

EQUIPMENT ORDER - TERMS AND CONDITIONS
IMPORTANT – READ CAREFULLY

1. **RENTAL/PURCHASE AGREEMENT.** Subject to these terms and conditions (this “Agreement”), TIB – The Independent BankersBank, NA (“TIB”) agrees to provide to the merchant (the “Merchant”) listed in the attached equipment order request form (the “Equipment Order Form”) the hardware or other solutions described in the Equipment Order Form (the “Equipment”). The Equipment will be rented or sold to Merchant as indicated in the Equipment Order Form.
2. **RENTAL/PURCHASE PRICE.** The rental price or the purchase price, as applicable, for the Equipment is specified in the Equipment Order Form. Merchant agrees to pay the rental payments or the purchase price for the Equipment as set forth in the Equipment Order Form, EX WORKS Shipping Point. As used herein, (i) “EX WORKS” shall have the meaning assigned to it under the INCOTERMS 2000, and (ii) “Shipping Point” means the offices of TIB in Farmers Branch, Texas. Merchant shall also be solely responsible for (i) any sales, use or other taxes which may become due and owing by reason of the rental or sale of the Equipment hereunder, and (ii) all costs, duties, fees, taxes, and expenses arising from or in connection with the shipping of the Equipment from the Shipping Point to a destination selected by Merchant. By signing this Agreement, Merchant hereby authorizes TIB to debit Merchant’s bank account on record with TIB pursuant to its merchant account with TIB (the “Bank Account”) for all amounts owed to TIB in accordance with this Agreement. A restocking fee of \$150 will apply, if equipment is returned back to TIB.
3. **TERM.** The term of this Agreement will run coterminous with the Merchant’s merchant agreement with TIB. In the event of termination of such merchant agreement, this Agreement will automatically terminate. In addition, either party may terminate this Agreement upon thirty (30) days prior written notice. TIB may terminate this Agreement immediately upon a breach by Merchant of any term, condition or covenant set forth herein (including any failure to pay any rental payment when due) that is not remedied within ten (10) days after written notice thereof is sent to Merchant. Termination of this Agreement shall not relieve Merchant from paying any amounts accrued under this Agreement prior to termination and shall not limit TIB from pursuing any other available remedies.
4. **EFFECT OF TERMINATION; SURVIVAL.** If Merchant is renting Equipment, upon termination of this Agreement, Merchant will return the Equipment, including all cables, to TIB, 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 TIB within thirty (30) days after such termination, then Merchant shall be liable to TIB for a replacement fee of \$495.00. Further, upon any breach of this Section, Merchant will be liable, and TIB will have the right to automatically debit Merchant’s Bank Account for TIB’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 TIB’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, shall survive without limitation.
5. **TITLE; OWNERSHIP.** If Merchant purchases the Equipment, title to the hardware (exclusive of all software and third party intellectual property or other proprietary rights contained therein) and risk of loss for the Equipment shall pass to Merchant upon TIB making such Equipment available for pick-up by Merchant or its representative at the Shipping Point. If Merchant is renting the Equipment, title to the Equipment will at all times remain with TIB. Notwithstanding any other provision set forth herein, TIB or its third party licensors are and shall 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 improvements 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.
6. **COVENANTS.** If Merchant is renting the Equipment, during the term of this Agreement, Merchant (i) shall maintain the Equipment in good condition and repair, reasonable wear and tear excepted, (ii) shall promptly notify TIB of the occurrence of any events which materially and adversely affect the value of the Equipment, including if it is stolen, and (iii) shall not, without the prior written consent of TIB, sell, assign, exchange, lease, tend, license the use of, pledge, encumber, grant a security interest in or dispose of the Equipment. In addition, Merchant agrees to use the Equipment at all times in compliance with all applicable laws, regulations and ordinances and any third party licensors’ requirements or agreements.
7. **GOVERNING LAW; WAIVER OF JURY TRIAL.** The rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Texas (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 Dallas County, Texas for any dispute arising out of the rental or sale of the Equipment.
8. **WAIVER OF JURY TRIAL.** EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY.
9. **DISCLAIMER OF WARRANTY.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, TIB 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, NON-INFRINGEMENT, TITLE OR WORKMANSHIP.
10. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, TIB 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 EQUIVOCAL THEORY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES. IN NO EVENT SHALL TIB’S TOTAL LIABILITY HEREUNDER FOR ANY AND ALL CAUSES, WHETHER ARISING OUT OF NEGLIGENCE, BREACH OF CONTRACT, TORT OR OTHERWISE, EXCEED \$100.
11. **INDEMNIFICATION.** Merchant agrees to defend, indemnify, and hold TIB, its subsidiaries, affiliates, and its and their respective officers, directors, employees, sub-contractors, suppliers, agents and representatives (collectively, the “TIB Entities”) harmless from and against any claim, demand, cause of action, or proceeding related to this Agreement (“Claim”) brought by any party as a result of any breach of Merchant’s obligations under this Agreement. Merchant further agrees to defend, indemnify, and hold the TIB 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.
12. **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 SHALL BE THE RETURN OF THE EQUIPMENT TO TIB.
13. **NOTICES.** All notices and other communications required or permitted under this Agreement shall 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 in the merchant agreement.
14. **MODIFICATIONS; SEVERABILITY.** TIB reserves the right to make changes to this Agreement at any time. If any term or condition of this Agreement shall be deemed invalid, void, or for any reason unenforceable, that term or condition shall be deemed severable and shall 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 TIB and any attempt to do so without such consent shall be void.
16. **PROVISIONS RELATED TO SECURITY SERVICES.** The provision of TransArmor services for tokenization or the TransArmor solution as indicated on the Equipment Order Form shall be subject to the terms and conditions of Merchant’s merchant agreement with TIB titled “SPECIAL PROVISIONS REGARDING TRANSARMOR SERVICES.” Such terms and conditions are incorporated herein by reference hereof.