



## CONFIDENTIALITY AGREEMENT

CMAX NDSE LLC (the "Company") is furnishing \_\_\_\_\_ (the "Prospective Buyer") with certain valuable proprietary and confidential information regarding the Company's and/or its customers' accounts, assets, clients, properties, business, business relationships and financial affairs (the "Confidential Information") in connection with the evaluation for purchase by the Prospective Buyer of certain accounts receivable or other similar assets (the "Accounts") sold by the Company on behalf of itself or its customers (each, the "Seller") through the Company's web based debt sales system (the "Proposed Transaction"). "Confidential Information" includes, but is not limited to, all data, information and materials in any form, tangible or intangible, and provided in any medium, including electronically, in writing or verbally, that is confidential, proprietary, non-public or trade secret, including, without limitation, personal non-public information relating to the Accounts (the "Consumer Information"). In consideration of the Company furnishing the Confidential Information, the Prospective Buyer agrees as follows:

1. The Prospective Buyer shall:
  - a. maintain the confidentiality of the Confidential Information;
  - b. use the Confidential Information solely for the purposes of evaluating (on its own behalf and not as an agent, representative or broker of or for another party) the Proposed Transaction and for no other purpose; and
  - c. not, without the prior written consent of the Company, divulge, publish or otherwise disclose or make available to any third party any Confidential Information other than to its affiliates and their respective officers, directors, employees, advisors, representatives and agents ("Representatives") who are bound to the same nondisclosure and other terms contained in this Agreement and that have an actual need to know in connection with the Prospective Buyer's evaluation of the Proposed Transaction. The Confidential Information shall not be used by the Prospective Buyer or any of its Representatives for any purpose other than the evaluation of the Proposed Transaction. The Prospective Buyer shall be responsible for any breach by any of its Representatives of any of the provisions of this Agreement.
2. Confidential Information does not include information which:
  - a. is or becomes generally available to the public, other than as a result of disclosure by the Prospective Buyer or its Representatives;
  - b. the Prospective Buyer or its Representatives are required to disclose by applicable law, regulation or legal process and the Prospective Buyer has complied with the provisions of Section 5 below;
  - c. is or becomes available to the Prospective Buyer on a non-confidential basis from a person, other than the Company or the Seller or their respective Representatives, provided that such source is not known to the Prospective Buyer to be bound by a confidentiality agreement.



Notwithstanding (a) and (c) above, Consumer Information shall always be considered Confidential Information, subject to the limitations contained herein and any applicable state and federal laws.

3. Upon the Company's request, the Prospective Buyer shall return to the Company all Confidential Information obtained from the Company or otherwise in its possession or control and all copies of that information, including, without limitation, physical copies and copies embedded in computer files, extracts from computer files and analyses or other materials based upon that information. If requested by the Company or the Seller, an authorized officer of the Prospective Buyer shall certify in writing to the Company and/or the Seller as to that return or destruction. Notwithstanding the return or destruction of the Confidential Information, the Prospective Buyer shall continue to be bound by the obligations of confidentiality and other obligations contained in this Agreement.
4. The Prospective Buyer represents and warrants that it is aware of the Gramm-Leach-Bliley Act (15 U.S.C. §6801-6809) and the rules and regulations promulgated pursuant thereto (the "GLBA"), and in connection with the GLBA, it shall maintain Consumer Information in accordance with the GLBA. Without limiting the foregoing, the Prospective Buyer shall maintain physical, electronic and procedural safeguards that comply with applicable local, state and federal laws. The Company and the Seller shall have the right to review the books and records of the Prospective Buyer to confirm compliance with this Section. The Prospective Buyer shall immediately disclose to the Company any and all breaches in security that may materially affect any person that is the subject of any Consumer Information disclosed to the Prospective Buyer. The Prospective Buyer's obligations under this Section extend to the activities of any of its Representatives to which it provides Consumer Information.
5. The Prospective Buyer represents and warrants that it is aware of the Gramm-Leach-Bliley Act (15 U.S.C. §6801-6809) and the rules and regulations promulgated pursuant thereto (the "GLBA"), and in connection with the GLBA, it shall maintain Consumer Information in accordance with the GLBA. Without limiting the foregoing, the Prospective Buyer shall maintain physical, electronic and procedural safeguards that comply with applicable local, state and federal laws. The Company and the Seller shall have the right to review the books and records of the Prospective Buyer to confirm compliance with this Section. The Prospective Buyer shall immediately disclose to the Company any and all breaches in security that may materially affect any person that is the subject of any Consumer Information disclosed to the Prospective Buyer. The Prospective Buyer's obligations under this Section extend to the activities of any of its Representatives to which it provides Consumer Information.
6. In the event that the Prospective Buyer or its Representatives are requested or required by application of law, regulation or legal process to disclose any of the Confidential Information, the Prospective Buyer shall (provided it is permitted by law to do so) provide the Company with prompt written notice of any such request or requirement so that the Company or its customers may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or other remedy or the receipt of a written waiver by the Company, the Prospective Buyer or the Representatives is nonetheless, in the written opinion of counsel, required to disclose Confidential Information, the Prospective Buyer or the Representatives may, without liability hereunder, disclose only that portion of the Confidential Information, which such counsel advises is required to be disclosed.
7. Neither this Agreement nor the delivery of the Confidential Information shall obligate the Seller



