

P.O. Box 372, Jericho, NY 11753

## Seller's Information

Business Legal Name:			
D/B/A:		State of Incorporation/Organization:	
Type of Entity (please circle):	Corporation Limited Liability Partnership	Limited Partnership Partnership	Limited Liability Company Sole Proprietorship
Physical Address:	City:	State:	Zip:
Mailing Address:	City:	State:	Zip:
Date Business Started (Month/Year):		Federal Tax ID# (if Sole Proprietor use SS#):	
Contact Name:		Position:	
Phone:	Fax:	Email:	Web Site:
Bank Name:	City:	State:	Zip:

## Purchase and Sale of Future Receivables

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

Purchase Price: = \$ \_\_\_\_\_  
 Purchased Percentage: = \_\_\_\_\_ %  
 Purchased Amount: = \$ \_\_\_\_\_

In exchange for the foregoing the Seller hereby agrees to enter into a credit card processing agreement reasonably acceptable to the Buyer with a credit card processor, in order to obtain credit and processing services and the Seller hereby authorizes such credit card processor to pay the cash attributable to the Purchased Percentage of each credit card receivable due to the Seller to the Buyer rather than to the Seller until the Buyer has received an amount equal to the Purchased Amount from such credit card processor.

## Unconditional Personal Guarantee

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

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

<b>Seller:</b>	<b>Guarantor 1:</b>
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Home Address: _____ _____
Date: _____	SS#: _____
	Date of Birth: _____ Date: _____
<b>Merchants Advance, LLC:</b>	<b>Guarantor 2:</b>
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Home Address: _____ _____
Date: _____	SS#: _____
	Date of Birth: _____ Date: _____

## 1. PROCESSING AGREEMENT.

Section 1.1 *Processing Agreement*. Upon the execution hereof, the Seller shall enter into a processing agreement with a credit card processor acceptable to the Buyer, which agreement shall authorize the credit card processor to pay the cash attributable to the Purchased Percentage of each of credit card receivable to the Buyer rather than to Seller until the Buyer has received an amount equal to the Purchased Amount from such processor. This authorization may only be revoked with the prior written consent of the Buyer and the agreement with the credit card processor cannot be amended or terminated without the prior written consent of the Buyer. In the event that the Buyer determines, in its sole discretion, that the authorized credit card processor utilized by the Seller is no longer acceptable, the Seller shall have five (5) business days, upon receipt of written notice from the Buyer, to terminate its relationship with its credit card processor and to enter into a similar processing agreement with a new credit card processor acceptable to the Buyer. The Seller agrees to execute any documents and or agreements in order to implement the foregoing.

Section 1.2 *Liability*. The Buyer is not responsible and shall not be liable for any actions taken by the Seller's credit card processor which are not contemplated or authorized herein or in the processing agreement to be entered into between the Seller and the credit card processor and the Seller hereby agrees to hold the Buyer harmless from all actions of the credit card processor.

Section 1.3 *Processor Commissions*. The Buyer and the Seller understand that the credit card processor will charge a fee or commission for processing receipts representing future credit card receivables of the Seller which have become actual receivables as shall be set forth in the processing agreement. The Buyer and the Seller understand that with respect to each such receipt, the credit card processor will deduct a pro rata portion of its fees from each such receipt based on the relative size of the cash attributable to the Purchased Percentage of such credit card receivable sold by the Seller to the Buyer and the cash attributable to the portion of such credit card receivable which was retained by the Seller.

Section 1.4 *Other Processors*. The Seller hereby authorizes the Buyer to contact any current or prior credit card processor of the Seller in order to obtain whatever information it may require regarding the Seller's transactions with such credit card processors. Such information may include, but not be limited to, information necessary to verify the amount of credit card receivables previously processed on behalf of the Seller and any fees which may have been charged by the credit card processor. In addition to the foregoing, the Seller authorizes the Buyer to contact any current or prior credit card processor of the Seller in order to confirm that the Seller is exclusively using the credit card processor approved by the Buyer in accordance with this Agreement.

## 2. STATEMENTS AND REPORTS.

Section 2.1 *Credit Reports*. The Seller acknowledges and agrees that in connection with the execution of this Agreement an investigative or consumer report may be made. Accordingly, the Seller and each of Guarantors authorizes the Buyer and its agents and representatives and any credit reporting agency employed by the Buyer to investigate any references given or any other statements of data obtained from or about the Seller or any of its principals for the purpose of this Agreement and to pull credit reports at any time now or in the future on the Seller and Guarantor(s).

