

# EQUIPMENT AGREEMENT

Merchant #:

Sales Rep ID#: **BRP8****LOCATION OF EQUIPMENT** Please indicate below where the equipment will be placed

LOCATION ADDRESS, CITY &amp; STATE

EQUIPMENT

QUANTITY

1.		/	
2.		/	
3.		/	

**SERVICE FEE & DEPOSIT TERMS**

DESCRIPTION (MANUFACTURER, MODEL)

QUANTITY

PURCHASE/MONTHLY PAYMENT

DEPOSIT PER PIECE

FD 150		\$ <b>634.00</b>	\$
FD 410		\$ <b>779.00</b>	\$
RP10 pinpad for use with FD150		\$ <b>219.00</b>	\$
		TOTAL \$	TOTAL \$

DBA Name of Business:

Legal Name of Business: **New York University**

IN WITNESS WHEREOF, the parties have caused this Equipment Agreement to be executed by their duly authorized officers.

**Client's Business Principal:****Signature** (Please sign here):

**X** \_\_\_\_\_  
Name (please print or type) Title Date

PROCESSOR: **Banc of America Merchant Services, LLC****Signature:**

**X** \_\_\_\_\_  
Name (please print or type) Title Date

**Bank Name:** **Bank of America, N.A.**

This Equipment Agreement ("Agreement") is being entered into by and between Processor and the Client identified on the signature page of this Agreement. This Equipment Agreement governs any equipment that is rented to you on a month to month basis or that is sold to you by Processor under the Merchant Processing Application, subsequent purchase or rental agreements and/or other documentation provided in connection with the purchase or rental of Equipment ("Equipment Documents"). Equipment rented to or purchased by you under the Equipment Documents is referred to in this Agreement as the "Equipment." THE EQUIPMENT IS BEING SOLD TO YOU FOR USE IN YOUR BUSINESS USE AND IS NOT BEING SOLD OR RENTED TO YOU FOR HOUSEHOLD OR PERSONAL USE. Sales and rentals of equipment are made by Processor. The Services provided, Equipment, Equipment Documents and other matters contemplated under this Agreement are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Agreement directly conflict with another provision of this Agreement, in which case the terms of this Agreement will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to sales and rental of equipment and Bank is not liable to you in any way with respect to such services. For purposes of this section the words "we," "our" and "us" refer only to Processor and not to Bank, and the words "you" and "your" refer to the Client.

Warranties, if any, for the Equipment or any related Software originate from the applicable third party provider or manufacturer ("Vendor"). Materials or documents, if any, setting forth warranty terms, conditions, exceptions, exclusions and disclaimers will be contained within the packaging shipped from the Vendor.

We or Persons designated by us will only provide help desk support for Equipment purchased or rented from us under the Equipment Documents, and we will not provide any such support or related services for any other products or equipment. For the purposes of this Agreement, "Person" shall mean any individual or entity other than Processor, Bank or Client.

YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU PURCHASE OR RENT FROM US MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS. WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE WITH ANY OTHER PROCESSING SYSTEMS. IN THE EVENT THAT YOU ELECT TO USE ANOTHER PROCESSING SERVICE PROVIDER UPON THE TERMINATION OF THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE RENTED OR PURCHASED UNDER THIS AGREEMENT.

**1. Purchased Equipment; Supplies.** We will sell to you, and you will buy from us the Equipment identified in the Equipment Documents throughout the term of this Agreement as being purchased by you (individually and collectively, the "Purchased Equipment"), free and clear of all liens and encumbrances (subject to Section 7), except that any "Software" (as defined in Section 8) will not be sold to you outright but instead will be provided to you pursuant to, and subject to the conditions of Section 8 of this Agreement. You shall pay the purchase price specified for the Purchased Equipment and the related software license(s), including all applicable tax, prior to the effective date of the Equipment Agreement or at our option, such amounts will be collected by us by debits or deductions pursuant to Section 5. We will provide you supplies as requested by you from time to time. You shall pay the purchase price for such supplies, plus shipping and handling charges, including all applicable tax, prior to delivery of the supplies or upon invoice, as specified by us, or at our option, such amounts will be collected by us by debits or deductions pursuant to Section 5. (Maintenance and repair of customer-owned equipment is your responsibility.) Should your terminal become inoperable we can provide you with equipment at a monthly rental fee. There will also be a nominal shipping and handling fee. For such rental equipment contact the POS Help Desk.

