

# MERCHANTS ADVANCE LLC

475 Park Avenue South, 11th Floor, New York, NY 10016

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Date: Jun 19, 2014

## SELLER'S INFORMATION

Business Legal Name: GDL ENTERPRISES, LLC

D/B/A: SOS Auto Service

State of Incorporation/Organization: TN

Type of Entity (check one): ☐ Corporation ☐ Limited Partnership ☒ Limited Liability Company ☐ Limited Liability Partnership ☐ Partnership ☐ Sole Proprietorship

Physical Address: 50 North Lowry St

City: Smyrna

State: TN

Zip: 37167

Mailing Address: 50 North Lowry St

City: Smyrna

State: TN

Zip: 37167

Date business started (mm/yy): 02/2010

Federal ID or SS#: 271977610

Contact Name: John Gilbert

Position: owner

Phone: 6152236720

Fax:

Email: plaguerre@amerimerchant.com

Web Site:

Bank Name:

City:

State:

Zip:

## PURCHASE AND SALE OF FUTURE RECEIVABLES

Merchants Advance LLC (the "Buyer") hereby purchases from the merchant set forth above (the "Seller"), a percentage, as specified below (the "Purchased Percentage"), of each future credit card and/or debit card receivables due to the Seller from its credit card processor until the Buyer has received the amount specified below (the "Purchased Amount") for the purchase price set forth below.

Purchase Price: = \$ 10,000.00

Purchased Percentage: = 24 %

Purchased Amount: = \$ 14,100.00

In exchange for the foregoing the Seller hereby agrees (i) to enter into a credit card processing agreement with a credit card processor reasonably acceptable to the Buyer, and (ii) to establish and maintain a depository account with a banking institution reasonably acceptable to the Buyer (the "Deposit Account" as more fully described in section 3.1 herein, and the seller hereby authorizes such credit card processor to pay all cash attributable to each card and/or debit card receivables due to the Seller to the Deposit Account and/or the Buyer pursuant to the agreement with the Buyer, as more fully described in Sections 1 and 3 herein.

## VALIDITY GUARANTEE

In consideration of the Buyer entering into this Agreement, and to induce the Buyer to enter into this Agreement, the undersigned principal(s) of Seller (the "Guarantors") hereby personally and unconditionally guarantees the performance by the Seller of all of its obligations hereunder and further guarantees the accuracy, truthfulness and completeness of all of the representations, warranties and covenants made by Seller herein as more specifically set forth on the reverse side hereof. The foregoing guarantees shall be continuing and irrevocable and the Guarantor hereby waives demand of payment, notice and presentment and agrees that the Buyer may proceed directly against the Guarantor without first proceeding against the Seller. The Guarantor further guarantees payment of all costs, expenses and attorneys fees which may be incurred as a result of Seller's default in the performance of its obligations or as a result of the Guarantor's default under this guarantee.

Upon execution of this Agreement, each of the parties hereto shall be obligated hereunder and shall be subject to all of the terms and conditions stated on the front and reverse side hereof. The person executing this Agreement on behalf of the Seller warrants and represents that he/she is authorized to bind the Seller to all of the terms and conditions set forth on the front and reverse side of this Agreement and all of the information provided herein is true and accurate in all respects.

## MERCHANTS ADVANCE LLC:

By: \_\_\_\_\_ Date: \_\_\_\_\_

### SELLER:

By: (Sign Here)

Name: (Print Name)

Title: owner

Date: 6-20-14

### GUARANTOR 1:

By signing below, I agree to the terms of the Validity Guarantee above, even if signed as an officer of the Seller.

By: (Sign Here)

Name: (Print Name)

Home Address: 683 Hollandale Rd La Vergne, TN, 37086

SS#: \_\_\_\_\_

Date of Birth: 07/07/1963

Date: \_\_\_\_\_

### SELLER:

By: (Sign Here)

Name: (Print Name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### GUARANTOR 2:

By signing below, I agree to the terms of the Validity Guarantee above, even if signed as an officer of the Seller.

