

**FACTORING AND SECURITY AGREEMENT  
(NON-RECOURSE)**

THIS FACTORING AND SECURITY AGREEMENT ("Agreement") is made as of the date executed, hereby known as the Effective Date, by and between [REDACTED] ("Client") and [REDACTED] (together with its affiliates, successors and assigns, "[REDACTED]"),

1. **Sale and Purchase of Accounts.** Client shall assign and offer to sell to [REDACTED] as absolute owner, all rights and title to payment and proceeds for freight services rendered by Client. [REDACTED] in its reasonable sole credit and business judgment may purchase certain Accounts from Client, prepare and present invoices to the shippers or freight intermediaries responsible for payment ("Account Debtor"), and pay Client the invoice amount less applicable Fees and Expenses (and other amounts due from Client to [REDACTED], if any), whereupon the Accounts shall be deemed purchased ("Purchased Accounts"). Client agrees to provide [REDACTED] with such invoice documentation and other supporting evidence as [REDACTED] may request. Client must offer for sale to [REDACTED] all Accounts owing to Client by an active Account Debtor, and all payors will be instructed to make payments directly to [REDACTED]. All payors will be instructed to make payments directly to [REDACTED] and upon purchase, [REDACTED] will assume the risk of non-payment so long as there are no Payor Disputes.

2. **Term.** This Agreement will be effective on the date executed by Client and will continue for successive [REDACTED] period(s) ("Term") until terminated. If Client wishes to terminate the Agreement, Client must submit a termination letter, hand signed by at least one business owner, to [REDACTED] at least thirty (30) days prior to the end of the current Term. [REDACTED] may terminate this Agreement at any time by giving Client thirty (30) days prior written notice of termination, or at any time without notice upon the occurrence of any Event of Default. Payment of all past, present, and future obligations owing by Client to [REDACTED] ("Obligations") must be received prior to termination of this Agreement.

3. **Fees and Expenses.** Client shall pay to [REDACTED] the following items:

- 3.1. Factoring Fee Percentage [REDACTED] %
- 3.2. Client Setup Fee \$ [REDACTED]
- 3.3. [REDACTED] Fuel Card [REDACTED]
- 3.4. Early Termination Fee \$ [REDACTED]
- 3.5. Out of pocket expenses As incurred, or as specified in the Instructions for Cash Payment schedule.
- 3.6. Buyout Fee [REDACTED]

4. **Security Interest.** As collateral securing the Obligations, Client grants to [REDACTED] a continuing first priority security interest in all of Client's Assets including but not limited to Accounts, Chattel Paper, Instruments, Documents, General Intangibles, and the proceeds thereof ("Collateral"). Notwithstanding the creation of this security interest, the relationship of the parties shall be that of purchaser and seller of Accounts, and not that of lender and borrower. Client authorizes [REDACTED], as and in all offices it deems appropriate, to file any initial financing statements and amendments naming the undersigned as "debtor."

5. **Representations and Warranties.** Client represents and warrants that: (a) Client is fully authorized to enter into this Agreement; to perform hereunder and the security agreement contained herein constitutes Client's legal, valid and binding obligation; (b) Client holds and will hold until termination of this Agreement a valid operating permit to transact business as a motor Client; (c) Client has and shall maintain insurance at all times as required by the Federal Motor Client Safety Administration; (d) the Purchased Accounts are and will remain genuine obligations of Client's customers for freight services rendered in the ordinary course of business without disputes, offsets, or cancellation; (e) Client will not impede normal collection of any Purchased Account and all proceeds of received by Client will be held in express trust for [REDACTED] and forwarded to [REDACTED] within 24 hours of receipt; (f) Client is current on all tax liabilities, shall pay when due all payroll and other taxes and shall provide proof thereof as [REDACTED] shall reasonably require and (g) Client will not knowingly haul any load that has been double brokered nor will it attempt to or actually double broker any load.

6. **Payor Disputes.** Client shall notify [REDACTED] promptly of all claims by payor against Client, of any kind, that reduce the amount collectible on Purchased Accounts ("Payor Disputes"). [REDACTED] may attempt (but is not required) to settle any Payor Disputes, in its sole discretion at Client's expense. Notwithstanding an Account Debtor becoming insolvent, [REDACTED] may accept the nonpayment of Purchased Accounts beyond 90 days from date of purchase as evidence of Payor Disputes. [REDACTED] may require that Client repurchase any Purchased Account, by payment or offset to any other Accounts of Client for (a) any Payor Disputes or (b) illegible, not received or unacceptable invoice documentation.

