

and correct in all material respects, and since the dates therein, there has been no material adverse change in the business or its prospects or in the financial condition, results of operations, or cash flows of Seller and its affiliates. The Seller shall furnish the Purchaser with such other information as the Purchaser may request from time to time, including, if applicable, all information necessary to permit Purchaser and its agents to determine the amount to be paid to Seller and its affiliates under Purchaser's "ACH Program" and initiate such electronic check or ACH payments. To the extent there is a material change in any of the information provided by the Seller to the Purchaser, Seller shall immediately notify Purchaser of such change.

Section 4.3 Reliance on Information. The Seller acknowledges that the information (financial and other) provided by the Seller has been relied upon by the Purchaser in connection with its decision to purchase the Future Receivables of the Seller.

Section 4.4 Governmental Approvals. The Seller possesses and is in compliance with all permits, licenses, approvals, consents and other authorizations necessary to conduct its business. The Seller is in compliance with any and all applicable federal, state and local laws and regulations. The Seller possesses all requisite permits, authorizations and licenses to own, operate and lease its properties and to conduct the business in which it is presently engaged.

Section 4.5 Authorization. The Seller, and the person(s) signing this Agreement on behalf of Seller, have fully power and authority to enter into and perform the obligations under this Agreement, all of which have been duly authorized by all necessary and proper action.

Section 4.6 Legally Binding. This Agreement has been duly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by general principles of equity.

Section 4.7 No Violation. Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated by this Agreement will: (i) violate any federal, state, local or foreign laws, statutes, rules, regulations, ordinances, permits, certificates or requirements applicable to the Seller or its business; or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Seller is a party or by which it is bound or to which any of its assets are subject (or result in the imposition of any security interest or lien of any kind upon any of its assets, other than as granted to the Purchaser hereunder). Seller does not need to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any third party or any governmental agency, authority, court, department or other instrumentality thereof, in order for the parties to consummate the transactions contemplated by this Agreement.

Section 4.8 Insurance. The Seller shall maintain insurance in such amounts and against such risks as are consistent with past practice and shall show proof of such insurance upon the reasonable request of the Purchaser.

Section 4.9 Change of Name, Location, Etc. The Seller will not conduct its businesses under any name other than as disclosed to the Purchaser or change any of its places of business. In addition, Seller will not change its legal name, entity type or state of formation, unless it has provided the Purchaser with not less than thirty (30) days prior written notice thereof and any documents, agreements and information reasonably requested by the Purchaser with respect thereto.

Section 4.10 Conduct of Business. Seller shall continue to conduct its business consistent with past practice. Seller has no present intention of closing its business or ceasing to operate its business, either permanently or temporarily.

Section 4.11 Seller Not Indebted to Purchaser. The Seller is not a debtor of the Purchaser as of the date of this Agreement.

Section 4.12 Solvency. As of the date hereof, Seller is solvent, and is not contemplating bankruptcy or insolvency proceeding.

5. ADDITIONAL TERMS

Section 5.1 Sale of Receivables. The Seller, Guarantor and the Purchaser acknowledge and agree that the Purchase Price paid by the Purchaser in exchange for the Purchased Amount of Future Receivables is a purchase of the Purchased Amount, is absolute and irrevocable and is not intended to be, nor shall it be construed as, a loan from the Purchaser to the Seller. Each Future Receivable purchased by the Purchaser hereunder represents a bona fide sale by the Seller to customer or vendor. Each Future Receivable purchased by the Purchaser which becomes an actual receivable hereunder shall be owned by the Seller free and clear of all encumbrances. Seller, Purchaser and Guarantors hereto acknowledge and agree that neither party is a "consumer" with respect to this Agreement and underlying transaction and neither this Agreement nor any guarantee thereof shall be construed as a consumer transaction. In the event any amounts paid to Purchaser under the Purchased Amount is the subject of a chargeback for any reason, the then outstanding balance of the Purchased Amount shall be increased by the amount of such chargeback and shall be paid to Purchaser from Future Receivables.

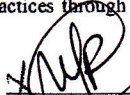
Section 5.2 Collection of Receivables. As provided herein, the Purchased Percentage of each Future Receivable due to the Seller shall be collected by Purchaser from electronic check or ACH payments initiated by Purchaser or its agents. Seller hereby grants permission to Purchaser to pay any amount owing to it hereunder by ACH from the account into which its receivables are deposited and pursuant to the ACH authorization form attached hereto.

Section 5.3 Terms of Agreement. This Agreement shall be in full force and effect until Purchaser has received the full amount of the Purchased Amount.

Section 5.4 Remedies. In the event of (a) any breach or inaccuracy of any representation or warranty made by Seller in this Agreement or in any certificate or other document delivered by or on behalf of Seller pursuant hereto, or (b) any breach or default in the performance by Seller of any covenant or agreement contained in this Agreement or in any certificate or other document delivered by or on behalf of Seller pursuant hereto (any of the foregoing, a "Breach"), the Purchaser shall be entitled to all remedies available at law. In such a case, without limitation, Purchaser may recover, as damages from Seller, an amount equivalent to the Purchased Amount less the amount received by Purchaser from the Purchased Percentage. Seller hereby authorizes Purchaser to ACH from the Seller's bank account all or any portion of the Purchase Price payable at any time hereunder. In addition Purchaser shall have all rights and remedies provided under the UCC.

Section 5.5 No Right to Repurchase. The Seller acknowledges that it has no right to repurchase the Purchased Amount of Future Receivables from the Purchaser.

Section 5.6 Due Diligence. Seller authorizes Purchaser to conduct background, onsite and financial examinations of Seller, which may include without limitation, address verifications for up to ten (10) years; verification of the status of the licenses, permits, authorizations and/or governmental filings of Seller; verification of insurance coverage; verification of good business practices through


Initials Here