

## PURCHASE AND ASSIGNMENT AGREEMENT

This Agreement made between [REDACTED] a [REDACTED] corporation, having its principal place of business at, [REDACTED] hereafter referred to as Seller or Client, and [REDACTED] corporation, with its principal place of business located at [REDACTED] hereinafter referred to as Purchaser or [REDACTED]

1. **Purchase of Accounts.** Seller hereby agrees to sell, assign and transfer to [REDACTED] and [REDACTED] hereby agrees to purchase, all Seller's Accounts which are deemed acceptable by [REDACTED] in its sole and absolute discretion; with full power to [REDACTED] to collect and otherwise deal with such Accounts as the sole and exclusive owner thereof. As a material inducement to [REDACTED] to enter into this Agreement, Seller agrees to sell, assign and transfer all acceptable accounts to [REDACTED]. [REDACTED] will purchase an Account on the shortest selling terms of the Purchase Price thereof upon receipt by [REDACTED] of (a) the invoice copy evidencing such Account; (b) information acceptable to [REDACTED] concerning such Account has been transmitted by Seller to [REDACTED] through transmission and (c) such other information otherwise requested and acceptable to [REDACTED].
  
2. **Seller's Representations, Warranties, and Covenants as to Accounts and Account Debtors.** To induce Purchaser to render its services available to Seller and with full knowledge that the truth and accuracy of the following are being relied upon by the Purchaser in the purchase and remittance for the accounts acceptable to Purchaser, the Seller represents, warrants, covenants and agrees that:
  - (a) The Seller is the sole and absolute owner of each Account set forth in Purchases & Advances Report(s) and has full legal right to make said sale, assignment and transfer thereof;
  - (b) The correct amount of each Account is set forth in Purchases & Advances Report(s) and is not in dispute;
  - (c) The payment of each Account is not contingent upon fulfillment of any obligation or contract, past or future, and any all obligations required of the Seller have been fulfilled as of the date of this Agreement;
  - (d) Each Account set forth in Purchases & Advances Report(s) is based on an actual sale and delivery of goods and/or services actually rendered, is presently due and owing to Seller, is not past due or in default, has not been previously sold, assigned, transferred, or pledged, and is free of any encumbrance or lien;
  - (e) There are no defenses, offsets, or counterclaims against any of the Accounts, and no agreement has been made under which the account debtor may claim any deduction,

Seller Initials [REDACTED]

Purchaser Initials [REDACTED]

except as otherwise stated in any of the Accounts set forth in Purchases & Advances Report(s);

- (f) If any remittances of payments are made, or attempted to be made, directly to Client or Client's employees or agents, Client shall act as trustee of an express trust for [REDACTED]'s benefit, hold the same as [REDACTED]'s property and deliver the same to [REDACTED] forthwith in kind the next business day following receipt of payment by Client. In the event that Client fails to deliver any remittance of payment to [REDACTED] in kind by the next business day, Client shall be responsible to pay to [REDACTED] a Misdirected Payment Fee in the amount of [REDACTED] percent ([REDACTED]%) of the amount of payment received, or attempted to be received by Client;
- (g) [REDACTED], and any designee(s), are hereby appointed Client's attorney-in-fact to endorse Client's name on any and all checks or other forms of remittances received by [REDACTED] where such endorsement is required to effect collection and to transmit notices to customers, in Client's or [REDACTED]'s name, this power, being coupled with an interest, is irrevocable;
- (h) To Seller's best knowledge, each account debtor set forth in Purchases & Advances Report(s) is not insolvent as that term is defined by the Federal Bankruptcy Act and the Uniform Commercial Code;
- (i) Each Account set forth in Purchases & Advances Report(s) shall not be on bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment or any other repurchase or return basis;
- (j) Each account debtor named in Purchases & Advances Report(s) will not object to the payment for, or the quality or the quantity of the subject matter of the Account and is liable for the amount referred to above in Paragraph 2(b);
- (k) Each account set forth in Purchases & Advances Report(s) shall be promptly notified after acceptance by Purchaser that the Account has been transferred to and is payable to Purchaser and Seller expressly waives any claim of tortious interference with business relationships with respect to Purchaser in the communications with the account debtors;
- (l) Seller does not own, control, or exercise dominion in any way whatsoever, over the business of any account debtor set forth in Purchases & Advances Report(s); and
- (m) All Accounts forwarded to Purchaser and acceptable to Purchaser after date hereof, which include those accounts first purchased and any accounts forwarded by Seller during the term of this Agreement, shall comply with each and every one of the representations, warranties, covenants and agreements contained in the Agreement, and each invoice shall state that all payments shall be made to Purchaser and sent directly to Purchaser's lockbox or other location as specified by Purchaser.

