



## LISTING AGREEMENT

**THIS LISTING AGREEMENT** (this "**Agreement**"), is between CMAX NDSE LLC, a Delaware Limited Liability Company ("**CMAX**") and \_\_\_\_\_ ("**Seller**").  
\_\_\_\_\_, a \_\_\_\_\_, \_\_\_\_\_ ("**Seller**").  
(Company Name) (State) (Entity Type)

### WITNESSETH

**WHEREAS**, CMAX owns and operates a debt selling system under the domain [www.creditmaxsales.net](http://www.creditmaxsales.net), [www.creditmaxteam.com](http://www.creditmaxteam.com) and [www.cmaxndse.com](http://www.cmaxndse.com) (the "**Site**") pursuant to which Accounts are offered for sale to registered users and/or their designees; and

**WHEREAS**, CMAX desires to make the Site available to Seller, and Seller desires to use the Site for the purpose of selling charged-off consumer credit card accounts and other receivables owned by Seller (each, an "**Account**" and collectively, the "**Accounts**"), subject to and in accordance with the terms contained in this Agreement.

**NOW, THEREFORE**, in consideration of the above premises and the mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. **RECITALS.** The recitals set forth above are true and correct and incorporated herein by reference.
2. **LISTINGS.** CMAX is authorized to list for sale on the Site each Account that is subject to a Placement Order (as such term is defined below) until the earlier of: (a) the expiration of the time period specified in such Placement Order (the "**Listing Period**") or (b) the sale of such Account. Seller shall not permit the sale of an Account during the applicable Listing Period, except through the Site. Prior to each listing, Seller and CMAX shall execute an order in the form attached hereto as Exhibit "A" (a "**Placement Order**") covering the Accounts that shall be listed for sale on the Site. Seller shall also complete a survey describing the Accounts that will be listed for sale on the Site, which survey may be published by CMAX on the Site (the "**Seller Survey**").
3. **SALE PRICE.** The price at which the Accounts shall be listed for sale and the price at which the Accounts may be sold shall be stated on the related Placement Order. Seller shall determine those prices at its sole discretion. CMAX shall have no obligation to accept a Placement Order and by accepting a Placement Order does not guaranty that the Accounts covered by such Placement Order shall be sold during the Listing Period and, if sold, shall be sold for the price stated in such Placement Order.
4. **PURCHASE AND SALE AGREEMENT.** Each Account shall be sold pursuant to the terms and conditions of a purchase and sale agreement, the terms of which shall be confirmed by Seller in writing (the "**Account Purchase Agreement**"). Each Purchaser of Accounts shall be required to electronically accept the terms and conditions of the Account Purchase Agreement, as a condition to Purchaser's purchase of the Accounts. CMAX has no obligation to Seller with respect to any obligations undertaken by a purchaser of the Accounts pursuant to the Account Purchase Agreement or otherwise.
5. **FEES.** CMAX shall charge a fee equal to a percentage of the sales proceeds received from each sale of an Account listed for sale on the Site (the "**Fee**"). The Fee shall be deducted from remittances due Seller. If



the Fee is not collected by CMAX in such manner, Seller shall pay CMAX the Fee within five (5) days after receipt of an invoice.

6. **AUTHORIZATION.** All Accounts shall be available for sale on the Site in accordance with the “User Agreement” that is published on the Site. In connection with the sale of Seller’s Accounts, CMAX is authorized to make available to Purchaser on behalf of Seller the Account Purchase Agreement, a closing statement, a bill of sale and the sale file (collectively, the “**Purchase Documents**”), provided that CMAX shall not be obligated to provide any of the Purchase Documents, if such Purchase Documents are not consistent with CMAX’s standard formats. Prior to a sale, CMAX is authorized to deliver to a prospective purchaser an unmasked data file of the Accounts and to answer questions regarding the Accounts based upon the information provided by Seller, including information that was supplied by Seller on the Seller Survey. If additional information is requested, Seller shall provide such information to CMAX promptly to the extent that such information is reasonably available to Seller. If a prospective purchaser requests that CMAX deliver the unmasked file of Accounts, CMAX may, at its discretion, elect to do so, but only after it has received from such prospective purchaser a confidentiality agreement restricting such prospective purchaser’s right to use and further disclose any information with respect to such Accounts, and only to members in good standing of DBA, ACA, NARCA, or attorneys.