to sell the Accounts or the Prospective Buyer to purchase of the Accounts. The Prospective Buyer acknowledges and understands that neither the Company nor the Seller makes any representation or warranty whatsoever, express or implied, with respect to the content, completeness or accuracy of the Confidential Information, any such representation or warranty, if any, to be set forth in the final and definitive account purchase agreement, if the Proposed Transaction is consummated. In assessing the Confidential Information, the Prospective Buyer is relying solely on its own due diligence and inspection, and the Prospective Buyer releases the Company and the Seller (and their respective agents, officers, directors, attorneys, employees, contractors and other representatives) from any liability to the Prospective Buyer relating to the Confidential Information, the use thereof or for any errors therein, including, without limitation, attorneys' fees and costs (whether suit is initiated or not) asserted against or incurred by the Prospective Buyer by reason of the Confidential Information.

8. The Prospective Buyer shall not permit its Representatives to make contact with any person with respect to the Consumer Information, including any person that is the subject of the Consumer Information or that is a Representative of such person.
9. The Prospective Buyer understands that in the event it fails to comply with this Agreement, the Company and/or the Seller may suffer irreparable harm, which may not be adequately compensated for by monetary damages alone. The Prospective Buyer, therefore, agrees that in the event of its breach or threatened breach of this Agreement, the Company and/or the Seller shall be entitled to injunctive and/or other preliminary or equitable relief in addition to any other remedies available at law.
10. The Seller shall be a third party beneficiary of this Agreement and shall be entitled to all rights and remedies of the Company hereunder. If necessary or desirable, the Company may assign to Seller the Company's rights and remedies under this Agreement in order to facilitate the Seller's enforcement.
11. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof, supersedes any prior oral or written agreements with respect to such, and may only be modified in writing. The parties hereto recognize and agree that nothing contained in this Agreement shall be construed as granting any rights, by license or otherwise, to any Confidential Information disclosed pursuant to this Agreement. This Agreement may be amended or modified, in whole or in part, only by a written amendment signed by the parties. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions shall continue in full force without being impaired or invalidated in any way. The invalid provision shall be replaced by a valid provision that most closely approximates the intent and economic effect of the invalid provisions. The term "person" as used in this Agreement shall be broadly interpreted to include, without limitation, any corporation, company, partnership, joint venture, association, entity or individual.
12. The tax structure and tax treatment of the Proposed Transaction shall not be confidential and notwithstanding anything herein to the contrary the Prospective Buyer and its Representatives may disclose without limitation of any kind, the federal tax structure and federal tax treatment of the Proposed Transaction so that the Proposed Transaction shall be treated as not having been offered under conditions of confidentiality.
13. This Agreement shall be governed by the laws of the State of Delaware



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**[SIGNATURE PAGE OF THE CONFIDENTIALITY AGREEMENT]**

Agreed to and accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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

Buying Arm Name(s): \_\_\_\_\_

Buying Arm Name(s): \_\_\_\_\_

Buying Arm Name(s): \_\_\_\_\_

Does Buying Arm Entity(s) have Insurance? \_\_\_\_\_

If Yes: How Much Coverage Under Each Type of Policy:

General Liability (GL): \_\_\_\_\_

Errors & Omissions (E&O): \_\_\_\_\_

Physical Address (no P.O. Box): \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

States in which entity(s) is licensed (or National): \_\_\_\_\_

Phone Number: \_\_\_\_\_

Debtor Referral Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Authorized Contact Name on Behalf Of Company: \_\_\_\_\_

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

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

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