

[REDACTED]

**FACTORING AGREEMENT**

This Factoring Agreement ("Agreement") is entered into this [REDACTED] day of [REDACTED], [REDACTED] by and between the customer whose signature appears below ("Customer") and [REDACTED] Customer and [REDACTED] are sometimes collectively referred to as "Parties" and sometimes individually referred to as "Party."

**Preliminary Statement**

- A. Customer is in the business of providing goods or services to third parties and is interested in selling to [REDACTED] accounts receivables generated from Customer's business;
- B. [REDACTED] is in the business of factoring accounts receivable on a direct notification basis; and
- C. The Parties desire to provide for the terms and conditions of factoring services to be provided by [REDACTED] to Customer, in accordance with this Agreement.

Now, therefore, in consideration of the mutual promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Customer and [REDACTED] agree as follows.

**Terms and Conditions**

1. **Definitions and Rules of Construction.** As used in this Agreement, unless the context requires a different meaning or as otherwise specified, the following terms shall have the indicated definitions and the following rules of construction shall apply.

a. **Definitions.**

- i. "Account" shall have the definition contained in § [REDACTED] 1)(b), [REDACTED] Stat. (2002).
- ii. "Account Debtor" means an Account debtor of Customer;
- iii. "Account Statement" means a statement rendered by [REDACTED] to Customer each month detailing the information as more particularly described in paragraph 16 below.
- iv. "Affiliate" means any entity which directly or indirectly, through one or more intermediaries, controls, or is controlled by or is under common control with Customer, or 5% or more of the equity interest of which is held beneficially or of record by Customer or a subsidiary of Customer. "Control" means the power, directly or indirectly, to direct management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.
- v. "Attorney's fees" means reasonable attorney's fees incurred by [REDACTED], whether or not an action is brought, and includes fees incurred during trial court, appellate and bankruptcy proceedings.
- vi. "Balance Payment" means the balance of the payment due Customer for a Purchased Account, as calculated in accordance with paragraph 14 below.

"Collateral" means all of Customer's personal property, whether now owned or hereafter acquired, including all Accounts, chattel paper, goods, inventory, equipment, fixtures, instruments, investment property, documents, deposit accounts, letter-of-credit rights, and general intangibles, and all proceeds thereof.

- vii. "Consent" means [REDACTED]'s consent, which shall be in writing and may be given or withheld in [REDACTED] Discretion.
- viii. "Credit Approval" means [REDACTED] approval of credit for a particular Account Debtor, which shall be in writing.
- ix. "Customer Account" means an account established with [REDACTED] in Customer's name for the purpose of crediting funds under this Agreement.
- x. "Days" means calendar days, and if the due date falls on a day which is not a business day, then the due date shall be the first day which is a business day.
- xi. "Discretion" means sole discretion.
- xii. "Eligible Account" shall have the definition contained in paragraph 6 below.
- xiii. "Events of Default" means the occurrence of any of the events specified in paragraph 23 below.
- xiv. "Factoring Commission" means the applicable factoring commission due [REDACTED] as specified on Exhibit "B" hereto.
- xv. "*Force Majeure*" means an event beyond the reasonable control of the Account Debtor, such as enemy or terrorist attack, civil commotion, strikes, lockouts, the act or restraint of public authorities, or acts of God.
- xvi. "Good faith" means "honesty in fact in the conduct or transaction concerned."
- xvii. "Including" means "including but not limited to."
- xviii. "Indemnify" means to indemnify [REDACTED] for, and hold it harmless against, any claim, loss, liability, judgment, damages, fines, and expenses, including Attorney's fees and costs in connection with the event for which indemnification is due, even if [REDACTED] is negligent in connection with the event for which indemnification is due.
- xix. "Initial Advance" means the amount of [REDACTED]'s initial payment to Customer for a Purchased Account, as calculated in accordance with paragraph 14 below.
- xx. "Net Invoice Amount" means the gross invoice amount of the invoice underlying the Purchased Account, less any applicable taxes, credits, selling discounts, or other deductions, all as indicated on the face of the invoice.
- xxi. "Obligations" means all of Customer's obligations to [REDACTED] arising under this Agreement.