By: (Sign Here)

Name: (Print Name)

Home Address: \_\_\_\_\_

SS#: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Date: \_\_\_\_\_

ADDITIONAL TERMS OF THIS AGREEMENT ARE SET FORTH ON THE REVERSE SIDE HEREOF.

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Section 1.1 Processing Agreement. Upon the execution hereof, the Seller shall enter into a processing agreement with a processor acceptable to the Buyer (the "Processor"), which agreement shall authorize the Processor to pay all cash attributable to each credit card and/or debit card receivable to the Deposit Account. This authorization may only be revoked with the prior written consent of the Buyer, and the agreement with the Processor cannot be amended or terminated without the prior written consent of the Buyer. In the event that the Buyer determines, in its sole discretion, that the Processor utilized by the Seller is no longer acceptable, upon receipt of written notice thereof from the Buyer, the Seller shall terminate its relationship with the Processor and enter into a similar processing agreement with a new processor acceptable to the Buyer. The Seller agrees to execute any documents and/or agreements in order to implement the foregoing.

Section 1.2 No Buyer Liability. The Buyer is not liable or responsible for any action taken by the Processor not contemplated or authorized herein or in the processing agreement to be entered into between the Seller and the Processor, and the Seller hereby agrees to indemnify, defend, and hold the Buyer harmless from all actions of the Processor.

Section 1.3 Other Processors. The Seller hereby authorizes the Buyer to contact any current or prior processor of the Seller in order to obtain whatever information it may require regarding the Seller's transactions with any such processors. Such information may include, without limitation, information necessary to verify the amount of credit card and/or debit card receivables previously processed on behalf of the Seller and any fees which may have been charged by the processor. In addition to the foregoing, the Seller authorizes the Buyer to contact any current or prior processor of the Seller in order to confirm that the Seller is exclusively using the processor approved by the Buyer in accordance with this Agreement.

Section 1.4 Processing Trial. After this agreement has been signed and returned by Seller, but prior to the disbursement of the Purchase Price to the Seller, Seller agrees to permit the Buyer to conduct a short processing trial to ensure that Seller's transactions are being processed correctly and that the Purchase Percentage is being correctly remitted to Buyer. Buyer has the right to rescind this Agreement after the processing trial for any reason. If Buyer elects to fund the purchase price then all of the cash collected by the Buyer during the processing trial prior to the payment of the Purchase Price shall be applied to reduce the Purchased Amount. If Buyer decides not to pay the Purchase Price to Seller, this Agreement shall have no further effect and Buyer shall promptly after receipt from processor return to Seller any cash received by Buyer in connection with this Processing Trial.

## 2. STATEMENTS AND REPORTS.

Section 2.1 Credit Reports and Fees. The Seller authorizes, acknowledges and agrees that, in connection with the execution of this Agreement, an investigative or consumer report may be obtained with respect to the Seller and Guarantor(s). Accordingly, the Seller and each of Guarantor(s) authorizes the Buyer, its agents and representatives and any credit reporting agency employed by the Buyer to investigate any references given or any other statements of data obtained from or about the Seller or any of its principals for the purpose of this Agreement and to obtain credit reports at any time now or in the future on the Seller and Guarantor(s). Seller acknowledges and agrees to pay Buyer a \$ 95.00 fee for administrative services which fee will cover entry into the Merchant Cash Advance Program, general underwriting costs, providing monthly statements and online access to the account which fee will be deducted from the Purchase Price at funding and which fee will not be credited to the Purchased Amount or Seller acknowledges and agrees to pay Buyer % of the Purchase Price representing a fee for administrative services which fee will cover entry into the Merchant Cash Advance Program, general underwriting costs, providing monthly statements and online access to the account which fee will be deducted from the Purchase Price at funding and which fee will not be credited to the Purchased Amount. Seller will be required to repay the entire Purchased Amount pursuant to this Agreement.

Section 2.2 Monthly Statements. The Buyer may produce monthly statements reflecting the delivery of the Purchased Percentage from the credit card and/or debit card receivables of the Seller via the Processor.

