

Agreement # \_\_\_\_\_ Sales Rep Name: \_\_\_\_\_ ID# \_\_\_\_\_  
 This Future Receivables Purchase and Sale Agreement ("Agreement") dated \_\_\_\_/\_\_\_\_/\_\_\_\_ between **Advanceme, Inc.** ("Buyer") and the merchant or other business listed below ("Seller").  
(month) (day) (year)

Business Legal Name: _____			
D/B/A: _____		State of Incorporation/Organization: _____	
Type of entity (check one):	<input type="checkbox"/> corporation	<input type="checkbox"/> limited liability company	<input type="checkbox"/> partnership
	<input type="checkbox"/> limited partnership	<input type="checkbox"/> limited liability partnership	<input type="checkbox"/> sole proprietorship
Physical address: _____	City: _____	State: _____	Zip: _____
Mailing address: _____	City: _____	State: _____	Zip: _____
Date business started (mm/yy): _____	Federal ID or SS#: _____		
Contact name: _____	Position: _____		
Phone: _____	Fax: _____	E-mail: _____	Web Site: _____
Bank name: _____	City: _____	State: _____	

In exchange for payment by Buyer to Seller of the purchase price specified below ("Purchase Price"), Buyer hereby purchases from Seller and Seller hereby sells to Buyer all of Seller's right, title and interest in and to the amount specified below ("Specified Amount") of Seller's future receivables ("Future Receivables") arising from payments by Seller's customers with credit cards, debit cards, charge cards, bank cards and other payment cards ("Cards") of the types settled, directly or indirectly, by Processor (as defined below). Seller will remit the Specified Amount of Future Receivables to Buyer by causing a processor acceptable to Buyer ("Processor") to pay Buyer each day an amount of cash equal to the percentage specified below ("Specified Percentage") of all Card receivables otherwise due to Seller on the day in question ("Receivables"). Seller will continue to cause the Specified Percentage of Receivables to be paid to Buyer until Seller has remitted to Buyer the entire Specified Amount of Future Receivables.

Buyer will not increase the Specified Percentage without Seller's prior written consent. Seller (i) will enter into an agreement acceptable to Buyer with Processor to obtain processing services ("Processing Agreement") and (ii) hereby authorizes and directs Processor and Operator (as defined below) to pay daily the cash attributable to the Specified Percentage of Receivables to Buyer rather than to Seller and to debit or withdraw such amounts from Seller's accounts, including the Account (as defined below), until Buyer receives the cash attributable to the entire Specified Amount of Future Receivables.

Seller shall pay Buyer a \$\_\_\_\_\_ fee for administrative services, including filing financing statements, providing monthly statements when applicable, online access to account information, and toll-free telephone access to customer service representatives. Buyer may charge additional amounts for providing copies and other documentation Seller may request from time to time (a list of such charges will be made available upon request or online). Seller agrees that Buyer and its designees may debit or otherwise withdraw such fees and charges from Seller's accounts, including the Account.

AS CONSIDERATION FOR BUYER ENTERING INTO THIS AGREEMENT, THE UNDERSIGNED OWNER(S) (WHETHER SHAREHOLDERS, PARTNERS, MEMBERS OR OTHER OWNERS), PRINCIPAL(S), OFFICER(S), DIRECTOR(S), OR OTHER REPRESENTATIVE(S) OF SELLER (COLLECTIVELY, "PRINCIPAL(S)") HEREBY PERSONALLY AND UNCONDITIONALLY GUARANTEE TO BUYER AND ITS ASSIGNS THAT (I) ALL INFORMATION PROVIDED TO BUYER IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES IS TRUE, ACCURATE AND COMPLETE IN ALL RESPECTS, (II) SELLER SHALL NOT REPLACE THE PROCESSOR ACCEPTED BY BUYER OR ENGAGE OR UTILIZE THE SERVICES OF ANY OTHER OR ADDITIONAL PROCESSOR BEFORE BUYER HAS RECEIVED THE ENTIRE SPECIFIED AMOUNT OF PURCHASED FUTURE RECEIVABLES, AND (III) SELLER SHALL NOT BREACH ANY OF THE "SELLER CONTRACTUAL COVENANTS" AS DEFINED IN SECTION 2.1 HEREOF. In addition, Principal(s) guarantee the payment of and agree to pay Buyer and its assigns all amounts Buyer is entitled to receive pursuant to and in accordance with Section 3.3 (Remedies) and Section 4.8 (Indemnified Amounts) hereof. The obligations of Principal(s) pursuant to the foregoing guarantees are primary, joint and several, and irrevocable, irrespective of the genuineness, validity, regularity or enforceability of this Agreement, and without regard to any circumstance that might constitute a legal or equitable discharge of a guarantor. Each Principal waives any rights to require Buyer to first proceed against Seller or any other Principal or to first exhaust any remedies against Seller, the Future Receivables or any property subject to Section 3.5 hereof before proceeding against such Principal. Principal(s) agree to and hereby make each representation, warranty and covenant set forth in Sections 2 and 3 of this Agreement (and each of the subsections thereof), which representations, warranties and covenants shall survive the termination of this Agreement as provided in Section 4.9 hereof. Principals acknowledge and agree that Seller going bankrupt or out of business, in and of itself, does not constitute a breach of the Seller Contractual Covenants.

