

{FIELD044}

Serviced through Kapitus Servicing, Inc.
2500 Wilson Boulevard Suite 350, Arlington, Virginia 22201
Ph. (844) 547-9396
Contract ID# {FIELD000}

FUTURE RECEIVABLES FACTORING AGREEMENT (CREDIT CARD)

Agreement dated {FIELD027} {FIELD028} {FIELD029} between {FIELD051} (“PURCHASER”) and each of the merchant(s) listed below and on any attached addendum as applicable (the “Merchant”) (the “Merchant Agreement” or the “Agreement”).

MERCHANT INFORMATION

Merchant’s Legal Name: {FIELD001}
D/B/A: {FIELD002}
Type of entity: {BUSINESS_TYPE_FNAME}
Physical Address: {FIELD004} City: {FIELD005} State: {FIELD006} Zip: {FIELD007}
Mailing Address: {FIELD008} City: {FIELD009} State: {FIELD010} Zip: {FIELD011}
Date business started (mm/yyyy): {FIELD012} Federal ID# {FIELD013}

PURCHASE AND SALE OF FUTURE RECEIVABLES

Merchant hereby sells, assigns and transfers to PURCHASER in consideration of the purchase price specified below (the “Purchase Price”), all of Merchant’s future accounts, contract rights and other rights to payment arising from or relating to the use by Merchant’s customers of cash, credit cards, charge cards, debit cards, prepaid cards, mobile payments and other similar payment methods in the ordinary course of Merchant’s business (the “Receipts”) for the payment of Merchant’s sale of goods or rendition of services until the purchased amount specified below (the “Purchased Amount”) has been delivered by Merchant to PURCHASER, provided that the Purchase Price, the Specified Percentage (as defined below) and/or the Purchased Amount may be adjusted by PURCHASER and Merchant in writing if one or more card processing conditions are not satisfied.

The Purchased Amount shall be paid to PURCHASER by Merchant using and irrevocably authorizing only one processor acceptable to PURCHASER (“Processor”) to remit to or for the benefit of PURCHASER the percentage specified below (the “Specified Percentage”) of Merchant’s settlement amounts due from each card issuer with respect to the Receipts, until such time as PURCHASER receives payment in full of the Purchased Amount. Furthermore Merchant will not enter into another cash advance agreement or any other type of factoring agreement, or any other type of credit/debit card processing during the term of this contract. Notwithstanding anything to the contrary in this Agreement or any other agreement between PURCHASER and Merchant, upon the occurrence of an Event of Default under Section 3 of the FUTURE RECEIVABLES FACTORING AGREEMENT TERMS AND CONDITIONS, the Specified Percentage shall equal 100%.

Purchase Price: {FIELD014} Specified Percentage: {FIELD015}% Receipts Purchased Amount: {FIELD016}

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE “FUTURE RECEIVABLES FACTORING AGREEMENT TERMS AND CONDITIONS”, THE “MERCHANT SECURITY AGREEMENT AND GUARANTY” AND “ADMINISTRATIVE FORM” ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS AGREEMENT.

MERCHANT

By {OWNER_NT_1} _____ (Print Name and Title) _____ (Signature)

{FIELD051}

By _____ (Company Officer) _____ (Signature)

Each person signing this Agreement on behalf of Merchant represents that he or she is authorized to sign this Agreement on behalf of Merchant, and each person signing this Agreement on behalf of Merchant and/or as Owner/Guarantor represents that the information provided herein and in all of PURCHASER’s forms is true, accurate and complete in all respects. PURCHASER may produce a monthly statement reflecting the delivery of the Specified Percentage of Receipts from Merchant to PURCHASER and its participants via Processor.

Other than the Origination Fee, if any, set forth above, NEITHER KAPITUS SERVICING NOR PURCHASER is NOT CHARGING ANY ORIGINATION OR BROKER FEES to Merchant. If Merchant is charged another such fee, IT IS NOT BEING CHARGED BY KAPITUS SERVICING OR PURCHASER NOR DOES KAPITUS SERVICING OR PURCHASER RECEIVE ANY PORTION OF SUCH FEES.

To the extent set forth herein, each of the parties is obligated upon his, her or its’ execution of the Agreement to comply with all terms of this Agreement. Each of above-signed Merchant and Owner(s) represents and warrants that: (1) he or she is authorized to sign this Agreement for Merchant, legally binding the Merchant to deliver the receivables as agreed, and (2) the information provided herein, and in the applications provided, documents submitted, financial information provided, and in any interviews during underwriting is true, accurate and complete in all respects. If any information provided to Purchaser is determined to be false or misleading, Merchant shall be deemed in material breach of all agreements between Merchant and PURCHASER and Owner(s) shall be personally liable for the Merchant’s obligations under the Personal Guaranty of Performance. Merchant and each of the above-signed Owners authorizes PURCHASER, its agents and representatives and any credit reporting agency engaged by PURCHASER, to (i) investigate any references given or any other

statements or data obtained from or about Merchant or any of its Owners for the purpose of this Agreement, and (ii) obtain a credit report at any time now or for so long as Merchant and/or Owners(s) continue to have any obligation owed to PURCHASER.

ANY MISREPRESENTATION MADE BY MERCHANT OR OWNER IN CONNECTION WITH ANY APPLICATION FOR FUNDING, IN ANY DOCUMENT SUBMITTED AND/OR THIS AGREEMENT WILL RESULT IN A SEPARATE CAUSE OF ACTION, INCLUDING BUT NOT LIMITED TO A CLAIM AGAINST THE OWNER/GUARANTOR FOR FRAUD OR FRAUDULENT INDUCEMENT.



AUTHORIZED SUB-SERVICING AGENT – Kapitus Servicing, Inc.

PURCHASER, as Agent, may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents. Kapitus Servicing, Inc. (Kapitus Servicing) is the Authorized Sub-Servicing Agent of the PURCHASER for this contract providing administrative, bookkeeping, reporting and support services for the PURCHASER and the Merchant. Kapitus Servicing is acting as agent for services including but not limited to background checks, credit checks, general underwriting review, filing UCC-1 security interests, cash management, account reporting, servicing, collections and remit capture. Merchant and Owner/Guarantor acknowledge and agree that Purchaser has granted Kapitus Servicing all right and authority as its general agent to take any and all actions to enforce the terms of this Agreement, through legal actions in the name of Purchaser, or otherwise. Any and all authorizations and/or rights granted to PURCHASER under this Agreement are hereby granted to Kapitus Servicing, as servicer and general agent for Purchaser. Kapitus Servicing is not a credit card processor, or in the business of processing credit cards. Merchant hereby acknowledges that in no event will Kapitus Servicing be liable for any claims made against the PURCHASER or the Processor under any legal theory for lost profits, lost revenues, lost business opportunity, exemplary, punitive, actual, special, incidental, indirect or consequential damages, each of which is waived by the Merchant and Owner/Guarantor.

INITIALS: _____

MERCHANT AGREEMENT TERMS AND CONDITIONS

I. GENERAL TERMS

1.1 **Merchant Processing Agreement.** Merchant shall execute an agreement (the “Merchant Processing Agreement”) acceptable to PURCHASER, with a card processor acceptable to PURCHASER, to obtain card processing services. Merchant shall authorize Processor to deduct the amounts owed to PURCHASER for the Receipts as specified herein from settlement amounts which would otherwise be due to Merchant from Processor card transactions and to pay such amounts to PURCHASER pursuant to PURCHASER’s instructions to Processor. The authorization shall be irrevocable without the written consent of PURCHASER. Processor may rely upon the instructions of PURCHASER, without any independent verification, in making such deductions and payments, and Merchant waives any claims for damages it may have against Processor in connection with such acts unless such damages were due to Processor’s failure to follow PURCHASER’s instructions.