Seller Initials [REDACTED]

Purchaser Initials [REDACTED]

3. **Seller's Representations, Warranties, and Covenants as to Seller.** To induce the Purchaser to render its services available to the Seller, the Seller represents, warrants, covenants and agrees that it shall:
- (a) not permit any security interest, lien or encumbrance to attach to any Collateral now or hereafter granted to Purchaser or upon any Account;
  - (b) not assign any of its contracts or the right to receive payment from any source to any other entity without Purchaser's advanced written permission;
  - (c) not change its name or address without Purchaser's advanced written permission;
  - (d) not instruct account debtors to pay funds to any entity other than Purchaser (including Seller) without Purchaser's advanced written permission;
  - (e) not consolidate or merge with any person or business entity or acquire or purchase any equity or interest in any other person or business entity, including shares of stock of other corporations, or acquire or purchase any assets or obligations of any other entity without Purchaser's advanced written permission;
  - (f) not alter or amend its business structure without Purchaser's advanced written permission;
  - (g) other than as stated immediately below, not do business under an assumed or trade name without Purchaser's advanced written permission.  
Trade Name(s) & dba(s) used: N/A;
  - (h) not make any loans to any person, including any of its officers, directors, stockholder, or employees or repay any existing loans made to it by its officers, directors, stockholders, or employees;
  - (i) not declare or pay any dividends or make any other payments on its capital stock or issue, redeem, repurchase or retire, purchase or otherwise acquire any of its capital stock now or hereafter outstanding;
  - (j) remain current upon and pay all governmental taxes and fees, including, but not limited to, payroll and unemployment taxes, business operation taxes and property taxed and shall remain current on all employee retirement and benefit plans and payments as required by law. Upon written request, Seller shall furnish Purchaser with written verification of all filings;
  - (k) Use advances made by the Purchaser solely for refinancing existing indebtedness and for working capital and understands that [REDACTED] is not obligated to purchase invoices and cannot be liable for any damages for not purchasing invoices;

Seller Initials

Purchaser Initials

(l) The signatory to this Agreement has the full authority to enter into this Agreement and make the Representations contained in this Agreement.

(m) As a material inducement to reserve adequate funds for Seller, Seller will offer for purchase invoices equal to one-half of the Receivable Line each calendar month ("Minimum Volume Requirement"). In the event that purchased invoices are less than the Minimum Volume Requirement, [REDACTED] is entitled to deduct from future advances and/or reserves the minimum combined fees that would have been earned on the invoice shortfall for that calendar month.

Purchaser is not obligated to ensure that Seller complies with these above requirements, and no party may rely upon Purchaser to do so.

