

FACTORING SERVICES AGREEMENT

THIS FACTORING SERVICES AGREEMENT (this "Agreement") is made and entered into as of the _____ day of _____ by and between _____ and _____ ("Client").

In consideration of and for the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged _____ and Client agree as follows:

1. **Purchase of Accounts.** During the term hereof set forth in Section 8 below, Client agrees to sell, assign, transfer and convey to _____ all of its existing and future accounts receivable arising from services performed in the regular course of Client's business; i.e., any right to payment from any party for services rendered by or on behalf of Client (the "Accounts"). Client shall present all Accounts to _____ for purchase, with recourse, and _____ shall determine, in its sole discretion, which Accounts it deems acceptable for purchase. _____ may elect to purchase such Accounts it deems to be acceptable, in accordance with the terms and conditions hereof, and Client shall sell, assign, transfer and convey such Accounts to _____. Client agrees to sell, assign, transfer and convey all of its Accounts to _____ regardless of whether Client fails to present any of such Accounts to _____ for purchase as required hereunder. Client shall execute and deliver to _____ a Bill of Sale and Assignment, in the form attached hereto as EXHIBIT A, which shall vest in _____ all of Client's right, title and interest in said Accounts, together with any undercharges, securities and/or guarantees thereon. Client shall retain all original paperwork related to the Accounts (i.e., bills of lading, unloading receipts and other documentation supporting the Accounts) until the Accounts are paid in full. Client shall produce original paperwork upon request to _____ within two business days.

2. **Purchase Price; Fees and Charges.** The purchase price for each of the Accounts purchased by _____ hereunder shall be the net amount of such Account, less the base fee set forth on EXHIBIT B attached hereto (the "Base Fee"). For purposes of the foregoing, the "net amount" of an Account means the gross amount/face value of the Account less any discount or allowance of any nature offered or provided to the person or entity obligated to pay the Account ("Account Debtor"). Upon presentation by Client to _____ of an acceptable invoice for an Account approved for purchase by _____ along with all supporting documentation for such Account, including bills of lading, rate confirmation, loading receipts and any other documents substantiating the Account), and provided that no claim or dispute shall then exist with the Account Debtor with respect to the Account, _____ will advance to Client the purchase price of the Account. Client will pay _____ an invoice processing fee for each Account purchased by _____ hereunder, in addition to the other transactional fees and charges payable by Client set forth on EXHIBIT B attached hereto, which amounts may be offset from funds otherwise payable by _____ hereunder with respect to any of the Accounts, together with any other amounts owed by Client to _____.

3. **Notice to Account Debtors.** Client will notify each Account Debtor of the sale of its Account or Accounts to _____ and shall place a clear statement or legend, approved by _____ on each such Account invoice, bill of lading, purchase order or statement, stating that such Account has been sold and assigned, and is payable to _____ at _____ or at such other address as _____ shall designate in writing. Such notices shall be in the form attached hereto as EXHIBIT C. All remittances received by Client for payment of Accounts sold to _____ are the property of _____, and Client shall hold such proceeds in trust for _____ and shall immediately deliver to _____ in the identical form, all payments received by Client on each such Accounts, together with all documents accompanying the remittance to Client. Client guarantees the timely payment of the monies and amounts represented by the assigned Accounts. Client agrees that it will not attempt to direct any payments on Accounts purchased hereunder other than to _____.

4. **Power of Attorney.** Client does hereby irrevocably make, constitute and appoint _____ as its attorney-in-fact with full power and authority to act in its stead for the following purposes: (a) invoice or bill for, collect, receive, and deposit to Client's and/or _____ bank accounts any and all amounts which may be due or become due to Client from Account Debtors, and to use Client's name for purposes of billing and collection of any and all amounts due from Account Debtors; (b) receive, accept, open, dispose of and redirect any and all mail addressed to Client; (c) negotiate any checks received in payment of Accounts whether payable to Client or _____ or both, and endorse the name of Client on any checks or other evidences of payment or other instruments or documents that may come into the possession of _____ on Accounts purchased by _____ and on any invoices or other documents or instruments relating to any of the Accounts or relating to any collateral or security hereby granted by Client to _____ (d) in Client's name, or otherwise, demand, make claim for, sue for, collect, grant extensions, compromise,

