

FACTORING AGREEMENT

THIS FACTORING AGREEMENT (“**Agreement**”) is entered and made effective as of

Between

of (the “**Factor**”) and

of (the “**Client**”)

1 Definitions

In this Agreement, the following terms shall have the following meanings:

1.1 “Account Debtor” shall include any person liable on an Account, including without limitation, any guarantor of the Account and any issuer of a letter of credit or banker’s acceptance.

1.2 “Accounts” means, collectively, all accounts receivable arising from sales of inventory or rendition of services by Client, including those under any trade names, through any divisions and through any selling agent of Client, but excluding sales to affiliates of Client, sales on consignment, guaranteed sales, bill and hold or cash on delivery transactions.

1.3 “Business Day” means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of .

1.4 “Client Account Balance” means the aggregate of unpaid amounts owed by Client to Factor under this Agreement adjusted for any credits owed by Factor to Client.

1.5 “Client Risk Account(s)” means any Account or Account(s) which are not Factor Risk Accounts.

1.6 “Collections” means all good funds received by Factor from or on behalf of an Account Debtor with respect to Accounts.

1.7 “Credit Decision Report” has the meaning set forth in Section 2.2 of this Agreement.

1.8 “Credit Risk” means the risk that the Account Debtor will fail to pay the Account in full when due on or before its longest maturity solely because of its financial inability to pay.

1.9 “Customer Claim” means any dispute, claim, offset, defense, deduction, rejection, recoupment, counterclaim or contra account, other than returns and allowances permitted under this Agreement, with respect to any Account.

1.10 “Factor Risk Account(s)” means an Account or Accounts which Factor has approved in accordance with Section 3.6 and with respect to which Factor has assumed the Credit Risk.

1.11 “GAAP” means generally accepted accounting principles set forth in the statements and pronouncements of the Financial Accounting Standards Board that are applicable to the circumstances as of the date of determination.

1.12 “Obligations” means all advances, financial accommodations, liabilities, obligations, covenants and duties owing, arising, due or payable by Client to Factor of any kind or nature, present or future, arising under or in connection with this Agreement or under any other document, instrument or agreement, whether or not evidenced by any note, guarantee or other instrument, whether arising on account or by overdraft, whether direct or indirect (including those acquired by assignment) absolute or contingent, primary or secondary, due or to become due, now owing or hereafter arising, and however acquired; including, without limitation, all Advances, Finance Charges, Factoring Fees, interest, Repurchase Amounts, fees, expenses, professional fees and attorneys’ fees and any other sums chargeable to Client hereunder or otherwise.

1.13 “Purchase Price” means, for each Account, an amount equal to the gross amount of the respective invoice, less factoring commissions, credits (including, without limitation, merchandise returns and credit memos), charge backs, allowances, and all other charges provided thereunder.

1.14 “Reconciliation Date” means the last calendar day of each Reconciliation Period.

1.15 “Reconciliation Period” means each calendar month during the term of this Agreement.

1.16 “Schedule of Accounts” means a written document prepared by Client in a form acceptable to Factor in which Client accurately identifies Accounts (including, with respect to each Account, amount owed by Account Debtor, name and address of Account Debtor, invoice number and date) which Factor is purchasing under the terms of this Agreement.

2 Approval and Purchase of Accounts

2.1 Offer to Sell Accounts

During the term of this Agreement and provided no Event of Default or event that with notice or lapse of time would constitute an Event of Default exists, the Client sells and assigns the Factor as the absolute owner of all Accounts.

2.2 Credit Approval

Client must submit requests for credit approval to Factor for all orders that will lead to Accounts in the manner prescribed by Factor. Factor shall send to Client each week a Credit Decision Report indicating its decision, in its sole discretion, to approve, decline or hold credit approval for each order. The Credit Decision Report constitutes the official record of Factor’s credit decisions. Credit approvals will be effective only if shipment is made or services are rendered within from the completion date specified in the Credit Decision Report. Factor may withdraw credit approval for any order/Account at any time prior to the date when (a) shipment is made or services are rendered, and (b) title to goods being sold, if any, has passed to the Account Debtor.

Factor assumes the Credit Risk for each Account approved in the Credit Decision Report and each such approved Account is referred to herein as a “Factor Risk Account.” If any change in the amount, terms, shipping date or delivery date for any shipment of goods or rendition of services relating to an Account (other than accepting returns and granting allowances as provided in Section 3. of this Agreement), Client must submit a change of terms request to Factor, and if such change of terms pertains to a Factor Risk Account, then Factor shall have the option to retain the Credit Risk or to withdraw the credit approval for such Account.

