



**LEASE TERMS AND CONDITIONS**

**1. Terms and Conditions.** In this Lease Agreement, the words "I", "me", "my", "mine", mean the Lessee and Guarantor(s). The words "you", "your" and "yours" mean the Lessor. "Equipment" is the item I am leasing, and encompasses any combination of tangible assets. I acknowledge that I have been informed in writing by you of the Equipment Vendor's identity, and that I may have rights under the purchase agreement between you and the Equipment Vendor. I may contact the Equipment Vendor for a description of such rights.

**2. Payment Terms.** I agree to pay you the total amount due upon signing the Lease Agreement. I also agree to pay all additional monthly Lease payments when due, starting with the Commencement Date shown above and every 30 days thereafter for the Lease Term. The amount of the monthly Lease payment due from month to month may vary from the amount shown as "First Total Monthly Payment" due to: local, state and other taxes owed on the Equipment, your monthly tax processing fees, charges owed on any Loss or Destruction Waiver, past due amounts, late fees, and other charges I may owe under the Lease Agreement from time to time, as provided herein. This means that the amount of my monthly Lease payment may change each month and, if the payment is made under the "auto debit" payment option that the amount debited from my account may also vary and I agree to keep sufficient funds in my business checking account to pay the amount owed each month. If I have chosen to be statement billed by not completing the Method of Payment option on page 3 of this Lease, or if I have selected the direct debit option, and you find it necessary to statement bill due to the direct debit information being incomplete, inaccurate or due to insufficient funds in my checking account, or for any other reason beyond your control, you are authorized to add a \$5.00 per month charge to my monthly payment amount as reimbursement for your added services and processing expenses.

The Parties hereby agree that this Agreement is made in, governed by, to be performed in, and shall be construed in accordance with the laws of the Commonwealth of Massachusetts. Any suit, action or other proceeding arising out of or related to the parties obligations hereunder shall take place exclusively in the county in which the Lessee and/or Personal Guarantor are located if initiated by TimePayment Corp., and shall take place exclusively in Middlesex County, Massachusetts if initiated in any way by the Lessee and/or Personal Guarantor. It is further agreed and understood that the corporate headquarters of TimePayment Corp. is located within the venue of The District Court Department of the Trial Court, within Middlesex County. The Parties further agree to waive any right to trial by jury so that trial shall be by and only to the Court.

I have read and agree to the terms which appear in this Lease and understand same. This Equipment is leased "as is" for business and/or professional purposes and this Lease is not a consumer contract. I acknowledge you are a lessor under a "finance lease", as that term is defined in UCC Article 2A, and not a manufacturer, distributor, agent or reseller. Your only role is to provide Lease financing. I acknowledge receipt of a completed copy of this Lease Agreement with all Lease Terms filled in. I understand my obligations under this Lease become irrevocable on the Commencement Date.

AGENCY DISCLAIMER – NEITHER SUPPLIER NOR ANY SALESPERSON IS AN AGENT OF LESSOR NOR ARE THEY AUTHORIZED TO WAIVE OR ALTER THE TERMS OF THIS LEASE. THEIR REPRESENTATIONS SHALL IN NO WAY AFFECT LESSEE OR LESSOR'S RIGHTS AND OBLIGATIONS AS HEREIN SET FORTH.

**3. Credit Inquiries and Credit Reporting.** You, your authorized affiliates, your outside attorneys and your authorized suppliers are authorized to check my credit and employment history for the purposes of determining my credit worthiness at the time of application or thereafter in connection with the same transaction or extension of credit and for the further purposes of reviewing the account, taking collection activity on the account, and skip tracing. You are further authorized to provide history information to others about my credit standing and your credit experience with me, including but not limited to credit bureaus, other companies, outside collection agencies and outside attorneys.

**4. Commencement of Lease; Lease Term.** The commencement date (the "Commencement Date") shall be the date when You pay the Supplier or Vendor any funds for the Equipment, in reliance on my instructions to Lessor to purchase the Equipment on my behalf. I acknowledge and agree that billing will begin on the Commencement Date. The original Lease Term will commence on the Commencement Date and expire at the end of the number of months indicated on the front page.

