



Revised July 1st 2018

TERMS AND CONDITIONS OF MERCHANT CASH ADVANCE APPLICATION

This application is a request for TransMark Funding LLC (hereinafter “TransMark”) to purchase assets from the merchant applicant (hereinafter “Merchant”). It is not a request for a loan, extension of credit or any other financial transaction which may be covered by federal truth-in-lending, fair debt report or fair debt collection statutes. It is analogous, though not an exact mirror of, a “factoring” purchase [purchase of accounts receivable].

TransMark will act promptly upon the application after all required documentation is provided to TransMark in an appropriate format. TransMark is not bound by any time estimates provided by any ISO agent or agent of TransMark.

THERE SHALL BE EFFECTED NO WAIVER BY FAILURE ON THE PART OF TRANSMARK TO EXERCISE, OR DELAY IN EXERCISING, ANY RIGHT UNDER THIS APPLICATION, NOR SHALL ANY SINGLE OR PARTIAL EXERCISE OF ANY RIGHT UNDER THIS APPLICATION PRECLUDE ANY OTHER FUTURE EXERCISE OF ANY RIGHT. THE REMEDIES PROVIDED HEREUNDER ARE CUMULATIVE AND NOT EXCLUSIVE OF ANY REMEDIES PROVIDED BY LAW OR EQUITY.

THIS APPLICATION AND ALL TRANSACTIONS THAT IT CONTEMPLATES, INCLUDING ALL ISSUES CONCERNING THE VALIDITY OF THIS APPLICATION, ANY SEQUENT AGREEMENT OR CONTRACT, THE CONSTRUCTION OF THEIR TERMS, THE REFUSAL TO CONTRACT AND THE INTERPRETATION, PERFORMANCE AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF MERCHANT AND EACH APPLICANT SIGNATOR (COLLECTIVELY, “THE MERCHANT”), AND OF TRANSMARK, SHALL BE GOVERNED BY AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MISSISSIPPI, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD REQUIRE THE APPLICATION OF ANY OTHER LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE MERCHANT AND TRANSMARK AGREE THAT, EXCEPT AS OTHERWISE PROVIDED IN SECTION 24 OF ARTICLE III BELOW, THE LAWS OF THE STATE OF MISSISSIPPI SHALL GOVERN THE ENTIRE RELATIONSHIP BETWEEN AND AMONG THEM, INCLUDING WITHOUT LIMITATION, ALL LEGAL ACTIONS ADDRESSING, RELATING TO OR TOUCHING UPON ANY ELEMENT OF THE APPLICATION, DENIAL OF ANY PURCHASE, CONDUCT REGARDING THE UNDERWRITING OF THE POTENTIAL CONTRACT, ANY SUBSEQUENT CONTRACT, SUMS DUE, CONDUCT ALLEGED, INTEPRETATION OF TERMS OR ANY OTHER CONTRACTUAL LEGAL OBLIGATION SET OUR HEREIN, WHETHER IN LAW OR EQUITY, MAY ONLY BE IN A COURT OF APPROPRIATE JURISDICTION IN RANKIN COUNTY, MISSISSIPPI. RANKIN COUNTY, MISSISSIPPI SHALL ACT AS THE EXCLUSIVE VENUE OF ALL SUCH ACTIONS AND ANY FILING OUTSIDE THEREOF MUST BE IMMEDIATELY DISMISSED WITHOUT PREJUDICE. ALL ISSUES OR CLAIMS ARISING OUT OF,

RELATING TO, IN CONNECTION WITH, OR INCIDENT TO THIS APPLICATION, THE UNDERWRITING OF THE APPLICATION, NOTICES OF DENIAL OF EXTENDING OR CONSUMMATING A CONTRACT OFFER, ANY SUBSEQUENT CONTRACT AND ANY TRANSACTIONS THE APPLICATION OR SUBSEQUENT CONTRACT CONTEMPLATES, WHETHER SUCH CLAIMS ARE BASED IN TORT, CONTRACT, OR ARISE UNDER STATUTE OR IN EQUITY. TRANSMARK AND THE MERCHANT ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS MADE AND PERFORMED IN THE STATE OF MISSISSIPPI.

TRANSMARK AND THE MERCHANT HEREBY WAIVE TRIAL BY JURY. EITHER PARTY MAY REQUIRE THE ADJUDICATION OF ALL DISPUTES ARISING OUT OF THIS CONTRACT BY ARBITRATION, consistent with the Rules of the American Arbitration Association, REGARD ALL THE TRANSACTIONS THAT THIS APPLICATION OR SUBSEQUENT AGREEMENT CONTEMPLATES, INCLUDING ALL ISSUES CONCERNING THE APPLICATION, UNDERWRITING, DENIAL OF A CONTRACT OR CONTRACT OFFER, NOTICE OF THE DENIAL, VALIDITY OF ANY SUBSEQUENT CONTRACT, THE CONSTRUCTION OF ANY RELATED DOCUMENTS' TERMS, AND THE INTERPRETATION, PERFORMANCE AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF TRANSMARK AND THE MERCHANT. TRANSMARK AND THE MERCHANT HEREBY ACKNOWLEDGE THAT THIS WAIVER IS MADE IRREVOCABLY, UNCONDITIONALLY, KNOWINGLY AND VOLUNTARILY. TRANSMARK AND THE MERCHANT HAS BEEN GIVEN AMPLE TIME AND OPPORTUNITY TO SEEK ADVICE OF COUNSEL PRIOR TO EXECUTION OF THIS AGREEMENT

TRANSMARK may record all in-bound and out-bound phone calls, and from time to time may monitor telephone calls regarding the application, underwriting issues or, more generally, the Merchant's account to assure the quality of their service(s) and for training purposes. Merchant agrees, in order for TRANSMARK to underwrite the account, service the account or to collect any amounts Merchant may owe, that TRANSMARK may from time to time make calls and/or send e-mails and/or text messages to the Merchant, using prerecorded/artificial voice messages and/or through the use of an automatic dialing device, at any telephone number associated with Merchant's account, including wireless telephone numbers that could result in charges to Merchant, or at any email address Merchant provide to TRANSMARK.

These Terms and Conditions are superseded by the terms and conditions of the Merchant Receivables Purchase Contract (hereinafter "the Contract") when signed by all appropriate parties.

Any intentional misrepresentation on the application by the Merchant may constitute grounds to reject the applicable or declare the Contract in default. Material misrepresentations in this application/contract are punishable under 18 U.S.C. Chapter 47 Section 1001, *et seq.*, and other relevant civil and criminate statutes.

These terms and conditions, referenced in the subject application, are incorporated therein as if included word-for-word as stated on this website page or any hard copy of same. These terms and conditions may be changed or updated at any time by TransMark Funding LLC, and any such update shall be available on our website, at www.transmarkfunding.com/appterm