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FACTORING AND SECURITY AGREEMENT – FULL RECOURSE

THIS AGREEMENT made effective as of the ____ day of _____, _____ between **[NAME OF SELLER]** [address] (the “Seller”) and **[NAME OF BUYER]** [address] (the “Buyer”)

WHEREAS Seller wishes to obtain short-term financing by factoring, selling and assigning to Buyer certain acceptable accounts receivable in accordance with the terms of this Agreement at a discount below face value and on recourse, as set in this Agreement.

1. Definitions

- (a) “Account” means any right to payment for any reason whatsoever including but not limited to goods sold, leased or delivered, or services provided, or refunds due, as sold and assigned to the Buyer pursuant to this Agreement, including but not limited to those Accounts set out in Schedule “A” attached.
- (b) “Acceptable Account” means an Account in respect of which all of the representations and warranties set forth herein are true and accurate, including the Accounts set out in Schedule “A” attached.
- (c) “Buyer” means the buyer of Accounts from the Seller as set out above.
- (d) “Seller” means the seller and assignor of the Accounts as set out above.
- (e) “Credit Problem” includes any circumstance which may adversely affect a Customer’s ability to pay of its obligations (including any Account) when due.
- (f) “Customer” means Seller’s customer or the account debtor of any Account purchased by Buyer pursuant to this Agreement.
- (g) “Customer Dispute” means any claim by customer against Seller, of any kind whatsoever, valid or invalid, that reduces the amount collectible from Customer by Buyer in respect of any Account purchased by Buyer.
- (h) “Interest Rate” means the rate of ###% per year, which will be charged on any and all overdue payments from Seller to Buyer of any kind whatsoever under this Agreement.

2. Representations, Warranties And Covenants By Seller

As an inducement for Buyer to enter into this Agreement, and with full knowledge that the truth and accuracy of the representations and warranties of Seller in this Agreement are being relied upon by Buyer instead of the delay of a complete credit investigation, Seller represents and warrants that the following statements are true and correct, and covenants that the same will remain true and correct for so long as any amount remains owing to Buyer hereunder:

- (a) Seller is properly licensed and authorized to operate its business.
- (b) The complete and proper legal name of Seller is as set out above, and Seller has no French version of such name.
- (c) Seller’s business is solvent.
- (d) Each Customer’s business is solvent, to the best of Seller’s information and knowledge.
- (e) Seller is, at the time of purchase by Buyer, the lawful owner of and has good and undisputed title to the Accounts purchased by Buyer.

- (f) Customer shall have no right of set-off, abatement or reduction whatsoever in respect of any Account which is offered for sale by Seller to Buyer.
- (g) Each Account offered for sale to Buyer is an accurate statement of indebtedness by Customer to Seller for a certain sum which is due and payable in thirty (30) days or less.
- (h) Each Account offered for sale to Buyer is an accurate statement of a bona fide sale, delivery and acceptance of merchandise or performance of service by Seller to Customer, or other good and valid liability of the Customer in question to the Seller.
- (i) The execution and delivery of this Agreement by Seller have been duly authorized by all necessary corporate acts on the part of Seller and is enforceable against Seller in accordance with its terms.
- (j) Seller does not own, control or exercise dominion over, in any way whatsoever, the business of any Customer whose Account is to be factored by Seller to Buyer.
- (k) All financial records, statements, books, or other documents shown to Buyer by Seller at any time, either before or after the signing of this Agreement, are true and accurate.
- (l) Seller will not, under any circumstances or in any manner whatsoever, interfere with any of Buyer's rights under this Agreement.
- (m) Seller will not factor or sell Accounts except to Buyer for the term of this Agreement as hereinafter provided.
- (n) Seller will not offer any Account to Buyer which is not an Acceptable Account. By offering any Account to Buyer, Seller shall be deemed to have represented and warranted that such Account is an Acceptable Account.
- (o) Seller has not and will not transfer, pledge or give security interest in any of its Accounts to any other party unless, prior to the sale of such Account to Buyer, such pledge or security interest shall have been released in writing.
- (p) Seller will discharge all taxes, levies or assessments imposed upon it or incurred by it in the operation of its business as and when same become due.
- (q) Seller will not change or modify the terms of the original Account with Customer unless Buyer first consents to such change in writing. For example, Seller may not extend credit to a Customer beyond sixty (60) days without prior written consent from Buyer.
- (r) Seller will not permit any lien, security interest or encumbrance to be created upon its fixtures, inventory or property except with prior notice thereof to Buyer.
- (s) Seller will maintain such insurance covering Seller's business and/or the property of Seller's Customers as is customary for businesses similar to the business of Seller and, at the request of Buyer, name Buyer as a loss payee of such insurance.
- (t) Seller will notify Buyer in writing prior to any change in Seller's place of business, or if Seller has or acquires more than one place of business, or prior to any change in Seller's chief executive office, the office or offices where Seller's books and records concerning accounts receivable are kept.
- (u) Seller will immediately notify Buyer of any proposed or actual change of Seller's name, identity, legal entity or corporate structure.
- (v) The purpose of this funding is commercial in nature, and not for household, family or personal use.