**5. End of Lease Term.** At the end of the original Lease Term I have the following options: (a) I can promptly return the Equipment in good condition, except for ordinary wear and tear, to you or to the person and place you indicate, or (b) I can extend the Lease for the same terms and conditions as stated herein on a month to month basis until such time as I give you written notice that I elect to terminate the lease at least 30 days prior to such termination and return the Equipment, or (c) Upon my request I can purchase the Equipment for the Fair Market Value as quoted by you at that time plus any applicable taxes. The amount will not exceed three lease payments. You will return any Security Deposit after deducting any amounts I owe you under the conditions of this agreement if I choose option 1 (return the Equipment).

**6. Late Payments and Collection Costs.** There will be a processing charge of up to \$20.00 or whatever fee is allowable by law for any returned check or for any rejected credit card charge or for any rejected automatic bank account debit. If I do not make a payment within 5 business days of its due date, I must pay you, in addition to the payment, a late charge of 15% of the late monthly payment (but at least \$5.00 per month). I will pay you your collection costs, including charges for collection letters (not to exceed \$5.00 per letter), collection phone calls (not to exceed \$6.00 per call), collection agency fee (not to exceed \$50.00 per placement), collection agency charge (an amount not to exceed 30% of the amount paid by you to the collection agency), pre-suit notification legal letter fee (not to exceed \$20.00 per letter), and pre-litigation administrative preparation fee (not to exceed \$200.00) whenever such costs are incurred. I will also pay your costs and expenses in the event that you obtain a judicial ruling or decision in your favor regarding my liability under the Lease Agreement, including reasonable Attorneys' fees, witness travel expenses, court costs, and service of process fees.

**7. Default A.** I will be in default of this lease if: (a) I fail to pay any amount due you within 60 days of the due date. (b) The Equipment becomes involved in any civil or criminal actions or suits or is seized by law enforcement agencies due to my neglect or misconduct. (c) I (or any guarantor of my obligation hereunder) file or there is filed against me (or any guarantor of my obligation hereunder) a petition in U.S. Bankruptcy Court or I (or any guarantor of my obligation hereunder) have made an assignment for the benefit of creditors. (d) The Equipment is lost, stolen or destroyed, if the loss is not covered by the loss or destruction waiver. (e) I fail to return the Equipment at the end of the lease-term if I have chosen the option of returning the Equipment at the end of the lease-term. (f) I fail to follow any other terms of this Lease.

**8. Default B.** If I default you have the right to exercise any or all of the following remedies, to the extent permitted by law: (a) Terminate this Lease without giving me notice. (b) Require the immediate payment of all amounts then due plus the unpaid balance of the amounts due for the original or extended term of the Lease discounted by an annual discount rate compounded monthly of at least 4%. (c) Take possession or request that I return the Equipment to you. You will credit my account for any amounts received, net of expenses, in the event of disposition of the Equipment in excess of the assumed Fair Market Value at the end of the Lease Term. (d) Lawfully enter my property and take the Equipment. If you repossess the Equipment, I will pay you your repossession costs, plus a \$50 disposition fee. (e) Charge me the fair market retail value of the Equipment on the date of its loss, theft, or destruction. (f) Keep any security deposit I have given to you to reduce the amount I owe. (g) Charge me any amount necessary to put the Equipment in good condition, ordinary wear and tear excepted. (h) Continue to charge me additional monthly lease-payments beyond the end of the lease-term until I return the Equipment. (i) Obtain, share and use information concerning me, including but not limited to, social security number, employment, name, date of birth, credit reports, tax identification numbers ("information") to locate all assets, including, but not limited to, bank accounts, mutual funds, stock brokerage accounts, money market accounts, real property, and personal property for the purpose of collection of money I owe you.

**9. De-Installation and Removal Charges.** I am responsible for any costs associated with the de-installation and/or removal of the Equipment for any reason.

**10. Maintenance of Equipment.** Except for ordinary wear and tear, I agree to maintain the Equipment in good operating and physical condition at my expense.

