free of charge to Merchant for the term of the Merchant Agreement.

2. TERM – The term of this Agreement will run coterminous with the term of the Merchant Agreement. In the event of termination of the Merchant Agreement, this Agreement will automatically terminate. In addition, either party may terminate this Agreement upon thirty (30) days prior written notice. Company may terminate this Agreement immediately upon a breach by Merchant of any term, condition or covenant set forth herein that is not remedied within ten (10) days after written notice thereof is sent to Merchant. Termination of this Agreement will not limit Company from pursuing any other available remedies.

3. EFFECT OF TERMINATION;

SURVIVAL – Upon expiration or termination of this Agreement, Merchant will return the Equipment, including all cables, to Company, at Merchant’s cost, free and clear of all liens, and in good condition and repair, reasonable wear and tear excepted. If such Equipment is not received by Company within ten (10) days after such expiration or termination, then Merchant will pay Company for a replacement fee of \$2,000 within thirty (30) days of the expiration or termination of the Agreement. Further, upon any breach of this Section, Merchant will be liable, and Company will have the right to automatically charge Merchant’s merchant account (as set forth in the Merchant Agreement) for Company’s reasonable costs and

expenses related to such Equipment, including costs and expenses for repair, protection and preservation of the Equipment and all reasonable attorneys and collection fees and expenses in connection with defending or enforcing Company’s rights and remedies under this Agreement. All terms and any sections of this Agreement that are logically intended and required to survive expiration or termination of this Agreement to achieve their intent, will survive without limitation.

4. TITLE; OWNERSHIP – Title to the Equipment will at all times remain with Company. Notwithstanding any other provision set forth herein, the Company or its third party licensors are and will remain the sole and exclusive owners of the proprietary software and other intellectual property rights contained in the Equipment (the “Software”), including any amendments, modifications, derivative works, revisions, changes or other improvement thereto. Merchant has no right to use, make, sublicense, modify, transfer, rent, lease, sell, display, distribute or copy originals or copies of the Software, or to permit anyone else to do so. In addition, Merchant agrees to not (i) reverse engineer, unencrypt, disassemble, decompile or otherwise translate the Software or allow anyone else to do it, or (ii) remove any patent, copyright or trademark or other intellectual property notices that may appear on any part of the Software or Equipment.

5. COVENANTS – During the term of this Agreement, Merchant (i) will maintain the Equipment in good condition and repair, reasonable wear and tear excepted, (ii) use the Equipment in compliance with all applicable laws, regulations and ordinances, (iii) will promptly notify Company of the occurrence of any events which materially and adversely affect the value of the Equipment, including if it is stolen, and (iv) will not, without the prior written consent of Company, sell, assign, exchange, lease, tend, license the use of, pledge, encumber, grant a security interest in or dispose of the Equipment. The Equipment is the property of Company. Company is the only person or entity permitted to program the Equipment. Neither Merchant nor any third

party will program the Equipment without the written consent of Company. If the Equipment program is altered by anyone other than Company, Merchant will be responsible for all damages including fraud arising from such action. If the Equipment is damaged, then Merchant will be responsible for all repair fees associated with the Equipment. Merchant will not repair or permit any repairs to the Equipment unless authorized by Company in writing. If the Equipment is lost, then Merchant will be responsible for its cost to be calculated at fair market value as determined in the sole discretion of Company. Such amount shall not exceed \$395.

6. GOVERNING LAW; WAIVER OF JURY TRIAL – The rights and obligations of the parties hereto will be governed by and construed in accordance with the laws of the State of New York (without regard to conflicts of laws principles). The parties hereby consent to the sole and exclusive jurisdiction to the state and federal courts located in New York, New York for any dispute arising out of this Agreement.

7. WAIVER OF JURY TRIAL. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY.

8. DISCLAIMER OF WARRANTY - EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, COMPANY DOES NOT MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER RELATED TO THE EQUIPMENT OR ANY OTHER MATTER, AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE OR WORKMANSHIP.

9. LIMITATION OF LIABILITY - NOTWITHSTANDING ANY OTHER PROVISION IN THESE TERMS, COMPANY WILL NOT BE LIABLE TO MERCHANT OR

ANY THIRD PARTY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT UNDER ANY THEORY OF CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES. IN NO EVENT WILL COMPANY'S TOTAL LIABILITY HEREUNDER FOR ANY AND ALL CAUSES, WHETHER ARISING OUT OF NEGLIGENCE, BREACH OF CONTRACT, TORT OR OTHERWISE, EXCEED \$100.

10. INDEMNIFICATION – Merchant agrees to defend, indemnify, and hold harmless Company, its subsidiaries, affiliates, and its and their respective officers, directors, employees, sub-contractors, suppliers, agents and representatives (collectively, the “Company Entities”), against any claim, demand, cause of action, or proceeding related to this Agreement (“Claim”) as a result of any breach of Merchant’s obligations under this Agreement. Merchant further agrees to indemnify and hold the Company Entities harmless from and against any and all losses, damages, costs and expenses (including reasonable attorneys’ fees) that may result or arise from any Claim.

11. LIMITATION OF REMEDIES – MERCHANT ACKNOWLEDGES AND AGREES THAT ITS SOLE REMEDY, IN THE EVENT OF ANY DISPUTE, CLAIM OR ACTION, ARISING OUT OF OR IN ANY WAY RELATED TO OR RESULTING FROM THIS AGREEMENT OR OTHERWISE WILL BE THE RETURN OF THE EQUIPMENT TO COMPANY.

12. ENTIRE AGREEMENT – This Agreement, the Merchant Agreement, and any other agreement referenced therein constitutes the entire agreement between the parties and will supersede all previous communications, representations, agreements or understandings, either oral or written, between the parties with respect to the subject matter hereof.

13. **NOTICES** – All notices and other communications required or permitted under this Agreement will be in writing and given by personal delivery, telecopy (confirmed by a mailed copy), or first class mail, postage prepaid, sent to the addresses set forth herein.

14. **MODIFICATIONS; SEVERABILITY** – Company reserves the right to make changes to this Agreement at any time. If any term or condition of this Agreement will be deemed invalid, void, or for any reason unenforceable, that term or condition will be deemed severable and will not affect the validity and enforceability of any remaining term or condition.

15. **NO ASSIGNMENT** – Merchant may not assign this Agreement without the prior written consent of Company and any attempt to do so without such consent will be void.