Section 2.3 Database Disclosure. Seller acknowledges and agrees that Buyer may report to third party credit and data reporting agencies, information relating to Seller's participation in this Purchase and Sale of Future Receivables ("transaction"), including without limitation information specifically identifying Seller and its principals, the amount of the merchant cash advance, Seller's processing history resulting in re-payment of the Purchased Amount and other information that third parties would reasonably rely on in evaluating the creditworthiness of the Seller (the "Transaction Information"). Seller expressly authorizes Buyer's disclosure of the Transaction Information as set forth herein, and understands that the Transaction Information will be readily available to merchant cash advance companies and Seller's potential creditors.

## 3. DEPOSIT ACCOUNT.

Section 3.1 Deposit Account Agreements. Upon the execution hereof, the Buyer in conjunction with the Seller shall enter into such agreements as are necessary to establish the Deposit Account in the name of the Seller at a banking institution acceptable to the Buyer. The Seller hereby agrees to execute and deliver any and all such account agreements, account assignment agreements and the like, each in a form satisfactory to the Buyer, which agreements shall convey to the Buyer full power of attorney, and absolute dominion, authority and control over the Deposit Account to be established and maintained by the Buyer, such Deposit Account to be established in the name of and under the federal tax identification number of the Seller (without cost to Seller), and such Deposit Account to be designated in the processing agreement as the exclusive account into which the Processor shall remit all payments relating to the credit card and/or debit card receivables. The Seller hereby acknowledges and agrees that (i) the Deposit Account shall be the exclusive account into which the Processor shall remit all payments relating to the credit card and/or debit card receivables, (ii) the Seller shall not at any time or for any reason authorize the Processor to direct any payments relating to the credit card and/or debit card receivables to any account other than the Deposit Account, and (iii) all Deposit Account agreements may be amended or terminated only with the prior written consent of the Buyer. In the event that the Buyer determines, in its sole discretion, that the banking institution at which the Deposit Account is maintained is no longer acceptable, upon receipt of written notice thereof from the Buyer, the Seller shall terminate its relationship with such banking institution and the Seller shall thereupon enter into a similar account agreement with a new banking institution acceptable to the Buyer. The Seller agrees to execute any documents and/or agreements in order to implement the foregoing.

Section 3.2 Liability. The Buyer is not liable or responsible for any action taken by the banking institution at which the Deposit Account is maintained which are not contemplated or authorized herein or in the account agreement(s) to be entered into between the Seller and the banking institution, and the Seller hereby agrees to indemnify, defend and hold the Buyer harmless from all actions of the banking institution.

Section 3.3 Patriot Act Disclosure. To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. Accordingly, the Seller hereby acknowledges and agrees to execute and deliver all documentation necessary to establish the Seller's identity to the satisfaction of the banking institution at which the Deposit Account shall

be maintained, and in compliance with the statutory requirements of Section 326 of the USA Patriot Act, Pub. L. 107-56, 31 U.S.C. 5311 et seq..

Section 3.4 Power of Attorney Over Deposit Account. The Seller hereby grants to the Buyer full and complete power of attorney over the Deposit Account pursuant to which power the Buyer is authorized to withdraw all funds on deposit in the Deposit Account, to disburse such funds in the manner set forth in Section 3.5 hereof, and to have access to all information, statements and reports pertaining to the Deposit Account, whether issued by the banking institution at which the Deposit Account is maintained, the Internal Revenue Service, another governmental agency, or otherwise. This authorization may only be revoked with the prior written consent of the Buyer. The Seller hereby acknowledges and agrees that it shall have no authority or control over the use of, or any right to withdraw any monies from, the Deposit Account. However, Seller will be responsible for any debits that are bounced for any reason including but not limited to insufficient funds in the Deposit Account. Additionally, Seller will be responsible for any fees due the Bank as a result of maintaining the Deposit Account including but not limited to processor fees. Seller authorizes Buyer to maintain a \$50.00 reserve (the "reserve") in the deposit account at all times which reserve will initially be built up from the first several batches credited to the deposit account commencing during the processing trial. If at any time during the Agreement, the reserve drops below \$50.00, Buyer is authorized to replenish the reserve out of the next credits to hit the deposit account up to \$50.00. In any instance where there are not enough funds in the reserve or the deposit account to cover fees or debits Buyer shall have the right to withdraw these from Seller's credit card and/or debit card processor receipts that are thereafter deposited into the account to satisfy the debits or fees and rebuild the reserve. Should there be no funds in the account to cover the fees said fees will be added to the cash advance balance due Buyer. Additionally, there will be a \$29.95 monthly fee for maintaining the Deposit Account which funds will be debited from the account each month and which fee is the responsibility of the Seller and subject to the language above should the debit be returned for any reason.