To the extent set forth herein, each of the undersigned shall be obligated upon execution of the Agreement to all terms of the Agreement, including the jury trial waiver, class action waiver and other Additional Terms set forth on the pages that follow. The person executing this Agreement on behalf of Seller represents and warrants that he/she is authorized to do so and to bind Seller to all of the terms and conditions set forth herein. Each of the undersigned represents and warrants that the information provided herein and in each of Buyer's forms is true, accurate and complete in all respects. If any such information is false or misleading, Seller shall be deemed in material breach of all agreements between Seller and Buyer and Buyer shall be entitled to all remedies available under law. An investigative or consumer report may be made in connection with the Agreement. Seller and each of the Principal(s) authorizes Buyer and each of Buyer's affiliates (each, a "Company"), their agents and representatives and any credit reporting agency engaged by any Company, to (i) investigate any references given or any other statements or data obtained from or about Seller or any of its Principal(s) for the purpose of this Agreement, and (ii) pull credit reports, and share such credit reports with any other Company, (A) at any time now or for so long as Seller or Principal(s) continue to have any obligation to Buyer as a consequence of this Agreement, or (B) at any time in order for a Company to determine Seller's eligibility for a financial product offered by any Company. Buyer's payment of the Purchase Price shall be deemed Buyer's acceptance and performance of this Agreement, notwithstanding Buyer not executing this Agreement.

By:	_____	_____
	(Print Name)	(Signature)
WITNESS	_____	_____
	(Print Name)	(Signature)
PRINCIPAL(S)	_____	_____
	(Print Name)	(Signature)
	_____	_____
	(Print Name)	(Signature)
WITNESS	_____	_____
	(Print Name)	(Signature)

## ADDITIONAL TERMS OF AGREEMENT

Capitalized terms used but not defined in these Additional Terms of the Agreement shall have the meanings assigned to such terms above.

### 1. PROCESSING TERMS AND ARRANGEMENTS.

**Section 1.1. *Processing Agreement.*** Seller understands and agrees that this Agreement, including the authorizations to access Seller's accounts (including the Account) set forth herein, and the Processing Agreement irrevocably authorize Processor and Operator to pay the cash attributable to the Specified Percentage of Receivables to Buyer rather than to Seller until Buyer receives the cash attributable to the entire Specified Amount of Future Receivables from Processor and Operator. These authorizations and instructions may be revoked only with the prior written consent of Buyer. Seller agrees that Processor and Operator may rely upon the instructions of Buyer, without any independent verification, in making the cash payments described above. Seller waives any claim for damages it may have against Processor or Operator in connection with actions taken based on instructions from Buyer, unless such damages were due to such Processor's or Operator's failure to follow Buyer's instructions. Seller acknowledges and agrees that (a) Processor and Operator will be acting on behalf of Buyer with respect to the Specified Percentage of Receivables until the cash attributable to the entire Specified Amount of Future Receivables has been remitted by Processor and Operator to Buyer, (b) Processor and Operator may or may not be affiliates of Buyer, (c) Buyer does not have any power or authority to control Processor's or Operator's actions with respect to the processing of Card transactions or remittance of cash to Buyer, (d) Buyer is not responsible and shall not be liable for, and Seller agrees to hold Buyer harmless for, the actions of Processor and Operator, and (e) funds representing the Specified Percentage of Receivables in the possession of Processor or Operator constitute property owned solely by Buyer and Seller disclaims any and all interest therein. For purposes of this Agreement, the term "Operator" shall mean any person or entity Buyer designates to debit or otherwise withdraw (via the Automated Clearing House ("ACH") system, electronic checks, wires, or otherwise) any amounts from Seller's or Principal(s)'s accounts as authorized or permitted by this Agreement.