**2. Rental Equipment.** We agree to rent to you and you agree to accept and rent from us the Equipment identified in the Equipment Documents as being rented to you (individually and collectively, the "Rental Equipment"), according to the terms and conditions of this Agreement. In addition, any Equipment ordered by and rented to you during the term of this Agreement shall constitute Rental Equipment and be governed by the terms of this Equipment Agreement.

**3. Effective Date and Term of Agreement.** This Equipment Agreement shall become effective on the first date you receive any piece of Equipment covered. This Equipment Agreement will remain in effect until all of your obligations and all of our obligations under this Equipment Agreement have been satisfied. We will deliver the Equipment to the site designated by you. You shall be deemed to have accepted each piece of Equipment at the earlier of: (a) your actual acceptance after installation, (b) delivery to you if your site is not prepared and ready for installation or (c) for Equipment that we have not agreed to install for you, seven (7) days after shipment of each such piece of Equipment. The rental period with respect to each piece of Rental Equipment shall commence on the date such Equipment is deemed accepted and shall terminate at the scheduled termination date (but not upon any early termination) of your Merchant Agreement and/or any other agreement then in effect with us for card services. The provisions of this

BAMSEQAgr1305(ia)

Agreement shall survive the termination or expiration of the Merchant Agreement and continue until all Equipment Documents rented from us is returned or paid for.

**4. Site Preparation, Installation & Maintenance.** You will prepare the installation site(s) for the Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date. You will support the installation in accordance with our requirements.

- Upon request, you must allow us (or our agents) reasonable access to the premises where authorization terminals or other communications equipment (e.g., printers) are or will be located.
- Any alterations required for installation of authorization terminal(s) or other communications equipment will be done at your expense.
- Only we or our agents can alter or modify authorization terminal(s) or other communications equipment owned by us.
- If a terminal or printer appears to be defective, you must immediately call the POS Help Desk.
- You are responsible for safeguarding Equipment from loss, damage, unauthorized use, misuse or theft; we should be notified immediately if any of the foregoing occurs.
- If necessary, we will assist you in obtaining replacement equipment. If you fail to return any defective equipment, you may be responsible for its replacement value and for any legal and/or collection costs incurred by the equipment owner in connection with recovering equipment.
- You are responsible for keeping all communications equipment free of any claims, liens and legal processes initiated by creditors.
- Equipment may not be subleased at any time. The cost of comparable new equipment, as well as any associated legal and/or collection costs incurred by us or the owner of the equipment will be assessed to you for each piece of equipment not returned upon termination of the Agreement by either party, or upon request for the return of the equipment for any reason.
- You may not relocate, remove, disconnect, modify or in any way alter any equipment used in connection with the services we are providing to you without first obtaining our permission.
- You must provide us with thirty (30) days prior written notice to request the relocation of any equipment.
- Should you require additional equipment, you must contact Relationship Management or Customer Service (there may be additional costs or fees charged to you in connection with any new equipment ordered, including download fees).