**11. Disclaimer of Warranties.** I understand that the Manufacturer may have provided a warranty on the Equipment. I will refer to the owner's manual or separate Manufacturer's certificate for the actual terms of the warranty. I understand that you have not given me either express or implied warranties for the Equipment, use of the Equipment and/or any services provided. You have specifically disclaimed any implied warranties of merchantability and/or fitness for any particular use. You will have no liability for indirect, consequential or special damages. I have chosen this specific Equipment based on my own judgment and expressly disclaim any reliance upon any statements or representations made by you.

**12. Equipment Servicing.** I understand that no servicing of any kind is provided by you. I am to look to the Equipment Vendor/Supplier for any claims, servicing or warranties if any, and I specifically and unconditionally waive any claims, present or future, against you. Any failure of Equipment, service or operation of any kind, whatsoever, is no basis for non-fulfillment of my obligations under the Lease.

**13. Manner of Execution.** Facsimile or electronic signatures shall be deemed as fully enforceable valid signatures as if such signature were an original signature as of the date executed. By signing electronically, I intend to be bound by all the Terms of the Agreement.

Lessee #1 Initials \_\_\_\_\_

Lessee #2 Initials \_\_\_\_\_

(If Applicable)

**LEASE TERMS AND CONDITIONS CONTINUED**

- 14. Alterations.** I shall not make alterations, additions or improvements to the Equipment without your prior written consent. All additions and improvements made to the Equipment shall belong to you.
- 15. Loss or Destruction of the Equipment.** I shall bear the entire risk and be responsible for loss, theft, damage or destruction of the Equipment from any causes whatsoever after I receive possession of the Equipment. I will notify you immediately if the Equipment is lost, destroyed, stolen or taken by any person. If the Equipment has only been partially damaged, you may require that I have it repaired. If you determine it is not repairable, then it will be considered destroyed.
- 16. Insurance.** I will keep the Equipment fully insured against loss, destruction, theft or damage and will provide an insurance binder naming you as loss payee.
- 17. Loss or Destruction Waiver.** You will waive my responsibility for loss or destruction of the Equipment and for keeping the Equipment fully insured during the Lease Term. After loss or destruction of Equipment, you will provide for its replacement with Equipment of comparable value at that time to the extent that I took reasonable care in preventing the loss or destruction of Equipment. I will promptly notify you of the loss. I will cooperate in making any claim with respect to the Equipment, including providing Police/Fire reports or documents to substantiate the claim. If I do not provide proof of insurance, I am deemed to have chosen to buy the Loss or Destruction Waiver, and I will pay you an amount not to exceed 25% of the base monthly lease payment due per month for such waiver.
- 18. Taxes and Tax Processing Fee.** I shall pay promptly when due any and all taxes (except income taxes), charges, penalties, interest, expenses, costs, assessments and fees, whatsoever, relating to this Lease and the equipment whether local, state, federal and otherwise, which now or hereafter is imposed on Lessee or Lessor. I agree that you may estimate the property and sales/use taxes that will be due for the equipment and agree to pay you the estimated taxes in monthly installments together with the monthly processing fee. The monthly processing fee will not exceed \$3.00 per month. Such fee will reimburse you for your costs of preparing, reviewing, and filing the returns and for your overall processing expenses. The taxes and tax processing fee may vary from month to month and from Lease to Lease.
- 19. Notice.** All notices under this Lease will be sent to your address on the front page of the Lease and to me at the address on the front page of the Lease.
- 20. Changes on Terms of the Lease.** This Lease explains all the terms and conditions for the use of the Equipment I am leasing. The terms and conditions may not be changed orally. You and I must both give written approval before any changes are made.
- 21. Collateral.** As security for payment of this Lease, I give you a security interest in the Refundable Security Deposit. If the Equipment is lost, stolen, damaged, destroyed, or if I fail to return the Equipment to you at the end of the Lease, you have the right to apply the Refundable Security Deposit to reduce the amount I owe, in addition to whatever other rights you may have at law or equity. No interest will be paid on the Refundable Security Deposit.