**Section 1.2. *Instructions to Processor.*** Seller hereby irrevocably instructs Processor to hold the Specified Percentage of Receivables on behalf of Buyer and to remit directly to Buyer the cash attributable thereto at the same time it remits to Seller the cash attributable to the balance of the Receivables. Seller acknowledges and agrees that Processor shall provide Buyer with Seller's Card transaction history. Seller hereby (i) authorizes Buyer to contact any past, present or future processor of Seller, its predecessors or affiliates, to obtain any information that Buyer deems necessary or appropriate regarding any of their transactions with such processors, and (ii) authorizes and directs such processors to provide Buyer with all such information in compliance with this Section 1.2. Such information may include information to verify the amount of Card receivables previously processed on behalf of Seller, its predecessors or

affiliates, and any amounts that may have been paid to, offset, held or reserved by, such processors. Without limiting the generality of the foregoing, Seller authorizes Buyer to contact any past, present or future processor of Seller, its predecessors or affiliates, to confirm that Seller is exclusively using the Processor accepted by Buyer in accordance with this Agreement.

**Section 1.3. *Indemnification.*** Seller indemnifies and holds each of Processor and Operator, their respective officers, directors, affiliates, employees, agents and representatives harmless from and against all losses, damages, claims, liabilities and expenses (including reasonable attorneys' fees) suffered or incurred by Processor or Operator resulting from actions taken by Processor or Operator in reliance upon information or instructions provided to Processor or Operator by Buyer.

**Section 1.4. *Limitation of Liability.*** In no event will Processor, Operator or Buyer be liable for any claims asserted by Seller under any theory of law, including any tort or contract theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby expressly waived by Seller.

**Section 1.5. *Processor Commissions.*** Seller understands and agrees that Processor will charge a fee or commission for processing receipts of Receivables (the "Processor's Fee") as set forth in the Processing Agreement and that the Processor's Fee will be deducted from the portion of the Receivables payable to Seller and not from the cash attributable to the Specified Percentage of Receivables payable to Buyer.

**Section 1.6. *No Modifications.*** Seller will comply with the Processing Agreement and will not modify the Processing Agreement in any manner that could have an adverse effect upon Buyer's interests, without Buyer's prior written consent.

**Section 1.7. *Account; Authorization to Withdraw from Accounts.*** Seller represents and warrants that Seller's sole bank account ("Account") into which all settlement proceeds of Receivables will be deposited is that account identified by account name, account number and bank name and address that is shown on the face of the voided check that Seller shall provide to Buyer along with this Agreement, the delivery of which voided check is a condition precedent to Buyer's obligations under this Agreement. If Processor transfers to the Account or any other account of Seller or Principal(s) any funds that should have been transferred to Buyer pursuant to Sections 1.1 and 1.2 hereof, or if Seller otherwise has monies deposited in its or Principal(s)'s account(s) that otherwise should have been transferred to Buyer pursuant to Sections 1.1 and 1.2 hereof, Seller shall, and shall cause Principal(s) to, immediately segregate and hold all such funds in express trust for Buyer's sole and exclusive benefit. In any such circumstance, Seller shall maintain in the Account a minimum balance equal to Buyer's undivided interest in such funds or the Specified Percentage multiplied by Seller's average daily Card volume based on the processing records provided to Buyer prior to the date of this Agreement (assuming

twenty-one days of processing per month) multiplied by three (3), whichever is greater ("Minimum Balance"), until such funds are paid to Buyer. Seller and each Principal hereby irrevocably authorize Buyer, Processor and Operator to debit or otherwise withdraw (via the ACH system, electronic checks, wires or otherwise) such funds and any fees, costs, charges or other amounts Buyer is entitled to receive hereunder, directly from all such accounts, including the Account, to the extent such authorizing Party (as defined in Section 4.6 hereof) is liable therefor hereunder, and shall not revoke or cancel such authorizations until such time as Buyer has received the entire Specified Amount of Future Receivables and any other amounts Buyer is entitled to receive hereunder. Seller and Principal(s) acknowledge and agree that Buyer, Processor and Operator may issue pre-notifications to Seller's and Principal(s)'s bank(s) with respect to such debit, withdrawal and other transactions. Within two business days of any request by Buyer, Seller shall provide, or cause Processor, Operator, the applicable bank(s) or Principal(s) to provide, Buyer with records and other information regarding Seller's Card sales, the Account and any other accounts of Seller or Principal(s). Seller and Principal(s) hereby authorize and direct the applicable bank(s) to provide Buyer with all such information in compliance with this Section 1.7.