**5. Payment of Amounts Due.**

- a) The monthly rental charge specified in the Equipment Documents shall be due and payable on the first day of each month of the rental period for each piece of Rental Equipment, except that the first payment of the monthly rental charge for each piece of Rental Equipment shall be due and payable upon acceptance of such Equipment by you at the location designated in the Equipment Documents or, upon delivery if the site is not prepared for installation (as provided in Section 3). The monthly rental charge for fractions of a calendar month shall be prorated based on a thirty (30) day month.
- b) You hereby authorize us to collect all amounts due from you under this Equipment Agreement by initiating debit entries for such amounts to your account designated pursuant to the Merchant Agreement to be debited and credited for amounts due from and to you under the Merchant Agreement (the "Settlement Account") or by deducting such amounts from TeleCheck or Servicers due to you. All authorizations and other provisions in your Merchant Agreement regarding the debiting and crediting of your Settlement Account apply with equal force with respect to amounts due to or from you under this Equipment Agreement. This authority will remain in full force and effect until we have given written notice to your bank where your Settlement Account is maintained that all monies due from you under this Agreement have been paid in full.
- c) In addition to the purchase price or monthly rental charge due hereunder, you shall pay, or reimburse us for, amounts equal to any taxes, levies, duties or assessments, however designated, levied or based on such charges, or on this Equipment Agreement or the Equipment and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise taxes, exclusive, however, of taxes based on our net income.
- d) As indicated in the Merchant Agreement, separate charges will apply for supplies; they are not included in monthly rental charges.

**6. Use and Return of Equipment; Insurance.**

- a) You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer and in connection with the Services provided under your Merchant Agreement. You shall not use the Equipment, or permit the Equipment to be used, in any manner or for any purpose for which the Equipment is not designed or reasonably suited.
- b) You shall not permit any physical alteration or modification of the Equipment without our prior written consent.
- c) You shall not change the installation site of the Equipment without our prior written consent, which consent we will not unreasonably withhold.
- d) You shall not assign your rights or obligations under this Equipment Agreement, or pledge, lend, create a security interest in, directly or indirectly create, incur, assume or allow to exist any other consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Rental Equipment to any other person, firm or organization without our prior written consent. Any such assignment, delegation, sublease, pledge, security interest or lien in the absence of such consent shall be void.
- e) You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all legally required permits for the Equipment.
- f) We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Equipment.
- g) Promptly upon termination of all applicable rental periods or promptly following any action by us pursuant to Section 11(b), you shall deliver possession of the Rental Equipment (including all attachments and parts) to us at your cost in the same operating order, repair, condition and appearance that the Rental Equipment had at the time of its delivery to you, reasonable wear and tear excepted.
- h) For each item of Rental Equipment that you fail to return to us at your cost in the same operating order, repair, condition and appearance that it had at the time of delivery to you, reasonable wear and tear excepted, by the 10th business day after (i) termination of the applicable rental period or (ii) any action by us pursuant to Section 11(b), you agree to pay us the greater of \$250.00 or the fair market value of such item of Equipment if it were in the condition described above, as determined by us. We may collect such amounts in the manner provided in Section 5 and to the extent we are unable to do so, you agree to pay us the amounts owed promptly.
- i) Except for Purchased Equipment that has been paid for in full, the Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment indicating our ownership.
- j) You shall keep the Rental Equipment adequately insured against loss by fire, theft and all other hazards (comprehensive coverage). The loss, destruction, theft or of damage to the Rental Equipment shall not relieve you from your obligation to pay the full purchase price or rent payable hereunder.
- k) Except for Purchased Equipment that has been paid in full, the Equipment shall be kept at your address indicated in the Equipment Documents and shall not be removed therefrom without our prior written consent (except where normal use of the Equipment requires temporary removal).
- l) In order to return equipment, you should:
  - Call Customer Service for the address of the location to send the equipment.
  - The following information must be included within the shipping box:
    - 1. Company name, complete address and phone number.
    - 2. Name of person to contact if there are any questions.
    - 3. Your Merchant Account Number.
    - 4. Serial number of the terminal (found on the underside of the terminal).
  - Please maintain proof of delivery documents for your records, and the serial number from the bottom of the terminal.
  - Rental fees may be continued until equipment is returned.

