

MERCHANT CASH ADVANCE AGREEMENT (USA)

THIS AGREEMENT made effective as of the ____ day of _____, _____.

BETWEEN:

[NAME OF CASH ADVANCE COMPANY]
[address]
("Company")

- and -

[NAME OF MERCHANT]
[address]
("Merchant")

WHEREAS, Merchant wishes to sell, assign and transfer, without recourse (except to the extent provided herein), and Company wishes to purchase, for the purchase price set out below ("Purchase Price"), Merchant's entire right, title and interest in a percentage specified herein of each of Merchant's future credit card receivables ("Future Receivables") owed to Merchant from its credit card processor(s) until the amount specified below ("Specified Amount") has been paid to the Company ("Purchased Receivables"):

Purchase Price \$ _____

Specified Percentage _____ %

Specified Amount \$ _____

NOW THEREFORE, Company and Merchant agree as follows:

1. Transaction

- 1.1 The purchase and sale of the Purchased Receivables pursuant hereto shall constitute a sale of accounts as such term is used in Article 9 of the Uniform Commercial Code ("UCC"), which sales are absolute and irrevocable, and provide the Company with the full benefits of ownership of Purchased Receivables. Merchant has no right to repurchase or resell the Purchased Receivables.
- 1.2 Merchant hereby represents and warrants that it has entered into a merchant service agreement with _____ [*insert name of merchant service provider*] to obtain credit card processing services ("Processor Agreement"), and hereby authorizes such credit card processor(s) to pay the funds attributable to the Purchased Receivables directly to the Company rather than to Merchant.
- 1.3 In connection with the foregoing purchase and sale, Merchant hereby irrevocably authorizes the Company to file one (1) or more financing or continuation statements, or amendments thereto, without the signature of the Merchant where permitted by law, as may be necessary or appropriate to perfect and maintain the perfection of the Company's ownership in the Purchased Receivables.

2. Security Interest

- 2.1 In the event that this Agreement does not constitute a valid sale, assignment, transfer and conveyance of all right, title and interest of Merchant in the Purchased Receivables, despite the intent of the parties hereto, the Merchant hereby grants a "security interest" (as defined in the

UCC) in the Purchased Receivables and the parties agree that this Agreement shall constitute a security agreement under the UCC. Merchant hereby irrevocably authorizes the Company to file one or more financing or continuation statements, and amendments thereto, without the signature of Merchant where permitted by law.

3. Processing

- 3.1 Merchant shall authorize its credit card processor(s) to deposit the Purchased Receivables directly into the Company's account, as designated by the Company. Such authorization shall be irrevocable, absolute and unconditional. Merchant acknowledges and agrees that its credit card processor(s) may provide the Company with certain of Merchant's financial information as permitted by law and the Processor Agreement. Merchant agrees that its credit card processor(s) may charge and collect its processing fees and the Specified Percentage on a daily discounted basis.

4. Due Diligence

- 4.1 Merchant authorizes the Company to conduct background, onsite and financial examinations of Merchant, which may include, but is not limited to, address verifications for up to ten (10) years; verification of the status of the licenses, permits, authorizations and/or governmental filings of Merchant; verification of insurance coverage; verification of good business practices through the appropriate agencies; and a search for bankruptcies, liens or judgments in all jurisdictions where Merchant has conducted business.
- 4.2 Any onsite examination may include, but is not limited to, verification that business is conducted as Merchant represents, at all sites where it conducts business. Such examination shall be conducted upon reasonable prior notice to Merchant, and only during reasonable business hours.
- 4.3 Any financial examination may include, but is not limited to, a review of Merchant's current financial statements, its most recent annual reports, tax returns for the previous three (3) years, and all documentation supporting employee bonds and insurance policies.
- 4.4 If Merchant is not publicly held, Company, or its agents, may conduct background and financial examinations of all principals owning ten percent (10%) or more of Merchant. Such examinations may include, but are not limited to, a review of information regarding criminal history for all jurisdictions where the principal has resided and been employed, address verification for all residences, and employment verification. The examination may also include, but is not limited to, a review of the credit standing of the principal, and a search for bankruptcies and judgments in all jurisdictions where the principal has resided or been employed. The review may also include a review of up to three (3) years of personal tax returns.

5. Indemnification

- 5.1 Merchant hereby indemnifies and holds harmless its credit card processor(s), and their member banks, and the Company, and its officers, managers, owners, affiliates, employees, agents and representatives (the "Indemnitees") from and against any and all losses, damages, claims, liabilities and expenses, including, but not limited to, attorney's fees incurred by any of the Indemnitees arising from (i) actions taken in reliance upon information or instructions provided to the Company and/or the credit card processor(s) and their member banks by or on behalf of Merchant, or (ii) the occurrence of termination of this Agreement. In no case will the Indemnitees be liable for any claims asserted against them based on any theory of law or equity for lost profits, revenues, or business opportunities; exemplary, special or consequential damages, each of which is hereby expressly waived by Merchant. However, in the event that any Indemnitee shall be found liable, damages shall not, under any circumstances, exceed the specified amount.

6. Modification

6.1 Merchant shall comply with all terms and provisions of this Agreement and the Processor Agreement, and shall not modify or cancel either this Agreement or the Processor Agreement at any time or in any manner.

7. Covenants

7.1 Merchant shall not conduct business under any other name than that disclosed herein, and shall not change the location of the business, the state of formation, or the credit card processor without the Company's prior written consent. Merchant shall conduct its business in the ordinary course and in substantially the same manner as heretofore conducted, and shall use commercially reasonable efforts to not commit any act that results in a material reduction of its credit card transaction volume, including, but not limited to, the refusal, for any reason, to accept bona fide credit cards as payment for transactions. Further, unless and until the Purchased Receivables have been paid in full, Merchant and its owners shall not enter into any transaction involving the sale of Merchant, either by an issuance, sale or transfer of ownership interests in Merchant that results in a change in voting control of Merchant; by a sale or transfer of substantially all of the assets of Merchant; or otherwise. The occurrence of any such event shall constitute a breach of this Agreement.

7.2 If an entity, Merchant is a validly existing [corporation/limited liability company/limited partnership/limited liability partnership], in good standing under the laws of the State of _____. The person executing this Agreement on behalf of Merchant has full power and complete authority to execute this Agreement on behalf of Merchant, and this Agreement is valid, binding and enforceable against Merchant.

7.3 There are no civil or criminal proceedings pending before any court, government agency, arbitration panel, or administrative tribunal or, to Merchant's knowledge, threatened against Merchant, which may result in any materially adverse change in the business, property or financial condition of Merchant.

THIS IS AN 8-PAGE DOCUMENT, including schedule.