

**Private Label Affiliate Agreement**

This Private Label Affiliate Agreement (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_, by and between Transfac Capital, Inc. (“Transfac”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Affiliate”) (each a “Party” or collectively the “Parties”):

WHEREAS, Transfac is in the business of factoring/purchasing accounts of companies who become clients or otherwise extending credit to clients;

WHEREAS, Transfac is interested in developing a business relationship with Affiliate, whereby Affiliate will sell, assign and transfer Purchase and Sale Agreements that the Affiliate enters into with its Factoring Client (as defined herein) to Transfac, whereby Transfac will perform factoring services to the client;

WHEREAS, Transfac is interested in developing a business relationship with Affiliate, whereby Affiliate will refer Factoring Clients (as defined herein) to Transfac, whereby Transfac will perform factoring services to the client;

WHEREAS, Transfac and Affiliate are entering into a Participation Agreement contemporaneously with this Agreement which will address Affiliate’s participation in the account of Factoring Client;

WHEREAS, Affiliate wants Transfac to pay Affiliate the Affiliate Fee (as defined herein) as consideration for Affiliate entering into the Purchase and Sale Agreement with a Factoring Client that is transferred to Transfac hereunder, or for Affiliate referring Factoring Clients to Transfac hereunder;

WHEREAS, any capitalized terms not otherwise defined herein shall have that meaning as set forth in the PSA (as defined herein), the Participation Agreement, or the Uniform Commercial Code as enacted in Utah;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereto agree as follows:

1. **Business Development:** 
   1. Affiliate may, from time to time, enter into Purchase and Sale Agreements (hereafter, “PSA”) with Factoring Clients and thereafter assign to Transfac, the PSA. For purposes of this Agreement a Factoring Client is a person or entity who enters into a PSA with Affiliate directly as a result of Affiliate’s efforts, and Affiliate sells, assigns and transfers the PSA to Transfac. A PSA is the agreement entered into between Affiliate and Factoring Client, a form of which is attached as Schedule 1, including, without limitation, all documents related thereto, any guaranty or credit enhancement supporting any of the obligations as detailed in any such documents and all collateral securing any of the foregoing. Affiliate may not modify or otherwise alter any part of the PSA and all documents related thereto.
   2. Affiliate will only use an Application and a Proposal Letter for a prospective Factoring Client which has been previously approved by Transfac, although Affiliate may set the financial rates. For purposes of this Agreement, an Application means the form approved by Transfac in which a prospective client provides information as requested by Transfac for the purpose of entering into a PSA and a Proposal Letter is a letter to a prospective client which offers a PSA to a prospective client. Any promotional materials which uses Transfac’s of Affiliate’s name or likeness must be approved in advance by the other Party. Transfac will conduct all needed due diligence in regard to prospective Factoring Clients and Affiliate will not be entitled to any portion of any due diligence fees which may arise, unless Affiliate collects due diligence fees in addition to due diligence fees being charged by Transfac. Any such additional due diligence fees shall be retained by Affiliate. Affiliate shall provide Transfac with sufficient information about the prospective client that Transfac may reasonably request. Transfac and Affiliate shall agree on a case by case basis whether negotiations with respect to a prospective client, the PSA or any of the related documents beyond what is expressly authorized by this Agreement will be conducted solely by Transfac.
   3. Affiliate shall enter into a Participation Agreement with Transfac with respect to each Factor Client in a form as provided for in Schedule 2.
   4. Affiliate shall present to Transfac at least one client who becomes a Factoring Client within 120days from the date this Agreement is first entered into, which Factoring Client shall have a minimum of at least $200,000 in monthly purchases under the Factoring Agreement, throughout the term of the Factoring Agreement. Thereafter, commencing every 90 days after the initial 120 days (a “Quarterly Review Period”), Affiliate shall present to Transfac at least one client who becomes a Factoring Client during each and every Quarterly Review Period, and at least one Factoring Client which is presented to Transfac during each Quarterly Review Period shall have a minimum of at least $100,000 in monthly purchases under the Factoring Agreement, throughout the term of the Factoring Agreement.
2. **Acceptance of Clients:** Affiliate may enter into a PSA with prospective clients at its sole discretion under terms which are acceptable to Transfac in its sole discretion. Nothing in this Agreement shall be interpreted as obligating Transfac to purchase accounts or accept an assignment and transfer of the PSA from Affiliate at any time. Transfac shall not be obligated to purchase any accounts from the Factoring Client at any time. Transfac shall not be obligated to pay Affiliate any fee whatsoever unless and until Transfac actually purchases accounts from the Factoring Client. The actual transfer of the PSA shall be evidenced by a separate Assignment and Transfer of PSA (each an “Assignment”), the form of which is attached as Schedule 3 hereto and incorporated by reference herein. Each Assignment shall be given in furtherance of, become a part of and governed pursuant to the terms of this Agreement.
3. **Affiliate’s Duties and Representations:** Except for the PSA as limited by documents which are related thereto, which are entered into and then assigned to Transfac as provided for in this Agreement, Affiliate will not enter into any agreement on behalf of or which otherwise binds Transfac. Affiliate may not take any action or make any representation which would cause any third party to believe that Affiliate is authorized to contract directly or indirectly on behalf of Transfac. Affiliate will keep in full force and effect all licenses, authorizations and insurance policies, if any, that may be required of Affiliate. Affiliate will indemnify Transfac against any losses, claims, lawsuits, or demands (including attorney’s fees and costs) incurred as a result of negligence or willful misconduct of Affiliate, including misrepresentations or fraud. If Affiliate or Affiliate’s Clients misrepresent any information to Transfac, in addition to any other damages, Affiliate shall forfeit all earned and unearned Referral Affiliate Fees (as defined in paragraph 6, below). Affiliate shall cooperate with Transfac to effect the assignment of each PSA, including the execution and recording of such documents needed to confirm the assignment of and perfect Transfac’s interest in each PSA or the collateral security same.