2.3 Effectiveness of Sale of Accounts

Upon Factor's payment of the Purchase Price to Client, Client sells, assigns and transfers to Factor as absolute owner all of Client's right, title and interest in and to each Account and all monies due or which may become due on or with respect to such Account. Factor shall have, with respect to any goods related to the Accounts, all rights and remedies of an unpaid seller under the applicable law, including the rights of replevin, claim and delivery, reclamation and stoppage in transit.

2.4 Reserve

Factor shall establish on its books a reserve account in Client's name (the "Reserve") and, upon the purchase by Factor of each Account, shall set aside in the Reserve an amount equal to per cent of the Purchase Price. The Reserve is not required to be a segregated fund. The Reserve is set up as security to pay the Client Account Balance and other Obligations. Client shall not have any right, title or interest in the Reserve. Factor may change the required amount of the Reserve at any time in its sole discretion without written notice to Client. Funds in the Reserve may be released upon the discretion of Factor.

2.5 Invoices; Notification to Account Debtor

Factor shall have no liability to Client or to any person, firm or entity for declining, withholding or withdrawing credit approval with respect to any Account. All information regarding the credit standing of an Account Debtor communicated by Factor to Client is confidential, and Client agrees not to disclose such information to such Account Debtor or any third party. Factor shall have no obligation to perform in any respect any contract relating to any Account.

2.6 Liability of Factor; Confidentiality

Factor shall have no liability to Client or to any person, firm or entity for declining, withholding or withdrawing credit approval with respect to any Account. All information regarding the credit standing of an Account Debtor communicated by Factor to Client is confidential, and Client agrees not to disclose such information to such Account Debtor or any third party. Factor shall have no obligation to perform in any respect any contract relating to any Account.

2.7 Recourse

Factor's acquisition of Client Risk Accounts from Client shall be with full recourse against Client. Factor's acquisition of Factor Risk Accounts shall be without recourse to Client.

3 Collections, Payments, Fees and Finance Charges

3.1 Collections

(a) All Collections shall go directly to Factor, and Factor shall apply the Purchase Price with respect to such Collections to the Client Account Balance daily. Factor may endorse the name of Client on any check, draft, instrument or document received in connection with the Accounts. If Client receives a payment on an Account, Client shall hold such payment in trust for Factor and immediately turn over such payment to Factor.

(b) In the event the Collections for Client Risk Accounts are less than the Purchase Price for such Client Risk Accounts, Client shall be liable for any deficiency and such deficiency shall become part of the Obligations. With respect to Client Risk Accounts, if any item of payment is not honored, or Factor does not receive good funds for any reason, the amount of such item shall be part of the Client Account Balance as if the Collection had not been received and Finance Charges under Section 3.2 shall apply.

(c) The amount of the Purchase Price of any Factor Risk Account which remains unpaid will be deemed collected and will be credited to the Client Account Balance as of the earlier of the following:

(i) the date of the Account's longest maturity if a proceeding or petition is filed by or against the Account Obligor under any state or federal bankruptcy or insolvency law, or if a receiver or trustee is appointed for the Account Obligor; or

(ii) 90 days following the Account's longest maturity date if such Account remains unpaid as of such date without the occurrence of any of the events specified in clause (i) above.

provided, however, if any Factor Risk Account credited to Client is not paid for any reason other than Credit Risk, Factor has the right to reverse the credit and charge the Client Account Balance accordingly, and such Account is then deemed to be a Client Risk Account.

(d) Factor has the right to:

- i. bring suit or otherwise enforce collection in the name of Client;
- ii. modify the terms of payment;
- iii. settle, compromise or release, in whole or in part, any amounts owing, and
- iv. issue credits in the name of Factor or Client, provided that if Factor's action with respect to a Client Risk Account will result in less than full recovery of such Client Risk Account, Client must consent to such action.

Client waives any and all claims based on suretyship. If an Account Obligor owes on both Factor Risk Accounts and Client Risk Accounts, Factor may apply any amount received on such Accounts first to any Factor Risk Accounts. As owner and assignee of the Accounts and all proceeds thereof, upon written notice by Factor to Client, Client shall, at Client's expense, comply with Factor's instructions with respect to any and all returned, rejected, reclaimed or repossessed inventory which shall be in compliance with Factor's rights under this Agreement.