- 22. Assignment.** Without your prior written consent, I shall not (a) assign, transfer, pledge, hypothecate or otherwise dispose of this Lease or any interest therein, or (b) sub-lease, or lend the Equipment or permit it to be used by anyone other than me or my employees. I acknowledge that any assignment by you of any of your interest in this Lease would neither materially change my duty nor materially increase the burden of risk imposed upon me under this Lease. Nevertheless, I acknowledge that your assignment is permitted even if such assignment would be deemed to materially affect lessee's interest. You may assign this Lease and/or mortgage the Equipment in whole or in part without notice to me, and your assignee or mortgagee may reassign this Lease and/or such mortgage, without notice to me. Each such assignee and/or such mortgagee shall have your rights but none of your obligations under this Lease. I shall recognize each such assignment and/or mortgage and shall not assert against the assignee and/or mortgagee any defense, counterclaim, or set-off that I may have against you. Subject to the foregoing, this Lease inures to the benefit, is binding upon the heirs, personal representatives, survivors, and assignees, of the parties hereto.
- 23. Ownership.** The Equipment is, and shall at all times remain, your property; and I shall have no right, title or interest in it except as expressly set forth in this Lease. I will not directly or indirectly create or permit to exist, and will promptly and at my own expense discharge, any lien, charge or encumbrance on the Equipment, except for any lien, charge or encumbrance resulting solely from your acts. You may sign and file any documents, including a copy of this Lease, in the public records as necessary to protect your ownership and any security interest in the Equipment.
- 24. Use.** I shall use the Equipment in a careful manner and shall comply with all laws relating to its possession, use and maintenance.
- 25. Indemnity.** To the extent permitted by law, I shall indemnify you against, and hold you harmless from, any and all claims, actions, proceedings, expenses, damages and liabilities, including attorneys' fees arising in connection with the Equipment, including without limitation, its manufacture, selection, purchase, delivery, possession, use, operation, or return.
- 26. Change of Name, Billing Address, Bank Account Change.** I will inform you, within one week, of any change in my name, address, billing address, telephone numbers, location of the Equipment, or the bank checking account used for ACH debit. You will charge me up to \$100 if I fail to do so. You are authorized to correct any typographic or spelling errors made on the front of this Lease Agreement regarding my address, telephone numbers, Equipment leased or identification numbers of the Equipment.
- 27. Miscellaneous.** If any provision in this Lease is invalid, such invalidity shall not affect the validity of the remaining provisions of this Agreement and we agree to substitute for the invalid provision a valid provision which most closely approximates the effect and intent of the invalid provision. Notwithstanding any provision contained herein, the maximum amount charged and collected shall not exceed the maximum amount which may be lawfully contracted for, charged, and received in this Lease transaction as determined by final judgment of a court of competent jurisdiction, including appeals there from.
- 28. Communication via Cell Phone and Email.** By providing my telephone number and email address, I authorize you, your affiliates and agents to contact me using any means of communication, including but not limited to, calls placed to my cellular telephone using an automatic dialer device, calls using prerecorded messages and/or SMS text messages, and emails regarding any current or future payments owed to you, even if I will be charged by my service provider(s) for receiving such communication.

**Method of Payment**

I represent and warrant that the checking account or credit/debit card listed below has been established as a business purpose account and is not used for personal, family or household purposes.

**Statement Billing:** I will receive monthly statements showing all amounts due. I understand a \$5 statement billing fee will be charged per month in accordance with paragraph 2 above.

**Automatic Payment:** I authorize my bank, credit card company or other financial institution shown below to: A) debit my checking account B) charge my credit card, for the purpose of paying the amounts due under my Agreement. I agree that if a payment cannot be made for any reason when due that continued attempts to debit or charge my designated account for the monies owed may be made until payment in full has been received.

**Payable at Signing:** If there is a payment due at the time I sign this lease, and I have not provided you with a check for that Payable at Signing sum, I authorize you to collect the Payable at Signing sum via the payment Method I have selected below.

Complete only one of the following:

**A: EFT Direct Payment:**

Name on Checking Account: \_\_\_\_\_

Routing #: \_\_\_\_\_ Account #: \_\_\_\_\_

**B: Credit Card-Direct Debit Charge to My Credit Card**      VISA                      MasterCard                      AMEX                      Discover

Name as it appears on the Card: \_\_\_\_\_

Account #: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

**Authorized Signature #1** \_\_\_\_\_ **Authorized Signature #2** \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_