1.2 **Purchase Price Reduction.** PURCHASER may, in its sole discretion, reduce the Purchase Price if one or more card processing conditions are not satisfied.

1.3 **Bridge / Control Account.** Merchant may be required to open a new bank account into which 100% of the settlement amounts will be deposited and the Specified Percentage collected by PURCHASER (the “Bridge / Control Account”). **Merchant appoints the Sub-Servicing Agent as “Acting Agent” over the Bridge / Control Account, and shall instruct Processor to designate the Bridge / Control Account as the deposit account for all of Merchant’s customers’ card transactions. Merchant assumes all responsibility for all fees, costs, charge-backs or suspicious items processed through the Bridge / Control Account** (see “Miscellaneous Service Fees” paragraph 3.7). **Merchant agrees to maintain a minimum balance in the Bridge / Control Account (the “Minimum Balance”) equal to the per-month average of all fees charged to Merchant by Processor, averaged over a six-month period.**

1.4 **Term of Agreement.** This Agreement shall have an indefinite term that shall last until all the Merchant’s obligations to PURCHASER are fully satisfied. This shall include but not be limited to any renewals, outstanding fees or costs.

1.5 **Financial Condition.** Merchant and each Owner/Guarantor authorize PURCHASER, its agents and representatives, and any credit reporting agency engaged by PURCHASER, to investigate their creditworthiness, financial responsibility and history, and they agree to provide PURCHASER any financial statements, tax returns, references, or other credit or financial information as PURCHASER deems necessary prior to or after execution of this Agreement. A photocopy of this authorization will be deemed as acceptable for release of credit and financial information. Merchant and each Owner/Guarantor authorize PURCHASER to update their credit and financial profile from time to time in the future, as PURCHASER deems appropriate. An investigative or consumer report may be made or obtained in connection with this Agreement.

1.6 **Transactional History.** Merchant authorizes Processor and each of Merchant’s banks to provide PURCHASER upon request with Merchant’s card history or bank statements, as applicable.

1.7 **Indemnification.** Merchant and each Owner/Guarantor jointly and severally indemnify and

hold harmless Processor, its officers, directors and shareholders against all losses, damages, claims, liabilities and expenses (including reasonable attorney’s fees) incurred by Processor resulting from (a) claims asserted by PURCHASER for monies owed to PURCHASER from Merchant and (b) actions taken by Processor in reliance upon information or instructions provided by PURCHASER.

1.8 **No Liability.** In no event will Processor or PURCHASER (or any of the Purchasers) be liable for any claims asserted by Merchant under any legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is waived by Merchant and each Owner/Guarantor.

1.9 **Reliance on Terms.** Sections 1.1, 1.7, 1.8, 2.5, and 4.6 hereof are agreed to for the benefit of Merchant, PURCHASER (and its Participants) and Processor, and notwithstanding the fact that Processor is not a party to this Agreement, Processor may rely upon their terms and raise them as a defense in any action.

1.10 **Sale of Receipts.** Merchant and PURCHASER intend that the transfer of the interest in the Receipts from Merchant to PURCHASER constitute a sale, and not a loan, for all purposes. Merchant agrees that the Purchase Price equals the fair market value of such interest. If, notwithstanding such intent, such transfer is not deemed to constitute a sale, Merchant hereby grants to PURCHASER a security interest in all right, title and interest of Merchant in and to the Receipts, which security interest shall secure the payment of the Purchased Amount and all other obligations of Merchant under this Agreement. In no event shall the aggregate of all amounts deemed interest hereunder and charged or collected hereunder exceed the highest rate permissible at law. In the event that a court determines that PURCHASER has charged or received interest hereunder in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by applicable law and PURCHASER shall promptly refund to Merchant any interest received by PURCHASER in excess of the maximum lawful rate, it being intended that Merchant not pay or contract to pay, and that PURCHASER not receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by Merchant under applicable law. Merchant hereby authorizes PURCHASER to file any financing statements deemed necessary by PURCHASER to perfect or maintain PURCHASER’s interest in the Receipts.

1.11 **Power of Attorney.** Merchant irrevocably appoints PURCHASER and any assignee of PURCHASER as its agent and attorney-in-fact with full authority to take any action or execute any instrument or document to settle all obligations due to PURCHASER from Processor, or upon the occurrence of an Event of Default under Section 3.1 hereof, to settle all obligations due to PURCHASER from Merchant, under this Agreement, including without limitation (i) to obtain and adjust insurance; (ii) to collect monies due or to become due under or in respect of any of the Collateral (as defined in the Merchant Security Agreement and Guaranty); (iii) to receive, endorse and collect any checks, notes, drafts, instruments, documents or chattel paper in connection with clause (i) or clause (ii) above; (iv) to sign Merchant’s name on any invoice, bill of lading, or assignment directing customers or account debtors to make payment directly to PURCHASER; and (v) to file any claims or take any action or institute any proceeding which PURCHASER may deem necessary for the collection of any unpaid Purchased Amount from the

Collateral, or otherwise to enforce its rights with respect to payment of the Purchased Amount.

1.12 **Protection of Information.** Merchant and each person signing this Agreement on behalf of Merchant and/or as Owner/Guarantor, in respect of himself or herself personally, authorizes PURCHASER to disclose to any third party information concerning Merchant’s and each Owner’s/Guarantor’s credit standing (including credit bureau reports that PURCHASER obtains) and business conduct. Merchant and each Owner/Guarantor hereby waive to the maximum extent permitted by law any claim for damages against PURCHASER or any of its affiliates and the Purchasers relating to any (i) investigation undertaken by or on behalf of PURCHASER as permitted by this Agreement or (ii) disclosure of information as permitted by this Agreement.

1.13 **Publicity.** Merchant and each Owner/Guarantor authorize PURCHASER to use their respective names in a listing of clients and in advertising and marketing materials.

1.14 **UCC Agent & D/B/A’s.** Merchant hereby acknowledges and agrees that PURCHASER may be using “doing business as” or “d/b/a” names in connection with various matters relating to the transaction between PURCHASER and Merchant, any may file UCC-1 financing statements and other notices or filings using such names on its own behalf or though PURCHASER’s UCC agent. PURCHASER shall have no obligation to terminate any UCC financing statement filed in connection with this Agreement absent a written request by PURCHASER and after delivery of the Receipts Purchased Amount.

1.15 **Financial Information.** Merchant and each Owner/Guarantor shall provide to PURCHASER upon request copies of financial statements representing the financial condition of Merchant and/or such Owner/Guarantor.