[REDACTED]

7. **Default.** The following events will constitute an Event of Default: (a) Client defaults in the payment of any Obligations or in the performance of any agreement entered into with [REDACTED] (b) any of the Representations and Warranties contained herein proves to be false in any way; (c) Client or any guarantor of the Obligations becomes subject to any debtor-relief proceedings; (d) Client's business is significantly changed as a result of a sale of assets not in the ordinary course of business or transfer of more than 25% of its capital stock and/or equity interests or (e) [REDACTED] for any reason, in good faith, deems itself insecure with respect to the prospect of repayment of the Obligations. Upon the occurrence of any Event of Default, in addition to any rights [REDACTED] has under this Agreement or applicable law, [REDACTED] may immediately terminate this Agreement and all Obligations shall immediately become due and payable without notice

8. **Authorization to [REDACTED].** Client authorizes [REDACTED] and irrevocably grants its power of attorney to [REDACTED] to exercise any of the following powers until all of the Obligations have been paid in full: (a) notify any Account Debtor that the underlying Account has been assigned to [REDACTED] by Client and that payment is to be made directly to the order of [REDACTED] (b) affix an electronic version of the signature of Client to any notification of assignment or other communication sent by [REDACTED] (c) receive, take, and deposit proceeds of any Collateral securing the Obligations; (d) file any claim under any bond or trust fund and take or bring, in the name of [REDACTED] or Client, all actions, suits or proceedings to effect collection of [REDACTED] Accounts; (e) procure credit reports, verifications and other information on both Client and guarantors which [REDACTED] deems appropriate for its continuing credit evaluation, and to release any of such information to [REDACTED] affiliates and (f) initiate electronic debit or credit entries through the ACH system to any account maintained by Client

9. **Misdirected Payments.** Client may be assessed a Misdirected Payment Fee equal to [REDACTED] of the amount of any payment (but in no event less than \$[REDACTED] for any Purchased Account received by Client and not delivered to [REDACTED] on the next business day.

10. **Indemnification.** Client agrees to indemnify and hold [REDACTED] harmless from any suits, claims, demands, and expenses resulting out of this Agreement, or failure by Client to perform its obligations. In no event will either party be liable to the other party for any lost profits, lost savings or other consequential, incidental or special damages.

11. **Entire Agreement.** No promises of any kind have been made by [REDACTED] or any third party to induce Client to execute this Agreement. Only a writing signed by all parties may amend this Agreement. If any provision of this Agreement shall be held invalid, illegal, or unenforceable, the remaining provisions shall not in any way be affected or impaired. Client agrees to reimburse [REDACTED] on demand for the actual amount of all costs and expenses, including attorneys' fees, which [REDACTED] may incur in enforcing its rights under this Agreement. This Agreement may be signed in any number of counterparts and may be delivered by facsimile with the same validity, enforceability and binding effect of a manually executed counterpart.

12. **Successor Entity.** Client will notify [REDACTED] of any existing or newly created business, if owned in part or whole by Client or Client's principals, that are in any way related to or associated with the transportation industry. In the event Client's principals, officers or directors, directly or in conjunction with any other person, causes to be formed a or otherwise become associated with any new or existing transportation entity, such entity shall be deemed to have expressly assumed the obligations due [REDACTED] by Client under this Agreement. With respect to such entity, [REDACTED] shall be deemed to have been granted an irrevocable power of attorney with authority to file a new UCC-1 financing statement, naming such entity as Debtor, in all appropriate UCC filing offices. [REDACTED] shall be held harmless by Client, and its principals, officers or directors and be relieved of any liability as a result of [REDACTED] recording or the resulting perfection of its ownership or security interests in such entity's assets. In addition, [REDACTED] shall have the right to notify such entity's Account Debtors of [REDACTED] rights to collect all Accounts, and to notify any creditor of such entity that [REDACTED] has rights in such entity's assets.

13. **Choice of Law; Jurisdiction.** This Agreement and all related transactions shall be governed by, construed under, and enforced in accordance with the laws of the State of [REDACTED]. All capitalized terms not herein defined shall have the meaning set forth in the Uniform Commercial Code as adopted in the state of [REDACTED]. Any suit, action or proceeding arising hereunder shall, if [REDACTED] so elects, be instituted in [REDACTED]. Client waives any and all objections to jurisdiction or venue.

14. **Account Purchase Transaction.** Client confirms and acknowledges that it does business as a commercial enterprise and that this Agreement is intended to be an "account purchase transaction" as is authorized by [REDACTED] Finance Code §306.003(b) conclusively establishing that this Agreement is not one for the use, forbearance or detention of money. Client further acknowledges that in accordance with 9-318 of the UCC, Client will not retain any legal or equitable interest in any Purchased Account sold under this Agreement.

15. **Jury Trial Waiver.** IN RECOGNITION OF THE HIGHER COSTS AND DELAY WHICH MAY RESULT FROM A JURY TRIAL, THE PARTIES HERETO WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING HEREUNDER OR IN ANY WAY RELATED OR INCIDENTAL TO THE DEALINGS OF ANY OF THE PARTIES HERETO, IN CONTRACT OR TORT OR OTHERWISE. AND EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY SUCH ACTION

IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Notice. All notices to Client shall be deemed given upon deposit with the U.S. Postal Service or courier service, or actual receipt by such party or its employee or agent. All notices to [REDACTED] shall be deemed given upon actual receipt by a responsible officer of [REDACTED]. Notices shall be sent to the following addresses, or to such other addresses as each party may in writing hereafter indicate:

CLIENT

Address: [REDACTED]  
Officer: [REDACTED]  
Fax Number: [REDACTED]  
Email: [REDACTED]

IN WITNESS WHEREOF, the parties have executed this agreement on the date first written above.

Client: [REDACTED]

By: [REDACTED]  
Name: [REDACTED]  
Title: [REDACTED]  
Date: [REDACTED]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
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[REDACTED]  
By: [REDACTED]  
Name: [REDACTED]  
Title: [REDACTED]