7. **REVIEW OF ACCOUNTS.** CMAX., with express written consent of Seller, may engage third party service providers to review the Accounts to determine and/or verify those characteristics of the Accounts that may affect their selling price. CMAX’s costs for obtaining information with respect to the Accounts shall be charged to Seller, provided that such costs shall not without Seller’s prior written consent exceed one thousand dollars (\$1,000) for each portfolio placed for sale with CMAX. Seller shall pay such costs promptly after receipt of an invoice from CMAX itemizing such costs in reasonable detail, unless such costs were deducted from remittances to Seller pursuant to Section 8 below.

8. **REMITTANCES.** Each purchaser of an Account shall be instructed to remit the purchase price for such Account to CMAX in accordance with the instructions provided in the Purchase Documents. The purchase price less the Fee and other sums due CMAX shall be remitted to Seller within two (2) “business days” after receipt by CMAX of such purchase price in good and available funds. If the Purchase Documents require a prospective purchaser to remit the purchase price directly to Seller, then Seller shall immediately notify CMAX in writing that the purchase price was received in good and available funds and shall remit the Fee to CMAX within two (2) “business days” after receiving the purchase price to which the Fee relates. In no event shall the sale file of the Accounts or the bill of sale covering such Accounts be released by CMAX, unless and until the purchase price for such Accounts is received by CMAX in good and available funds. CMAX shall not undertake to release such bill of sale or the sale file, if such purchase price is received by Seller, unless CMAX consents to undertake such release in writing. A “business day” for purposes of this Agreement shall mean any day in which CMAX and banks located in the State of Florida are open for business. All purchase price proceeds due Seller shall be deposited in an account maintained by CMAX for such purpose with a federally insured financial institution. CMAX shall have no liability or obligation to Seller arising from any negligence or wrong doing of any officer, director or employee of such financial institution or the financial institution’s insolvency or receivership.

9. **LIMITATION ON LIABILITY.** Seller shall not hold CMAX responsible for the Site’s users’ actions or inactions. The Site is merely a venue or format pursuant to which Accounts may be sold. CMAX does not guarantee a prospective purchaser’s ability to pay for an Account that it has elected to purchase, or that a prospective purchaser shall complete a transaction initiated on the Site. CMAX does not guarantee continuous or secure access to the Site or to the services offered on the Site. CMAX makes no express or implied warranties or representations with respect to the Site, all of which are expressly disclaimed. CMAX shall not be liable for any loss of money, goodwill or reputation or any special or consequential damages arising out of this Agreement or Seller’s use of the Site. If Seller has a dispute with one or more users of the Site, Seller releases CMAX and its affiliates and their respective agents, representatives and contractors from claims, demands and damages of every kind and nature, known and unknown, arising out of, or in any way connected with, such dispute or disputes, except to the extent that such dispute or disputes were a direct result of CMAX’s breach of this Agreement. If there is any liability of CMAX as a result of this Agreement, such liability shall be limited to actual, direct and monetary damages, not to exceed the Fees paid by Seller to CMAX pursuant to this Agreement.



10. **INDEMNITY.** Seller shall indemnify and hold CMAX and its affiliates and their respective agents, representatives and contractors harmless from any claim or demand by Seller or any third party, including reasonable attorneys' fees and costs, arising out of Seller's breach of this Agreement (irrespective of any qualifier in Seller's warranties and representations as to knowledge or materiality) or any other act or omission of Seller, its agents, representatives or contractors relating to the Accounts or this Agreement, including, without limitation, any claim of inaccuracy or incompleteness (whether or not such misstatement was intentional) with respect to the information provided by Seller in the Seller Survey, the data files concerning the Accounts or otherwise.

CMAX shall indemnify and hold Seller and its affiliates and their respective agents, representatives and contractors harmless from any claim or demand by CMAX or any third party, including reasonable attorneys' fees and costs, arising out of CMAX's breach of this Agreement or any other act or omission of CMAX, its agents, representatives or contractors relating to the Accounts or this Agreement, unless such act or omission was taken by CMAX in accordance with this Agreement or at the direction of Seller or its agents, representatives or contractors.

11. **NO AGENCY.** No agency, partnership or joint venture is created or intended to be created by virtue of this Agreement or Seller's listing of the Accounts for sale on the Site. Neither CMAX nor Seller shall hold itself out to be an agent, partner or joint venturer of the other.