II. REPRESENTATIONS, WARRANTIES AND COVENANTS

Merchant and each Owner/Guarantor each represents, warrants and covenants that as of the date of this Agreement and on each date during the term of this Agreement:

2.1 **Financial Condition and Financial Information.** Merchant is solvent, and no transfer of property is being made by Merchant and no obligation is being incurred by Merchant in connection with this Agreement with the intent to hinder, delay, or defraud either present or future creditors of Merchant. All processor statements, banks statements and other financial information provided to PURCHASER fairly represent the financial condition of Merchant and each Owner/Guarantor at such dates, and since those dates there has been no material changes, financial or otherwise, in such condition, operation or ownership of Merchant. Merchant is current on any and all lease, rent or mortgage payments due. No material changes, financial or otherwise, in the condition, operation or ownership of Merchant are in any way expected or anticipated. Merchant has a continuing, affirmative obligation to advise PURCHASER of any material change in its financial condition, operation or ownership. PURCHASER may request statements at any time during the performance of this Agreement and the Merchant shall provide them to PURCHASER within 5 business days. Merchant’s failure to do so is a material breach of this Agreement.

2.2 **Governmental Approvals.** Merchant is and will

remain in compliance with all laws and has valid permits, authorizations and licenses to own, operate and lease its properties and to conduct the business in which it is presently engaged.

2.3 **Authorization.** Merchant, and the person(s) signing this Agreement on behalf of Merchant, have full power and authority to execute this Agreement and to incur and perform the obligations under this Agreement, all of which have been duly authorized.

2.4 **Insurance.** Merchant has and will maintain business-interruption insurance naming PURCHASER as loss payee and additional insured in such amounts and against such risks as are satisfactory to PURCHASER and shall provide PURCHASER proof of such insurance upon request.

2.5 **Merchant Processing Agreement and Arrangements.** Without PURCHASER's prior written consent, Merchant will not: (i) change the card processor through which the Receipts are settled; (ii) permit any event to occur that could cause diversion of any of Merchant's card transactions from Processor; (iii) change its arrangements with Processor or amend the Merchant Processing Agreement in any way that is adverse to PURCHASER; (iv) add card processing terminals; (v) use multiple card processing terminals; (vi) change its financial institution or bank account(s) (including, if applicable, the Bridge / Control Account); (vii) take any other action that could have any adverse effect upon Merchant's obligations under this Agreement or PURCHASER's interest in the Receipts; or (viii) take any action, fail to take any action, or offer any incentive—economic or otherwise—the result of which could be to discourage the use of cards that are settled through Processor, or to induce any customers to pay for Merchant's services with any means other than cards that are settled through Processor, or permit any event to occur that could have an adverse effect on the use, acceptance, or authorization of cards for the purchase of Merchant's services and products.

2.6 **Change of Name or Location.** Merchant will not conduct its businesses under any name other than as disclosed to Processor and PURCHASER or change any of its places of business.

2.7 **Daily Batch Out.** Merchant will batch out receipts with Processor on a daily basis.

2.8 **Estoppel Certificate.** Merchant will at any time, and from time to time, upon at least one (1) day's prior notice from PURCHASER to Merchant, execute, acknowledge and deliver to PURCHASER and/or to any other person, firm or corporation specified by PURCHASER, a statement certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and stating the dates on which the Purchased Amount or any portion thereof has been paid.

2.9 **No Bankruptcy or Insolvency.** Merchant and Owner/Guarantors represent that they are not Insolvent and neither Merchant nor any Owner/Guarantor has filed any petition for bankruptcy protection under Title 11 of the United States Code, no involuntary petition for bankruptcy has been brought or is pending against Merchant or any Owner/Guarantor, neither Merchant nor any Owner/Guarantor has admitted in writing its inability to pay its debts or made a general assignment for the benefit of creditors, and no other proceeding has been instituted by or against Merchant or any Owner/Guarantor seeking to adjudicate it insolvent or seeking reorganization, arrangement, adjustment or composition of it or its debts. Merchant does not anticipate filing any such bankruptcy petition and is not aware and has no reason to believe that any such

bankruptcy petition or other proceeding will be filed or brought against it or any Owner/Guarantor.

2.10 **Other Financing.** Merchant shall not enter into any arrangement, agreement or commitment that relates to or involves Receipts, whether in the form of a purchase (such as a factoring arrangement or merchant cash advance) of, a loan against, or the sale or purchase of credits against, any Receipts, cash deposits or future card or mobile payment sales with any party other than PURCHASER without PURCHASER's written permission.

2.11 **Unencumbered Receipts.** Merchant has good and marketable title to all Receipts, free and clear of any and all liabilities, liens, claims, changes, restrictions, conditions, options, rights, mortgages, security interests, equities, pledges and encumbrances of any kind or nature whatsoever or any other rights or interests that may be inconsistent with the transactions contemplated with, or adverse to the interests of, PURCHASER.

2.12 **Business Purpose.** Merchant is a valid business in good standing under the laws of the jurisdictions in which it is organized and/or operates, and Merchant is entering into this Agreement for business purposes and not as a consumer for personal, family or household purposes.

2.13 **Default Under Other Contracts.** Merchant's execution of or performance under this Agreement will not cause or create any breach or default by Merchant under any contract with another person or entity.

2.15 **Tax Obligations.** Merchant is currently in compliance with all federal state and local tax laws, has filed all returns, and has paid all taxes due, except as disclosed to PURCHASER.

2.16 **Sale of Business.** Merchant shall not sell, dispose, transfer or otherwise convey its business or assets without (i) the express prior written consent of PURCHASER, and (ii) the written agreement of any purchaser or transferee assuming all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to PURCHASER

2.17 **Bridge / Control Account.** If Merchant is required to open a Bridge / Control Account, (i) Merchant will not, unless otherwise directed in writing by PURCHASER, take any action to cause the Specified Percentage of the settlement amounts to be settled or delivered to any account other than the Bridge / Control Account and (ii) Merchant will at all times maintain the Minimum Balance in the Bridge / Control Account.

2.19 **Accuracy of Information.** All information provided by Merchant and each Owner/Guarantor to PURCHASER herein, in the Merchant Security Agreement and Guaranty, and in all other documents executed in connection with such agreements or related to such agreements is true, accurate and complete in all respects.

III. EVENTS OF DEFAULT AND REMEDIES

3.1 **Events of Default.** The occurrence of any of the following events shall constitute an "Event of Default" hereunder: (a) Merchant or any Owner/Guarantor violates any term, covenant or condition in this Agreement, the Merchant Security Agreement and Guaranty or any other agreement with PURCHASER; (b) any representation or warranty by Merchant or any Owner/Guarantor in this Agreement, the Merchant Security Agreement and Guaranty or any other agreement with PURCHASER shall prove to have been incorrect, incomplete, false or misleading in any material respect when made; (c) Merchant or any Owner/Guarantor admits in writing within 120 days of funding its inability to pay its debts, or makes a general

assignment for the benefit of creditors, or any proceeding shall be instituted by or against Merchant or any Owner/Guarantor seeking to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, or composition of it or its debts; (d) any Owner/Guarantor sends a notice of termination of the Merchant Security Agreement and Guaranty; (e) Merchant voluntarily suspends, dissolves or terminates its business; (f) Merchant sells all or substantially all of its assets; (g) Merchant makes or sends notice of any intended bulk sale or transfer by Merchant; (h) Merchant performs any act that encumbers the cash flow of the business placing undue stress on the viability of the operations and reduces the value of the Collateral or the security interest granted in the Collateral under the Merchant Security Agreement and Guaranty; (i) any Owner/Guarantor performs any act that reduces the value of the Additional Collateral (as defined in the Merchant Security Agreement and Guaranty) or the security interest granted in the Additional Collateral under the Merchant Security Agreement and Guaranty; or (j) Merchant or any Owner/Guarantor defaults under any of the terms, covenants and conditions of any other agreement with PURCHASER including those with affiliated / associated businesses.