xxii. "Purchased Accounts" means Accounts purchased by [REDACTED] under this Agreement, including all contract rights, notes, bills, acceptances and all other obligations owing by Account Debtor(s) in respect of the Purchased Accounts.

xxiii. "Repurchase Date" means the date which is [REDACTED] Days after the due date of the invoice, and on such day the Customer shall be required to repurchase the invoice for the amount outstanding thereon.

xxiv. "Reserve Amount" means the percentage amount, as specified on Exhibit "B" hereto, as changed from time to time, subtracted from the Net Invoice Amount and held by [REDACTED] as a reserve against amounts owing to [REDACTED] as calculated in accordance with paragraph 14 below.

b. Rules of Construction.

i Words in the single or plural tense shall read as plural or single, respectively, if the context requires.

ii The headings in this Agreement are for convenience only and are not intended to govern, limit, or aid in the construction of any term or provision.

2. Appointment and Sale of Accounts. Customer hereby appoints [REDACTED] as its factor, and hereby sells and assigns to [REDACTED] subject to all of Customer's warranties and representations and [REDACTED] right of recourse, all Purchased Accounts.

3. Establishment of Customer Account. [REDACTED] shall establish a Customer Account. All funds due Customer under this Agreement shall be credited to the Customer Account. [REDACTED] may debit the Customer Account for all amounts due [REDACTED] under this Agreement.

4. Credit Approval. If Customer wishes to sell [REDACTED] one or more Eligible Accounts from a particular Account Debtor, Customer shall provide [REDACTED] with all information that it may request to permit [REDACTED] to analyze the credit-worthiness of the Account Debtor. [REDACTED] may either approve or disapprove the Account Debtor for credit, in [REDACTED] Discretion. If [REDACTED] issues a Credit Approval, [REDACTED] will indicate the amount of credit that it is willing to extend by factoring the Eligible Accounts owed by that Account Debtor. However, [REDACTED] is not obligated, once it issues a Credit Approval, to purchase any particular Eligible Account offered by Customer. If [REDACTED] declines to approve credit for an Account Debtor, Customer shall treat any information furnished by [REDACTED] as privileged and confidential, and Customer shall not disclose the information to any third party. If necessary, Customer shall merely advise the Account Debtor that credit has been declined and that any questions should be directed to [REDACTED]. Notwithstanding anything stated above to the contrary, [REDACTED] shall have the right in its Discretion to cancel any credit it may have previously approved.

5. Direct Notification to Account Debtors. Upon issuing a Credit Approval for an Account Debtor, [REDACTED] may notify that Account Debtor to remit payment directly to [REDACTED] the Purchased Accounts, or may require Customer to provide such notice. On [REDACTED]'s request, Customer shall promptly (i) notify an Account Debtor to remit payment directly to [REDACTED] and (ii) provide a copy of such notice to [REDACTED]. [REDACTED] may also contact any Account Debtor at any time to verify any information provided by Customer with respect to that Account Debtor.

6. Eligible Accounts. For an Account to be eligible for sale to [REDACTED] ("Eligible Account"), (i) the Account shall have arisen from Customer's bona-fide outright sale of goods or the rendition of services under an enforceable contract, and such goods shall have been delivered to, or the services rendered for, the Account Debtor in accordance with such order or contract and in the ordinary course of Customer's business; (ii) Customer's