**7. Security Interest; Financing Statements.** You hereby grant to us a security interest in (a) all Purchased Equipment and the related Software to secure payment of the purchase price, and (b) all Rental Equipment and the related Software to secure payment of the monthly payments therefor and authorize us to file financing statements with respect to the Equipment and the Software in accordance with the Uniform Commercial Code, signed only by us or signed by us as your attorney-in-fact.

**8. Software License.** Anything in this Equipment Agreement to the contrary notwithstanding, we or certain Persons retain all ownership and copyright interest in and to all software, computer programs, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment (collectively "Software"), and you shall have only a nonexclusive, non-transferable, revocable license to use the Software in your operation of the Equipment for the purposes set forth in this Agreement. Nothing in this Agreement confers any title or ownership of any such Software to you or shall be construed as a sale of any rights in any such Software to you. You agree to accept, agree to and be bound by all applicable terms and conditions of use and other license terms applicable to such Software. You shall not reverse engineer, disassemble or decompile the Software. You shall not give any Person access to the Software without our prior written consent. Your obligations under this Section 8 shall survive the termination of this Agreement.

**9. Limitation on Liability.** Our liability arising out of or in any way connected with the Equipment shall not exceed the purchase price or prior twelve month's rent, as applicable, paid to us for the particular Equipment involved. In no event shall we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Equipment Agreement will be your sole and exclusive remedies.

**10. Indemnification.** You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses resulting from (a) the purchase, delivery, installation, acceptance, rejection, ownership, leasing, possession, use, operation, condition, liens against, or return of the Equipment, or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

In addition to your other obligations hereunder, You acknowledge and agree that the "use" and "operation" of the Equipment for which you will indemnify and hold us harmless shall include, but not be limited to, You loading additional software onto Equipment or using such software, or using Equipment or Software to access the Internet.

**11. Default; Remedies.**

- a) If any debit of your Settlement Account initiated by us for rent and/or other charges due hereunder is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or provision in this Equipment Agreement, or if any other default occurs under the Merchant Agreement, any such event shall be a default hereunder.
- b) Upon the occurrence of any default, we may at our option, effective immediately without notice, either: (i) terminate the period of rental and our future obligations under this Equipment Agreement, repossess the Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, in which case this Equipment Agreement shall terminate as soon as your obligations to us are satisfied, or (ii) accelerate and declare immediately due and payable all monthly rental charges for the remainder of the applicable rental period and proceed in any lawful manner to obtain satisfaction of the same.

**12. Assignment.** Subject to the following provisions, this Equipment Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. You may not assign or transfer this Equipment Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Equipment Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer hereof. We may assign or transfer this Equipment Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, shall have any right to continue or to assume or to assign this Equipment Agreement.

**13. Governing Law; Miscellaneous.** This Equipment Agreement is being entered into in connection with the Merchant Agreement and shall be governed by and will be construed in accordance with the laws of the State of New York (without applying its conflicts of laws principles), except that Section 14 shall be governed by the Federal Arbitration Act. If any part of this Equipment Agreement is not enforceable, the remaining provisions will remain valid and enforceable. In performing their obligations under this Equipment Agreement, each party agrees to comply with all laws and regulations applicable to it.

**14. Dispute Resolution and Arbitration.** If the parties disagree as to any matter governed by this Equipment Agreement, the parties shall promptly consult with one another in an effort to resolve the disagreement. If such effort is unsuccessful, any controversy or claim arising out of or relating to this Equipment Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) shall have the right to render equitable, as well as other, awards and relief. The parties agree that the underlying agreement between the parties involves interstate commerce, and that, notwithstanding any choice of law provision in Section 13 of this Equipment Agreement, any arbitration hereunder shall be governed by the Federal Arbitration Act.

**15. Notices.** All notices must be in writing, and shall be given (a) if sent by mail, when received, and (b) if sent by courier, when delivered: if to you at the address appearing in your Merchant Agreement, and if to us at 3975 N.W. 120th Avenue, Coral Springs, FL 33065 to the attention of Marketing.

**16. Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter, supersedes any previous agreements and understandings and can be changed only by a written agreement signed by all parties.