[REDACTED]

discharge, and get or give releases for any and all monies or funds due or to become due on the Accounts; (e) execute and deliver receipts or acknowledgements to Account Debtors for such amounts due which shall be binding upon Client and [REDACTED] (f) notify Account Debtors of the sale of Accounts to [REDACTED] and notify and instruct Account Debtors, in Client's name, of the address and procedures for making payments on any Accounts that are sold to [REDACTED] or which constitute collateral hereby granted by Client to [REDACTED] (g) take all steps necessary to ensure payment of such amounts and monies due, and do any and all things in Client's name necessary or proper to carry out the purposes intended by this Agreement; (h) file financing statements and all amendments thereto, describing as collateral any or all of the collateral described in Section 6 hereof by any description [REDACTED] deems appropriate in any jurisdiction or office [REDACTED] deems appropriate to perfect its security interest in the collateral described in Section 6 hereof; (i) initiate debit or credit entries through the Federal Reserve Automated Clearing House System (ACH) to any deposit account maintained by Client or [REDACTED] wherever located in order to satisfy any obligations of Client to [REDACTED] under this Agreement; and (j) make claims under any applicable cargo insurance policy held by or on behalf of Client for any cargo loss, damage, theft, delay or injury to cargo, and direct the insurance proceeds to pay any outstanding amounts due to Account Debtors or [REDACTED] as a result of the loss, destruction or damage. It is understood that this power of attorney is coupled with an interest, and is irrevocable until all obligations of Client to [REDACTED] under this Agreement have been satisfied. Exercise of the foregoing powers shall be in the sole and absolute discretion of [REDACTED] but [REDACTED] shall have no obligation to exercise any of the foregoing powers. Nothing contained in this Agreement shall in any way require [REDACTED] to initiate or become a party to any litigation or other legal proceedings. [REDACTED] shall not, under any circumstances, or in any event whatsoever, have any liability for any error, omission or delay of any kind occurring in the collection, payment or settlement of any Account or of any instrument received in full or in part payment thereof or in dealing with any lien, security or guaranty of any such Account. To facilitate [REDACTED] ability to exercise the power of attorney with respect to insurance policy claims as described in item (j) above, Client shall execute and deliver to [REDACTED] an Insurance Power of Attorney, in the form attached hereto as EXHIBIT D, which shall grant to [REDACTED] all of Client's right, power and authority to make claims under Client's cargo insurance policy.

5. **Full Recourse.** All Accounts purchased by [REDACTED] from Client are purchased with full recourse. If Client breaches any warranty or otherwise violates or defaults on any of its obligations hereunder, or if [REDACTED] reasonably determines at any time that any Account purchased by [REDACTED] hereunder is uncollectible, or if any Account purchased by [REDACTED] hereunder is not paid in full within ninety (90) days after the Account invoice date, then Client shall immediately repurchase such Account(s) from [REDACTED] for an amount equal to the net amount of such Account(s), less any payments received by [REDACTED] on such Account(s) from the Account Debtor(s).

6. **Security Interest.** Client hereby grants to [REDACTED] as collateral, to secure all of the debts, liabilities and obligations of Client to [REDACTED] under this Agreement, including all costs and expenses incurred by [REDACTED] in connection with the enforcement of its rights under this Agreement, a continuing security interest in the following property of Client: (a) all Accounts, wherever located or situated, and whether now existing or arising in the future, and whether now owned or at any time in the future acquired by Client; all guaranties and security for such Accounts; all of Client's rights and interest in the goods giving rise to such Accounts, and the rights associated with or related or pertaining to such goods, including without limitation the right of stoppage in transit and any and all related insurance, any items substituted therefor as replacements and all additions thereto; (b) all of Client's chattel paper, instruments, general intangibles, securities, contract rights, associated with or related to the Accounts; (c) all proceeds of any of the foregoing Accounts, and all rights and interests and monies due or becoming due on such Accounts; and (d) all other personal property in which Client has an interest, now or hereafter existing or acquired, and wheresoever located, tangible or intangible, including, but not limited to, all present and hereafter existing or acquired vehicles, equipment, tools, goods, inventory, furniture, fixtures, contract rights, chattel mortgages, deeds of trust, stocks, bonds, certificates of deposit, bank accounts, security deposits, intellectual property and other general intangibles. Upon request by [REDACTED] Client shall execute a Security Agreement in a form provided by [REDACTED] evidencing the foregoing security interest. [REDACTED] may file financing statements and amendments thereto describing as the collateral any or all of the foregoing collateral by any description [REDACTED] deems appropriate in any jurisdiction or office [REDACTED] deems appropriate to perfect and maintain its security interest therein, and Client expressly authorizes the same. Client agrees to bear the cost of all filing fees, filing taxes, search reports, legal fees and other charges or costs incurred by [REDACTED] in the perfection, protection and preservation of the rights and collateral security herein granted to [REDACTED]. In the event of Client's breach of any warranty made in this Agreement or Client's failure to observe or perform any of the provisions or obligations of this Agreement, Client shall be in default, and [REDACTED] may enforce payment and exercise any and all of the rights and remedies provided by Article 9 of the Uniform Commercial Code. In addition, upon default by Client, [REDACTED] shall also have the right to take all actions necessary to collect the Accounts directly from the Account Debtors. Without limiting the foregoing, Client agrees that if Client fails to present any of Client's Accounts to [REDACTED] for purchase as required hereunder, then Client shall be in default and shall owe to [REDACTED] liquidated damages for such^{os}