3.2 Factoring Fee

On each Reconciliation Date, client shall pay to Factor a factoring fee of ("**Factoring Fee(s)**").

3.3 Finance Charges

On each Reconciliation Date, Client shall pay to Factor a finance charge on any adjustments and on any advances under this Agreement equal to per cent per month of the outstanding amount of such Obligations owed to Factor during the applicable Reconciliation Period ("**Finance Charge(s)**").

3.4 Advances

Factor may, in its sole discretion upon a request from Client, advance funds to Client prior to collection of the Accounts, subject to additional terms and conditions as Factor may reasonably request (each an “Advance”). All amounts owed by Client to Factor, including any and all advances to Client, any debit balance in the Client Account Balance, and any Obligations, are payable on demand and may be charged to the Client Account Balance at any time.

3.5 Accounting

Client shall immediately upon the sale of Accounts to Factor make proper entries on its books and records of the sale to Factor. Factor shall prepare and send to Client, after the close of business for each Reconciliation Period, an accounting of the transactions for that Reconciliation Period, including the amount of the Purchase Price for all Accounts, amounts held for Reserve, Factoring Fees, Finance Charges, Repurchase Amounts and any other adjustments. The accounting shall be deemed correct and conclusive unless Client makes written objection to Factor within thirty (30) days after Factor mails or posts electronically such accounting to Client.

3.6 Payment to Client

Provided that no Event of Default exists and no event or condition that with notice, lapse of time or otherwise would constitute an Event of Default exists, Factor shall pay to Client by check, or such other means as agreed upon by the parties, to be sent upon each Reconciliation Date, provided such date is a Business Day and if not then upon the next Business Day, immediately following each Reconciliation Date, the amount, if any, which Factor owes to Client at the end of the Reconciliation Period according to the accounting prepared by Factor in accordance with Section 3.5 of this Agreement (“Balance Payment”). The Balance Payment shall be an amount equal to the Reserve as of the beginning of that Reconciliation Period and the Reserve amount for each Account purchased during that Reconciliation Period,

Except for the following:

The total for that Reconciliation Period of:

(a) Finance Charges;

(b) Factoring Fees;

(c) adjustments for discounts, allowances, returns, disputes, counterclaims, offsets, defenses, rights of recoupment, rights of return, warranty claims or short payments by or on behalf of any Account Debtor with respect to any Account;

(d) any amount due from or charged to Client pursuant to Section 4. of this Agreement;

(e) all amounts due pursuant to this Agreement for professional fees and expenses and other costs for which Factor has demanded payment from Client during that Reconciliation Period and which remain unpaid; and

(vi) the Reserve for the Client Account Balance as of the first day of the following Reconciliation Period in the minimum amount set forth in Section 2.4 of this Agreement.

In the event that the calculation in this Section 3.6 results in an amount owing from Client to Factor, Client shall make such payment to Factor immediately upon demand by Factor.

4. Claims and Charge Backs

(a) Client shall notify Factor promptly of any matter affecting the value, enforceability or collectability of any Account and of all Customer Claims. Factor and Client agree to cooperate in adjustment of Customer Claims, provided that Factor shall have the sole right to adjust Customer Claims on Factor Risk Accounts directly with Account Obligors, upon such terms as Factor determines in its sole discretion.

(b) Factor may at any time charge back to the Client Account Balance the amount of: (i) any Factor Risk Account which is not paid in full when due for any reason other than Credit Risk; (ii) any Factor Risk Account which is not paid in full when due because of an act of God, civil strife, or war; (iii) anticipation (interest) deducted by an Account Obligor on any Account; (iv) Customer Claims; (v) any Client Risk Account which is not paid in full when due; and (vi) any Account for which there is a breach of any representation or warranty. A charge back does not constitute a reassignment of an Account.

(c) Factor may at any time charge to the Client Account Balance the amount of: (i) payments received by Factor on Client Risk Accounts which are required at any time to be turned over or returned (including preference claims); (ii) all remittance expenses (including incoming wire charges, currency conversion fees and stop payment fees), other than stop payment fees on Factor Risk Accounts; and (iii) expenses, collection agency fees and attorneys' fees incurred by Factor in collecting or attempting to collect any Client Risk Account or any Obligation.