**Transfac’s Representations and Warranties: Transfac represents that it shall be responsible for hanlding all back-end operations, including, but not limited to: i) performing its own credit analysis of the Factoring Client; ii) opening a lockbox bank account and maintaining it for payments to be made; iii) handling all collections of payments, pursuant to a PSA and all transfers of funds, as set forth in the Participation Agreement between the Parties; iv) providing Affiliate with access to Transfac’s Client/Broker Portal on Affiliate’s website; v) being responsible for all maintenance costs and service requests; vi) providing office support to Affiliate including, but not limited to, maintaining dedicated phone lines on behalf of Affiliate which will be answered using Affiliate’s company name in addition to ensuring that any email requests from Factoring Clients are responded to utilizing our company email server.**

1. **Independent Contractor:** The parties intend that this Agreement create an independent contractor relationship between them. Transfac is interested only in the results achieved by Affiliate; the manner of legally achieving those results is the responsibility of Affiliate. Affiliate is a professional and is not an agent or employee of Transfac for any purpose and has no actual, express or implied authority to bind Transfac to any obligation or to represent Transfac in any manner. Transfac is not responsible for deducting, and shall not deduct, from payments to Affiliate any amounts for withholding tax, FICA insurance or other similar items relating to Affiliate. Neither Affiliate nor Affiliate’s employees, if any, shall be eligible or entitled to any of the benefits to which employees of Transfac may be entitled, such as worker’s compensation, unemployment compensation, insurance, paid vacations, paid holidays, pension, profit sharing, Social Security, or other benefits that may be available.
2. **No Other or Further Compensation:** No fees or any other money shall be due from Transfac to Affiliate for any reason whatsoever, except as set forth in paragraphs 6 and 7 below, or as provided for in the Participation Agreement. Affiliate, by Affiliate’s signature below, acknowledges all of the terms and conditions contained in this Agreement and Affiliate expressly waives and forever relinquishes any claim or demand of or against Transfac, its officers, directors, employees and successors of interest for any payments other than those specifically set forth herein and under the conditions set forth herein.
3. **Affiliate Fee:** Transfac agrees to pay Affiliate a fee for Transfac’s factoring of accounts for Factoring Clients pursuant to PSAs that Affiliate originates and assigns and transfers to Transfac as outlined below, subject to ALL of the following conditions: (i) Affiliate originates the PSA with Factoring Client on the form approved by Transfac, (ii) such Factoring Client has not previously been contacted by a Transfac staff member or by another Affiliate with whom Transfac does business; (iii) such Factoring Client will be registered and the registered prospective client will be protected for 60 days; (iv) as a direct result of (i) above, Transfac accepts the assignment and transfer from Affiliate, the PSA Affiliate entered into with Factoring Client; and (v) Transfac purchases accounts from such Factoring Client (purchase shall be evidenced by issuance of payment by Transfac to or on behalf of the Factoring Client for said accounts).