**Section 1.8. *Processing Trial.*** After this Agreement has been signed by Seller and Principal(s) but prior to Buyer's determination as to whether to pay the Purchase Price, Seller agrees to permit Buyer to instruct Processor and Operator to conduct a short processing trial (the "Processing Trial") to ensure that Seller's Card transactions are being correctly processed through Processor and that the cash attributable to the Specified Percentage of Receivables will be appropriately remitted to Buyer. Buyer agrees to make a determination as to whether to purchase the Specified Amount of Future Receivables promptly after the commencement of the Processing Trial. Seller hereby authorizes Buyer and its designees, in connection with the Processing Trial, to debit or withdraw from Seller's accounts, including the Account, any fees Buyer is entitled to receive hereunder. If Buyer elects to purchase the Specified Amount of Future Receivables, then all of the cash received by Buyer in connection with the Processing Trial prior to the payment of the Purchase Price shall be applied to reduce fees Buyer is entitled to receive hereunder first, then the Specified Amount. Nothing herein shall create an obligation on behalf of Buyer to purchase any Future Receivables, and Buyer expressly reserves the right to not purchase the Specified Amount of Future Receivables and not pay the Purchase Price to Seller. If Buyer decides to not purchase the Specified Amount of Future Receivables and not pay the Purchase Price, this Agreement shall have no further effect and Buyer shall, promptly after receipt from Processor or Operator, return to Seller any cash received by Buyer in connection with the Processing Trial. Buyer shall have no obligation to pay Seller any interest or other compensation with respect to any such returned cash.

**Section 1.9. Excess Cash.** In the event that the amount of cash remitted to Buyer pursuant to this Agreement exceeds the sum of the Specified Amount and any other amounts Buyer is entitled to receive hereunder (such excess being the "Excess Cash") by at least \$20.00, Buyer agrees to pay such Excess Cash to Seller within thirty (30) days after receipt thereof by Buyer. In the event the Excess Cash is less than \$20.00, Buyer agrees to pay such Excess Cash to Seller within thirty (30) days after its receipt of a written request from Seller, provided such request is made within six months of Buyer's receipt of such Excess Cash. Seller acknowledges and agrees that Buyer has no obligation to take any action (including against Processor or Operator) with respect to any cash being held by Processor or Operator, which will become Excess Cash once it is paid by Processor or Operator to Buyer, prior to the receipt of such Excess Cash by Buyer.

**Section 1.10. Reliance on Terms.** The provisions of this Agreement are agreed to for the benefit of Seller, Principal(s), Buyer, Processor and Operator and, notwithstanding the fact that Processor and Operator are not parties to this Agreement, they may rely upon the terms of this Agreement and raise them as defenses in any action.

## **2. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

Seller and Principal(s) represent, warrant and covenant the following as of the date hereof and during the term of this Agreement:

**Section 2.1. Seller Contractual Covenants.** Seller agrees as follows (collectively, the "Seller Contractual Covenants"): (i) to not materially change the nature of the business it conducts from the type of business originally disclosed to Buyer in connection with this Agreement or to Processor as of the date of this Agreement; (ii) to exclusively use Processor for the processing of all of its Card transactions, to not change its arrangements with Processor in any way that is adverse to Buyer, and to not take any action that has the effect of causing the processor through which any Card transactions are settled to be changed from the Processor initially approved by Buyer to another, or additional, processor; (iii) to not take any action to discourage the use of Cards and to not permit any event to occur that could have an adverse effect on the use, acceptance or authorization of Cards for the purchase of Seller's services and products; (iv) to not open a new account other than the Account to which Card settlement proceeds will be deposited, to not take any action to cause Future Receivables or Receivables to be settled or delivered to any account other than the Account, and to not revoke or cancel any of the authorizations to debit or otherwise withdraw from, or access the Account or any other account of Seller described in this Agreement; (v) to not sell, dispose, convey or otherwise transfer its business without the express prior written consent of Buyer and the assumption of all of Seller's obligations under this Agreement pursuant to documentation reasonably satisfactory to Buyer; (vi) to not sell, assign, convey, dispose of, or otherwise transfer any of its Future Receivables to any person or entity other than Buyer; (vii) to not grant or permit any Lien (as defined in Section 2.11 hereof) upon any of its accounts receivable, including Future Receivables, for the benefit of any person or entity other than Buyer; and (viii) to

maintain a Minimum Balance (as defined in Section 1.7) in the Account to the extent required as provided in Section 1.7 hereof. **Buyer, Seller and Principals acknowledge and agree that Seller going bankrupt or out of business, in and of itself, does not constitute a breach of the Seller Contractual Covenants.**

**Section 2.2. Business Information.** All information (financial and other) provided by or on behalf of Seller to Buyer in connection with the execution of or pursuant to this Agreement is true, accurate and complete in all respects. Seller shall furnish Buyer, Processor and Operator such information as Buyer may request from time to time.

**Section 2.3. Reliance on Information.** Seller acknowledges and agrees that all information (financial and other) provided by or on behalf of Seller and Principal(s) has been relied upon by Buyer in connection with its decision to purchase the Specified Amount of Future Receivables from Seller.