5 Representations, Warranties and Covenants of Client

5.1 Representations, Warranties and Covenants with Respect to Accounts

Client represents, warrants and covenants with respect to each Account that:

(a) it is based upon a bona fide sale and delivery of inventory or rendition of services made by Client in the ordinary course of business, and any and all obligations required of Client have been fulfilled as of the date of the Schedule of Accounts'

(b) it represents undisputed indebtedness, not subject to any setoffs, offsets or counterclaims, genuine or otherwise;

(c) it does not represent a sale to any of Client's subsidiaries, affiliates, directors, officers, agents, stockholders or employees;

(d) it is not a consignment, guaranteed sale, bill and hold, or cash on delivery transaction;

(e) the amount of such Account is correctly stated in the Schedule of Accounts, and it is not subject to any deduction or discount other than as stated on the invoice;

(f) Client is the lawful owner of such Account and has the right to sell and assign such it in accordance with its terms; and

(g) each Account Debtor has accepted the goods or services and owes and is obligated to pay the full amount stated in the invoice according to its terms.

5.2 Additional Representations, Warranties and Covenants

Client further represents, warrants and covenants that:

(a) Client's legal name, form of organization, place of business and place where all of Client's records concerning the Accounts are kept are as set forth at the beginning of this Agreement. Client agrees to provide Factor with thirty (30) days advance written notice of any change in name, organization, place of business or recordkeeping and agrees to execute any additional documentation needed due to such change in order to provide Factor with the interests granted to it under this Agreement;

(b) Client is solvent, and has not, as of the time of submitting a Schedule of Accounts to Factor or as of the time Client accepts an Advance from Factor, filed a petition for bankruptcy;

(c) to the best of Client's knowledge, there are no outstanding judgments against Client, its officers, directors or affiliates or any of Client's property, and there are no actions, charges, claims, demands, suits, proceedings or governmental investigations now pending or threatened against Client or Client's property;

(d) to the best of Client's knowledge, Client is not in violation of any applicable law, ordinance, rule, regulation, order or other requirement of any government or any instrumentality or agency thereof;

(e) Client will not assign, transfer or sell, or grant or permit any lien or security interest in, any Account or collateral to or in favor of any third party without the written consent of Factor;

(f) If Client owns, holds or has any interest in, any copyrights (whether registered or unregistered), patents or trademarks and any licenses of any of the foregoing, such interest has been disclosed to Factor, and Client shall immediately notify Factor if Client hereafter obtains any interest in any additional copyrights, patents, trademarks or licenses that are significant in value or are material to the conduct of its business; and

(g) Client will notify Factor promptly of any change in control of the ownership of Client, of any significant lawsuits or proceedings filed or threatened against Client, or any other change in the accuracy of the foregoing representations and warranties.

6 Power of Attorney

Client appoints Factor as its true and lawful attorney-in-fact and authorizes Factor (acting through any of its employees, attorneys or agents) at any time whether or not there has been an Event of Default, with or without notice to Client, to do any of the following in Client's name or otherwise:

(a) sell, assign, transfer, pledge, compromise or discharge the whole or any part of the Accounts;

(b) demand, collect, receive, sue and give releases to any Account Debtor for the monies due or which may become due upon or with respect to the Accounts and to compromise, prosecute, or defend any action, claim, case or proceeding relating to the Accounts, including the filing of a claim or the voting of such claim in any bankruptcy case;

(c) prepare, file and sign any notice, claim, assignment, demand, draft or notice of or satisfaction of lien or mechanics' lien or similar document with respect to Accounts;

- (d) notify all Account Debtors with respect to the Accounts to pay Factor directly;
- (e) receive, open and dispose of all mail addressed to Client for the purpose of collecting the Accounts;
- (f) endorse Client's name on any checks or other forms of payment on the Accounts;
- (g) execute any and all instruments and documents and file financing statements, if applicable, to protect or perfect Factor's interests in the Accounts or Collateral; and
- (h) do all acts and things necessary or expedient, in furtherance of any of the foregoing.

Any and all sums paid and any and all costs, expenses, liabilities, obligations and attorneys' fees incurred by Factor with respect to the foregoing shall be added to and become part of the Obligations and shall be payable on demand. In no event shall Factor's rights under the foregoing power of attorney or any of Factor's other rights under this Agreement be deemed to indicate that Factor is in control of the business management or properties of Client.