4. **Advances and Fees.** Subject to the terms and conditions of this Agreement, [REDACTED] may in [REDACTED]'s sole discretion, make advances to Client or for Client's account against the Purchase Price of Accounts in amounts, in [REDACTED]'s sole discretion, of up to the Advance Rate stated in the Factoring Proposal of Accounts Receivable less any sales taxes referenced on the invoices evidencing such Accounts and/or Dilution up to the Receivable Line as stated in the Factoring Proposal. Upon the purchase of an Account by [REDACTED], [REDACTED] shall charge Client the Processing Fee as stated in the Factoring Proposal. The Processing Fee shall be for the purposes of processing and verifying invoices that are purchased. [REDACTED] shall also charge Factoring Commission and Interest as stated in the Factoring Proposal for each thirty (30) day period outstanding, or part thereof. However, in no event shall the Factoring Commission paid by Client to [REDACTED] with respect to any invoice evidencing an Account be less than \$ [REDACTED].
5. **Adjustments and Charges.** In the event of a breach of any of the representations, warranties, covenants, and agreements contained in this Agreement, including a dispute between the Seller and any account debtor set forth in Purchases & Advances Report(s), Seller shall promptly advise Purchaser and shall, subject to Purchaser's approval, adjust such disputes and advise Purchaser of adjustment, and Purchaser shall have the right at any time to charge back to Seller's account the amount of any allowance, return or Account, full payment of which is delayed or refused by an asserted counterclaim, defense or purchase of the accounts in dispute. Unless reassigned to Seller, Purchaser shall remain the absolute owner of such Account and any rejected, returned, or recovered personal property, with the right to take possession thereof at any time, but if such possession is not taken, Seller is to resell it for Purchaser's account with the proceeds made payable to Purchaser. In addition to the foregoing, Purchaser shall charge back to Seller all necessary costs to administer this Agreement and fundings to Seller including, without limitation, wire transfer fees, bank charges, copies, data transmission charges, recording and/or filing charges, credit reports, attorneys fees, etc..
6. **Security Interest.** Seller hereby grants to Purchaser a present and continuing security interest in all of its assets including but not limited to, its presently owned or hereinafter acquired (a) accounts, (b) accounts receivable, (c) contract rights, (d) chattel paper, including electronic chattel paper (e) equipment, (f) inventory, (g) general intangibles (including but not limited to trademarks, trade names, patents, copyrights and all other

Seller Initials [REDACTED]

Purchaser Initials [REDACTED]

forms of intellectual property, and tax refunds), (h) instruments, (i) personal property, (j) deposit accounts, (k) investment property, (l) letter of credit rights, (m) cash, (n) cash deposits, (o) legal actions and rights to all claims including insurance proceeds (the "Collateral"). The security interest and assignment includes Purchaser's right to any returned personal property. As such owner, and in addition to Purchaser's rights under the Uniform Commercial Code, Purchaser shall have all rights of an unpaid seller, including the rights or replevin, claim and delivery, reclamation, and stoppage in transit, and any personal property so recovered will be considered, as between the parties hereto, as returned property. This assignment of security interest is granted to Purchaser to secure Seller's performance of the obligations, representation, warranties, covenants and agreements contained in this Agreement. This security interest is granted to Purchaser to secure all indebtedness owed by Seller at any time, including, but not limited to, future indebtedness, collection costs and attorneys' fees. Upon a breach of any of the obligations representations, warrants, covenants and agreements contained in this Agreement, Purchaser may exercise, at its option, any and all rights with respect to the Collateral of a secured creditor under the provisions of Article 9 of the Uniform Commercial Code including the right to realize upon said collateral as Purchaser may determine. Seller hereby authorizes Purchaser to file any and all necessary financing statements, including revisions or modifications thereof, which Purchaser may at any time desire to file in order to protect Purchaser's security interest as described herein.