ownership of the Account shall be absolute and not subject to any prior assignment, sale, claim, lien or security interest; (iii) the amount shown on Customer's books and records and on any invoice or statement delivered to [REDACTED] all be the amount owing to Customer at the time of the purchase and sale and no partial payment shall have been made thereon; (iv) the Account will not represent delivery of goods upon "consignment," "guaranteed sale," "sale or return," "payment on reorder," or similar terms; (v) the Account shall not be subject to any claim of reduction, counterclaim, set-off, recoupment, contra account, or any claim for credits, allowances or adjustments by the Account Debtor because of returned, inferior or damaged goods or unsatisfactory services or for any other reason, except as otherwise agreed to in writing by [REDACTED]; (vi) The Account shall not be an Account which [REDACTED] in its Discretion, has determined and advised Customer to be ineligible or unsatisfactory in whole or in part; (vii) the Account Debtor shall not have returned or refused to retain any of the goods from the sale of which the Account arose and the goods shall not be subject to return; (viii) the Account shall be due and payable not more than [REDACTED] Days from the date of the invoice corresponding thereto; (ix) the Account shall not arise out of a contract with, or order from, an Account Debtor which contract or order, by its terms, forbids or makes the sale of that Account void or unenforceable; (x) Customer shall not have received any note, trade acceptance, draft or other instrument with respect to or in payment of the Account or any chattel paper with respect to the goods giving rise to the Account and, if any such instrument or chattel paper is subsequently received, Customer shall immediately notify [REDACTED] and, at its request, Customer shall endorse or assign and deliver the same to [REDACTED]; (xi) Customer shall not have received any notice of the death of the Account Debtor or, if the Account Debtor is a partnership, of a partner thereof, or of the dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of the Account Debtor, assignment for the benefit of creditors, or of the filing of a petition under any bankruptcy or insolvency laws by or against the Account Debtor. Upon the receipt of any notice of the type referred to herein, Customer shall immediately notify [REDACTED] thereof; (xii) the Account Debtor shall neither directly or indirectly be an Affiliate of the Customer; and (xiii) the Account shall be less than [REDACTED] Days outstanding as reflected in Customer's books and records.

7. **Mechanics of Purchase and Sale.** Should Customer wish to sell [REDACTED] one or more Eligible Accounts, Customer shall notify [REDACTED] in writing and provide it with all information which [REDACTED] may request in respect of the Account Debtor and the Eligible Accounts. Should [REDACTED] wish to purchase the Eligible Accounts, Customer shall promptly execute and deliver such further documents as [REDACTED] may require and shall deliver to [REDACTED] copies of all invoices, shipping or delivery receipts, and such other proof of sale and delivery or performance as [REDACTED] may, at any time or from time to time, require in respect of the Purchased Accounts. Customer shall provide [REDACTED] with the form attached hereto as Exhibit "A" for each sale of a Purchased Account. Customer shall also make appropriate notations upon its books and records indicating the sale and assignment of the Purchased Accounts to [REDACTED]. All invoices or other statements to Account Debtors concerning Purchased Accounts shall contain, in conspicuous language satisfactory to [REDACTED], a statement that each Purchased Account has been sold and assigned, and is payable only to [REDACTED]. Copies of Purchased Accounts shall also bear this language.

8. **Reserve Amount.** [REDACTED] shall charge a Reserve Amount, as initially specified on Exhibit "B" hereto, which may be changed by [REDACTED] from time to time with [REDACTED] Days prior notice to Customer. The Reserve Amount will be established as that amount which [REDACTED] deems necessary to hold in the Customer Account to protect [REDACTED]'s interest under this Agreement, given the volume and character of Customer's business, charge-back activity, collection success by [REDACTED] from Account Debtors, the amount of Customer's Obligations outstanding, and any other contingencies that may affect [REDACTED] under this Agreement. The Reserve Amount, or any portion thereof, may be released by [REDACTED] to Customer on the [REDACTED] of each month, at [REDACTED]'s Discretion.

9. **Remittance of Direct Payments.** Should any Account Debtor remit to Customer any amount owing on a Purchased Account, Customer shall immediately remit the payment to [REDACTED].

10. **ACH Authorization.** In order to satisfy any of the Obligations, [REDACTED] is hereby authorized by Customer to initiate electronic debit or credit entries through the ACH system to any deposit account maintained by Seller wherever said deposit account is located.