12. **WARRANTIES AND REPRESENTATIONS.** Seller warrants and represents the following to be true and correct as of the Effective Date and so long as any Accounts of Seller are listed for sale on the Site:

(a) Seller is duly organized, validly existing and in good standing under the laws of the State of its creation with full power and authority to enter into this Agreement, to sell the Accounts, and to carry out the terms and provisions of this Agreement;

(b) the execution, delivery and performance of this Agreement have been duly authorized on or prior to the execution of this Agreement, by all necessary action on the part of Seller and no provision of applicable law or regulation or the governing documents of Seller or any agreement, judgment, injunction, order, decree or other instrument binding upon Seller is or shall be contravened or violated by Seller's execution, delivery and performance of this Agreement;

(c) Seller is a sophisticated seller that is acquainted with the risks of the business of selling Accounts;

(d) To Seller's best knowledge and belief, all of the information provided by Seller in connection with the sale of the Accounts, including the information provided in each Placement Order, Seller Survey and data file concerning the Accounts, is true and correct;

(e) Seller is the beneficial and record owner of the Accounts and the Accounts are free and clear of any claims, liens or encumbrances, other than financing liens that shall be satisfied and released simultaneously with the sale of such Accounts; and

(f) Seller is acting on its own behalf and not on behalf of any other party.

13. **CONFIDENTIALITY.** Seller and CMAX may from time to time provide each other with proprietary and/or confidential information regarding its clients, properties, businesses, business relationships, financial affairs and assets. (the "**Confidential Information**") in connection with this Agreement. The recipient shall use the Confidential Information in a lawful manner solely for the purpose of performing its obligations pursuant to this Agreement and for no other purpose. The recipient shall maintain the confidentiality of the Confidential Information and shall not, without the prior written consent of the disclosing party, divulge, publish or otherwise disclose or make available to any person any Confidential Information other than to its and its affiliates' officers, directors, employees, advisors, representatives and agents (the "**Representatives**")

who are bound to the same limitations on the use and disclosure of the Confidential Information that are contained in this Section. Each party shall be responsible to the other in the event of any breach by any of its Representatives of



such limitations. To the extent that the Confidential Information is Consumer Information (as such term is defined below) the foregoing limitation on disclosure shall be further limited by the provisions of the Gramm-Leach-Bliley Act (15 U.S. C. §6801-6809) and the rules and regulations promulgated pursuant thereto (the “GLBA”). Each party warrants and represents to the other that it knowledgeable as to the requirements of the GLBA and shall maintain physical, electronic and procedural safeguards that comply with applicable local, state and federal laws. Each party shall have the right, but not the obligation, to review the books and records of the other to confirm compliance with the GLBA. Each party shall immediately disclose to the other any breaches in its security that may materially affect any person that is the subject of any Consumer Information that has been disclosed to it. For purposes of this Section, “**Consumer Information**” means all personal, non-public information relating to the Accounts. Subject to any requirements of the GLBA concerning Consumer Information, “**Confidential Information**” does not include information which (a) is or becomes generally available to the public; (b) is required to be disclosed by applicable law, regulation or legal process; or (c) is or becomes available to the recipient on a non-confidential basis.

14. **NON-CIRCUMVENT** Seller or any of its affiliated companies shall not make contact with any purchaser that purchases accounts from Seller during CMAX’s Listing Period for a period of six (6) months following such purchase of debt (the “**Protected Period**”), unless Seller and such purchaser can evidence the existence of a business relationship that pre-existed such disclosure. For purposes of this Section, a pre-existing business relationship means that Seller had consummated a business transaction with the purchaser whose identity was disclosed to Seller by CMAX preceding such disclosure. In the event that a transaction is consummated by Seller in violation of this Section, Seller shall pay to CMAX a fee equal to four and one half percent (4.50%) of the proceeds collected by Seller as a result of such transaction and any subsequent transaction occurring within six (6) months of such transaction.

15. **ENTIRE AGREEMENT.** This Agreement, constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior written and oral proposals, understandings, agreements and representations, except for any , other than those which impose upon CMAX and/or Seller any additional limitations on disclosure or use of information or requires additional obligations of confidentiality.

16. **ASSIGNMENT.** CMAX and Seller may assign this Agreement to an affiliate or the successor surviving entity in any merger, reorganization or the like, upon the condition that the assignee shall assume, either expressly or by operation of law, Seller's or CMAX 's respective obligations hereunder and such assignment and assumption shall not release CMAX and Seller from their respective obligations hereunder.