**Section 2.4. Compliance.** Seller is in compliance with any and all applicable federal, state and local laws and regulations and rules and regulations of card associations and payment networks. Seller possesses and is in compliance with all permits, licenses, approvals, consents, registrations and other authorizations necessary to own, operate and lease its properties and to conduct the business in which it is presently engaged.

**Section 2.5. Authorization.** 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 and the Processing Agreement, all of which have been duly authorized by all necessary and proper actions.

**Section 2.6. Insurance.** 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 request of Buyer.

**Section 2.7. Change of Name, Location, Etc.** Seller does not and shall not conduct Seller's business under any name other than as set forth on page one of this Agreement and shall not change its place of business. Seller shall not change its legal name, entity type or state of formation, unless it has provided Buyer with at least thirty (30) days' prior written notice thereof and any documents, agreements and information requested by Buyer with respect thereto.

**Section 2.8. Seller Not Indebted to Buyer.** Seller is not a debtor of Buyer as of the date of this Agreement.

**Section 2.9. Exclusive Use of Processor.** Seller understands and agrees that the services of Processor are the exclusive means by which Seller can and shall process any and all of its Card transactions.

**Section 2.10. Working Capital Funding.** Seller shall not enter into any arrangement, agreement or commitment that relates to or involves Future Receivables, whether in the form of a purchase of, a loan against, or the sale or purchase of credits against, Future Receivables or future Card sales with any person or entity other than Buyer.

**Section 2.11. Unencumbered Future Receivables.** Seller has, and at all times will have, good, complete and marketable title to all Future Receivables, free and clear of any and all liabilities, liens, claims, charges, restrictions, conditions,

options, rights, mortgages, security interests, equities, pledges and encumbrances of any kind or nature whatsoever (collectively, "Liens") or any other rights or interests that may be inconsistent with the transactions contemplated with, or adverse to the interests of, Buyer. Without limiting the generality of the foregoing, all Future Receivables purchased by Buyer hereunder shall be free and clear of any and all Liens (other than Buyer's ownership rights therein) at the time they become Receivables. All amounts received by Buyer attributable to the Specified Amount of Future Receivables purchased by Buyer hereunder shall arise from bona fide sales by Seller of its goods and services to Card holders who present their Cards as payment therefor.

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

**Section 2.13. Conduct of Business.** Seller shall conduct its business consistent with past practice. Seller has no present intention to close or cease operating its business, in whole or in part, temporarily or permanently. As of the date hereof, Seller is solvent and is not contemplating any insolvency or bankruptcy proceeding. During the four (4) months preceding the date hereof, neither Seller nor any Principal has discussed with or among Seller's management, with counsel, or with any other advisor or creditor, any potential insolvency, bankruptcy, receivership, or assignment for the benefit of creditors with respect to Seller and no such action or proceeding has been filed or is pending. Other than as disclosed to Buyer in a writing attached to this Agreement, no eviction or foreclosure is pending or threatened against Seller.

## **3. ADDITIONAL TERMS.**

**Section 3.1. Sale of Future Receivables.** Seller and Buyer agree that the Purchase Price paid by Buyer in exchange for the Specified Amount of Future Receivables is a purchase of the Specified Amount of Future Receivables and is not intended to be, nor shall it be construed as, a loan or financial accommodation from Buyer to Seller. By such purchase and sale, Seller transfers to Buyer full and complete ownership of the Specified Amount of Future Receivables and Seller retains no legal or equitable interest therein. Seller sells the Specified Amount of Future Receivables to Buyer in Seller's normal course of business and the Purchase Price paid by Buyer therefor is good and valuable consideration for such sale. Seller will use the proceeds of such sale solely for business purposes.

**Section 3.2. No Right to Repurchase.** Seller acknowledges and agrees that it has no right to repurchase the Specified Amount of Future Receivables, or any portion thereof, from Buyer and Buyer may not force Seller to repurchase the Specified Amount of Future Receivables, or any portion thereof.

**Section 3.3. Remedies.** In the event that any of the representations or warranties contained in this Agreement is not true, accurate and complete, or in the event of a breach of any of the covenants contained in this Agreement, including the Seller Contractual Covenants (each of the foregoing, a "Breach"), Buyer shall be entitled to all remedies

available under law and equity, including the right to non-judicial foreclosure, and to receive all Indemnified Amounts (as defined in and in accordance with Section 4.8 hereof) from Seller. In the event that Seller breaches any of the Seller Contractual Covenants specified in clauses (ii) or (iv) in Section 2.1 hereof, Seller agrees that Buyer shall be entitled to, but not limited to, damages equal to the amount by which the cash attributable to the Specified Amount of Future Receivables and any other amounts Buyer is entitled to receive hereunder exceeds the amount of cash received from Receivables that have previously been delivered by or on behalf of Seller to Buyer pursuant to this Agreement. Seller hereby agrees that Buyer, Processor and Operator may automatically debit or otherwise withdraw such damages from Seller's accounts (including the Account) via the ACH system, electronic checks, wire transfers or otherwise.