3.2 **Remedies.** Upon the occurrence of an Event of Default that is not waived pursuant to Section 4.4 hereof, PURCHASER on its own and on behalf of its Participants may proceed to protect and enforce its rights or remedies by suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement or other provision contained herein, or to enforce the performance of Merchant's and each Owner's/Guarantor's obligations hereunder, under the Merchant Security Agreement and Guaranty, or pursuant to any other legal or equitable right or remedy. Upon any Event of Default, the entire Receipts Purchased Amount and unpaid fees not already paid to PURCHASER shall become immediately due and payable to PURCHASER. In addition, upon an Event of Default (i) PURCHASER may enforce the provisions of the Merchant Security Agreement and Guaranty against each Owner/Guarantor; (ii) PURCHASER may enforce its security interest in the Collateral and Additional Collateral; and (iii) PURCHASER may debit Merchant's deposit accounts wherever situated by means of ACH debit or facsimile signature on a computer-generated check drawn on Merchant's bank account or otherwise. All rights, powers and remedies of PURCHASER in connection with this Agreement and the Merchant Security Agreement and Guaranty may be exercised at any time by PURCHASER after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

3.3 **Costs.** Merchant and each Owner/Guarantor shall pay to PURCHASER all costs reasonably incurred by PURCHASER in connection with (a) any Event of Default including without limitation any breach by Merchant or any Owner/Guarantor of the representations, warranties and covenants in this Agreement or the Merchant Security Agreement and Guaranty, and (b) the enforcement of PURCHASER's remedies set forth in Section 3.2 hereof, including but not limited to expenses, court costs and attorneys' fees of twenty-five percent (25%) of any balance due.

3.4 **Required Notifications.** Merchant is required to give PURCHASER written notice within 24 hours of any filing under Title 11 of the United States Code. Merchant is required to give PURCHASER seven days' written notice prior to the closing of any sale of all or substantially all of the Merchant's assets or equity interests.

3.5 **Default Fee.** Upon the Occurrence of any Event of Default, and written notice to Merchant thereof, Merchant shall pay to PURCHASER a default fee

("Default Fee") of \$2,500. This Default Fee shall be payable on demand and stand in addition to any other fees or penalties outlined within this Agreement, the Merchant Security Agreement or Guaranty.

3.6 **Multiple Processor Fee.** Merchant shall pay a multiple processor fee (the "Multiple Processor Fee") to PURCHASER in the amount of \$2,500.00 in the event that Merchant (i) uses multiple card processing terminals without the prior written consent of PURCHASER, (ii) changes its card processor without the prior written consent of PURCHASER or (iii) directs Processor to deliver settlement amounts to any account other than the Bridge / Control Account (if Merchant is required to open a Bridge / Control Account). Such Multiple Processor Fee (i) shall be due and payable to PURCHASER on demand, (ii) is not exclusive of, and is cumulative with, any other fee or amount paid or payable to PURCHASER by Merchant pursuant to this Agreement or the Merchant Security Agreement and Guaranty; and (iii) shall not be construed as a waiver of any Event of Default hereunder or under the Merchant Security Agreement and Guaranty or as otherwise operating to reduce or limit PURCHASER's rights or remedies provided for hereunder, under the Merchant Security Agreement and Guaranty or at law or in equity.

3.7 **Miscellaneous Service Fees.** Merchant shall pay certain fees for services related to the origination and maintenance of accounts which may include but not be limited to: Merchant funding is done electronically to their designated bank account and charged a fee of \$50.00 for a Fed Wire or \$20.00 for an ACH. The fee for underwriting and origination is paid from the funded amount in accordance with the schedule below. If Merchant is utilizing a Bridge / Control Account, there is an upfront fee of \$129.00 for the bank fees and administrative costs of maintaining such account for each cash advance agreement with Merchant. Fund transfers from Bridge / Control Accounts to Merchant's operating bank account will be charged \$15.00 per month via ACH. This fee will continue if the bridge account remains open after the RTR is paid. Merchant will be charged \$75.00 for each change of its operating bank account once active with PURCHASER. Any administrative adjustments associated with changes to the Specified Percentage will incur a fee of \$100.00 per occurrence. (All fees are subject to change). Merchant and its sales representative / broker may have agreed to an additional fee in relation to their services. This fee is not charged by Kapitus Servicing nor does Kapitus Servicing received any portion of it.

INITIALS: _____

IV. MISCELLANEOUS

4.1 **Modifications; Amendment.** No modification, amendment, or waiver of any provision of, or consent to any action under, this Agreement or the Merchant Security Agreement and Guaranty shall be effective unless the same is in writing and signed by PURCHASER.

4.2 **Assignment.** PURCHASER and any Principal may assign, transfer or sell its right to receive the Purchased Amount or delegate its duties hereunder, either in whole or in part. Merchant shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of PURCHASER which consent may be withheld in PURCHASER's sole discretion. PURCHASER reserves the rights to sell or assign this

Agreement with or without prior written notice to Merchant.

4.3 **Notices.** All notices, requests, consent, demands and other communications hereunder shall be delivered by certified mail, return receipt requested, to PURCHASER the address set forth in this Agreement and shall become effective only upon receipt.

4.4 **Waiver.** No failure on the part of PURCHASER to exercise, and no delay in exercising, any right under this Agreement or the Merchant Security Agreement and Guaranty shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement or the Merchant Security Agreement and Guaranty preclude any other or further exercise thereof or the exercise of any other right. The remedies provided hereunder and under the Merchant Security Agreement and Guaranty are cumulative and not exclusive of any remedies provided by law or equity.

4.5 **Terminated Merchant File and Match File.** Merchant expressly acknowledges that a Terminated Merchant File ("TMF"), or any successor thereto, is maintained by MasterCard or VISA containing the business name and names and identification of principals of merchants which have been terminated for one or more of the reasons specified in MasterCard or VISA operating regulations. Such reasons include, but are not limited to, fraud, counterfeit drafts, unauthorized transactions, excessive charge-backs and retrieval requests, money laundering, or where a high security risk exists. **MERCHANT ACKNOWLEDGES THAT PROCESSOR AND PURCHASER ARE REQUIRED TO REPORT THE BUSINESS NAME OF MERCHANT AND THE NAMES AND IDENTIFICATION OF ITS PRINCIPALS TO THE TMF WHEN A MERCHANT IS TERMINATED FOR ONE OR MORE OF THE REASONS SPECIFIED IN MASTERCARD OR VISA OPERATING REGULATIONS. MERCHANT EXPRESSLY AGREES AND CONSENTS TO SUCH REPORTING BY PROCESSOR AND PURCHASER AND RELEASES EACH FROM ANY DAMAGES FOR DOING SO IN GOOD FAITH.**

4.7 **Binding Effect; Governing Law, Venue and Jurisdiction.** Merchant and Guarantor agree that any suit, action or proceeding to enforce or arising out of this Agreement shall be brought in any court in the Commonwealth of Virginia or in the United States District Court for the Eastern District of Virginia (the "Acceptable Forums"), and Merchant and Guarantor waive personal service of process. Merchant and Guarantor agree that the Acceptable Forums are convenient to them, submit to the jurisdiction of the Acceptable Forums and waive any and all objections to jurisdiction or venue. In the event a legal proceeding concerning this Agreement is initiated in any other forum, Merchant and Guarantor waive any right to oppose any motion or application made by PURCHASER to transfer such proceeding to an Acceptable Forum, or to dismiss the action on the grounds of *forum non conveniens*.