[REDACTED]

[REDACTED]

default in an amount equal to the Base Fee which would have otherwise been payable hereunder with respect to such Account(s).

7. **Personal Guaranty; Background Check.** To induce [REDACTED] to enter into this Agreement and to purchase the Accounts from Client, and as additional security for all of the debts, liabilities and obligations of Client to [REDACTED] under this Agreement, one or more owners of Client shall execute the Personal Guaranty form attached hereto as EXHIBIT E, pursuant to which said owner(s) shall unconditionally guaranty the obligations of Client under this Agreement. Such owner(s) must also consent to a personal credit check and comprehensive background investigation.

8. **Term and Termination.** The term of this Agreement shall commence as of the [REDACTED] day of August, [REDACTED] and shall continue for an initial term of [REDACTED] years. Thereafter, this Agreement shall automatically renew for additional consecutive [REDACTED] year terms, unless either party provides the other party with written notice of its intent not to renew at least ninety (90) days, but not more than one hundred twenty (120) days, prior to expiration of the then current term. Notwithstanding the stated term hereof, [REDACTED] may terminate this Agreement immediately upon written notice thereof to Client in the event Client breaches this Agreement or in the event of the insolvency of Client or the filing of a petition in bankruptcy by or against Client. Further, notwithstanding anything herein to the contrary, [REDACTED] may terminate this Agreement without cause by providing Client with at least thirty (30) days prior written notice thereof. Expiration or earlier termination of this Agreement shall not affect, waive or release the rights and obligations of the parties hereunder with respect to any Accounts purchased by [REDACTED] prior to such expiration or termination, and Client shall remain liable to [REDACTED] for all amounts and monies as may be owed to [REDACTED] under the terms and conditions of this Agreement. If Client provides notice of non-renewal/termination of this Agreement, but thereafter presents any Account(s) to [REDACTED] for purchase following the specified date of termination, then Client's notice of non-renewal/termination shall, at the option of [REDACTED], be deemed rescinded and the term hereof shall continue in full force and effect. Upon termination of this Agreement, any funds or monies from any source whatsoever which [REDACTED] would otherwise owe to Client may be retained by [REDACTED] until such time as all obligations and debts of Client to [REDACTED] have been fully satisfied, and [REDACTED]'s security interest provided in Section 6 hereof shall continue until all obligations of Client to [REDACTED] are paid in full. [REDACTED] shall have the right, in its sole discretion, to set off against any sums owing to Client by [REDACTED] all obligations and debts of Client to [REDACTED]. All of Client's covenants, warranties and agreements under this Agreement made to [REDACTED] as well as [REDACTED]'s security interest pursuant to Section 6 above, shall continue in full force and effect until all Accounts purchased hereunder and all debts and obligations of Client to [REDACTED] are paid in full. Further, if [REDACTED] receives payment from any Account Debtor(s) or other party on any of Client's invoices following termination of this Agreement and satisfaction in full of all debts and obligations of Client to [REDACTED] then [REDACTED] may, at its option, either: (a) forward such payment to Client; or (ii) return such payment to the Account Debtor/payer without any further liability or responsibility to Client in respect thereof. Client agrees that to cover [REDACTED]'s costs in handling any such payments, [REDACTED] may, at its option, impose a [REDACTED] charge on the amount of all such payments forwarded to Client or returned to the Account Debtor/payer, and Client agrees to pay the same to [REDACTED].