7. **Payment.** As payment is received for an account, the purchase price of such Account, not to exceed the Collected Amount of such Account, less advances, factoring commission, interest and any other amounts due to [REDACTED] less Reserves as provided for below will be credited to Client's account on the Collection Date [REDACTED] business days after receipt of payment) for such Account.
8. **Reserves.** [REDACTED] shall reserve, maintain and withhold a reserve amount equal to [REDACTED] percent [REDACTED]%) of the gross face amount of all outstanding unpaid Accounts purchased as security for the payment and performance of the Obligations, including, without limitation, reserves for the amount of any Account which is subject to a Dispute. Eligible Reserves may be released no more than twice per month and in conjunction with the purchase of Accounts and upon [REDACTED]'s discretion as payments on invoices are received and schedules are fully closed. All reserve balances shall be held on any past due accounts. This Reserve Account shall be for the sole benefit of [REDACTED] and [REDACTED] may, at its sole discretion, change the amount of reserves held. Upon notice of termination of this Agreement [REDACTED] may retain the Reserve Account unless and until Client has executed and delivered to [REDACTED] a general release in the form acceptable to [REDACTED]
9. **Full Recourse:** [REDACTED] may, at [REDACTED]'s option, charge back to Client (or Client shall pay) all amounts owing on Accounts, which are not paid within ninety (90) days of invoice date. If [REDACTED] charges back amounts outstanding pursuant to this paragraph or any other reason, Client shall be charged [REDACTED] percent [REDACTED]%) of the face value of the invoices. This charge is to be deemed an "Invoice buy-back" charge.

Seller Initials [REDACTED]

Purchaser Initials [REDACTED]

10. **Collection Costs.** The Seller agrees to pay all costs to collect any sums due hereunder, and, if collected by or through an attorney, all actual attorneys' fees together with all other legal and court expenses. Seller agrees that such costs are reasonable and not a penalty.
11. **Inspection of Books and Records.** In the event of default Client shall within twenty-four (24) hours after [REDACTED]'s request, permit [REDACTED] and/or any authorized representative to visit and inspect any of the properties of Client, including its financial and accounting records, and to make copies and take extracts therefrom, and to discuss its affairs, finances, and business with its officers or employee at such times during normal business hours and as often as [REDACTED] requests. Client also acknowledges that [REDACTED] intends to make such inspections on at least an annual basis, and Client agrees to pay to [REDACTED] an audit fee for each inspection equal to \$ [REDACTED] per auditor per day or any portion thereof, including days spent traveling to or from Client's location plus travel and lodging expenses; provided, however, that the aggregate amount of such audit fees for which Client will be liable during any Contract Year shall not exceed \$ [REDACTED]. At a minimum, Client agrees to furnish to [REDACTED] copies of quarterly financial documentation in a timely manner.
12. **Term and Termination.** The Term of this Agreement shall be as stated in the Factoring Proposal between Seller and Purchaser, which is to be incorporated herein and made a part of this Agreement in its entirety. This Agreement shall continue on an auto renewal basis unless Client provides a 30 day written notice of termination. Any termination shall be subject to any fees provided for in this Agreement. Should Client for any reason whatsoever, voluntarily or involuntarily, terminate this Agreement or should this financing become inactive prior to the Termination Date then in that event Client shall be liable and shall pay to [REDACTED] an Early Termination Fee per month for each month or part of a month prior to the Termination Date. This prepayment fee is based on the Minimum Volume Requirement per month as calculated and provided in Section 3(m).
13. **Default.** The Seller shall be in default under this Agreement if it breaches any of the representations, warranties, agreements, and covenants contained herein. Upon the occurrence of any default under this Agreement, the Purchaser, at its sole discretion, may immediately exercise any or all of its rights and remedies under this Agreement and at law without providing notice to the Seller or opportunity to cure, including, but not limited to any fees that may be charged pursuant to this Agreement.
14. **Events of Default.** The following events will constitute an Event of Default hereunder: (a) Client defaults in the payment of any Obligations or in the performance of provision hereof or of any other agreement now or hereafter entered into with [REDACTED], or any warranty or representation contained herein proves to be false in any way, whatsoever, (b) Client or any guarantor of the Obligations becomes subject to any debtor-relief proceedings, (c) if Client fails or refuses to sell, assign and transfer all its Accounts to [REDACTED] hereunder, (d) any such guarantor fails to perform or observe any of such Guarantor's obligations to [REDACTED] or shall notify [REDACTED] of its intention to rescind, modify, terminate or revoke any guaranty of the Obligations, or any such guaranty shall cease to be in full force and effect for any reason whatever, (e) interfere with rights of [REDACTED] as provided herein and any other related documentation, and (d) [REDACTED] for

any reason, in good faith, deems itself insecure with respect to the prospect of repayment or performance of the Obligations.