11. **Assertion of Lien Rights.** If Customer is or becomes engaged in finishing or improving goods, Customer shall, notwithstanding any Credit Approval given on the Account Debtors involved, assert promptly, at Customer's expense and upon [REDACTED] demand, any lien rights provided by law on goods in Customer's possession. Customer shall immediately remit to [REDACTED] the proceeds of sale of such goods to satisfy the amounts owed to [REDACTED] by the Account Debtor.

12. **Rights of Unpaid Seller.** [REDACTED] shall have all the rights of an unpaid seller or provider of the goods or services, the sale or rendering of which gives rise to each Purchased Account, including the rights of stoppage in transit, reclamation and replevin of the goods underlying the Purchased Account.

13. **Credit Risk/Right of Recourse.** Notwithstanding [REDACTED] purchase of a Purchased Account, [REDACTED] shall have a right of recourse against Customer, and Customer shall pay [REDACTED] immediately on demand, the unpaid amount of any Purchased Account for which [REDACTED] has not timely received payment from the Account Debtor for any reason whatsoever. By way of example only [REDACTED] shall have a right of recourse against Customer, and Customer shall immediately pay [REDACTED] on demand, if:

- a. the Account Debtor fails to pay due to:
  - i. any claim or dispute by the Account Debtor for any reason, including disputes as to price, terms of sale, delivery, quantity, quality of the goods or services, or the exercise of any counterclaim or offset (whether or not such claim, counterclaim or offset relates to the Purchased Account); or
  - ii. payment by the Account Debtor directly to the Customer for the Purchased Account; or
  - iii. *Force Majeure*; or
  - iv. any representation or warranty made or deemed to have been made by Customer to [REDACTED] in respect of a Purchased Account is or becomes untrue, incorrect or misleading in any material respect.

14. **Purchase Price and Schedule of Advances.**

a. The purchase price for each Purchased Account ("Purchase Price") shall equal the Net Invoice Amount minus the amounts specified below. Unless specifically shown on the invoice underlying the Purchased Account, Customer shall not provide any discount, credit, allowance, or deduction without [REDACTED] prior Consent.

b. [REDACTED] shall remit the Purchase Price as follows:

- i. On [REDACTED] receipt of the Purchased Account, the Initial Advance, equal to the percentage set forth on Exhibit "B" as the Initial Advance of the Net Invoice Amount;
- ii. On [REDACTED] receipt of cleared funds equal to the full amount owing on the Purchased Account, the Balance Payment, equal to the percentage set forth on Exhibit "B" as the Balance Payment, minus any other amounts due [REDACTED] under this Agreement ("Other Charges") minus the applicable Factoring Commission.

15. Interest. Interest on any amount owing under this Agreement before an Event of Default shall equal the greater of [REDACTED] percent ( [REDACTED] ) per annum or [REDACTED] percent ( [REDACTED] ) per annum above the Prime Rate, as determined on the first business day of each month. The Prime Rate shall mean, at any time, the rate of interest quoted in the *Wall Street Journal*, Money Rates Section as the "Prime Rate." In the event that the *Wall Street Journal* quotes more than one rate, or a range of rates as the Prime Rate, then the Prime Rate shall mean the highest of the quoted rates. In the event that the *Wall Street Journal* ceases to publish a Prime Rate, then the Prime Rate shall be the average of the three largest U.S. money center commercial banks, as determined by [REDACTED]. Interest shall be computed for the actual number of Days elapsed on the basis of a year consisting of 360 Days. From and after an Event of Default, interest shall accrue on any outstanding amounts at the highest rate allowed by law.