9. **Representations and Warranties.** Client represents, covenants, warrants and agrees as follows:

- (a) If Client is a corporation or limited liability company, that it is duly organized, existing and in good standing under the laws of the state of its incorporation or organization, and that the execution, delivery and performance of this Agreement are in every respect within its corporate/company powers and have been duly authorized by appropriate corporate/membership action.
 - (b) That this Agreement, when duly executed and delivered by Client and [REDACTED] will constitute a legal, valid and binding agreement of Client fully enforceable in accordance with its terms and conditions.
 - (c) Client's address set out in Section 12 of this Agreement is the address of Client's principal office and its sole place of business. Client shall give [REDACTED] immediate written notice of any change in the location of its principal office, the addition of any new place or places of business and their addresses, any name change or the addition of any name under which Client does business, or any change in the nature or status of Client's business or operations.
 - (d) In addition to Client's notice obligations set forth in subsection (c) above, during the term of this Agreement, neither Client nor any of its owners shall, without the prior written consent of [REDACTED] sell or permit or effectuate the sale or transfer of Client's assets (other than in the ordinary course of business), Client's operating authority, or a majority of Client's stock, equity or other ownership^{DS}
- [REDACTED]

[REDACTED]

interests, in one or more transactions, or incorporate, organize or otherwise create a new company, entity, or business engaged in substantially the same business as Client, whether in the same state as Client's current location or in a different state, whether under the same name or a different name, and regardless of whether it has the same ownership or management as Client. Client expressly acknowledges and agrees that any such new company, entity, or business created without the written consent of [REDACTED] shall be liable for Client's obligations hereunder as if such company, entity, or business was party to this Agreement directly with [REDACTED]

- (e) If Client is a motor carrier: Client is registered with the U.S. Department of Transportation, Federal Motor Carrier Safety Administration ("FMCSA"), and has a valid USDOT Number and the requisite operating authority from the FMCSA to conduct its motor carrier operations, in accordance with the requirements of the Federal Motor Carrier Safety Regulations.
- (f) As to each Account purchased by [REDACTED] under this Agreement: (1) the Account is not yet past due, arose in the ordinary course of Client's business and represents a bona fide completed transaction; (2) Client owns the Account free and clear of all liens, security interests and/or any other encumbrance, Client's ownership of and right and title to the Account is absolute and subject to no assignment or claim, and Client shall not assign, grant a security interest in or encumber the Account contrary to this Agreement; (3) the Account, as shown on Client's books and records, and on any invoices, bills of lading or statements, delivered to [REDACTED] is a legally enforceable debt owed by Account Debtor to Client in its full face amount, and is not contingent upon the fulfillment of any condition whatsoever; (4) no partial payment has been made by anyone on such Account; (5) no set off, credit, allowance, adjustment, counterclaim or defense to such Account exists or will exist and no agreement has been made or will be made with any person or entity under which any deduction or discount may be claimed on such Account; (6) the Account is payable not more than thirty (30) days from the date of assignment of the Account to [REDACTED]
- (g) Client shall execute any and all financing statements, Uniform Commercial Code forms or other documents or instruments which [REDACTED] deems necessary and/or appropriate to protect its interest under this Agreement.
- (h) Client shall indemnify, defend and hold harmless [REDACTED] from and against any and all claims, losses and/or damages resulting from or related to any misrepresentations or breaches of warranty or other defaults hereunder by Client; from any dispute or claim resulting in liability, loss, expense, cost or attorneys' fees caused by or arising out of work performed or services rendered by Client; from claims, losses or damages attributable to any lien or security interest with respect to an Account in favor of a third party; or from any alleged claim, dispute, action, defense or set off of every kind and nature asserted by any Account Debtor or any third party. Any liability and/or payment obligation of Client hereunder may be offset by [REDACTED] against any funds otherwise payable to Client hereunder.
- (i) Client shall not, without the express written consent of [REDACTED], release, compromise, settle or adjust any Account purchased hereunder, or grant any discounts, allowances or credits thereon.

The representations, covenants and warranties set forth in this Section 9 shall survive expiration or termination of this Agreement, regardless of reason.

10. **Recordkeeping.** All of Client's books, accounts, ledgers, correspondence, records and papers pertaining to all of the Accounts and Client's business shall be accurately and properly prepared and maintained by Client and shall disclose the sale of Accounts purchased by [REDACTED]. All such books, ledgers, accounts, records, correspondence and papers shall be made available by Client at all reasonable times for [REDACTED] inspection, audit and copying. Client shall, upon the request of [REDACTED] furnish [REDACTED] with financial statements, including income statements and balance sheets showing Client's financial condition.