This Agreement and any claim, dispute or controversy (whether in contract, tort, or otherwise) at any time arising from or relating to this Agreement is governed by, and this Agreement will be construed in accordance with Virginia law (to the extent not preempted by federal law) without regard to internal principles of conflict of laws. The legality, enforceability and interpretation of this Agreement and the amounts contracted for under this Agreement will be governed by the laws of the Commonwealth of Virginia. Merchant and Guarantor understand and agree that (i) PURCHASER and/or Kapitus Servicing are located in Virginia, (ii) all final credit decisions are made from Virginia, (iii) the

Agreement is made in Virginia (that is, no binding contract will be formed until Merchant's signed Agreement in received and accepted in Virginia) and (iv) Merchant's payments are not accepted until received in Virginia.

4.8 **Survival of Representation, etc.** All representations, warranties and covenants herein and in the Merchant Security Agreement and Guaranty shall survive the execution and delivery of this Agreement and the Merchant Security Agreement and Guaranty and shall continue in full force until all obligations under this Agreement and the Merchant Security Agreement and Guaranty shall have been satisfied in full and this Agreement and the Merchant Security Agreement and Guaranty shall have terminated.

4.9 **Severability.** In case any of the provisions in this Agreement or the Merchant Security Agreement and Guaranty is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of any other provision contained herein or therein shall not in any way be affected or impaired.

4.10 **Entire Agreement.** Any provision hereof or of the Merchant Security Agreement and Guaranty prohibited by law shall be ineffective only to the extent of such prohibition without invalidating the remaining provisions hereof or thereof. This Agreement and the Merchant Security Agreement and Guaranty embody the entire agreement between Merchant, each Owner/Guarantor and PURCHASER and supersede all prior agreements and understandings relating to the subject matter hereof.

4.11 **JURY TRIAL WAIVER. THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THE TRANSACTIONS OF WHICH THIS AGREEMENT IS A PART OR THE ENFORCEMENT HEREOF. THE PARTIES HERETO ACKNOWLEDGE THAT EACH MAKES THIS WAIVER KNOWINGLY, WILLINGLY AND VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH THEIR ATTORNEYS.**

4.12 **CLASS ACTION WAIVER. THE PARTIES HERETO WAIVE ANY RIGHT TO ASSERT ANY CLAIMS AGAINST ANY OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION. TO THE EXTENT ANY PARTY IS PERMITTED TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION, THE PARTIES HERETO AGREE THAT: (1) THE PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION AND (2) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION. THIS PROVISION IS A MATERIAL INDUCEMENT FOR PURCHASER TO ENTER INTO THIS AGREEMENT.**

4.13 **ARBITRATION. PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY. THIS SECTION PROVIDES THAT DISPUTES MAY BE RESOLVED BY BINDING ARBITRATION. ARBITRATION**

REPLACES THE RIGHT TO GO TO COURT, HAVE A JURY TRIAL OR INITIATE OR PARTICIPATE IN A CLASS ACTION. IN ARBITRATION, DISPUTES ARE RESOLVED BY AN ARBITRATOR, NOT A JUDGE OR JURY. ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN IN COURT. THIS ARBITRATION PROVISION IS GOVERNED BY THE FEDERAL ARBITRATION ACT (“FAA”), AND SHALL BE INTERPRETED IN THE BROADEST WAY THE LAW WILL ALLOW.

Covered claims

- a. *Merchant and/or Performance Guarantors, (collectively hereinafter referred to as “Merchant”) or Purchasers may arbitrate any claim, dispute or controversy between Merchant and Purchasers arising out of or related to this Agreement, any other agreement, or the Merchant/Purchasers relationship (“Claims”).*
- b. **If arbitration is chosen by any party, in accordance with paragraph 4.11(h) neither Merchant nor Purchasers will have the right to litigate that Claim in court or have a jury trial on that Claim.**
- c. Except as stated below, all Claims are subject to arbitration, no matter what legal theory they are based on or what remedy (damages, or injunctive or declaratory relief) they seek, including Claims based on contract, tort (including intentional tort), fraud, agency, Merchant or Purchasers’ negligence, statutory or regulatory provisions, or any other sources of law; Claims made as counterclaims, cross-claims, third-party claims, interpleaders or otherwise; Claims made regarding past, present, or future conduct; and Claims made independently or with other claims. This also includes Claims made by or against anyone connected with Purchasers or Merchant or claiming through Purchasers or Merchant, or by someone making a claim through Purchasers or Merchant, such as a co-applicant, authorized user, employee, agent, representative or an affiliated/parent/subsidiary company.

Arbitration limits

- d. Individual Claims filed in a small claims court are not subject to arbitration, as long as the matter stays in small claims court.
- e. Purchasers will not initiate arbitration to enforce its rights under this Agreement. If Merchant asserts a Claim against Purchasers, Purchasers may elect to arbitrate any Claims against Purchasers.
- f. Claims brought as part of a class action, private attorney general or other representative action can be arbitrated only on an individual basis. The arbitrator has no authority to arbitrate any claim on a class or representative basis and may award relief only on an individual basis. If arbitration is chosen by any party, neither Merchant nor Purchasers may pursue a Claim as part of a class action or other representative action. Claims of 2 or more persons may not be combined in the same arbitration. However, applicants, co-applicants, authorized users on a single account and/or related accounts, or corporate affiliates are here considered as one person.

How arbitration works

- g. Arbitration shall be conducted by the American Arbitration Association (“AAA”) according to this arbitration provision and the applicable AAA Commercial Arbitration Rules in effect when the claim is filed (“AAA Rules”), except where those rules conflict with this arbitration provision. Merchant can obtain copies of the AAA Rules at

the AAA’s website (www.adr.org) or by calling 800-778-7879. Merchant or Purchasers may choose to have a hearing, appear at any hearing by phone or other electronic means, and/or be represented by counsel. Notwithstanding any terms to the contrary, any in-person hearing will be held in Arlington, Virginia

- h. Arbitration may be requested any time, even where there is a pending lawsuit, unless a trial has begun or a final judgment entered. Neither Merchant nor Purchasers waive the right to arbitrate by filing or serving a complaint, answer, counterclaim, or motion in a lawsuit. To choose arbitration, a party must file a motion to compel arbitration in a pending matter or commence arbitration by submitting the required AAA forms and requisite filing fees to the AAA.
- i. The arbitration shall be conducted by a single arbitrator in accord with this arbitration provision and the AAA Rules, which may limit discovery. The arbitrator shall not apply any federal or state rules of civil procedure for discovery, but the arbitrator shall honor claims of privilege recognized at law and shall take reasonable steps to protect account information and other confidential information of either party if requested to do so. The arbitrator shall apply the substantive laws of the Commonwealth of Virginia without regard to any applicable principals of conflicts of law.
- j. The arbitrator shall make any award in writing and, if requested by Merchant or Purchasers, shall include a reasoned opinion for the award. An arbitration award shall decide the rights and obligations only of the parties named in the arbitration, and shall not have any bearing on any other person or dispute.
- k. The arbitrator shall have no authority to award punitive damages, consequential damages, or other damages not measured by the prevailing party’s actual damages, except as required by statute.