Section 3.5 Authorization to Disburse Funds. The Seller hereby authorizes the Buyer to withdraw all funds on deposit at any time in the Deposit Account and to disburse such funds (i) to pay to the Buyer the cash attributable to the Purchased Percentage of each credit card and/or debit card receivable until the Buyer has received an amount equal to the Purchased Amount, (ii) to satisfy any other monetary obligations due and owing to the Buyer by the Seller, and (iii) to pay rebates due to the Seller, if any, via federal funds wire payment or via ACH payment to the depository account designated in writing by the Seller upon the execution hereof, which account may be amended from time to time upon five (5) business days' advance written notice to Buyer from Seller. The Seller hereby acknowledges and agrees that a period of approximately forty-eight (48) hours is required for the processing of disbursements from the Deposit Account.

## 4. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS.

Seller and Guarantors represent, warrant and covenant that as of this date and during the term of this Agreement:

Section 4.1 Seller's Conduct. Seller shall: (i) conduct its business consistent with past practice; (ii) exclusively use the Processor accepted by the Buyer for the processing of all of its credit card and/or debit card transactions; (iii) direct all payments relating to the credit card and/or debit card receivables exclusively to the Deposit Account, and cause the Processor to direct all such payments to the Deposit Account; (iv) not take any action to discourage the use of credit cards and/or debit cards or permit any event to occur which could have an adverse effect on the use, acceptance or authorization of credit cards and/or debit cards for the purchase of the Seller's services and products; (v) not change its arrangements with the Processor or the banking institution accepted by the Buyer in any way which is adverse to the Buyer; (vi) not take any action that has the effect of causing the Processor through which the major credit cards and/or debit cards are settled to be changed from the Processor accepted by the Buyer to another processor; (vii) not take any action that has the effect of causing the banking institution approved by the Buyer to close the Deposit Account or which is otherwise detrimental to the Seller's relationship with such banking institution; (viii) not terminate the Deposit Account or revoke the Power of Attorney granted to Buyer with respect thereto; (ix) not sell, dispose, convey or otherwise transfer its business or assets without the express prior written consent of the Buyer and the assumption of all of the Seller's obligations under this Agreement pursuant to documentation reasonably satisfactory to the Buyer; (x) not commit fraud; (xi) not accept funds from Buyer hereunder with the intent not to repay such funds and immediately thereafter terminate its business without first paying to Buyer all funds due and payable to Buyer hereunder; (xii) not obtain additional financing without the express prior written consent of the Buyer; (xiii) not default on any of its payment obligations under any agreement, instrument or document to which it or any of its affiliates is a party; (xiv) not take any action which would render Seller insolvent as and from the date hereof and not incur any further or additional debt on the business without the express prior written consent of the Buyer; and (xv) Seller is not prohibited from entering into this Agreement by any other contract of Agreement to which they may be a party.

Section 4.2 Business Information. The information (financial and other) provided by or on behalf of the Seller to the Buyer in connection with the execution of or pursuant to this Agreement is true and correct in all material respects. The Seller shall furnish the Buyer with such information as the Buyer may request from time to time. Each future credit card and/or debit card receivable purchased by the Buyer hereunder represents a bona fide sale by the Seller to a credit card and/or debit card holder for the total amount shown on the related sales slip.

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 Buyer in connection with its decision to purchase the future credit card and/or debit card 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 full 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 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 them Buyer.