15. **Remedies in the Event of Default.** If any Event of Default shall have occurred, [REDACTED] may exercise all the rights and remedies of a secured party on default under the [REDACTED] Uniform Commercial Code and all of the rights and remedies provided for in this Agreement and such other rights and remedies as may be provided by law or otherwise (such rights and remedies to be cumulative and non-exclusive). Upon the occurrence and during the continuance of an Event of Default, all Fees and the Interest as stated in the Factoring Proposal shall accrue and be charged and paid at a rate, which is [REDACTED]% of the rates otherwise provided in said proposal. [REDACTED] also may: (a) declare Client's Obligations immediately due and payable; (b) terminate the agreement and cease making advances to or for the benefit of Client under this Agreement; (c) enter, with or without process of law, any premises where the Collateral is or may be located and, without breach of the peace and without charge or liability to [REDACTED] therefore, until [REDACTED]'s completion of enforcement of its security interests in the Collateral and/or until [REDACTED]'s removal of the Collateral therefrom to such other place or places as [REDACTED] deems convenient and in connection therewith (i) take possession of said premises and of any of the Collateral located therein; (ii) place a receiver in exclusive control of said premises and of any of the Collateral located therein; (iii) remove the Collateral (and any of Client's materials, supplies, books and records in any way relating to the accounts or the Collateral or useful by [REDACTED] in enforcing its rights) from those premises; (iv) remain upon those premises and use the same (together with said materials, supplies, books and records) for the purpose of collecting the Collateral and/or preparing the Collateral for disposition and/or disposing of the Collateral; (d) sell or otherwise dispose of the Collateral (in its then condition or after further manufacturing, processing or preparation thereof, utilizing in connection therewith, without charge or liability to [REDACTED] therefore, any of Client's assets) at public or private sale, as [REDACTED] deems advisable for cash or credit; provided, however, that Client shall be credited with the net proceeds of such sale only when such proceeds are actually received by [REDACTED] and [REDACTED] may become the beneficiary at any such sale if permissible under applicable law; (e) notify any Customers and take possession of all Accounts or Collateral and collect any Accounts and Collateral with or without judicial process; (f) grant extensions, compromise claims and settle receivables for less than face value, all without prior notice to Client; and (g) use, in connection with any assembly or disposition of the Collateral, any trade name, trade style, copyright, patent right, or technical process used or utilized by Client; (h) change Client's mailing address and receive and open mail addressed to Client. Client shall, if [REDACTED] requests, assemble the Collateral and make it available to [REDACTED] at a place or places to be designated by [REDACTED] which is reasonably convenient to [REDACTED] and Client. [REDACTED] shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. [REDACTED] may adjourn any public or private sale from time to time by announcement at the time and place fixed therefore, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Client recognizes that if Client fails to perform, observe or discharge any of its obligations under this Agreement, no remedy of law will provide adequate relief to [REDACTED] therefore, Client agrees that [REDACTED] shall be entitled to temporary and permanent injunctive relief in any such case without the

necessity of proving actual damages. [REDACTED] may enter the premises of Client and take possession of the Collateral and of the records pertaining to the receivables and any other Collateral. Client grants to [REDACTED] a right of entry to obtain possession of such Collateral and records and further promises to store such Collateral and records on the premises of Client without cost to [REDACTED]