Paying for arbitration fees

- l. Arbitration fees will be allocated according to the applicable AAA Rules. All parties are responsible for their own attorney’s fees, expert fees and any other expenses unless the arbitrator awards such fees or expenses to Purchasers based on applicable law.
- m. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges shall constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver shall not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.
- n. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of both parties.

The final award

- o. Any award by an arbitrator is final unless a party appeals it in writing to the AAA within 30 days of notice of the award pursuant to the AAA’s Optional Appellate Arbitration Rules. The arbitration appeal shall be determined by a panel of 3 arbitrators. The panel will consider all facts and legal issues anew based on the same evidence

presented in the prior arbitration, and will make decisions based on a majority vote. Arbitration fees for the arbitration appeal shall be allocated according to the applicable AAA Rules. An award by a panel on appeal is final. A final award is subject to judicial review as provided by applicable law.

Survival and Severability of Terms

- p. This arbitration provision shall survive changes in this Agreement and termination of the account or the relationship between Merchant and Purchasers, including the bankruptcy of any party and any sale of Merchant account, or amounts owed on Merchant account, to another person or entity. If any part of this arbitration provision is deemed invalid or unenforceable, the other terms shall remain in force, except that there can be no arbitration of a class or representative Claim. This arbitration provision may not be amended, severed or waived, except as provided in this Agreement or in a written agreement between Merchant and Purchasers.

RIGHT TO OPT OUT OF ARBITRATION.

- q. **MERCHANT AND GUARANTOR(S) MAY OPT OUT OF THE ARBITRATION PROVISION ABOVE. TO OPT OUT OF THE ARBITRATION CLAUSE, MERCHANT AND EACH GUARANTOR MUST SEND BUYER A NOTICE THAT THE MERCHANT AND EACH GUARANTOR DOES NOT WANT THE CLAUSE TO APPLY TO THIS AGREEMENT. FOR ANY OPT OUT TO BE EFFECTIVE, SELLER AND EACH GUARANTOR MUST SEND AN OPT OUT NOTICE TO THE FOLLOWING ADDRESS BY REGISTERED MAIL, WITHIN 14 DAYS AFTER THE DATE OF THIS AGREEMENT: Kapitus Servicing, Inc. – ARBITRATION OPT OUT, 2500 Wilson Boulevard, Suite 350, Arlington, VA 22201 ATTENTION: General Counsel.**

4.14 Purchaser acting as Agent.

Purchaser has entered into this Agreement, the Merchant Security Agreement and the Guaranty (collectively, the Transaction Documents”) as agent (in such capacity, “Agent”) for itself and one or more third parties as “co-investors” or “co-Purchasers” (each a “Principal”). Agent and each Principal have elected to treat the transaction consummated under the Transaction Documents (the “Transaction”) as a single transaction on behalf of separate Principals, and Agent hereby certifies that the portion of the Transaction allocable to the account of each of the Principals (the “Portion”) for which it is acting (to the extent that any such Transaction is allocable to the account of more than one Principal) as set forth in one or more addenda to the Transactional Documents, which may be provided to Merchant upon request.

All references to “Purchaser” or “Merchant” or “Performance Guarantors,” as the case may be, in the Transaction Documents shall be subject to the provisions of this Section 4.14 and shall be construed to reflect that (i) each Principal shall have, in connection with the Transaction entered into by the Agent on its behalf, all of the rights, responsibilities, privileges and obligations of a “Purchaser” directly entering into such Transaction with the other parties under each of the Transaction Agreements and (ii) Agent’s Principals have designated Agent (acting directly or through the Authorized Subservicing Agent) as their sole agents for performance of Purchaser’s obligations to Merchant and for receipt of performance by Merchant of its obligations to Purchaser in connection with the Transaction (including, among other things, as Agent for each Principal in connection with transfers of cash or other

property and as agent for giving and receiving all notices under the Transaction Documents), either directly. Both Agent and its Principals shall be deemed "parties" to the Transaction Documents and all references to a "party" or "either party" in any Transaction Document shall be deemed revised accordingly.

The parties hereto acknowledge and agree that any assignment, pledge and/or grant to purchaser by the merchant or a performance guarantor of a security interest in and to any property and assets (including the collateral and the additional collateral) pursuant to any of the applicable transaction agreements to secure the payment and/or performance of any of their respective and/or joint obligations, shall be deemed to have been made to the purchaser for and on behalf of itself and any other principal. Purchaser hereby agrees to hold all collateral and additional collateral hereafter delivered to it pursuant to the transaction documents, for itself and for the benefit of the principals, on and subject to the terms and conditions set forth in the transaction documents. In its capacity, the agent and sub-servicing agent are a "representative" of each of the principals within the meaning of the term "secured party" as defined in the UCC. In addition to the representations and warranties set forth in the transaction documents, agent hereby makes the following representations and warranties, which shall continue during the term of any transaction: principal has duly authorized agent to execute and deliver the transaction documents on its behalf, has the power to so authorize agent and to enter into the transaction contemplated by the transaction documents and to perform the obligations of funder, and has taken all necessary action to authorize such execution and delivery by agent and such performance by it.

4.15 Counterparts; Facsimile and PDF Acceptance.

This Agreement and the Merchant Security Agreement and Guaranty may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one instrument. Signatures on this Agreement and the Merchant Security Agreement and Guaranty sent by facsimile or PDF will be treated as original signatures for all purposes.

INITIALS: _____

Origination Fee Schedule (From 3.7)

Amount Funded	Origination Fee
Up to \$15,000.00	\$395.00
Over \$15,000.00	2.5% of Amount Funded