Section 4.7 Name Change or Location or Temporary Closure. The Seller will not conduct its businesses under any name other than as disclosed to the processor accepted by the Buyer or the Buyer or change any of its places of business. Seller shall not close its business for seven (7) or more consecutive days with the intent to re-open without first informing Buyer for reasons including but not limited to vacations or renovations.

X \_\_\_\_\_ (Please Initial) I have read and agreed to the Terms and Conditions

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of this Agreement.

**Section 4.9 Exclusive Use of Processor.** Seller understands that the services of the processor accepted by the Buyer is the exclusive means by which the Seller can process its credit card and/or debit card transactions.

**Section 4.10 No Payment Default.** Neither the Seller, nor any of its affiliates, is in default of any of its payment obligations under any agreement or instrument to any third party to which it is a party, nor is any third party attempting to collect funds from the Seller or any of its affiliates.

**Section 4.11 Seller certifies that Purchase Price is being used for Business Purposes only.** By signing this Agreement you certify that the Purchase Price is to be used solely for business purposes and not for consumer, personal, family or household purposes. You understand that in providing you with the Purchase Price, Buyer is relying upon your agreement not to use the Purchase Price for consumer, personal, family or household purposes.

#### 5. EVENTS OF DEFAULT.

If any of the following events (each an "Event of Default") shall occur: (i) the Seller shall fail to exclusively use the Processor accepted by the Buyer for the processing of all of its credit card and/or debit card transactions; (ii) the Seller shall fail to direct all payments relating to the credit card and/or debit card receivables exclusively to the Deposit Account; (iii) the Seller shall terminate the Deposit Account or revoke the Power of Attorney granted to the Buyer with respect thereto; (iv) the Seller shall commit fraud; (v) the Seller shall not accept funds from Buyer hereunder with the intent not to repay such funds and immediately thereafter terminate its business without first paying to Buyer all funds due and payable to Buyer hereunder; (vi) the Seller shall obtain additional financing without the express prior written consent of the Buyer; (vii) the Seller shall sell, dispose, convey or otherwise transfer its business or assets without the express prior written consent of the Buyer, in which event the Seller and the Guarantors shall remain jointly and severally liable hereunder; (viii) any of the representations and warranties contained in this Agreement are not true and correct; and (ix) the Seller breaches any of the covenants contained in this Agreement, then, and in any such event, the Buyer may by notice to the Seller shall be entitled to any and all of the remedies available under law, as more fully described in Section 6 herein.

#### 6. REMEDIES.

In the event that any of the representations and warranties contained in this Agreement are not true and correct or in the event of a breach of any of the covenants contained in this Agreement, including those set forth in Section 4, the Buyer shall be entitled to all remedies available under law, including but not limited to the right to demand immediate payment of all sums due and payable to Buyer hereunder, and including the right to non-judicial foreclosure. In the event that the Seller breaches the covenants set forth in Section 4, the Seller agrees that the Buyer will be entitled to, but not limited to, damages equal to the amount by which the cash attributable to the Purchased Amount of future credit card and/or debit card receivables exceeds the amount of cash received from credit card and/or debit card receivables that have previously been delivered by the Seller to the Buyer under this Agreement. The Seller hereby agrees that the Buyer may automatically debit such damages from the Deposit Account, or from the Seller's bank account via an automated clearing house system or wire transfer. In the event that the Deposit Account and Seller's bank account do not have sufficient funds for the payment of damages pursuant to this Section 6, the Guarantor(s) hereby agrees that he/she will be liable to the Buyer for such obligations, without any presentment or demand made by the Buyer. In the event of a default by the Guarantor, Guarantor agrees that Buyer may report such default to one or more credit bureaus.

#### 7. ADDITIONAL TERMS.

**Section 7.1 Sale of Credit Card and/or Debit Card Receivables.** The Seller and the Buyer agree that the Purchase Price paid by the Buyer in exchange for the Purchased Amount of future credit card and/or debit card receivables is a purchase of the Purchased Amount and is not intended to be, nor shall it be construed as, a loan from the Buyer to the Seller. The Seller and the Buyer further acknowledge and agree that the Buyer owns the Purchased Amount of each future credit card and/or debit card receivable purchased hereunder free and clear of any and all liens and encumbrances.