**Section 3.4. Power of Attorney.** In addition to any other remedies available for violation of the Seller Contractual Covenants, in the event that Seller changes or permits the change of the Processor accepted by Buyer or utilizes the services of an additional processor, Buyer shall have the right, without waiving any of its rights or remedies and without notice to Seller or Principal(s), to notify the new or additional processor of the sale of the Specified Amount of Future Receivables hereunder and to direct such new or additional processor to make payment to Buyer of all or any portion of the amounts received or held by such processor for or on behalf of Seller to pay any amounts Buyer is entitled to receive hereunder. Seller hereby grants to Buyer an irrevocable power of attorney, which power of attorney shall be coupled with an interest, and hereby appoints Buyer and its designees as Seller's attorney-in-fact, to take any and all actions necessary or appropriate to direct such new or additional processor to make payment to Buyer as contemplated by this Section 3.4.

**Section 3.5. Security Agreement; Financing Statements.** To secure performance of the Seller Contractual Covenants and all of the other obligations of Seller to Buyer under this Agreement or any other agreement between Seller and Buyer, Seller grants to Buyer a continuing priority security interest, subject only to the security interest of Processor, if any, in the following property of Seller wherever found (collectively, the "Collateral"): (a) all personal property of Seller, including, all accounts, chattel paper, documents, equipment, general intangibles, instruments, inventory (as those terms are defined in Article 9 of the Uniform Commercial Code ("UCC") in effect from time-to-time in the State of New York), and liquor licenses, wherever located, now or hereafter owned or acquired by 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 ("USPTO") and all renewals, reissues and extensions thereof (collectively "IP") whether now owned or hereafter acquired, together with any written agreement granting any right to use any IP; and (c) all proceeds with respect to the items described in (a) and (b) above, as the term "proceeds" is defined in Article 9 of the UCC. Seller understands and agrees that Buyer may file one or

more (i) UCC-1 financing statements at anytime to perfect Buyer's interests under the UCC created by this Agreement, including Buyer's purchase and ownership of the Specified Amount of Future Receivables and the interests described above in this Section 3.5, and (ii) assignments with USPTO to perfect the security interest in IP described above. The UCC-1 financing statements (or portions thereof) evidencing the sale of the Specified Amount of Future Receivables shall state that such sale is intended to be a sale and not an assignment for security. Such financing statements also may state that Seller is prohibited from transferring Future Receivables to any person or entity other than Buyer, or granting any security interest in its accounts receivable to any person or entity other than Buyer until Buyer has received the Specified Amount of Future Receivables and any other amounts Buyer is entitled to receive hereunder. Seller hereby authorizes Buyer to file such financing statements and any continuation statements or amendments thereto, and ratifies the filing of any financing statement filed by or on behalf of Buyer prior to the effectiveness of this Agreement. Buyer's rights under this Section 3.5 shall apply equally to any subsequent or other agreement between Seller and Buyer. Seller agrees that it shall, from time to time, promptly execute and deliver all instruments and documents, and take all further action, that may be necessary or appropriate, or that Buyer may request, to perfect against Seller and all third parties the sale of the Specified Amount of Future Receivables hereunder or to enable Buyer to exercise and enforce its rights and remedies hereunder.

**Section 3.6. Protection of Information.** Seller and each person signing this Agreement on behalf of Seller or as a Principal, in respect of himself or herself personally, authorizes Buyer to disclose to any third party information concerning Seller's and each Principal's credit standing (including credit bureau reports that Buyer obtains) and business conduct. Seller and each Principal hereby waives to the maximum extent permitted by law any claim for damages against Buyer or any of its affiliates relating to any (i) investigation undertaken by or on behalf of Buyer as permitted by this Agreement or (ii) disclosure of information as permitted by this Agreement.

**Section 3.7. Solicitations.** Seller and each Principal authorizes Buyer and its affiliates to communicate with, solicit and market to Seller and each Principal via regular mail, telephone, email and facsimile in connection with the provision of financial products, goods or services by Buyer, its affiliates or any third party, including those that Buyer shares, transfers, exchanges, discloses or provides information with or to pursuant to Section 3.6, and will hold Buyer, its affiliates and such third parties harmless against any and all claims pursuant to the federal CAN-SPAM ACT of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003), the Telephone Consumer Protection Act (TCPA), and any and all other state or federal laws relating to transmissions or solicitations by any of the methods described above.