17. **INSURANCE.** Seller shall, during the term of this Agreement, maintain at its sole expense professional and general liability insurance with a financially sound and reputable insurer in an amount of at least one million (\$1,000,000) dollars per occurrence. Seller shall submit a copy of its certificate of insurance to CMAX NDSE LLC, 1555 Palm Beach Lakes Blvd. – Suite 200, West Palm Beach, FL 33401, and Attn: Compliance Manager upon CMAX’s request.

18. **REMEDIES CUMULATIVE.** CMAX may in its sole discretion deny any Seller access to the Site, including any Seller who has breached the terms of this Agreement. However, each right, power and remedy of CMAX provided for in this Agreement or now or hereafter existing in law and in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise and the exercise or commencement of the exercise by CMAX of any one or more of those rights, powers or remedies shall not preclude the simultaneous or later exercise by CMAX of any or all of such rights, powers or remedies.

19. **SEVERABILITY.** If any term or condition of this Agreement should be held invalid by a court or tribunal; in any respect, such invalidity shall not affect the validity of any other term or condition hereof.

20. **TERMINATION.** Seller may terminate a listing of an Account at any time prior to CMAX’s acceptance of a winning bid or offer to purchase. If Seller terminates a listing of an Account or sells an Account directly without the use of the Site prior to the expiration of the Listing Period for such Account, Seller shall pay to CMAX a listing termination fee arrived at by multiplying the applicable Fee (expressed as a percentage of the sales proceeds) by the product of (a) the unpaid balance of such Account multiplied by (b) the fixed price at which such Account was listed for sale on the Site or, if no fixed price was listed, then the “reserve” or the minimum price at which



Seller agreed to sell such Account in a bid/auction transaction. Either CMAX or Seller may terminate this Agreement with thirty (30) days' prior written notice to the other, provided that such termination shall not in any way affect either party's obligations under this Agreement with respect to Accounts placed by Seller for sale pursuant to a Placement Order executed by Seller prior to the effective date of such termination.

21. **NOTICES.** All notice, request, demand or other communication concerning this Agreement or any matter arising in connection with this Agreement shall be in writing and personally delivered, sent by certified mail, return receipt requested, or by overnight delivery by a reputable national overnight delivery service and shall be deemed to be effective on the date that such writing is delivered. All such notices shall be addressed as follows:

**Send Notices To:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Phone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

**Send Notices To:**

CMAX NDSE LLC \_\_\_\_\_

1555 Palm Beach Lakes Blvd., Suite 200 \_\_\_\_\_

West Palm Beach, FL 33401 \_\_\_\_\_

Attn: Compliance Department \_\_\_\_\_

Phone No: (561) 352-2209 or (561) 352-2229

Fax No: (561) 352-2199 \_\_\_\_\_

22. **NO THIRD PARTY BENEFICIARIES.** Nothing in this Agreement shall be construed to grant to any person any right, remedy or claim under or in respect of this Agreement or any provision hereof, other than to the parties hereto, and their successors and permitted assigns.

23. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of Florida, without regard to any conflict of law principles.

24. **ATTORNEYS' FEES.** In any litigation between the parties relating to this Agreement, the prevailing party with respect to each claim shall be entitled to recover its reasonable attorneys' fees and costs in connection with that claim from the non-prevailing party.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



**[SIGNATURE PAGE OF LISTING AGREEMENT]**

25. **DIGITAL SIGNATURES.** By executing this Agreement, the Seller authorizes CMAX to use the signature below for the online Purchase Documents requiring digital signatures of Seller and agrees that such digital signature shall bind Seller to the obligations created by such documents in accordance with its terms.

IN WITNESS WHEREOF the parties have set their hands and seals as of this \_\_\_\_ day of \_\_\_\_\_, 2011.

**Company Name:**

**CMAX NDSE LLC:**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Scott Manganelli

Title: \_\_\_\_\_

Title: Vice President of Sales

**Send Notices To:**

**Send Notices To:**

\_\_\_\_\_

CMAX NDSE LLC

\_\_\_\_\_

1555 Palm Beach Lakes Blvd., Suite 200

\_\_\_\_\_

West Palm Beach, FL 33401

Attn: \_\_\_\_\_

Attn: Compliance Department

Phone No: \_\_\_\_\_

Phone No: (561) 352-2209 or (561) 352-2229

Fax No: \_\_\_\_\_

Fax No: (561) 352-2199