Section 2.2 *Monthly Statements*. The Buyer may produce a monthly statement reflecting the delivery of the Purchased Percentage from the credit card receivables of the Seller via the credit card processor.

## 3. REPRESENTATIONS, WARRANTIES AND COVENANTS.

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

Section 3.1 *Seller's Conduct*. shall: (i) conduct its business consistent with past practice; (ii) exclusively use the credit card processor accepted by the Buyer for the processing of all of its credit card transactions; (iii) not take any action to discourage the use of credit cards or permit any event to occur which could have an adverse effect on the use, acceptance or authorization of credit cards for the purchase of the Seller's services and products; (iv) not change its arrangements with the credit card processor accepted by the Buyer in any way which is adverse to the Buyer; (v) not take any action that has the effect of causing the credit card processor through which the major credit cards are settled to be changed from the credit card processor accepted by the Buyer to another credit card processor; and (vi) not sell, dispose, convey or otherwise transfer its business or assets without the express prior written consent of the Buyer and the assumption of all of the Seller's obligations under this Agreement pursuant to documentation reasonably satisfactory to the Buyer.

Section 3.2 *Business Information*. The information (financial and other) provided by or on behalf of the Seller to the Buyer in connection with the execution of or pursuant to this Agreement is true and correct in all material

respects. The Seller shall furnish the Buyer with such information as the Buyer may request from time to time.

Section 3.3 *Reliance on Information*. The Seller acknowledges that the information (financial and other) provided by the Seller has been relied upon by the Buyer in connection with its decision to purchase the future credit card receivables of the Seller.

Section 3.4 *Governmental Approvals*. The Seller possesses and is in compliance with all permits, licenses, approvals, consents and other authorizations necessary to conduct its business. The Seller is in compliance with any and all applicable federal, state and local laws and regulations. The Seller possesses all requisite permits, authorizations and licenses to own, operate and lease its properties and to conduct the business in which it is presently engaged.

Section 3.5 *Authorization*. The Seller, and the person(s) signing this Agreement on behalf of Seller, have full power and authority to enter into and perform the obligations under this Agreement, all of which have been duly authorized by all necessary and proper action.

Section 3.6 *Insurance*. The Seller shall maintain insurance in such amounts and against such risks as are consistent with past practice and shall show proof of such insurance upon the reasonable request of the Buyer.

Section 3.7 *Name Change or Location*. The Seller will not conduct its businesses under any name other than as disclosed to the credit card processor accepted by the Buyer or the Buyer or change any of its places of business.

Section 3.8 *Seller Not Indebted to Buyer*. The Seller is not a debtor of the Buyer as of the date of this Agreement.

Section 3.9 *Exclusive Use of Processor*. Seller understands that the services of the credit card processor accepted by the Buyer is the exclusive means by which the Seller can process its credit card transactions.

## 4. ADDITIONAL TERMS.

Section 4.1 *Sale of Credit Card Receivables*. The Seller and the Buyer agree that the Purchase Price paid by the Buyer in exchange for the Purchased Amount of future credit card receivables is a purchase of the Purchased Amount and is not intended to be, nor shall it be construed as, a loan from the Buyer to the Seller.

Section 4.2 *No Right to Repurchase*. The Seller acknowledges that it has no right to repurchase the Purchased Amount of future credit card receivables from the Buyer.

Section 4.3 *Term of Agreement*. This Agreement shall be in full force and effect until the Purchased Amount of future credit card receivables has been delivered by the Seller to the Buyer.

Section 4.4 *Rescission of Agreement*. Seller agrees that in the event that the representations and warranties in Sections 3.2 or 3.7 are not true and correct, the Buyer shall be entitled to rescind this Agreement and to the return (and the Seller agrees to so return) of the Purchase Price less any cash attributable to credit card receivables which have been received by the Buyer. The Seller agrees that the Buyer may automatically debit such rescission amount from Seller's bank account via the automated clearing house system or wire transfer.