**Section 3.8. Confidentiality.** Seller understands and agrees that the terms and conditions of the products and services offered by Buyer, including this Agreement and any other Buyer documentation

(collectively, "Confidential Information") are proprietary and confidential information of Buyer. Accordingly, unless disclosure is required by applicable law or court order, Seller shall not disclose Confidential Information to any person other than an attorney, accountant, financial advisor or employee of Seller who needs to know such information for the purpose of advising Seller ("Advisor"), provided such Advisor uses such information solely for the purpose of advising Seller and first agrees in writing to be bound by the terms of this Section 3.8.

**Section 3.9. Publicity.** Seller and each Principal authorize Buyer to use its, his or her name in a listing of clients and in advertising and marketing materials.

**Section 3.10. Inspection of Collateral and Place of Business.** Buyer or its designated representatives and agents shall have the right, during Seller's normal business hours and at any other reasonable times, to examine the Collateral where located and the interior and exterior of any of Seller's places of business. Any such examination of any of Seller's places of business may include, among other things, whether Seller (a) has a place of business that is separate from any personal residence, (b) is open for business, (c) has sufficient inventory to conduct its business and (d) has one or more point-of-sale terminals to process Card transactions. When performing an examination, Buyer or its designated representatives and agents may photograph the interior and exterior of any of Seller's places of business, including any signage, and may photograph any Principal.

#### **4. MISCELLANEOUS.**

**Section 4.1. Modifications; Amendments; Construction.** 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 parties affected. The headings of the sections and subsections herein are inserted for convenience only and under no circumstances shall they affect in any way the meaning or interpretation of this Agreement. For purposes of this Agreement, "including" shall mean "including, without limitation" and "and" shall mean "and/or." Any reference in this Agreement (a) to the singular includes the plural where appropriate, and (b) to the masculine gender includes the feminine and neuter genders where appropriate.

**Section 4.2. 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. Notices to Buyer shall be sent to the following address: Advanceme, Inc., c/o General Counsel, 2 Overhill Road, Suite 410, Scarsdale, NY, 10583-5323.

**Section 4.3. Waiver; Remedies.** No failure on the part of 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 4.4. D/B/A's.** Seller hereby acknowledges and agrees that Buyer may be using "doing business as" or "d/b/a" names in connection

with various matters relating to the transactions between Buyer and Seller, including the filing of UCC-1 financing statements and other notices or filings.

**Section 4.5. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Seller, Principal(s), Buyer and their respective successors and assigns, except that Seller and Principal(s) shall not have the right to assign or delegate any of their rights or obligations hereunder or any interest herein without the prior written consent of Buyer, which consent may be withheld in Buyer's sole discretion. Buyer reserves the right to assign or delegate this Agreement or any of its rights or obligations hereunder with or without prior notice to Seller. Without limiting the generality of the foregoing, Buyer may grant a security interest in any and all of Buyer's rights and interests pursuant to this Agreement, including Buyer's rights and interests in and to the Specified Amount of Future Receivables, to any secured party from whom Buyer may now or hereafter obtain financing, and such secured party will be entitled to enforce Buyer's rights and interests under this Agreement, subject to and in accordance with the terms thereof. Such secured party will have no liability for any of Buyer's obligations under this Agreement.

**Section 4.6. Governing Law; Jurisdiction; Service of Process.** THIS AGREEMENT AND ALL TRANSACTIONS IT CONTEMPLATES, INCLUDING ALL ISSUES CONCERNING THE VALIDITY OF THE AGREEMENT AND ANY TRANSACTIONS IT CONTEMPLATES, THE CONSTRUCTION OF ITS TERMS, AND THE INTERPRETATION, PERFORMANCE AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF BUYER, SELLER AND PRINCIPAL(S) (EACH, A "PARTY" AND COLLECTIVELY, THE "PARTIES"), SHALL BE GOVERNED BY AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD REQUIRE THE APPLICATION OF ANY OTHER LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE PARTIES AGREE THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN THE ENTIRE RELATIONSHIP BETWEEN AND AMONG THE PARTIES, INCLUDING WITHOUT LIMITATION, ALL ISSUES OR CLAIMS ARISING OUT OF, RELATING TO, IN CONNECTION WITH, OR INCIDENT TO THIS AGREEMENT AND ANY TRANSACTIONS IT CONTEMPLATES, WHETHER SUCH CLAIMS ARE BASED IN TORT, CONTRACT, OR ARISE UNDER STATUTE OR IN EQUITY. AS USED HEREIN, THE PHRASE "LAWS OF THE STATE OF NEW YORK" INCLUDES NEW YORK LAW WITH RESPECT TO, AMONG OTHER THINGS, ANY APPLICABLE STATUTE OF LIMITATIONS, LACHES, OR SIMILAR TIME-BASED DEFENSE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS MADE AND PERFORMED IN THE STATE OF NEW YORK. Seller and Principal(s) further irrevocably and unconditionally consent and submit to the jurisdiction of any state or federal court sitting in New York City or Westchester County, New York or Cobb County, Georgia to resolve any suit, action, controversy, or proceeding of any kind (whether in contract, tort, statute, equity or otherwise) between or among the

