

ENCOMPASS POSA EQUIPMENT USAGE AGREEMENT

Encompass Communications
 P.O. Box 3529
 Longview, TX 75606
 Phone: (903)323-4550 Fax: (903)323-4822

POSA Reporting Site: <https://posa.ecllc.com/reports>

Distributor:	Sales Rep:
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Retailer Information:

Legal Name:		Federal Tax ID:	
Mailing Address:		City:	State:
Phone: ()	Fax: ()	Contact Person:	
Location Name (DBA):		Phone: ()	Fax: ()
Location Address:		City:	State:
Contact Person at Location:		E-Mail Address:	

Terminal Deployment:

Ship terminal to:		Phone: ()	
Address:		City:	State:
			Zip:

Equipment provided will be a Verifone Omni 3200 or better and software, valued at \$495.

AUTHORIZATION FOR AUTOMATIC WITHDRAWAL OF FEES

I, the undersigned Equipment User, in the capacity set forth below, hereby authorizes Encompass Communications, LLC, or its designee, successor or assignee (hereinafter "Owner") to automatically withdraw any amounts, including any and all taxes or other charges now due or hereinafter imposed, owed in conjunction with the above referenced Equipment Usage Agreement (hereinafter "Agreement") by initiating debit entries to my account at the financial institution (hereinafter "Bank") evidenced on the check copy provided, or such other Bank that may be designated by me from time to time. In the event of default of my obligations hereunder, I authorize debit of my account for the full amount due under this Agreement. A payment (whether paid by debit or other means) that is not honored by my Bank for any reason will be subject to a \$20.00 service charge imposed by Owner, the amount of which may be debited from my account. Further, I authorize my Bank to accept and to charge any debit entries initiated by Owner, to my account. This authorization is to remain in full force and effect until Owner has received written notice from me of its termination in such time and in such manner as to afford Owner a reasonable opportunity to act, but no less than three (3) prior business days written notice. User agrees to notify Owner in writing of any change to the business checking account used for ACH debits at least five (5) business days prior to the next scheduled ACH debit. Encompass Communications, LLC abides by the NACHA Rules governing these transactions. The below signatory, as the primary owner of the User, shall obligate the User's formal entity (if any) and shall also serve as an absolute personal and continuing guaranty of the signing individual for all liability of User hereunder. This guaranty binds the individual and his/her successors, assigns, estate, representatives and heirs.

Your signature acknowledges that you are authorized to execute this Agreement and have read and understand all information contained herein, the terms and conditions on the reverse side of this Agreement, and any addenda, amendments and/or attachments, all of which are part of this Agreement.

Signature	Date	Print Name	Title
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EQUIPMENT USAGE AGREEMENT Terms and Conditions

INVESTIGATIVE CONSUMER REPORT: An investigative or Consumer Report may be made in connection with this Agreement. User authorizes Owner or any credit bureau or any credit reporting agency employed by Owner or any agents of Owner to investigate the references given or any other statements or data obtained from User for the purpose of this agreement.

WARRANTIES: No express warranty on equipment except as otherwise explicitly provided herein, Owner expressly disclaims all warranties, whether expressed or implied, including, without limitation, the implied warranties of fitness for a particular purpose and merchantability with respect to the equipment. User represents and warrants to Owner that User has selected the equipment, and under no

circumstances shall Owner be liable to User for special, incidental, consequential or punitive damages, whether or not Owner receives notice of any such damages and whether or not such damages could have been foreseen. In the event said Equipment is defective or malfunctions, User's sole remedy shall be to notify Owner, which, in its sole discretion, shall make a determination as to whether to repair or replace said Equipment. User agrees to pay Owner a processing fee of \$25.00, to be debited from User's account, for each replacement or repair occurrence to cover general shipping and handling costs. Equipment damaged through User misuse, abuse, or neglect voids all limited remedies provided by Owner hereunder.

*** REVERSE SIDE HAS ADDITIONAL TERMS AND CONDITIONS WHICH ARE PART OF THIS AGREEMENT ***

TERM AND USE: The Usage term shall commence as of the date this Agreement is accepted by Owner (the "Commencement Date"), and shall continue: (a) month to month until such time that this Agreement is terminated; or (b) if Retailer has accepted the Term Commitment in Owner's POSA Retailer Agreement, for the length of the applicable term. User's obligation to pay any fees detailed herein shall be absolute and unconditional and is not subject to any abatement, set-off or defense of counterclaim for any reason whatsoever. When determined by Owner, User hereby authorizes Owner to insert on the Agreement form the serial numbers and other identification data of the Equipment and dates or other omitted factual matters.