In consideration for Affiliate’s services, Transfac agrees to pay an Affiliate a fee (the “Affiliate Fee”) calculated based on a numerical of 20% of the Servicing Fees and Daily Funds Rate, if applicable, charged and actually collected by Transfac from Factoring Client’s which PSAs are entered into between Affiliate and said Factoring Client and transferred to Transfac in accordance with the PSA if Affilitate determines not to participate in the factoring of the Factoring Client. Affiliate, in its sole discretion, may participate in the transaction by issuing funds to the Factoring Client up in such an amount as determined by Affiliate.

If Affiliate participates in the transaction, Affiliate shall be entitled to a share of all monies collected by Transfac equal to the extent of its participation in addition to an amount equal to 20% of the remainder of monies collected by Transfac from the Factoring Client, pursuant to a PSA. ,If f the Factoring Client is in default under the terms of the PSA with Transfac, such Affiliate Fee shall be reduced proportionately to reflect the extent of the default by the Factoring Client and Affiliate shall receive the same percentage Affiliate Fee on monies actually paid to Transfac by the Factoring Client. .

1. **Payment of the Affiliate Referral Fee:** Payment of the Affiliate Fee shall be made for any Factoring Client on or about the 15th day of the month following the month in which the Affiliate Fee is earned.
2. **Confidentiality:** During the term of this Agreement, each Party to this Agreement may have access to, and become familiar with, various trade secrets of the other Party. Such secrets may include, but are not limited to, product sources, processes, compilations of information, records, specifications, pricing arrangements, financing and financial arrangements, customer and client lists, and other business information and practices regarding the disclosing Party, its affiliates, its clients and/or prospective clients. Such information is a trade secret of the disclosing Party regardless of the form it takes. Such trade secrets are owned by the disclosing Party and are regularly used in the operation of the business of disclosing Party, but are kept from public knowledge. The Parties shall not disclose any of disclosing Party’s trade secrets, directly or indirectly at any time. Nor shall any Party use any of the disclosing Party’s trade secrets in any way during the term of this Agreement, except as required in the course of Party’s duties under this Agreement. The Parties shall not use the disclosing Party’s trade secrets at any time for any purpose whatsoever after the termination of this Agreement. All trade secrets, files, records, customer and client lists, documents, specifications, invoices, and other items relating to the business of the disclosing Party, whether prepared by the receiving Party in the course of its duties under this Agreement or otherwise coming into receiving Party’s possession, remain the exclusive property of the disclosing Party and shall not be disclosed by the receiving Party to any person or entity, and shall not be removed from the physical or digital premises of the disclosing Party under any circumstances whatsoever, without the prior written consent of the President of disclosing Party. In no event will the receiving Party make use of the disclosing Party’s trade secrets for the purpose of soliciting the disclosing Party’s Clients’ (including Factoring Clients’) business, including but not limited to, offering them the factoring or lending products or services of another company.
3. **Duration and Termination of Agreement:** Unless this Agreement is terminated as otherwise provided herein, Affiliate may terminate this Agreement by giving sixty (60) days written notice to Transfac of its intention to terminate this Agreement. After termination, if Affiliate wishes to repurchase any PSAs which have been sold to Transfac pursuant to the terms of this Agreement, it may do so by: (a) purchasing the PSA and all related agreements for the full amount of all Obligations due and owing to Transfac as provided for in the PSA, and (b) upon the Client executing such other documents that Transfac requires in its sole discretion, including but not limited to a release. Transfac shall have the right to terminate this Agreement immediately for any of the following reasons: (a) a good faith determination by Transfac that Affiliate has committed a breach of any covenant, provision, term, condition or undertaking contained in this Agreement or the Participation Agreement; (b) the failure of Affiliate to present Factoring Clients to Transfac pursuant to Sec. 1.4, above; (c) any act by Affiliate that constitutes misfeasance, malfeasance, or nonfeasance; (d) commission by Affiliate of a felony or a crime involving moral turpitude; (e) commission by Affiliate of any act that exposes Transfac or any employee, officer or director of Transfac to any criminal liability for the behavior of Affiliate; or (f) any gross negligence or willful misconduct in Affiliate’s performance of his/her/its duties under this Agreement that result in detriment to Transfac. This Agreement will also terminate immediately upon the death of Affiliate or its principal, or by the Agreement’s expiration and non-renewal. Should Transfac terminate this Agreement based upon the above, Affiliate shall be entitled to all compensation through the date of termination, which shall be paid within thirty (30) days following the termination of the Agreement. In addition to the foregoing, Transfac shall have no obligation to Affiliate and Transfac shall no longer be liable to pay Affiliate amounts provided for herein with respect to any PSA that is subject to a default by a Factoring Client or has been terminated for any reason. If this Agreement is terminated solely on account of Affiliate’s breach of Sec. 1.4, Affiliate shall continue to receive the Affiliate Fee on any existing Factoring Clients, provided that there are no further breaches of this Agreement or the Participation Agreement.
4. **No Solicitation; Exclusivity:** Each Party to this Agreement agrees that he/she/it will not solicit factoring/purchasing accounts business from any active client or Factoring Client of the other Party. Nor shall either Party to this Agreement otherwise entice, or attempt to entice, any such client, Factoring Client to terminate their agreements with the other Party. In consideration for the time and effort Transfac shall expend in setting up and administering the PSAs and due to the confidential nature of the trade secrets, as further described in Section 8, Affiliate agrees that during the term of this Agreement, he/she/it will conduct all of its Affiliate Business through Transfac. For purposes of this Agreement, Affiliate Business means the procuring of clients for the purpose of entering into a PSA and becoming a Factoring Client, which is then assigned and transferred to Transfac pursuant to this Agreement.
5. **Governing Law:** This Agreement was negotiated and entered into in the State of Utah and shall be governed in all respect by the laws of Utah, without giving effect to the principles of conflict of laws.
6. **Jury Waiver, Jurisdiction and Venue:** AFFILIATE HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM, WHETHER IN CONTRACT OR IN TORT, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT. Jurisdiction for any legal actions between the parities arising under this Agreement shall reside exclusively with the state and federal courts of the State of Utah. Venue for any such actions shall lie in the County of SALT LAKE, Utah.