In no event shall the rate of interest agreed to or charged exceed the maximum rate of interest permitted under applicable law. IT IS THE INTENTION OF THE PARTIES HERETO NOT TO MAKE ANY AGREEMENT VIOLATIVE OF THE LAWS OF THE STATE OF [REDACTED] OR THE UNITED STATES RELATING TO USURY. IN NO EVENT, THEREFORE, SHALL ANY INTEREST DUE HEREUNDER BE AT A RATE IN EXCESS OF THE HIGHEST LAWFUL RATE, i.e., IN NO EVENT SHALL [REDACTED] CHARGE, NOR SHALL CUSTOMER BE REQUIRED TO PAY, ANY INTEREST THAT, TOGETHER WITH ANY OTHER CHARGES HEREUNDER THAT MAY BE DEEMED TO BE IN THE NATURE OF INTEREST, HOWEVER COMPUTED, EXCEED THE MAXIMUM LAWFUL RATE OF INTEREST ALLOWABLE UNDER THE LAWS OF THE STATE OF [REDACTED] AND/OR OF THE UNITED STATES. SHOULD ANY PROVISION OF THIS AGREEMENT OR ANY OTHER AGREEMENT BETWEEN THE PARTIES BE CONSTRUED TO REQUIRE THE PAYMENT OF INTEREST THAT EXCEEDS SUCH MAXIMUM LAWFUL RATE, ANY SUCH EXCESS SHALL BE AND IS EXPRESSLY HEREBY WAIVED BY [REDACTED]. SHOULD ANY EXCESS INTEREST IN FACT BE PAID, SUCH EXCESS SHALL BE DEEMED TO BE A PAYMENT OF THE PRINCIPAL AMOUNT OF OUTSTANDING OBLIGATIONS OWING BY CUSTOMER AND SHALL BE APPLIED TO SUCH PRINCIPAL OR REFUNDED IF NO PRINCIPAL AMOUNT IS OWING.

16. Account Statement. Once each month, [REDACTED] shall render an Account Statement to Customer with respect to the Purchased Accounts sold during the previous month, including any advances made by [REDACTED] collections received by [REDACTED] and charges made to the Customer Account under this Agreement. The Account Statement shall be updated each and every time there is a transaction concerning Customer's Account. [REDACTED] may charge the Customer Account all permitted discounts made available to Account Debtors on Purchased Accounts, and all expenses, including postage, facsimile transmission or courier charges, bank wire fees, UCC search and filing fees and similar charges as referenced in paragraph 18 of this Agreement. Customer shall promptly review and must notify [REDACTED] within [REDACTED] Days after [REDACTED] sends the Account Statement of any disputes or errors contained in the Account Statement, failing which the Account Statement shall be deemed correct. Customer shall also notify [REDACTED] if Customer does not receive an Account Statement for any particular month. Notwithstanding anything stated above to the contrary, to the extent [REDACTED] provides customer with online access to its Account Statement, [REDACTED] shall not be required to send an Account Statement to Customer as set forth in this paragraph 16, and Customer must notify [REDACTED] within 10 Days of any update to the Customer's Account of any disputes or errors contained in the Account Statement.

17. Representations and Warranties. Customer hereby represents and warrants to [REDACTED] and is deemed to represent and warrant to [REDACTED] in connection with the purchase and sale of each Purchased Account, that: (i) the Purchased Account constitutes an Eligible Account; (ii) Customer is solvent; (iii) Customer has full right and authority to sell or assign to [REDACTED] and to grant to [REDACTED] a security interest in, the Purchased Account and the other items comprising the Collateral; (iv) Customer has not granted and will not hereafter grant to any other person a security interest in any of the Collateral, or any right to purchase the Purchased Accounts; (v) Customer has paid all taxes which have become due and payable and there are no judgments, assessments, or liens filed against Customer or any of its property, real or personal; and (vi) Customer is duly incorporated and in good standing in its state of incorporation or formation and in those states in which Customer conducts business and shall remain so during the term of this Agreement.