ASSIGNMENT: (a) Owner may assign or transfer this agreement or owner's interest in the equipment without notice to User. User agrees that it will not assert against any assignee of Owner any defense, counterclaim or offset that User may have against Owner. (b) User shall not assign or in any way dispose of all or any part of its rights or obligations under this agreement or enter into any other agreement for all or any part of the equipment without prior written consent of owner. (c) User shall not create, incur, assume or suffer to exist any mortgage, lien, pledge or other encumbrance or attachment of any kind whatsoever upon, affecting or with respect to the Equipment or this Agreement or any of Owner's interest thereunder.

TITLE, QUIET ENJOYMENT: Owner shall at all times retain title to the Equipment. User hereby authorizes Owner, at User's expense, to cause this Agreement or any statement or other instrument in respect to this Agreement showing the interest of Owner in the Equipment, including Uniform Commercial Code Financing Statements, to be filed or recorded and re-filed and re-recorded, and grants Owner the right to execute User's name thereto. This Agreement shall serve as a security agreement, if applicable, for perfecting any filing which confirms Owner's ownership of the Equipment. User agrees to pay or reimburse Owner for any filing, recording or stamp fees or taxes arising from the filing or recording of any such instrument or statement.

CARE, USE AND LOCATION: User shall maintain the Equipment in good operating condition, repair and appearance, and protect the same from deterioration other than normal wear and tear, shall use the Equipment in the regular course of its business, and shall comply with all laws, ordinances, regulations and rules with respect to the use, maintenance and operation of the Equipment, and shall keep the Equipment at the location shown herein, and shall not remove the Equipment from its location without the prior written consent of Owner. User is responsible for required phone lines, connection equipment and consumables related to use of the Equipment. In the event Equipment is returned to Owner, User shall return the Equipment, freight prepaid, to Owner in good repair, condition and working order, in a manner and to a location designated by Owner, packed and insured in a manner sufficient to maintain the value and usability of the Equipment. Damage or loss of equipment in transit from User is the responsibility of User.

INDEMNITY: User agrees to indemnify, defend and hold harmless Owner, its shareholders, employees, directors, agents, servants, successors, and assigns from any and all liability, damage or loss, including reasonable attorney's fees, arising out of the ownership, selection, possession, leasing, operation, control, use, condition, maintenance, delivery and return of the Equipment. The indemnities and obligations herein provided shall continue in full force and effect, notwithstanding the termination of this Agreement.

INSURANCE: User shall keep the Equipment insured against all risks of loss or damage from any cause whatsoever for not less than the full replacement value thereof. User shall carry public liability insurance, both personal injury and property damage, covering the Equipment. All such insurance shall be in form and with companies satisfactory to Owner, and shall name Owner and its assignee as Loss Payee as its interest may appear with respect to property damage coverage and as Additional Insured with respect to public liability coverage. User shall pay the premiums for such insurance and, upon Owner's request, shall deliver to Owner satisfactory evidence of insurance coverage required. The proceeds of such insurance payable shall be applied to satisfy User's obligation as set forth in Paragraph titled "RISK OF LOSS". User hereby irrevocably appoints Owner as User's attorney-in-fact to make a claim for, receive payment of and execute and endorse all documents, checks or drafts received in payment for loss or damage under any such insurance policy.

RISK OF LOSS: User shall bear all risks of loss of and damage to the Equipment from any cause and the occurrence of such loss or damage shall not relieve User of any obligation hereunder. In the event of loss or damage, User, at its option, provided it is not in default hereunder, otherwise at Owner's option, shall: (a) restore the damaged Equipment to good repair, condition and working order, or (b) replace lost or damaged Equipment with new identical equipment and deliver to Owner documentation creating clear title thereto in Owner's name, or (c) pay to Owner the then present value of the equipment.

INSURANCE NONCOMPLIANCE: In the event that User has not complied with User's obligation under Paragraph titled "INSURANCE" of this Agreement, then User shall be subject to a nonrefundable Insurance Noncompliance Charge in an amount not to exceed \$10 per month, said amount to be paid with the next billing and all subsequent payments due during the remaining term of the Agreement, or until such time as satisfactory evidence of insurance coverage has been provided. The imposition of the Insurance Noncompliance Charge shall not relieve User of any obligation under Paragraph titled "RISK OF LOSS" of this Agreement. In addition, at Owner's option, Owner may obtain such insurance, and the cost for

such insurance shall be an additional charge and obligation of User hereunder, payable to Owner upon demand.

NET CHARGES AND TAXES: User intends the payments hereunder to be net to Owner and User agrees to pay all sales, use, excise, personal property, stamp, documentary and ad valorem taxes, license and registration fees, assessment, fines, penalties and similar charges imposed on the ownership, possession or use of the Equipment during the term of this Agreement, and shall reimburse Owner upon demand for any taxes paid by or advanced by Owner.