16. **Entire Agreement.** This Agreement represents the entire understanding of the parties with respect to the subject matter of this Agreement. There are no other prior or contemporaneous agreements, either written or oral, among the parties with respect to this subject. This does not include any attachments and/or supplemental agreements, including, but not limited to, Power of Attorney, Funds Transfer Agreement, and any document incorporated herein and any other concurrently executed documents relating to this Agreement. In the event that terms conflict between any document and this Agreement, specifically, but not limited to the Term Sheet/Factoring Proposal, then this Agreement shall prevail.
17. **Indemnity.** Seller hereby agrees to defend, protect, indemnify and hold harmless Purchaser and all of Purchaser's directors, officers, employees and agents from and against any and all (a) claims, demands and causes of action of any nature whatsoever brought by any third party and arising from or related or incident to this Agreement, (b) costs and expenses incident to the defense of such claims, demands and causes of action including, with limitation, reasonable attorneys' fees and court costs, and (c) liabilities, judgments, settlements, penalties and assessments arising from such claims, demands and causes of action. The indemnity contained in this paragraph 17 shall survive the termination of the Agreement.
18. **Administration Of Agreement.** Seller hereby recognizes and agrees that Purchaser shall administer from its principal offices located in the State of [REDACTED] all matters relating to this agreement, including but not limited to: the preparation, delivery, final approval, acceptance and final execution of this agreement; receipt; review, purchase, and funding of accounts from Seller; and the accounting or all collections and payments received under this agreement. Seller further stipulates and agrees that such administration constitutes sufficient contact with the State of [REDACTED] to support the following sections regarding choice of law and choice of jurisdiction and venue.
19. **Attorney's Fees.** If either party to this Agreement shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorney fees incurred in bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorney fees and costs incurred in enforcing such judgment. For the purposes of this section, attorney fees shall include, without limitation, fees incurred in the following: (1) post judgment motions; (2) contempt proceedings; (3) garnishment, levy, and debtor and third party examinations; (4) discovery; and (5) bankruptcy litigation.

Seller Initials

[REDACTED]

Purchaser Initials

[REDACTED]



20. **Counterparts/Facsimile.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which together will constitute a single agreement. Delivery of executed pages by facsimile shall be binding on the parties.
21. **No Lien Termination Without Release.** In recognition of [REDACTED]'s right to have its attorneys' fees and other expenses incurred in connection with this Agreement secured by the Collateral, notwithstanding payment in full of all Obligations by Client, [REDACTED] shall not be required to record any terminations or satisfactions of any of [REDACTED]'s liens on the Collateral unless and until Client has executed and delivered to [REDACTED] a general release in a form reasonably satisfactory to [REDACTED]. Client understands that this provision constitutes a waiver of its rights under § 9-513 of the UCC.
22. **Severability.** The parties intend that this Agreement be enforced to the greatest extent permitted by applicable law. Therefore, if any provision of this Agreement, on its face or as applied to any person or circumstance, is or becomes unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons, circumstances, or extent, will not be impaired.
23. **CHOICE OF LAW.** This agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of [REDACTED].  
Initials [REDACTED]
24. **CHOICE OF JURISDICTION AND VENUE.** Without prejudice to the right of Purchaser to bring suit in any court of competent jurisdiction to enforce this agreement or any other right Purchaser may have, Seller agrees that any action by any party which in any way relates to any aspect of this Agreement, or any other dispute between the parties sounding in contract or tort may be brought only in [REDACTED] County [REDACTED] and no other venue or jurisdiction. In the event an action is instituted in a court other than [REDACTED] addressing disputes between the parties to this agreement, Seller agrees to the removal of such action to these courts located in [REDACTED] upon the request of purchaser.  
Initials [REDACTED]
25. **WAIVER OF JURY TRIAL.** The Seller waives all rights to a trial by jury in any action, proceeding or counterclaim on any matter arising out of this agreement or any other dispute between the parties whether sounding in contract or tort. This waiver is knowingly, willingly and voluntarily made by the seller, and the seller hereby represents that no representations of fact or opinion have been made by any individual to induce this waiver of trial by jury or in any way modify or nullify its effect.  
Initials [REDACTED]

(SIGNATURES ON FOLLOWING PAGE)

Seller Initials [REDACTED]

Purchaser Initials [REDACTED]