Section 4.5 *Remedies*. In the event that any of the representations and warranties contained in this Agreement are not true and correct or in the event of a breach of any of the covenants contained in this Agreement, including those set forth in Section 3.1, the Buyer shall be entitled to all remedies available under law, including but not limited to the right to non-judicial foreclosure. In the event that the Seller breaches the covenants set forth in Section 2.1, the Seller agrees that the Buyer will be entitled to, but not limited to, damages equal to the amount by which the cash attributable to the Purchased Amount of future credit card receivables exceeds the amount of cash received from credit card receivables that have previously been delivered by the Seller to the Buyer under this Agreement. The Seller hereby agrees that the Buyer may automatically debit such damages from the Seller's bank account via an automated clearing house system or wire transfer. In the event that Seller's bank account does not have sufficient funds for the payment of damages pursuant to this Section 4.5, the Guarantor(s) hereby agrees that he/she will be liable to the Buyer for such obligations, without any presentment or demand made by the Buyer.

Section 4.6 *UCC-1 Financing Statements*. To secure the performance of the covenants set forth herein and all of the obligations of the Seller to the Buyer under this Agreement, the Seller hereby grants to the Buyer a continuing priority security interest, subject only to the security interest of the credit card processor, if any, in the following property of the Seller: (a) All of Debtor's now owned and hereafter acquired accounts, chattel paper, tax refunds, documents, licenses, equipment, furniture,

fixtures, general intangibles, instruments, inventory (as those terms are defined in Article 9 of the Uniform Commercial Code in effect from time to time in the State of New York) wherever located, now or hereafter owned or acquired by the Seller; (b) All trademarks, trade names, service marks, logos and other sources of business identifiers, and all registrations, recordings and applications with the U.S. Patent and Trademark Office and all renewals, reissues and extensions thereof (collectively "Trademarks") whether now owned or hereafter acquired, together with any written agreement granting any right to use any Trademarks; and (c) All proceeds, as that term is defined in Article 9 of the Uniform Commercial Code. The Seller hereby authorizes and consents to the filing of a UCC-1 Financing Statement in order to perfect the interest created under the U.C.C. upon the sale. The UCC-1 Financing Statements will state that the sale of the credit card receivables of the Seller is intended to be a sale and not an assignment for security.

## 5. MISCELLANEOUS.

Section 5.1 *Modifications; Amendments*. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the party affected.

Section 5.2 *Notices*. All notices, requests, demands and other communications hereunder shall be in writing and shall be delivered by mail, overnight delivery or hand delivery to the respective parties to this Agreement. Notices shall be sent to the addresses set forth on the face of the Agreement.

Section 5.3 *Waiver; Remedies*. No failure on the part of the Buyer to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise of any other right. The remedies provided hereunder are cumulative and not exclusive of any remedies provided by law or equity.

Section 5.4 *Binding Effect*. This Agreement shall be binding upon and inure to the benefit of Seller, the Buyer and their respective successors and assigns, except that Seller shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Buyer which consent may be withheld in the Buyer's sole discretion. The Buyer reserves the right to assign this Agreement with or without prior notice to Seller.

Section 5.5 *Governing Law*. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. Seller hereby submits to the jurisdiction of any New York state or federal court sitting in Nassau County. Seller hereby waives any claim that the action is brought in an inconvenient forum, that the venue of the action is improper, or that this Agreement or the transactions of which this Agreement is a part may not be enforced in or by any of the above-named courts.

Section 5.6 *Costs to Enforce Seller Agreement* Payable by Seller. The Buyer shall be entitled to receive from Seller and Seller shall pay, all costs associated with a breach by Seller of the covenants set forth herein or other obligations or any of the representations and warranties of the Seller and the enforcement thereof, including but not limited to court costs and attorney's fees and disbursements.

Section 5.7 *Survival of Representations, etc.* All representations, warranties and covenants herein shall survive the execution and delivery of this Agreement and shall continue in full force and effect until all obligations under this Agreement shall have been satisfied in full and this Agreement shall have terminated.

Section 5.8 *Severability*. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

Section 5.9 *Entire Agreement*. This Agreement contains the entire agreement and understanding between Seller and the Buyer and supersedes all prior agreements and understandings relating to the subject matter hereof unless otherwise specifically reaffirmed or restated herein.

Section 5.10 *Jury Trial Waiver*. The parties hereto waive trial by jury in any court in any suit, action or proceeding on any matter arising in connection with or in any way related to the transactions of which this agreement is a part or the enforcement hereof, except where such waiver is prohibited by law or deemed by a court of law to be against public policy. The parties hereto acknowledge that each makes this waiver knowingly, willingly and voluntarily and without duress, and only after extensive consideration of the ramifications of this waiver with their attorneys.

v1.3 110204

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