18. **Costs and Expenses.** Customer shall pay [REDACTED] for all costs and expenses incurred in connection with the execution, amendment, administration, and enforcement of this Agreement, including (i) Attorney's fees; (ii) the filing of UCC financing statements, including continuations, and other actions to perfect, protect, continue or terminate the security interest in the Collateral; (iii) sums paid or incurred to take any action required of Customer under this Agreement or any supplement, amendment, modification, restatement, note or document related hereto that Customer fails to pay or take; (iv) costs of appraisals, inspections and verifications of Customer's books and records and Collateral, including travel, lodging, and other out-of-pocket expenses for inspections; (v) costs and expenses of forwarding advances and collections pursuant to this Agreement, collecting checks and other items of payment related to Purchased Accounts, and, if applicable, establishing and maintaining payment accounts and lock boxes; (vi) costs and expenses from usage of [REDACTED]'s on-line computer and electronic data transmission services; and (vii) any special or additional reports or statements prepared by [REDACTED] for Customer. Customer acknowledges that Exhibit "B" hereto references a summary of [REDACTED] current fees and costs, which [REDACTED] may change from time to time upon 10 Days' notice to Customer, provided, however, that any failure to give Customer such notice does not constitute a breach of this Agreement and does not impair [REDACTED]'s ability to institute any such change(s). [REDACTED] may charge any amounts payable hereunder directly to the Customer Account.

19. **Right of First Refusal.** During the term of this Agreement, Customer may not sell, assign or transfer any Account without prior written Consent of [REDACTED]. Customer shall first provide [REDACTED] with the opportunity of purchasing any of Customer's Accounts which Customer desires to sell, assign or transfer. [REDACTED] shall have [REDACTED] Days after receipt of notice from Customer, within which to notify Customer of [REDACTED] intent to exercise its option to purchase any such Accounts. If [REDACTED] agrees to purchase such Accounts, Customer shall deliver to [REDACTED] the notification form as set forth on Exhibit "A" hereto.

20. **Indemnification.** Customer shall indemnify [REDACTED] for any claims that may be asserted against [REDACTED] arising from this Agreement or Customer's acts or failure to act hereunder.

21. **Security.** As collateral security for the Obligations, Customer hereby grants to [REDACTED] a first priority security interest in the Collateral. [REDACTED] may file one or more UCC financing statements in any jurisdiction to perfect the security interest. Customer shall (i) execute and deliver such other documents, such as control agreements, which [REDACTED] requests to further perfect the security interest; and (ii) notify [REDACTED] not less than thirty (30) Days prior to any change in Customer's name, corporate structure, or business address(es) or location(s). Upon an Event of Default (as defined below), Customer shall, at its expense, assemble and deliver the Collateral to [REDACTED] or in accordance with [REDACTED] instructions. Should [REDACTED] wish to conduct a public or private disposition of any of the Collateral, [REDACTED] business days notice to Customer of the disposition shall be sufficient, unless the Collateral threatens to decline in a shorter period.

22. **Term/Termination/Survival.** This Agreement shall continue in full force and effect for a period of one year from the date hereof and shall be deemed renewed year to year thereafter unless either Party gives notice not less than sixty (60) Days prior to the expiration of the then applicable one year period of its intention to terminate this Agreement, which termination shall be effective on the expiration of the then applicable one year period. If Customer gives notice of termination, (i) all amounts owing to [REDACTED] shall become immediately due and payable, and (ii) [REDACTED] shall not be required to remit any amounts to Customer until all amounts owing to [REDACTED] are paid in full. [REDACTED] may also terminate this Agreement with immediate effect upon the occurrence of an Event of Default (as defined below). Should [REDACTED] terminate this Agreement on account of an Event of Default, then, notwithstanding any other provisions contained herein, [REDACTED] shall be entitled to charge Customer's account, and Customer shall immediately pay to [REDACTED] all amounts owing under this Agreement. Termination of this Agreement shall not terminate, extinguish, or remove any liens or security interest granted to [REDACTED], and Customer shall continue to comply with all of its Obligations. All provisions of this Agreement that contemplate performance after termination shall survive termination.