Due diligence Fee	<u>{FIELD102}</u>
Administrative Fee	<u>{FIELD103}</u>

UCC Termination Fee	\$250
----------------------------	--------------

***** All fees listed in this contract are subject to change.**

INITIALS: _____

SECURITY AGREEMENT AND GUARANTY

Merchant's Legal Name: {FIELD001}

D/B/A: {FIELD002}

Physical Address: {FIELD004}

City: {FIELD005}

State: {FIELD006}

Zip: {FIELD007}

Federal ID# {FIELD013}

SECURITY AGREEMENT

Security Interest. To secure Merchant's payment and performance obligations to PURCHASER under the Future Receivable Factoring Agreement between Merchant and PURCHASER (the "Merchant Agreement"), Merchant hereby grants to PURCHASER a security interest in: all accounts, accounts receivable, contracts, real property leases, notes, bills, acceptances, chooses in action, chattel paper, instruments, documents and other forms of obligations at any time owing to the Merchant arising out of goods sold or leased or for services rendered by Merchant, the proceeds thereof and all of Merchant's rights with respect to any goods represented thereby, whether or not delivered, goods returned by customers and all rights as an unpaid vendor or lienor, including rights of stoppage in transit and of recovering possession by proceedings including replevin and reclamation, together with all customer lists, books and records, ledger and account cards, computer tapes, software, disks, printouts and records, whether now in existence or hereafter created, relating thereto (collectively referred to hereinafter as "Receivables"); (ii) all inventory, including without limitation, all goods manufactured or acquired for sale or lease, and any piece goods, raw materials, work in process and finished merchandise, findings or component materials, and all supplies, goods, incidentals, office supplies, packaging materials and any and all items used or consumed in the operation of the business of Merchant or which may contribute to the finished product or to the sale, promotion and shipment thereof, in which Merchant now or at any time hereafter may have an interest, whether or not the same is in transit or in the constructive, actual or exclusive occupancy or possession of Merchant or is held by Merchant or by others for Merchant's account (collectively referred to hereinafter as "Inventory"); (iii) goods, including without limitation, all machinery, equipment, parts, supplies, apparatus, appliances, tools, fittings, furniture, furnishings, fixtures and articles of tangible personal property of every description now or hereafter owned by the Grantor or in which Grantor may have or may hereafter acquire any interest, at any location (collectively referred to hereinafter as "Equipment"); (iv) general intangibles in which the Merchant now has or hereafter acquires any rights, including but not limited to, causes of action, corporate or business records, inventions, designs, patents, patent applications, trademarks, trademark registrations and applications therefor, goodwill, trade names, trade secrets, trade processes, copyrights, copyright registrations and applications therefor, licenses, permits, franchises, customer lists, computer programs, all claims under guaranties, tax refund claims, rights and claims against carriers and shippers, leases, claims under insurance policies, all rights to indemnification and all other intangible personal property and intellectual property of every kind and nature (collectively referred to hereinafter as "Intangibles"); (v) All the capital stock, bonds, notes, partnership interests, member interests in limited liability companies, and other securities, if any, held of record or beneficially by the Merchant, including without limitation the capital stock of all subsidiaries of the Merchant, and the Merchant's interests in all securities brokerage accounts (collectively referred to hereinafter as "Investments"); (vi) all cash on hand and on deposit in banks, trust companies and similar institutions, and all property accounted for in the Merchant's financial statements as "cash equivalents" (collectively referred to hereinafter as "Cash"); (vii) all other assets, proceeds and items not directly referred to herein as those terms are defined in Article 9 of the Uniform Commercial Code under applicable federal and state law (collectively referred to hereinafter as "UCC Article 9 Items"); (viii) all accessions to, substitutions for, and all replacements, products and proceeds of the Receivables, Inventory, Equipment, Intangibles, Investments, Cash and UCC Article 9 Items (collectively referred to hereinafter as "Collateral"), including without limitation proceeds of insurance policies insuring the Collateral; and (ix) Books and records relating to any of the Collateral (including without limitation, customer data, credit files, computer programs, printouts, and other computer materials and records of the Merchant pertaining to any of the Collateral), whether now or hereafter owned or acquired by Merchant and wherever located; and all proceeds of the foregoing. If the Merchant Agreement identifies more than one Merchant, this Security Agreement applies to each Merchant, jointly and severally.

Merchant acknowledges and agrees that any security interest granted to PURCHASER under any other agreement between Merchant and PURCHASER will secure the obligations hereunder, and that the Merchant's payment and performance obligations secured by this Security Agreement, and the Collateral granted hereunder, shall be perfected under any previously filed UCC-1 or UCC-3 statement, perfecting PURCHASER's interest in the Collateral.

Merchant further acknowledges and agrees that, if Merchant enters into future Agreements with PURCHASER, any security interest granted to PURCHASER under such future Agreements will relate back to this Security Agreement, and that the Merchant's payment and performance obligations, and the Collateral granted, under such future Agreements, shall relate back to, be perfected under, and made a part of, any previously filed UCC-1 or UCC-3 statement, perfecting PURCHASER's interest in the Collateral.

Cross-Collateral. To secure the payment and performance obligations to PURCHASER (and the PURCHASERS) under this Merchant Security Agreement and Guaranty (this "Agreement"), Merchant and each Guarantor hereby grants PURCHASER, for itself and its participants, a security interest in the collateral set forth in the Addendum to the Security Agreement and Guarantee (the "Additional Collateral"). Each Guarantor agrees and acknowledges that PURCHASER will have a security interest in the aforesaid Additional Collateral upon execution of this Agreement.

Guarantor acknowledges and agrees that any security interest granted to PURCHASER under any other agreement between Guarantor and PURCHASER will secure the obligations hereunder, and that the Guarantor's payment and performance obligations under this Agreement, and the Additional Collateral granted hereunder, shall be perfected under any previously filed UCC-1 or UCC-3 statement, perfecting PURCHASER's interest in the Additional Collateral.

Guarantor further acknowledges and agrees that, if Guarantor enters into future Agreements with PURCHASER, any security interest granted to PURCHASER under such future Agreements will relate back to this Agreement, and that the Guarantor's payment and performance obligations, and the Additional Collateral granted, under such future Agreements, shall relate back to, be perfected under, and made a part of, any previously filed UCC-1 or UCC-3 statement, perfecting PURCHASER's interest in the Additional Collateral.

Each of Merchant and each Guarantor agrees to execute any documents or take any action in connection with this Agreement as PURCHASER deems necessary to perfect or maintain PURCHASER's first priority security interest in the Collateral and Additional Collateral, including the execution of any control agreements. Each of Merchant and each Guarantor hereby authorizes PURCHASER to file any financing statements deemed necessary by PURCHASER to perfect or maintain PURCHASER's security interest, which financing statements may contain notification that Merchant and each Guarantor have granted a negative pledge to PURCHASER with respect to the Collateral and Additional Collateral, and that any subsequent lender or lienor may be tortiously interfering with PURCHASER's rights. Merchant and each Guarantor shall be jointly and severally liable for and shall pay to PURCHASER upon demand all costs and expenses, including but not limited to attorneys' fees, which may be incurred by PURCHASER in protecting, preserving and enforcing PURCHASER's security interest and rights.

Negative Pledge. Merchant and each Guarantor agrees not to create, incur, assume, or permit to exist, directly or indirectly, any additional financings, loans, lien or other encumbrance of any kind on or with respect to any of the Collateral or Additional Collateral, as applicable without written permission of PURCHASER.

Consent to Enter Premises and Assign Lease. PURCHASER shall have the right to cure Merchant's default in the payment of rent for the Premises on the following terms. In the event Merchant is served with papers in an action against Merchant for nonpayment of rent or for summary eviction, PURCHASER may execute its rights and remedies under the Assignment of Lease. Merchant also agrees that PURCHASER may enter into an agreement with Merchant's landlord giving PURCHASER the right: (a) to enter the Premises and to take possession of the fixtures and equipment therein for the purpose of protecting and preserving same; and (b) to assign Merchant's lease to another qualified merchant capable of operating a business comparable to Merchant's at the Premises.

Remedies. Upon any Event of Default, PURCHASER may pursue any remedy available at law (including those available under the provisions of the UCC) or in equity to collect, enforce, or satisfy any obligations then owing to PURCHASER, whether by acceleration or otherwise.

GUARANTY

Personal Guaranty of Performance. Each undersigned Guarantor (“Guarantor”) hereby unconditionally guarantees to PURCHASER Merchant’s performance of all of the representations, warranties, covenants made by Merchant in this Agreement and the Merchant Agreement, as each agreement may be renewed, amended, extended or otherwise modified from time to time (the “Guaranteed Obligations”). Guarantor shall be liable for and PURCHASER may charge and collect all costs and expenses, including but not limited to attorneys’ fees, which may be incurred by PURCHASER in connection with the collection of any or all of the Guaranteed Obligations from Guarantor or the enforcement of this Agreement. (It is understood by all parties that Guarantors are only guaranteeing that they will not take any action or permit the merchant to take any action that is a breach of this agreement.)