EVENT OF DEFAULT: If any one or more of the following events (each an "Event of Default") shall occur, then to the extent permitted by applicable law, Owner shall have the right to exercise any one or more remedies set forth in Paragraph titled "REMEDIES" below. An Event of Default shall be if: (a) User fails to pay any payment hereunder when due; or (b) User fails to pay, when due, any indebtedness of User to Owner arising independently of this Agreement; or (c) User fails to perform any of the terms, covenants, or conditions of this Agreement; or (d) User becomes insolvent or makes an assignment for the benefit of creditors; or (e) a receiver, trustee, conservator, or liquidator of User is appointed with or without the application or consent of User; or (f) a petition is filed by or against User under the Bankruptcy Code or any amendment thereto, or under any insolvency law or laws, providing for the relief of debtors; or (g) User discontinues or otherwise terminates use of Encompass Communications, LLC services.

REMEDIES: Upon the occurrence of any Event of Default and at any time thereafter, Owner may, with or without terminating this Agreement, in its sole discretion, do any one or more of the following: (a) upon notice to User, terminate this Agreement and all schedules executed pursuant thereto; (b) dispose of the Equipment by sale or otherwise although Owner is not obligated to do so; (c) declare immediately due and payable all sums due and to become due hereunder for the term of this Agreement; (d) recover from User damages, in an amount equal to the sum of (1) any accrued and unpaid charges as of the date of the Event of Default plus interest at the rate of the lesser of: (i) eighteen percent (18%) per annum, and (ii) the maximum rate allowed by applicable law (the "Interest Rate"); (2) the present value of all future charges; (3) all costs and expenses incurred in any repossession, recovery, storage, or repair, sale, re-lease or other disposition of the Equipment; (4) all attorney's fees and costs incurred in connection therewith or otherwise resulting from User's default; (5) estimated value of the Equipment as of the expiration of this Agreement, or any renewal thereof as determined by the Owner; and (6) any indemnity, if then determinable, plus interest at the Interest Rate; and (e) re-use or sell any or all of the Equipment at a public or private sale on such terms and notice as Owner shall deem reasonable and recover from User damages, as set forth above, less the amount received by Owner upon such public or private sale or re-use of Equipment, if any. Any security deposits will be forfeited to Owner and Owner shall be entitled to any other right or remedy that may be available to it under Texas Uniform Commercial Code or any other applicable law. No remedy referred to in this paragraph is intended to be exclusive but shall be cumulative and in addition to any other remedy referred to above or otherwise available to Owner at law or in equity. No express or implied waiver by Owner of any default shall constitute a waiver of any other default by User or a waiver of any of Owner's rights.

TERMS FOR TERMINATION: (a) Upon termination of this Agreement, by whatsoever reason, User shall return the Equipment, freight prepaid, to Owner in good repair, condition and working order, in a manner and to a location designated by Owner. If, upon termination, User does not immediately return the Equipment to Owner, after thirty (30) days the User shall be considered in Default and Owner may use any method necessary to recover the Equipment or value of the Equipment as outlined in Paragraph titled "REMEDIES." (b) Provided User has fulfilled all of its obligations to Owner hereunder, (1) User's security deposit, if any, shall be refunded to User at the termination of the Agreement, without interest; or (2) at User's direction, such security deposit may be applied to the purchase of the Equipment, at a reasonable purchase price determined by Owner, in which event the Equipment need not be returned to Owner.

ENTIRE AGREEMENT: This Agreement contains the entire agreement between the parties and may not be altered, amended, modified, terminated or otherwise changed except in writing and signed by an executive officer of Owner, or as provided in Paragraph titled "TERM AND USE."

MISCELLANEOUS: If User fails to pay any charges or other amount required herein to be paid to Owner within ten (10) days of when due, User agrees to pay Owner not later than one (1) month thereafter, a service charge of five percent (5%) of the amount of such unpaid payment or \$5.00, whichever is greater, but only to the extent allowed by law. All notices under this Agreement shall be sufficient when mailed to the intended party at the respective address set forth herein, or at such other address as said party may provide in writing from time to time. Any such mail is to be duly addressed and with postage prepaid. No provision of this Agreement that may be deemed unenforceable shall in any way invalidate any other provision or provisions of this Agreement, all of which shall remain in full force and effect. This Agreement shall be governed by the laws of the State of Texas. Exclusive venue for any legal action related to this Agreement shall lie exclusively in Gregg County, Texas.

TERMINAL SOFTWARE MODIFICATION: User must obtain written authorization from Owner for all software modifications to terminal. Software modifications include, but are not limited to, Credit Card, Debit Card, Check, and EBT Programs and Services. Software modifications not authorized by Owner may result in removal of the unauthorized programs and termination of this Agreement.

This Agreement becomes effective on the date accepted by OWNER.