23. **Event of Default/Rights and Remedies.** The occurrence of any of the following events shall constitute an Event of Default:

- a. Customer's failure to comply with any of its Obligations under this Agreement;
- b. Customer's failure to comply with any other provision of this Agreement;
- c. Any warranty or representation made under this Agreement is or becomes incorrect, false or misleading in any material respect;
- d. Customer becomes insolvent, is unable to meet its debts as they mature, or files, or has filed against it, a petition for relief under the Bankruptcy Code, or any similar law granting relief from creditors, or Customer executes an assignment for benefit of its creditors;
- e. The appointment of a receiver, liquidator, conservator or similar functionary for Customer;
- f. Customer voluntarily terminates all or a substantial part of its business;
- g. A final judgment is entered against Customer in an amount exceeding \$ [REDACTED] and Customer fails to stay execution within [REDACTED] Days of entry of the judgment;
- h. Customer applies for dissolution or becomes dissolved;
- i. A writ of garnishment or other writ or order is issued or entered with respect to Customer's business assets; or
- j. [REDACTED] in good faith deems itself insecure.

Upon an Event of Default, (i) all amounts owing to [REDACTED] shall be immediately due and payable without further notice; and (ii) [REDACTED] shall have the rights and remedies of a secured party under the Uniform Commercial Code and all other rights and remedies under law.

24. **Miscellaneous.**

- a. **Power of Attorney for Instruments.** Customer hereby grants power of attorney to [REDACTED] to sign Customer's name as endorsement on any check, draft, note, acceptance or payment in any other form representing the proceeds of a Purchased Account.
- b. **Reimbursement for Taxes.** In the event a sales or excise tax is levied by State or Federal authorities, in such form that [REDACTED] is required to pay a tax on sales represented by any Purchased Account, Customer shall reimburse [REDACTED] on demand for the full amount of taxes payable.
- c. **Books and Records/Right of Inspection.** Customer shall keep proper books of record and accounts in accordance with sound and accepted accounting practices, which books shall at all times be open to inspection by [REDACTED]. [REDACTED] shall have the right, at Customer's expense, to inspect the Collateral, and all books and records relating to the Collateral.
- d. **No Joint Venture.** The Parties' relationship is that of debtor and creditor, and nothing in this Agreement is intended to create a joint venture relationship. Customer shall not seek advice or counsel from [REDACTED] or any of its representatives with respect to the management and/or operation of Customer's business, and if Customer deems such advice or counsel to have been offered, directly or indirectly, Customer shall evaluate it and act or decline to act upon it based upon Customer's own independent evaluation.



e. **Notices.** All notices, consents or other communications (collectively, "Communications") required or permitted under this Agreement shall be in writing and shall be addressed as follows (as may be changed in writing by the Party entitled to the communication):

If to [REDACTED] Attn: [REDACTED]  
[REDACTED]  
[REDACTED]

If to Customer: Attn: [REDACTED]  
[REDACTED]  
[REDACTED]

A properly addressed Communication shall be deemed received if sent (i) by courier, then on the business day of receipt; (ii) by facsimile transmission, then on the business day of receipt, as proved by a transmission confirmation received by the sender; (iii) by mail, then 5 Days after mailing.

f. **No Waiver.** [REDACTED] failure to insist upon performance of any provision of this Agreement shall not be deemed a waiver of any right reserved to [REDACTED] and the waiver of one provision shall not be deemed to be a waiver of any other provision.

g. **Merger/Modification.** This Agreement represents the entire agreement between the Parties with respect to the subject matter of this Agreement, and all prior negotiations concerning this Agreement are merged into this Agreement. There are no representations or understandings except as contained in this Agreement. This Agreement may be modified only by a writing signed by both Parties.

h. **Time of the Essence.** Time is of the essence with respect to Customer's performance of its Obligations.

i. **Governing Law/Forum for Disputes.** This Agreement shall be governed by and construed in accordance with the law of the State of [REDACTED] other than its principles governing conflicts of laws. Any action to enforce or which otherwise concerns this Agreement shall be brought exclusively in the courts of [REDACTED]  
[REDACTED]

j. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Customer may not assign this Agreement or any of its rights or duties without [REDACTED] prior written Consent.

k. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

l. **Facsimile Signature.** A genuinely signed document which contains a facsimile signature shall be valid and enforceable to the same extent as a document with an original signature.

m. **Attorney's Fees.** In any action to enforce or which otherwise concerns this Agreement, the prevailing Party shall be entitled to recover Attorney's fees from the losing party.