7 Collateral Security

As collateral security for the prompt payment and performance to Factor of all of the Obligations, Client hereby grants to Factor a continuing security interest in all of the following property (the "Collateral") whether now owned by Client or hereafter arising acquired by Client or arising in Client's favour:

- (a) all accounts, receivables, contract rights, chattel paper, instruments, documents, investment property, letters of credit, bankers acceptances, drafts, checks, cash, securities, and general intangibles (including without limitation all claims, causes of action, deposit accounts, guarantees, rights in and claims under insurance policies (including rights to premium refunds), rights to tax refunds, copyrights, patents, trademarks, rights in and under license agreements, and all other intellectual property);
- (b) all inventory, including Client's rights to any returned or rejected goods, with respect to which Factor shall have all the rights of any unpaid seller, including the rights of replevin, claim and delivery, reclamation, and stoppage in transit;
- (c) all monies, refunds and other amounts due Client, including without limitation amounts due Client under this Agreement (including Factor's right of offset and recoupment);
- (d) all equipment, machinery, furniture, furnishings, fixtures, tools, supplies and motor vehicles;
- (e) all farm products, crops, timber, minerals and the like (including oil and gas);
- (f) all accessions to, substitutions for, and replacements of, all of the foregoing;
- (g) all books and records pertaining to all of the foregoing; and
- (h) all proceeds of the foregoing, whether due to voluntary or involuntary disposition, including insurance proceeds. Client is not authorised to sell, assign, transfer or otherwise convey any Collateral without Factor's prior written consent, except for the sale of finished inventory in Client's ordinary course of business. Client agrees that Factor may file financing statements and that Client will sign other instruments and documents requested by Factor to evidence, perfect or protect the interests of Client in

the Collateral. Client agrees to deliver to Factor the originals of all instruments, chattel paper and documents evidencing or related to Accounts or Collateral.

8 Events of Default

Without limitation, the occurrence of any of the following shall constitute an “Event of Default”:

- (a) Client fails to make a payment on any of the Obligations when due;
- (b) Client fails to make any remittance required by this Agreement;
- (c) Client commits any breach of any of the terms, representations, warranties, covenants or conditions of this Agreement;
- (d) Client becomes insolvent or unable to meet Client’s debts as they mature;
- (e) any voluntary or involuntary case under the United States Bankruptcy Code is commenced by or against Client, or any assignment for the benefit of creditors, or appointment of a receiver or custodian is made for any of Client’s assets;
- (f) Client fails to pay when due any material obligations or liabilities owing by Client to any person other than Factor;
- (g) any involuntary lien, garnishment, attachment or the like is issued against or attaches to the Accounts or any Collateral.

9 Remedies

Upon and after the occurrence of an Event of Default, which has not been cured in accordance with the terms of this Agreement or with the approval of Factor or waived by writing signed by Factor, upon Factor’s demand (or in the event of a bankruptcy default, immediately without notice or demand from Factor), Factor may do any one or more of the following:

- (a) cease buying Accounts and making Advances or extending any financial accommodations to Client under this Agreement;
- (b) accelerate and declare all or any part of the Obligations to be immediately due and payable upon demand; or with respect to an Event of Default described in Clause 8(e), the Obligations shall be automatically, and without notice or demand, immediately due and payable in full;
- (c) charge Client under the terms provided in Clause 4 of this Agreement.
- (d) exercise all rights and remedies under this Agreement and under applicable law, including rights and remedies of a secured party under the law with respect to any or all of the Collateral, all power of attorney rights set forth in Clause 6 of this Agreement with respect to any or all of the Collateral, and the right to collect, dispose of, sell, lease, use and realize upon any or all of the Accounts and any or all of the Collateral in any commercially reasonable manner (and if notice of intended disposition of any such Accounts or Collateral is required by law, it is agreed that seven (7) days’ notice constitutes commercially reasonable notice).

All remedies under this Agreement will be cumulative and not exclusive of any other right or remedy Factor may have.

10 Amendment and Termination

10.1. This Agreement may be amended or terminated, and any of the terms, covenants, representations, warranties or conditions hereof may be waived only by a written instrument executed by the parties hereto or, in the case of a waiver, by the party waiving compliance.

11 Law and Jurisdiction

11.1 .

12 Notices

12.1 Any notices, demands, consents or other communications permitted or required by this Agreement shall be given by facsimile, overnight delivery or certified mail, return receipt requested, addressed to the party to be notified as follows:

13 Severability

13.1 If any provision of this Deed is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of this Deed and the remainder of the effective provisions shall continue to be valid.

14 Third-party rights

14.1 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Ordinance to enforce any of its terms.

IN WITNESS WHEREOF, this document has been executed, signed, sealed and delivered as a deed on the date shown on the first page.