Parties, arising out of, related to, in connection with, or incident to this Agreement or any of the transactions it contemplates. Seller and Principal(s) hereby agree that any of the above-named courts shall be a convenient forum for any such suit, action, controversy, or proceeding of any kind between or among the Parties, arising out of, related to, in connection with, or incident to this Agreement or any of the transactions it contemplates. Seller and Principal(s) waive, to the fullest extent permitted by law, (i) any objection that Seller or Principal(s) may now or later have to the laying of venue of any suit, action, controversy, or proceeding arising out of, relating to, in connection with, or incident to this Agreement or any of the transactions it contemplates in any of the above-named courts, (ii) any objection to personal jurisdiction applying in any such court, and (iii) any claim that any such suit, action, controversy or proceeding brought in any such court has been brought in an inconvenient forum. Seller and Principal(s) agree that service of process in any such suit, action, controversy, or proceeding may be served on any of them by mailing or delivering a copy of the process to any of the addresses set forth in this Agreement or any other address Seller or Principal(s) has provided to Buyer. Nothing set forth in this Section affects the right to serve process in any other manner permitted by law.

**Section 4.7. Costs.** Buyer shall be entitled to receive from Seller and Principal(s), and Seller and Principal(s) shall pay (a) all reasonable costs associated with a Breach and the enforcement thereof, including court costs and attorneys' fees, and (b) a fee of \$25.00 (or, if less, the maximum amount permitted by applicable law) for each rejected or dishonored check, ACH debit, or wire transfer withdrawal, as the case may be, it being understood that Buyer has the right to receive such fee for each business day on which Buyer or its designee attempted and was unable to debit or otherwise withdraw from the accounts of Seller or Principal(s) (including the Account), as authorized herein, the total amount Buyer was entitled to receive hereunder as of such date.

**Section 4.8. Indemnified Amounts.** In the event of a Breach, Seller shall assume liability for and hereby agrees to indemnify, protect, and hold harmless Buyer, its affiliates, and its and their officers, directors, employees, agents, representatives and assignees (collectively, the "Indemnified Parties"), from and against any and all liabilities, claims, losses, obligations, damages, penalties, suits, actions, controversies, or proceedings of any kind, imposed upon, incurred by, or asserted against any of the Indemnified Parties, in any way arising from, in connection with, relating to, or incident to such Breach (collectively, "Indemnified Amounts"), including the payment of all costs and expenses of every kind for the enforcement of Buyer's rights and remedies hereunder, including reasonable attorneys' fees, costs of any trial, appellate court proceeding, administrative proceeding, or any negotiations or consultations with respect to any such Breach. Such Indemnified Amounts will bear interest at the highest rate of interest permitted by applicable law until paid.

**Section 4.9. Term and Survival.** This Agreement shall continue in full force and effect until all obligations hereunder have been satisfied in full;

provided, however, that Sections 1.3, 1.4, 3.3, 3.7, 3.8, 3.9, 4.3, 4.5, 4.6, 4.7, 4.8, 4.9, 4.13 and 4.14 shall survive indefinitely.

**Section 4.10. 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 4.11. Counterparts; Facsimile and Electronic Signatures.** This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which when taken together shall constitute one and the same agreement. Facsimile signatures shall be deemed to be original signatures and each Party hereto may rely on a facsimile signature or electronic signature as an original for purposes of enforcing this Agreement.

**Section 4.12. Entire Agreement.** This Agreement contains the entire agreement and understanding among Seller, Principals and Buyer and supersedes all prior agreements and understandings, whether oral or in writing, relating to the subject matter hereof unless otherwise specifically reaffirmed or restated herein. Seller and Principals each acknowledge and agree that he, she or it is not relying on any representations not specifically embodied in this Agreement.

**Section 4.13. Jury Trial Waiver.** THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION, CONTROVERSY OR PROCEEDING OF ANY KIND ON ANY MATTER ARISING OUT OF, RELATING TO, IN CONNECTION WITH, OR INCIDENT TO THIS AGREEMENT OR ANY TRANSACTIONS IT CONTEMPLATES 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 4.14. Class Action Waiver.** The Parties acknowledge and agree that the amounts at issue in this transaction and any disputes that may arise between them are large enough to justify dispute resolution on an individual basis. EACH PARTY HERETO WAIVES ANY RIGHT TO ASSERT ANY CLAIMS AGAINST ANY OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW.