

Factoring and Security Agreement Terms and Conditions (Freight Broker)

The following are the Factoring Agreement Terms and Conditions (Terms and Conditions) that are incorporated by reference in the Factoring and Security Agreement between Operation Finance, Inc. ("Purchaser") and Seller. These terms and conditions are also published and updated online at www.operfi.com/terms-freight-broker. Capitalized terms not herein defined shall have the meaning set forth in the Factoring Master Agreement and vice versa. All other capitalized terms not otherwise defined shall have the meaning set forth in the Uniform Commercial Code.

SECTION 1. DEFINITIONS

The following terms used herein and in the Factoring and Security Agreement shall have the following meaning:

Account Debtor - The obligor on an Account.

Accounts - all "Accounts" as defined in the Uniform Commercial Code and all goods represented therefrom, including the right of stoppage in transit, replevin and reclamation.

Agreement - The Factoring and Security Agreement, incorporating these Terms and Conditions, and any extensions, riders, supplements, amendments, or modifications thereto or in connection therewith.

Clearance Day Payments - Payments received by Purchaser in whatever form and from whatever source, in reduction of the Obligations.

Clearance Days - Three (3) business days.

Collateral - All Accounts, Equipment, Inventory, Deposit Accounts, Chattel Paper, Electronic Chattel Paper, Letters of Credit, Letter of Credit Rights, Investment Property, Instruments, General Intangibles, all monies held in the Reserve Account, all books, records, files and computer data relating to the foregoing, and all products, profits and proceeds of the foregoing.

Collection Service Fee - The Collection Service Fee specified in the Factoring and Security Agreement, multiplied by the stated Face Amount of a Purchased Account at the time of purchase by Purchaser, for each specified period described in the Factoring and Security Agreement, or portion thereof that all or any portion thereof remains unpaid, computed from the days it takes to collect on an account.

Default Rate - Interest at a rate of two percent (2.00%) per month (24% per annum), subject to the maximum rate permitted by applicable law (with any excess credited against principal or refunded).

Due Diligence Expense - Expenses related to the time, labor, and fees associated with underwriting Seller, affiliates, principals, customers, etc. from when they are a prospective client all the way through the ongoing relationship until termination.

Event of Default - shall have that meaning as set forth in Paragraph 10 herein.

Face Amount - The face amount due on an Account at the time of purchase.

Factoring Fee Percentage - See Factoring and Security Agreement

Misdirected Funds Fee - fifteen percent (15%) of the amount of any payment on account of a Purchased Account which has been received by Seller and not delivered in kind to Purchaser on the next business day following the date of receipt of Seller.

Monthly Minimum Volume - Purchaser reserves the right to adjust Purchase Limits, Advance Rates, and Factoring Fees depending on Seller's monthly invoice volumes sold to Purchaser from Seller.

Notice Window - 30-day period determined for Seller to provide notice to Purchaser with their intent not to renew their agreement after the current term.

Obligations - all present and future obligations owing by Seller to Purchaser whether or not for the payment of money, whether or not evidenced by any note, invoice or other instrument, whether direct or indirect,

absolute or contingent, due or to become due, joint or several, primary or secondary, liquidated or unliquidated, secured or unsecured, original or renewed or extended, whether arising before, during or after the commencement of any bankruptcy case in which Seller is a debtor, including but not limited to any obligations arising pursuant to letters of credit or acceptance transactions or any other financial accommodations.

Term - The initial contract term length outlined in the Factoring and Security Agreement.

Parties - Seller and Purchaser.

Purchase Price - The Face Amount of a Purchased Account.

Purchased Accounts - Accounts purchased under this Agreement which have not been closed.

Renewal Term - Successive periods equal in length of the initial Term following the initial Term.

Repurchase Period - The period starting on the day the account is sold to purchaser and ending on the number of days outlined on the Factoring and Security Agreement.

Required Reserve Amount - The Reserve Percentage multiplied by the unpaid balance of Purchased Accounts. Purchaser reserves the right to adjust Required Reserve Amount limits based on Purchaser's reasonable credit determination.

Reserve Account - a bookkeeping account on the books of Purchaser representing an unpaid portion of the purchase price paid for the Purchased Accounts, maintained by Purchaser to ensure Seller's performance with this Agreement.

Reserve Release Period - Purchaser will release a portion of Seller's Reserve Account on the 10th of each month for the reserve balances on the last day of the prior month.

Reserve Shortfall - The amount by which the Reserve Account is less than the Required Reserve Amount.

Schedule of Accounts - a form acceptable to Purchaser from time to time wherein Seller lists such of its Accounts which it requests that Purchaser purchase under the terms of this Agreement.

UCC Definitions - All capitalized terms or other applicable terms not defined herein shall have that meaning as set forth in the Uniform Commercial Code ("UCC"), as adopted in the State of Texas.

Undisclosed Advance Fee - the greater of \$100.00 or Ten percent (10%) of the amount of any account that has been sold to Purchaser by Seller whereby any monies have been advanced against the account and not otherwise disclosed in writing to Purchaser by Seller prior to purchase of said account.

SECTION 2. PURCHASE OF ACCOUNTS

Seller agrees to sell, assign, transfer and convey to Purchaser all of its existing and future accounts receivable arising from services performed in the regular course of Seller's business; i.e., any right to payment from any party for services rendered by or on behalf of Seller (the "Accounts"). Seller shall present all Accounts to Purchaser for purchase, with recourse, and Purchaser, in its sole discretion, may purchase such Accounts from Seller as Purchaser determines to be acceptable. Each Schedule of Accounts shall be accompanied by such documentation which support

and evidence the Account as Purchaser may request. Purchaser is not under any obligation to purchase any Account from Seller. Seller will notify each Account Debtor of the sale of its Account or Accounts to Purchaser and shall place a clear statement or legend, approved by Purchaser, on each such Account invoice, purchase order, or statement, stating that such Account has been sold and assigned, and all payors will be instructed to make payments directly to Purchaser. All remittances received by Seller for payment of Accounts sold to Purchaser are the property of Purchaser, and Seller shall hold such proceeds in trust for Purchaser, and shall immediately deliver to Purchaser, in the identical form, all payments received by Seller on each such Account, together with all documents accompanying the remittance to Seller. Seller guarantees the timely payment of the monies and amounts represented by the assigned Accounts. Seller shall retain all original paperwork related to the Accounts (i.e., bills of lading, unloading receipts and other documentation supporting the Accounts) until the termination of the Agreement. Seller shall be required to produce original paperwork upon request to Purchaser within 5 business days.

SECTION 3. PURCHASE PRICE, ADVANCES, RESERVE ACCOUNT

Purchaser shall pay the Purchase Price, less any amounts due to Purchaser from Seller, including, without limitation, any amounts due under Section 3.1 hereof, of any Purchased Account to Seller within three business days of Purchaser's decision to purchase the Accounts, whereupon the Accounts shall be deemed purchased hereunder.

3.1 Advances; Reserve Account.

For all Eligible Accounts that are purchased by Purchaser, Purchaser will advance up to 90.00% of the invoice amount, subject to Purchaser's right to maintain a Reserve. The remaining amount of at least 10.00% (the "Reserve"), less the Factoring Fee and any other Obligations due hereunder, will be paid after Purchaser receives full payment on the invoice from the Account Debtor. On the 10th of every month, Purchaser may pay to Seller any amount by which collected funds in the Reserve Account are greater than the Required Reserve Amount as of the last day of the prior month; provided, that no Event of Default exists hereunder, and provided further Purchaser, in its sole discretion and acting in good faith, has no concerns about Seller's ability to continue to perform its obligations hereunder. Payment by Purchaser of said funds to Seller shall be made in accordance with any written instructions of Seller which are agreed to by Purchaser. Purchaser may apply a portion of any Purchase Price to the Reserve Account in the amount of the Reserve Shortfall. Seller shall pay to Purchaser, on demand, the amount of any Reserve Shortfall. Purchaser may (i) charge the Reserve Account with any Obligation, including any amounts due from Seller to Purchaser hereunder; and (ii) pay any amounts due Seller hereunder by a credit to the Reserve Account. Purchaser may retain the Reserve Account unless and until Seller has executed and delivered to Purchaser a



general release (which shall be notarized if required by Purchaser) in the form contained on the final page of the Terms and Conditions.

3.2 Payments and Collections. Purchaser shall, for the purpose of the computation of fees due hereunder, add the Clearance Days to any Clearance Day Payments which is acknowledged by the parties to constitute an integral aspect of the pricing of Seller's facility to Purchaser, and shall apply irrespective of the characterization of whether receipts are owned by Purchaser or Seller. Should any check or item of payment not be honored when presented for payment, then payment shall be deemed not to have been made, and the fees shall be recalculated accordingly.

3.3 Payments to Third Parties. In addition to the Quick Pay Program (as hereinafter defined), Seller irrevocably authorizes Purchaser to remit directly, in the sole discretion of Purchaser, on behalf of the Seller and without further direction from the Seller, payments to service providers involved in the transaction giving rise to an Account, including but not limited to drivers, carriers, dispatchers and/or independent contractors (the "Payees"), from Advances or funds that would otherwise be paid to Seller. Seller acknowledges and agrees that this payment direction is not an obligation of or guaranty by Purchaser to make such payments to the Payees.

SECTION 4. FEES AND EXPENSES

Seller shall pay to Purchaser the following items:

Factoring Fee Percentage: See Factoring and Security Agreement

Collection Service Fee: See Factoring and Security Agreement

Client Setup Fee \$150

Fuel Card Loading Fee: \$5

Wire Fee: \$25

ACH Fee: \$5

Early Termination Fee \$2,500.00

Postage & Handling Fee: \$1 per invoice

**Listed Fees are standard unless otherwise specified in writing on the Factoring and Security Term Sheet.*

Misdirected Funds Fee: fifteen percent (15%) of the amount of any payment on account of a Purchased Account which has been received by Seller and not delivered in kind to Purchaser on the next business day following the date of receipt of Seller

Undisclosed Advance Fee: the greater of \$100.00 or Ten percent (10%) of the amount of any account that has been sold to Purchaser by Seller whereby any monies have been advanced against the account and not otherwise disclosed in writing to Purchaser by Seller prior to purchase of said account.

Payment by Credit Card - In the event a Payor makes a payment to Purchaser using a credit card, Purchaser shall credit to the obligation of the Account Debtor the amount credited to Purchaser by Purchaser's credit card processor, *net of any processing fees*.

Out of pocket expenses: As incurred, or as specified in the Instructions for Cash Payment schedule.

SECTION 5. REPURCHASE OF ACCOUNTS

Seller shall repurchase, by payment of the unpaid Face Amount thereof, together with any unpaid fees relating to the Purchased Account, at Purchaser's option and on demand, and notwithstanding the occurrence of an Insolvency Event: any Purchased Account, the payment of which has been disputed by the Account Debtor, Purchaser being under no obligation to determine the bona fides of such dispute; any Purchased Account where the representations contained herein with respect to such Purchased

Account were untrue at the time of Purchaser's purchase of such Purchased Account; any Purchased Account for which Seller fails to provide all original backup documentation (to include but not limited to invoices, delivery notices and properly signed bills of lading) relating to the unpaid Purchased Account, within 7 days of Purchaser's request; any Purchased Account regarding which Seller has breached any representation or warranty under this Agreement; any Purchased Account owing from an Account Debtor or Payor: (i) which in Purchaser's reasonable credit judgement has become insolvent or (ii) which has indicated an inability or unwillingness to pay the Purchased Account when due; any Purchased Account that is not collected or paid by the Account Debtor by the Repurchase Period; and all Purchased Accounts upon the occurrence of an Event of Default

SECTION 6. SECURITY INTEREST

As collateral securing the Obligations, Seller grants to Purchaser a continuing first priority security interest in and to the Collateral. Notwithstanding the creation of the above security interest, the relationship of the parties shall be that of Purchaser and Seller of Accounts, and not that of lender and borrower. Seller hereby authorizes Purchaser to file all documents it deems necessary to perfect Purchaser's security interest in the Collateral, including but not limited to, UCC-1 Financing Statement(s).

SECTION 7. BANK ACCOUNT SETUP AND AUTHORIZATION

Seller hereby irrevocably authorizes Purchaser and Tank Payments, jointly and severally, to: a) Verify the provided bank account information, including but not limited to ownership, account validity, and transaction history, using any commercially reasonable means; b) Initiate debit entries (pre-authorized drafts or withdrawals) and credit entries, including adjustments for erroneous transactions, in connection with any obligations under this Agreement; c) Communicate directly with Seller's Bank, and Seller expressly authorizes the Bank to provide Purchaser and Tank Payments with any requested account information; d) Share Seller's bank account details with Tank Payments, solely for the purpose of payment processing, transaction verification, and compliance with funding operations; e) Rely on the accuracy of bank account details provided by Seller with any changes thereto requiring written notice to Purchaser at least five (5) business days prior to the effective date of the change; f) Obtain and share Seller's business and personal information, including personally identifiable information, for the purpose of opening and maintaining financial accounts without further notice to Seller; g) Open financial accounts for the benefit of Seller for the purpose of payment processing, transaction verification, and compliance with funding. This authorization remains in full force and effect until revoked in writing by Seller to both Purchaser and the financial institution. For purposes of this Agreement, the designated bank account shall be considered a Non-Consumer Account and shall not be used for family, household or consumer purposes.

SECTION 8. AUTHORIZATION TO PURCHASER; POWER OF ATTORNEY

Seller does hereby irrevocably make, constitute and appoint Purchaser as its attorney-in-fact with full power and authority to act in its stead for the following purposes: (a) invoice or bill for, collect, receive, and deposit to Seller's bank accounts any and all amounts which may be due or become due to Seller from Account Debtors, and to use Seller's name for

purposes of billing and collection of any and all amounts due; (b) negotiate any checks received in payment of Accounts whether payable to Seller or Purchaser or both, and endorse Seller's name on: (1) any and all checks or other forms of remittances received by Purchaser; and (2) any and all documents required in order to obtain a check or remittance, including, without limitation, rate or load confirmation sheets, broker/carrier contracts, and other documents or instruments relating to any of the Accounts or relating to any collateral or security hereby granted by Seller to Purchaser; (c) receive, accept, open, dispose of and redirect any and all mail addressed to Seller; (d) in Seller's name, or otherwise, demand, make claim for sue for, collect, grant extensions, compromise, discharge, and get or give releases for any and all monies or funds due or to become due on Accounts; (e) take all steps necessary to ensure payment of such amounts and monies due, and do any and all things in Seller's name necessary or proper to carry out the purposes intended by this Agreement; (f) execute and deliver receipts or acknowledgments to Account Debtors for such amounts due which shall be binding upon Seller and Purchaser; (g) notify Account Debtors of the sale of Accounts to Purchaser and notify and instruct Account Debtors, in Seller's name, of the address and procedures for making payments on any Accounts that are sold to Purchaser or which constitute collateral hereby granted by Seller to Purchaser; (h) file financing statements and all amendments thereto, describing as collateral any or all of the collateral described in Section 6 hereof by any description Purchaser deems appropriate in any jurisdiction or office Purchaser deems appropriate to perfect its security interest in the collateral described in Section 6 hereof; and (i) initiate debit or credit entries through the Federal Reserve Automated Clearing House System (ACH) to any deposit account maintained by Seller wherever located in order to satisfy any obligations of Seller to Purchaser under this Agreement.

It is understood that this power of attorney is coupled with an interest, and is irrevocable until all obligations of Seller to Purchaser under this Agreement have been satisfied. Exercise of the foregoing powers shall be in the sole and absolute discretion of Purchaser, but Purchaser shall have no obligation to exercise any of the foregoing powers. Nothing contained in this Agreement shall in any way require Purchaser to initiate or become a party to any litigation or other legal proceedings. The Purchaser shall not, under any circumstances, or in any event whatsoever, have any liability for any error, omission or delay of any kind occurring in the collection, payment or settlement of any Account or of any instrument received in full or in part payment thereof or in dealing with any lien, security or guaranty of any such Account

SECTION 9. REPRESENTATIONS AND WARRANTIES

Seller represents and warrants that: a) the execution, delivery and performance of this Agreement and all documents or agreements related to this Agreement by Seller, to the extent to be executed, delivered or performed by Seller, have been duly authorized by all necessary action by Seller; b) this Agreement and any instrument or agreement required hereunder to be given by Seller, when executed and delivered by an authorized representative of the Seller, will constitute the legal, valid and binding obligations of Seller, in accordance with their respective terms; c) it is solvent, duly organized, validly existing and in good standing within the state it is organized, is validly existing and



in good standing in all states in which Seller is doing business, and is properly insured pursuant to applicable law and to prudent levels; d) Seller is duly registered as required by law and has obtained and will maintain all required licenses, registrations, insurance and/or surety bonds as required or necessary to operate its business. If Seller is a carrier, Seller is registered with FMCSA as a for-hire motor carrier of property in interstate and foreign commerce pursuant to 49 U.S.C. § 13902. If Seller is a broker, Seller is duly registered with the appropriate government agencies as a freight broker; e) Seller has the full power and authority to transact the business in which it is presently engaged or presently proposes to engage; f) each Account purchased by Purchaser is and will remain a bona fide obligation created by the sale and delivery of goods or rendition or services, does not involve either sales to any entity which is affiliated with Seller or sales that in any way could be construed as not constituting "arm's length" transactions, and each Account is unconditionally owned by Seller; g) each Account purchased by Purchaser will be paid to Purchaser when due without defenses, disputes, offsets, counterclaims, rights of return or cancellations, and is not double brokered; h) Seller will not factor or sell its Accounts except to Purchaser will not grant or allow any liens to encumber any of the Collateral; i) Seller intends to use the proceeds from the sale of the Accounts to Purchaser solely for business or commercial related purposes; j) Seller shall notify Purchaser in writing prior to any change in Seller's name, address, use of additional trade names or proposed change in any of the officers, principals, partners and/or owners of Seller; and k) Seller shall not change its form of entity. Seller agrees that, at the sole expense of Seller, Purchaser or its designee shall have access to Seller's premises, to all premises where the Collateral is located for the purpose of inspecting (or removing, if after an Event of Default), any of the Collateral, including the books and records, and Seller shall permit Purchaser or its designee to make copies of such books and records as Purchaser may request. Seller further authorizes all accountants and third parties to disclose and deliver to Purchaser at Seller's expense, all financial information in their possession relating to the Seller.

SECTION 10. ACCOUNT DISPUTES

Seller shall notify Purchaser promptly of and, if requested by Purchaser, will settle all disputes concerning any Purchased Account, at Seller's sole cost and expense. Purchaser may, but is not required to, attempt to settle, compromise, or litigate (collectively, "Resolve") the dispute upon such terms as Purchaser in its sole discretion deems advisable, for Seller's account and risk and at Seller's sole expense, with Seller obligated to pay the unpaid difference to Purchaser. Upon the occurrence of an Event of Default, Purchaser may Resolve such issues with respect to any Account of Seller.

SECTION 11. DEFAULT

The following events will constitute an Event of Default: (a) Seller defaults in the payment of any Obligations or in the performance of any agreement entered into with Purchaser; (b) Seller ceases its business operations; (c) any of the Representations and Warranties contained herein proves to be false in any way; (d) Seller or any guarantor of the Obligations becomes subject to any debtor-relief proceedings; (e) Seller's business is significantly changed as a result of a sale of assets not in the ordinary course of business or transfer of more than 25% of its capital stock and/or equity interests or (f) Purchaser for any reason, in good

faith, deems itself insecure with respect to the prospect of repayment of the Obligations.

SECTION 12. REMEDIES AFTER DEFAULT

Upon the occurrence of any Event of Default, in addition to any rights Purchaser has under this Agreement or applicable law, Purchaser may immediately terminate this Agreement and all Obligations shall immediately become due and payable without notice and any fees due hereunder and previously waived by Purchaser shall be automatically reinstated, all such fees having been waived on the condition that no Event of Default was existing or shall thereafter occur. Interest at a default rate of 2.00% per month (24% per annum) shall accrue and be payable on demand on any Obligation not paid after the Repurchase Period (or upon an Event of Default, if earlier) until paid in full, subject to the maximum rate permitted by applicable law (with any excess credited against principal or refunded). The early termination fee shall become immediately due and payable without notice. Furthermore, Seller authorizes Purchaser to initiate electronic debit or credit entries in any amount through the Automated Clearing House system to any deposit account maintained by Seller, until all amounts owed by Seller to Purchaser are paid in full. In addition, Purchaser shall have all of the rights of a secured party under the Uniform Commercial Code, including, without limitation, the right to take possession of any collateral in which Purchaser has a security interest and to dispose of same at public or private sale and Seller will be liable for any deficiency.

SECTION 13. QUICK PAY PROGRAM

In the event Seller offers a quick pay option to its independent contractors (the "Quick Pay Program"), Seller agrees that Purchaser may pay independent contractors, including but not limited to carriers and dispatchers, participating in such Quick Pay Program directly from Advances under the terms and conditions herein. Purchaser must receive the following documentation regarding each independent contractor participating in the Quick Pay Program: (A) for the initial Quick Pay Program set up form submitted to Purchaser: (1) bank account information; (2) copy of a voided check from the independent contractor bank account; (3) Quick Pay Terms and Conditions executed by independent contractor; and (4) upon request by Purchaser, a copy of the agreement between Seller and the independent contractor; and (B) for each payment request by Seller under the Quick Pay Program: (1) the amount owed to the independent contractor for each invoice based on the terms and conditions of the agreement between the Seller and independent contractor; and (2) valid independent contractor invoices with supporting documentation; and (C) at all times: (1) a copy of any Notice of Assignment under UCC §9-406 received by Seller in connection with any independent contractor participating in the Quick Pay Program; (2) notice of a Quick Pay Program termination by an independent contractor; and (3) any other documentation that Purchaser may request in connection with the independent contractor (collectively the "Contractor Quick Pay Documentation"). Seller covenants and agrees that the Contractor Quick Pay Documentation and all information provided by Seller to Purchaser regarding each independent contractor shall be true, accurate and correct in all respects. Seller agrees that Purchaser may communicate directly with each independent contractor and may obtain directly from independent contractor any documentation needed to effectuate the quick pay payments, including but not limited to documentation required by Purchaser to

make payments directly to such independent contractor on behalf of Seller and to ensure that Purchaser has a priority secured interest in all Accounts. Seller shall ensure that all Accounts submitted to Purchaser for which Seller is requesting direct payment to an independent contractor under the Quick Pay Program shall be Eligible Accounts as defined herein. Seller acknowledges and agrees that in the event Seller has received a Notice of Assignment under UCC §9-406 or other legally enforceable direction of payment as to any independent contractor, such independent contractor is not eligible to receive a direct payment from Purchaser and Seller will not submit Contractor Quick Pay Documentation for such independent contractor.

Seller hereby irrevocably authorizes and directs Purchaser to remit Advances that would otherwise be paid to Seller directly to an independent contractor participating in the Quick Pay Program. Seller acknowledges and agrees that Purchaser may remit such payments at the sole discretion of Purchaser and as and to the extent funds are otherwise available to be paid to Seller. Seller further acknowledges and agrees that each payment made to an independent contractor is to be paid by Purchaser from funds otherwise due and owing Seller under this Agreement and is not a guaranty of payment or an assumption by Purchaser of any obligations owed by Seller to an independent contractor. Seller acknowledges and agrees that Purchaser, in its sole discretion, may pay an independent contractor even if funds are not currently due to Seller and Seller shall be liable to Purchaser for any such payments. Seller shall remain liable for the full and indefeasible payment and performance of the Obligations under the Factoring Agreement. Seller agrees to pay any associated fees relative to the Quick Pay Program. Nothing set forth in this provision limits the rights of Purchaser as set forth in Section 3.3 hereof.

SECTION 14. TERM AND TERMINATION

This Agreement will be effective on the date it is signed by the Parties, shall continue for the initial Term, and shall be automatically extended for successive Renewal Terms thereafter. In the event Seller does not sell their first invoice in the first 30 days, the initial Term will start on the date Seller submits their first invoice for factoring. Seller may terminate this Agreement as of the expiration of the initial Term or any Renewal Term by giving Purchaser prior written notice of its intention to so terminate. Such notice shall be given by Seller to Purchaser at least sixty (60) days, but not more than ninety (90) days ("Notice Window"), prior to the expiration of the initial Term or any Renewal Term. A \$2,500 termination fee without written notice within the Notice Window is required in the event of a buyout or contract termination according to the term. Purchaser reserves any rights to add reasonable fees as required (including but not limited to, the average monthly factoring fees from Seller's account calculated from the highest averaging three month period during the current term, multiplied by the remaining months in the term). Seller hereby acknowledges and agrees that Purchaser will incur significant time and expense setting up this financing relationship (the "Due Diligence Expenses"). In the event that Purchaser does not purchase any Accounts from Seller under this Agreement for any reason out of the control of Purchaser (including, but not limited to, the inability of Seller to completely terminate its relationship with another financing company), Seller hereby agrees to pay Purchaser a fee equal to \$2,500 to cover the Due Diligence Expenses.



SECTION 15. NO LIEN TERMINATION WITHOUT RELEASE

In recognition of Purchaser's right to have its attorneys' fees and other expenses incurred in connection with this Agreement secured by the Collateral, notwithstanding payment in full of all Obligations by Seller and termination of Seller's obligations hereunder, Purchaser shall not be required to record any terminations or satisfactions of any of Purchaser's liens on the Collateral unless and until Seller has executed and delivered to Purchaser a general release in a form reasonably satisfactory to Purchaser. Seller understands that this provision constitutes a waiver of its rights under §9-513 of the UCC.

SECTION 16. ATTORNEY'S FEES

If Purchaser retains the services of an attorney to enforce any obligation of Seller to Purchaser under this Agreement, Purchaser shall be entitled to recover from Seller all attorney's fees, court costs and expenses, regardless of whether or not an action is commenced. In the event of default, Purchaser's reasonable attorney's fees shall be at least 20% of the then unpaid Obligations

SECTION 17. INDEMNIFICATION

Seller agrees to indemnify and hold harmless Purchaser, its shareholders, directors, officers, employees, representatives, agents, and affiliates, from and against liabilities, damages, penalties, actions, judgments, claims, costs, expenses and disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against Seller or the indemnitees identified in this section, by reason of any matter, cause, or thing relating to or arising out of this Factoring Agreement, including but not limited to; a) any action by a third party against Purchaser that is based on a claim that any actions performed under this Agreement or any agreements between Seller and a third party, infringe, misappropriate or violate such third party's rights; b) any action by a third party against Purchaser that is based on any act or omission of Seller; or c) any claim by an independent contractor, including but not limited to a claim under the Quick Pay Program. Seller agrees to indemnify and hold Purchaser harmless from any loss or liability arising out of the assertion of any avoidance claim and shall pay to Purchaser on demand the amount thereof.

SECTION 18. ENTIRE AGREEMENT

This Agreement supersedes all prior agreements and understandings between said parties, verbal or written, express or implied, relating to the subject matter hereof. No promises of any kind have been made by Purchaser or any third party to induce Seller to execute this Agreement. No course of dealing, course of performance or trade usage, and no parole evidence of any nature, shall be used to supplement or modify any terms of this Agreement.

SECTION 19. SEVERABILITY

In the event any one or more of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable in any respect, then such provision shall be ineffective only to the extent of such prohibition or invalidity, and the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

SECTION 20. SUCCESSOR ENTITY

Seller will notify Purchaser of any existing or newly created business, if owned in part or whole by Seller or Seller's principals, that are in any way related to or associated with the transportation industry. In the event Seller's principals, officers or directors, directly or in conjunction with any other person, causes to be formed a or otherwise become associated with any new or existing transportation entity, such entity shall be deemed to have expressly assumed the obligations due Purchaser by Seller under this Agreement. With respect to such entity, Purchaser shall be deemed to have been granted an irrevocable power of attorney with authority to file a new UCC-1 financing statement, naming such entity as Debtor, in all appropriate UCC filing offices. Purchaser shall be held harmless by Seller, and its principals, officers or directors and be relieved of any liability as a result of Purchaser's recording or the resulting perfection of its ownership or security interests in such entity's assets. In addition, Purchaser shall have the right to notify such entity's Account Debtors of Purchaser's rights to collect all Accounts, and to notify any creditor of such entity that Purchaser has rights in such entity's assets.

SECTION 21. SUCCESSORS AND ASSIGNS

This Agreement binds and is for the benefit of successors and permitted assigns of each party. Seller may not assign this Agreement or any rights under it without Purchaser's prior written consent which may be granted or withheld in Purchaser's discretion. Purchaser may, without the consent of or notice to Seller, sell, transfer, or grant participation in any part of Purchaser's obligations, rights or benefits under this Agreement. Purchaser may assign its rights and delegate its duties hereunder. Upon such assignment, Seller shall be deemed to have attorned to such assignee and shall owe the same obligations to such assignee and shall accept performance hereunder by such assignee as if such assignee were Purchaser.

SECTION 22. JURY TRIAL WAIVER

IN RECOGNITION OF THE HIGHER COSTS AND DELAY WHICH MAY RESULT FROM A JURY TRIAL, THE PARTIES HERETO WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING HEREUNDER OR IN ANY WAY RELATED OR INCIDENTAL TO THE DEALINGS OF ANY OF THE PARTIES HERETO, IN CONTRACT OR TORT OR OTHERWISE. AND EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

SECTION 23. CHOICE LAW, VENUE, JURISDICTION

This Agreement and all transactions contemplated hereunder and/or evidenced hereby shall be governed by, construed under, and enforced in accordance with the internal laws of Texas. Any suit, action or proceeding arising hereunder shall, if Purchaser so

elects, be instituted in Dallas County, Texas. Seller waives any and all objections to jurisdiction or venue.

SECTION 24. NOTICE

All notices required to be given to Purchaser, except as specified in section 14 (notice of termination), shall be sent to: 610 Uptown Blvd., Suite 2000 Cedar Hill, TX 75104 ; Attn: The General Manager; and if to Seller, at the address, fax number or email address furnished on the Factoring Application or Factoring and Security Agreement, or to such other addresses as each such party may in writing hereafter indicate.

SECTION 25. COUNTERPARTS

This Agreement may be signed in any number of counterparts and may be delivered by facsimile with the same validity, enforceability and binding effect of a manually executed counterpart.