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FACTORING AND SECURITY AGREEMENT – LIMITED RECOURSE

THIS AGREEMENT made effective as of the ____ day of _____, _____ between **[NAME OF SELLER]** [address] (the “Seller”) and **[NAME OF BUYER]** [address] (the “Buyer”)

1. Purpose of Agreement

Seller wishes to obtain a cash injection of \$ _____ by factoring, selling and assigning to Buyer certain accounts receivable of Seller as outlined in Schedule “A” (“Accounts”) in accordance with the terms of this Agreement, at a limited discount below face value and on limited recourse, as set in this Agreement.

2. Representations, Warranties And Covenants By Seller

As an inducement for Buyer to enter into this Agreement, and with full knowledge that the truth and accuracy of the representations and warranties of Seller in this Agreement are being relied upon by Buyer, Seller represents and warrants that the following statements are true and correct, and covenants that the same will remain true and correct for so long as any amount remains owing to Buyer hereunder:

- (a) Seller is properly licensed and authorized to operate its business.
- (b) Seller is, at the time of purchase by Buyer, the lawful owner of and has good and undisputed title to the Accounts purchased by Buyer.
- (c) No Customer shall have right of set-off, abatement or reduction whatsoever in respect of any Account.
- (d) Each Account offered for sale to Buyer is an accurate statement of indebtedness by Customer to Seller for a certain sum which is due and payable on or before [date].
- (e) Each Account offered for sale to Buyer is an accurate statement of a bona fide sale, delivery and acceptance of merchandise or performance of service by Seller to Customer, or other good and valid liability of the Customer in question to the Seller.
- (f) The execution and delivery of this Agreement by Seller has been duly authorized by all necessary corporate acts on the part of Seller and is enforceable against Seller in accordance with its terms.
- (g) Seller does not own, control or exercise dominion over, in any way whatsoever, the business of any Customer whose Account is to be factored by Seller to Buyer.
- (h) Seller will not, under any circumstances or in any manner whatsoever, interfere with any of Buyer’s rights under this Agreement.
- (i) Seller will not change or modify the terms of the original Account with Customer unless Buyer first consents to such change in writing. For example, Seller may not extend credit to a Customer beyond sixty (60) days without prior written consent from Buyer.
- (j) Seller will not permit any lien, security interest or encumbrance, including any statutory deemed trust, to be created upon the Accounts in priority to the right, title and interest of Buyer therein.
- (k) Seller will provide Buyer with title to the Accounts free and clear of all liens, charges, security interest or deemed trusts, will obtain such discharges or postponements from prior secured creditors as may be necessary to do so, and will ensure that the first use on any funds advanced by the Buyer will be to get clear title to the Buyer as required under this clause, including but not limited to paying all outstanding Seller payroll and source deduction related liabilities. The security interest herein granted shall be a first charge on the Collateral, and the Seller will obtain such discharges or postponements from prior secured creditors

as may be necessary to do so. Buyer may withhold completing the advance referred to above until such time as the terms of this clause have been complied with.

- (l) Seller acknowledges receipt of a signed copy of this Agreement.

3. Transfer and Assignment of Initial Accounts

The Seller hereby sells, transfers and assigns all of its right, title and interest in the Accounts set out in Schedule "A" hereto to the Buyer. In return for this transfer and assignment, the Buyer agrees to immediately advance the Seller the sum of \$###,###.## in payment for such Accounts.

4. Notification

At any time following transfer of these Accounts to Buyer, Buyer may at its sole discretion notify any Customer of Seller to make payments to directly to Buyer.

5. Limited Recourse / Limited Discount

- (a) *Limited Recourse:* Buyer will have immediate recourse against Seller when an Account is not paid in by Customer when due, and Seller shall be liable to pay and shall immediately pay to Buyer an amount equal to 100% of the amount of the amount outstanding under the Account plus interest at the rate of ____% per year, to a cumulative maximum return to Buyer of \$ _____ on or before _____, plus interest on any shortfall below \$ _____ outstanding as of _____ ("Shortfall") at the rate of ##% per year until such time as the Shortfall and such interest is paid in full, with all payments applied firstly to reasonable enforcement costs, if any, and then to interest, and then to the principal amount of the Shortfall. Seller hereby indemnifies Buyer and saves it harmless from any Shortfall arising from any default or failure by a Customer to make payment in full of an Account transferred to Buyer on or before _____, to a cumulative maximum return to Buyer of \$ _____ plus interest on the Shortfall from _____ at the rate of ____% per year, plus reasonable enforcement costs.
- (b) *Limited Discount:* If Buyer receives payment on account of the Accounts from the Customers in question or the Seller in excess of \$ _____, plus interest from _____ at the rate of ____% per year on any Shortfall, plus reasonable enforcement costs ("Excess Discount"), the Buyer shall immediately pay such Excess Discount to the Seller.

6. Other Rights re: Accounts, Etc.

- (a) *Sole Property:* Once Buyer has purchased an Account, the payment from Customer as to that Account is the sole property of Buyer, subject to Section 5 above. Any interference by Seller with this payment will result in civil and / or criminal liability.
- (b) *Hold in Trust:* Seller will hold in trust and safekeeping, as the property of Buyer, and immediately turn over to Buyer the identical cheque or other form of payment received by Seller, whenever any payment on an Account purchased by Buyer comes into Seller's possession. Should Seller come into possession of a cheque compromising payments owing to both Seller and Buyer, Seller shall turn over validly endorsed cheque to Buyer. Buyer will remit Seller's portion to Seller subject to any additional fees, charge-backs or any other obligations of Seller to Buyer.
- (c) *Notice Of Levy:* Seller will promptly notify Buyer of any attachment, seizure, or any other legal process levied against any of Seller's Customers.
- (d) *Change In Customer Financial Status:* Seller shall immediately notify Buyer of any adverse change in a Customer's financial status, including default in other payments to Seller, insolvency or bankruptcy proceedings, or any sale in bulk or change in control related to the Customer.
- (e) *Book Entry:* Seller will immediately upon sale of accounts to Buyer make proper entries on its books and records disclosing the absolute sale of said accounts to Buyer.

Sample Preview