**Section 7.2 Collection of Receivables:** As provided herein, the Purchased Percentage of each credit and/or debit card receivable due to the Seller shall be paid to Buyer by the credit and/or debit card processor approved by Buyer, or shall be collected by Buyer from electronic check or ACH payments initiated by Buyer or its Agents or through the designated Deposit Account. In the event that Seller changes or permits the change of the credit and/or debit card processor approved by the Buyer or adds an additional credit and/or debit card processor or changes the Deposit Account, Buyer shall have the right, without waiving any of its rights and remedies and without notice to Seller or any Guarantor(s), to notify the new or additional credit and/or debit card processor or in the case of change of the Deposit Account their current credit and/or debit card processor of the sale of credit card and/or debit card receivables hereunder and to direct such new or additional credit and/or debit card processor or in the case of change of the Deposit Account their current credit and/or debit card processor to make payment to the Buyer of all or any portion of the amounts received by such credit and/or debit card processor. Seller hereby grants the Buyer an irrevocable power of attorney, which power of attorney shall be coupled with an interest, and hereby appoints the Buyer or any of Buyer's representatives as Seller's attorney in fact, to take any and all action necessary to direct such new or additional credit and/or debit card processor to make payments to the Buyer as contemplated by this Section. In the event of a default or the breach of any Representations, Warranties and/or Covenants herein in addition to all remedies contemplated under Section 6, Seller authorizes Buyer to increase the Purchased Percentage to up to 100% of receivables processed in order to allow Buyer to recoup any losses suffered as a result of the Default.

**Section 7.3 No Right to Repurchase.** The Seller acknowledges that it has no right to repurchase the Purchased Amount of future credit card and/or debit card receivables from the Buyer.

**Section 7.4 Power of Attorney.** The Seller hereby irrevocably authorizes the Buyer or Seller's expense to exercise at any time any of the following powers in order to settle all of Seller's obligations hereunder: (a) collect all monies due with respect to the credit card and/or debit card receivables and the Collateral; (b) receive, take, endorse, assign, deliver, accept and deposit, in the name of Buyer or Seller, any and all cash, checks, notes, drafts, remittances and other instruments and documents relating to the credit card and/or debit card receivables or the Collateral; (c) notify any customer or account debtor to remit payment directly to Buyer and endorse Seller's name on any related invoice, receipt, bill or lading or notice of assignment; and (d) take or bring, in the name of Buyer or Seller, all steps, actions, suits or proceedings deemed by Buyer necessary or desirable to effect collection of or other realization upon the credit card and/or debit card receivables or the Collateral, or otherwise to enforce Buyer's rights with respect thereto.

**Section 7.5 Term of Agreement.** This Agreement shall remain in full force and effect until the Purchased Amount of future credit card and/or debit card receivables has been delivered by the Seller to the Buyer.

**Section 7.6 Rescission of Agreement.** Seller agrees that in the event that the representations and warranties in Section 4 are not true and correct, the Buyer shall be entitled to rescind this Agreement and to the return (and the Seller agrees to so return) of the Purchase Price less any

cash attributable to credit card and/or debit card receivables which have been received by the Buyer. The Seller agrees that the Buyer may automatically debit such rescission amount from the Deposit Account, or from Seller's bank account via the automated clearing house system or wire transfer.

**Section 7.7 Seller Bankruptcy.** In the event that the Seller becomes a debtor in bankruptcy, this Agreement cannot be assumed or enforced, and the Buyer's obligation to perform hereunder shall terminate. As of the date hereof, Seller is solvent, and is not contemplating any bankruptcy or insolvency proceeding.