Guarantor Waivers. In the event that Merchant fails to make a payment due to Guarantor's actions or malfeasance or otherwise perform under the Merchant Agreement, PURCHASER may enforce its rights under this Agreement without first seeking to obtain payment from Merchant, any other guarantor, or any Collateral or Additional Collateral PURCHASER may hold pursuant to this Agreement or any other guaranty.

PURCHASER does not have to notify Guarantor of any of the following events and Guarantor will not be released from any of its obligations under this Agreement if it is not notified of: (i) Merchant’s failure to pay timely any amount owed under the Merchant Agreement; (ii) any material or adverse change in Merchant’s financial condition or business operations; (iii) any sale or other disposition of any collateral securing the Guaranteed Obligations, including without limitation the Collateral or Additional Collateral, or any other guarantee of the Guaranteed Obligations; (iv) PURCHASER’s acceptance of this Agreement; or (v) any renewal, extension or other modification of the Merchant Agreement or Merchant’s other obligations to PURCHASER. In addition, PURCHASER may take any of the following actions without releasing Guarantor from any of its obligations under this Agreement : (i) renew, extend or otherwise modify the Merchant Agreement or Merchant’s other obligations to PURCHASER; (ii) release Merchant from its obligations to PURCHASER; (iii) sell, release, impair, waive or otherwise fail to realize upon any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations; and (iv) foreclose on any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations, including without limitation the Collateral or Additional Collateral, in a manner that impairs or precludes the right of Guarantor to obtain reimbursement for payment under this Agreement. Until the Purchased Amount and Merchant’s other obligations to PURCHASER under the Merchant Agreement and this Agreement are paid and performed in full, Guarantor shall not seek reimbursement from Merchant or any other guarantor for any amounts paid by it under this Agreement. Guarantor permanently waives and shall not seek to exercise any of the following rights that it may have against Merchant, any other guarantor, or any collateral provided by Merchant or any other guarantor, for any amounts paid by it, or acts performed by it, under this Agreement: (i) subrogation ; (ii) reimbursement; (iii) performance; (iv) indemnification; or (v) contribution. In the event that PURCHASER must return any amount paid by Merchant or any other guarantor of the Guaranteed Obligations because that person has become subject to a proceeding under the United States Bankruptcy Code or any similar law, Guarantor’s obligations under this Agreement shall include that amount. Guarantor agrees that its obligations under this Agreement shall be irrevocable and shall be unconditional irrespective of any circumstance that might otherwise operate as a legal or equitable discharge of a guarantor or a defense of a guarantor.

Guarantor Acknowledgement. Guarantor acknowledges that: (i) he/she understands the seriousness of the provisions of this Agreement and that any misrepresentation may constitute fraud; (ii) he/she has had a full opportunity to consult with counsel of his/her choice; and (iii) he/she has consulted with counsel of his/her choice or has decided not to avail himself/herself of that opportunity.

INITIALS: _____

Joint and Several Liability. The obligations hereunder of each Guarantor are joint and several.

Consent to Receive Autodialed and Prerecorded Calls and Messages. PURCHASER, Kapitus Servicing, Inc., as servicer, and their subsidiaries and affiliates (collectively, Kapitus) may from time to time notify Merchant(s), and Owner(s) of various promotional offers and other marketing information, or contact Merchant(s) and Owners(s) in connection with the servicing of this Agreement, or in connection with any default under this Agreement. By signing this Agreement, Merchant(s), and Owner(s) expressly consent and authorize Kapitus to call, send text messages, and/or send other electronic messages (including prerecorded or artificial voice messages) using an automatic telephone dialing system to any telephone number provided by Merchant(s) and Owner(s) in this Agreement or corresponding administrative form or any other applications for funding, including cellular phone numbers and landlines, regardless of their inclusion on any do not call list for purposes of servicing, collections, marketing, or promoting any product offered by Kapitus.

Please note that Merchant(s) and Owner(s) are not required to consent to this section of this Agreement in order to qualify or obtain any products or services from Kapitus. If you do not agree to be called for marketing or promotional purposes please call (844) 547-9396 or email DNC@kapitus.com

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE “MERCHANT AGREEMENT”, INCLUDING THE “MERCHANT AGREEMENT TERMS AND CONDITIONS”, ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS SECURITY AGREEMENT AND GUARANTEE. CAPITALIZED TERMS NOT DEFINED IN THIS AGREEMENT SHALL HAVE THE MEANINGS SET FORTH IN THE MERCHANT AGREEMENT, INCLUDING THE MERCHANT AGREEMENT TERMS AND CONDITIONS.

MERCHANTS AND OWNERS/GUARANTORS ACKNOWLEDGE THAT THIS WRITING REPRESENTS THE ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO. IT IS UNDERSTOOD THAT ANY REPRESENTATIONS OR ALLEGED PROMISES BY INDEPENDENT BROKERS OR AGENTS OF ANY PARTY IF NOT INCLUDED IN THIS WRITTEN AGREEMENT ARE CONSIDERED NULL AND VOID. ANY MODIFICATION OR OTHER ALTERATION TO THE AGREEMENT MUST BE IN WRITING AND EXECUTED BY THE PARTIES TO THIS CONTRACT.

INITIALS: _____

MERCHANT

By {OWNER_NT_1}
(Print Name and Title)

(Signature)

OWNER/GUARANTOR #1

By {OWNER_1}
(Print Name)

(Signature)

OWNER/GUARANTOR #2

By {OWNER_2}
(Print Name)

(Signature)

ADDENDUM TO SECURITY AGREEMENT AND GUARANTY

MERCHANT INFORMATION

Merchant's Legal Name: {FIELD001}

D/B/A: {FIELD002}

Type of entity: {BUSINESS_TYPE_FNAME}

Physical Address: {FIELD004}

Mailing Address: {FIELD008}

Date business started (mm/yyyy): {FIELD012}

City: {FIELD005}

City: {FIELD009}

Federal ID# {FIELD013}

State of Incorporation / Organization: {FIELD003}

State: {FIELD006}

State: {FIELD010}

Zip: {FIELD007}

Zip: {FIELD011}

Additional Collateral: {FIELD023}

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE "MERCHANT AGREEMENT" AND THE "SECURITY AGREEMENT AND GUARANTY" ARE HEREBY INCORPORATED IN FULL.

Joint and Several Liability. The obligations hereunder of the persons or entities constituting each Merchant and each Guarantor under this Agreement are joint and several.

OWNER/GUARANTOR #3

By {OWNER_3} (Print Name)

(Signature)

OWNER/GUARANTOR #4

By {OWNER_4} (Print Name)

(Signature)

OWNER/GUARANTOR #5

By {OWNER_5} (Print Name)

(Signature)

OWNER/GUARANTOR #6

By {OWNER_6} (Print Name)

(Signature)

OWNER/GUARANTOR #7

By {OWNER_7} (Print Name)

(Signature)

OWNER/GUARANTOR #8

By {OWNER_8} (Print Name)

(Signature)

OWNER/GUARANTOR #9

By {OWNER_9} (Print Name)

(Signature)

OWNER/GUARANTOR #10

By {OWNER_10} (Print Name)

(Signature)