11. **Attorneys' Fees.** If [REDACTED] retains the services of an attorney to enforce any obligation of Client to [REDACTED] under this Agreement or to collect funds due on an Account from an Account Debtor, then [REDACTED] shall be entitled to recover from Client its attorneys' fees, court costs and expenses incurred in connection therewith, regardless of whether or not a lawsuit is filed by [REDACTED]

[REDACTED]

12. **Notice.** Notices under this Agreement shall be in writing and mailed postage prepaid, registered or certified mail, return receipt requested, or sent by overnight delivery service, addressed to the addresses set forth below, or by email to the recipient's email address set forth below, or to such other address as either party notifies the other in writing. Addresses for notices are as follows:

If to [REDACTED]

If to Client: [REDACTED]

13. **Governing Law.** This Agreement is accepted and made in the state of [REDACTED] and this Agreement and the rights of the parties hereunder shall be interpreted under and governed as to construction, enforcement and validity by the laws of the state of [REDACTED] and Client agree that any legal suit, action or proceeding arising out of or related to this Agreement shall be instituted, heard and resolved solely and exclusively in a State or Federal Court in or for [REDACTED] and Client submit to the jurisdiction of the State and Federal Courts for [REDACTED] for the purpose of deciding any questions, disputes or causes, arising under this Agreement. In the event that any one or more of the provisions in this Agreement should be held by any court of competent jurisdiction to be unenforceable, the holding or decision shall not affect or impair any of the other provisions of this Agreement.

14. **Waiver.** No delay or omission on the part of [REDACTED] in enforcing or exercising any right hereunder shall operate as a waiver of such right or any other right. The waiver by [REDACTED] of the breach by Client of any provision of this Agreement shall not be construed as a waiver of any other breach. No waiver or modification of the Agreement shall be enforceable or chargeable against [REDACTED] unless it is in writing, signed by [REDACTED] and delivered by [REDACTED] to Client.

15. **Miscellaneous Provisions.** This Agreement shall be binding upon and inure to the benefits of the parties hereto and their respective successors and assigns; provided, however, that this Agreement may not be assigned by Client without the prior written consent of [REDACTED]. The waiver, compromise, discharge, extension or release by [REDACTED] of any duty or obligation of any Account Debtor shall not reduce, diminish, limit or restrict in any way Client's obligations and liabilities to [REDACTED]. Duties and obligations imposed by this Agreement and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law. The parties agree to do all acts and things, and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement. All headings, titles and section captions are inserted in this Agreement for convenience of reference only, are descriptive only and shall not be deemed or construed to add to, detract from or otherwise modify the meaning of the sections or provisions hereof. This Agreement constitutes the exclusive statement of the agreement of the parties with respect to the subject matter hereof, and this Agreement supersedes and replaces all prior and contemporaneous agreements, discussions and representations, whether written or oral, relating to the subject matter hereof. The terms and provisions of this Agreement can only be amended, altered, changed, modified, supplemented or waived pursuant to a writing signed by the parties hereto. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement. Signature received via facsimile or electronically shall be binding as to the signor in the same capacity as an original signature.

16. **Authorization to Release Insurance Information.** As a material condition of this Agreement, Client agrees to execute the Authorization to Release Insurance Information form attached hereto as EXHIBIT F for each of its insurers. Such authorization shall be irrevocable during term of this Agreement.

17. **Liquidated Damages for Failure to Present Accounts.** Client acknowledges and agrees that [REDACTED] has incurred significant due diligence expenses and administrative costs in connection with the establishment of this Agreement. In the event that Client executes this Agreement but fails to present its Accounts to [REDACTED] for purchase as required hereunder throughout the entire term hereof, or otherwise desires or attempts to terminate or cancel this Agreement without doing so throughout the entire term hereof, then Client agrees to pay to [REDACTED] liquidated [REDACTED]

[REDACTED]

damages in the amount of \$ [REDACTED] to reimburse [REDACTED] for its due diligence expenses, administrative costs, and related damages resulting from such default. The foregoing shall not be construed to permit Client to terminate or cancel this Agreement prior to expiration of the stated term hereof, regardless of reason, by payment of such amount or otherwise. The parties acknowledge and agree that the liquidated damages payable to [REDACTED] hereunder shall be in addition to, not in lieu of, any and all other remedies available to [REDACTED] for breach of this Agreement by Client, including, but not limited to, recovery of compensatory damages from Client and the guarantor(s) executing the Personal Guaranty form attached hereto (i.e., recovery of the aggregate amount of the Base Fees otherwise payable hereunder for the term hereof), as well as attorneys' fees and costs incurred by [REDACTED]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly

[REDACTED]

[REDACTED]

[REDACTED]

Owner

[REDACTED]

Owner

Full Name

Title

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]