EXCEPT AS EXPRESSLY AGREED IN WRITING BY TRANSFAC, THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF UTAH SHALL HAVE SOLE AND EXCLUSIVE JURISDICTION OF ANY AND ALL CLAIMS, DISPUTES, AND CONTROVERSIES ARISING UNDER OR RELATING TO THIS AGREEMENT. NO LAWSUIT, PROCEEDING, ALTERNATIVE DISPUTE RESOLUTION, OR ANY OTHER ACTION RELATING TO OR ARISING UNDER THIS AGREEMENT MAY BE COMMENCED OR PROSECUTED IN ANY OTHER FORUM, EXCEPT AS EXPRESSLY AGREED IN WRITING BY TRANSFAC.

1. **Miscellaneous:** Neither this Agreement nor any provisions hereof may be changed, waived, discharged or terminated, nor may any consent to the departure from the terms hereof be given orally (even if supported by new consideration), but only by an instrument in writing signed by all Parties to this Agreement. Any waiver or consent so given shall be effective only in the specific instance and for the specific purpose for which given. This Agreement supersedes all other agreements and understandings between the Parties, verbal or written, express or implied, relating to the subject matter hereof. No course of dealing, course of performance or trade usage, and no parol evidence of any nature shall be used to supplement or modify any terms of this Agreement. This Agreement is not assignable or transferable by Affiliate and any such purported assignment or transfer is void. This Agreement shall be binding upon the successors of Affiliate.
2. **Attorneys’ Fees:** In the event legal action is commenced to enforce or interpret, or for breach of any provision of this Agreement, the prevailing Party shall be entitled to recover from the losing party costs and expenses incurred, and reasonable attorney’s fees incurred by the prevailing Party, in addition to all other relief and remedies to which the prevailing Party may be entitled to at law or in equity.
3. **Severability:** If any provision of this Agreement is held by a court of law to be legally invalid or unenforceable for any reason, the remaining provisions shall not be impaired or affected in any way, and shall remain in full effect as if this Agreement had been executed without the invalid provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first above written.

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| **TRANSFAC**  Transfac Capital, Inc.  257 East 200 South, Ste. 350  Salt Lake City, Utah 84111 | **Name:**  Address:  Fed ID: |

By: By:

Printed Name: Printed Name:

Its: Its:

SCHEDULE 1

Form of Purchase and Sale Agreement

SCHEDULE 2

Participation Agreement

SCHEDULE 3

Assignment