**Section 7.8 UCC-1 Financing Statements.** To secure the performance of the covenants set forth herein and all of the obligations of the Seller to the Buyer under this Agreement, the Seller hereby grants to the Buyer and/or its assignees or designees, if any, a continuing priority security interest, subject only to the security interest of the processor, if any, in the following property of the Seller: (a) All of Debtor's now owned and hereafter acquired accounts, including without limitation, the Deposit Account, contract rights, chattel paper, tax refunds, documents, licenses, equipment, furniture, fixtures, general intangibles, instruments, inventory (as those terms are defined in Article 9 of the Uniform Commercial Code (the "UCC") in effect from time to time) wherever located, now or hereafter owned or acquired by the Seller; (b) All trademarks, trade names, service marks, logos and other sources of business identifiers, and all registrations, recordings and applications with the U.S. Patent and Trademark Office and all renewals, reissues and extensions thereof (collectively "Trademarks") whether now owned or hereafter acquired, together with any written agreement granting any right to use any Trademarks; and (c) All proceeds, as that term is defined in Article 9 of the UCC (all such security interests, the "Collateral"). Wherever the term, "accounts receivable" appears herein, it shall have the same meaning as the term, "account" as defined under Section 9-101(a)(2) of Article 9 of the UCC. The Seller hereby authorizes and consents to the filing of a UCC-1 Financing Statement by the Buyer or any affiliate or subsidiary thereof, or any assignee thereof, in order to perfect any interest created under the UCC hereunder. The Security Interest granted by Seller includes all accessions, attachments, accessories, parts, supplies and replacements for the Collateral, all products, proceeds and collections thereof and all records and data relating thereto. The UCC-1 Financing Statements shall state that the sale of the credit card and/or debit card receivables of the Seller is intended to be a sale and not an assignment for security and shall state that the debtor is prohibited from obtaining any financing senior or junior to that of the secured party.

#### 8. MISCELLANEOUS.

**Section 8.1 Modifications; Amendments.** No modification, amendment, or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the party affected.

**Section 8.2 Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be delivered by mail, overnight delivery or hand delivery to the respective parties to this Agreement. Notices shall be sent to the addresses set forth on the face of the Agreement.

**Section 8.3 Waiver; Remedies.** No failure on the part of the Buyer to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise of any other right. The remedies provided hereunder are cumulative and not exclusive of any remedies provided by law or equity.

**Section 8.4 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Seller, the Buyer and their respective successors and assigns, except that Seller shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Buyer which consent may be withheld in the Buyer's sole discretion. The Buyer reserves the right to assign this Agreement with or without prior notice to Seller.

**Section 8.5 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York over any suit, action or proceeding arising out of or relating to this Agreement. New York law shall govern all issues concerning the validity of this Agreement, the construction of its terms and the interpretation and enforcement of the rights and duties of the parties. Seller and Guarantor(s) hereby submit to the jurisdiction of any New York state or federal court sitting in Nassau County. Seller hereby waives any claim that the action is brought in an inconvenient forum, that the venue of the action is improper, or that this Agreement or the transactions of which this Agreement is a part may not be enforced in or by any of the above-named courts.

**Section 8.6 Costs to Enforce Seller Agreement Payable by Seller.** The Buyer shall be entitled to receive from Seller and Seller shall pay, all costs associated with a breach by Seller of the covenants set forth herein or other obligations or any of the representations and warranties of the Seller and the enforcement thereof, including but not limited to court costs and attorney's fees and disbursements.

**Section 8.7 Survival of Representations, etc.** All representations, warranties and covenants herein shall survive the execution and delivery of this Agreement and shall continue in full force and effect until all obligations under this Agreement shall have been satisfied in full and this Agreement shall have terminated.

**Section 8.8 Severability.** In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

**Section 8.9 Entire Agreement.** This Agreement contains the entire agreement and understanding between Seller and the Buyer and supercedes all prior agreements and understandings relating to the subject matter hereof unless otherwise specifically reaffirmed or related herein.

**Section 8.10 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, except where such waiver is prohibited by law or deemed by a court of law to be against public policy. 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.

**Section 8.11 Counterparts Fax Signatures.** This Agreement may be executed in one or more counterparts each of which counterparts shall be deemed to be an original, and all such counterparts shall constitute one and the same Agreement. For purposes of execution of this Agreement, fax signatures shall be treated in all respects as original signatures.

X (Please initial) I have read and agreed to the Terms and Conditions

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