

**Please complete the application, print, and email/fax to  
214-614-4851 or email to [info@transnetsecure.com](mailto:info@transnetsecure.com)**



First Funds, LLC 240 West 35<sup>th</sup> Street New York, NY 10001

ISO Code	ISO Name
Agreement No.	

## Purchase and Sale of Future Receivables Agreement (“Agreement”) between First Funds, LLC (“Purchaser”) and the seller identified below (“Seller”).

### SELLER INFORMATION

Seller’s Legal Name: \_\_\_\_\_  
D/B/A: \_\_\_\_\_ State Business is registered: \_\_\_\_\_  
Type of entity (check one):    \_\_\_ corporation            \_\_\_ limited liability company            \_\_\_ partnership  
                                                 \_\_\_ limited partnership    \_\_\_ limited liability partnership            \_\_\_ sole proprietorship  
Physical address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Mailing address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Federal ID or SS#: \_\_\_\_\_  
Contact name: \_\_\_\_\_ Title: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_ Web Site: \_\_\_\_\_  
Bank name: \_\_\_\_\_ ABA Routing: \_\_\_\_\_ Account No.: \_\_\_\_\_

Purchaser agrees to purchase from Seller and the Seller agrees to sell to Purchaser, in consideration of the purchase price specified below (the “Purchase Price”), Seller’s interest in the percentage specified below (the “Specified Percentage”) of each of its future credit card receivables (the “Future Receivables”) due to Seller from the credit card processor identified below (“Processor”) until the amount specified below (the “Specified Amount”) of Future Receivables has been collected by Purchaser according to the additional terms and condition set forth in this Purchase and Sale Agreement (“Agreement”).

Purchase Price =            \$ \_\_\_\_\_            Specified Percentage =            \_\_\_\_\_ %  
Specified Amount =        \$ \_\_\_\_\_            Processor (Name / Address) =        \_\_\_\_\_

Seller will use Purchase Price for \_\_\_\_\_

Please carefully read all 6 pages of this Agreement for all its terms and conditions. The undersigned represents that he or she is authorized to sign this Agreement for Seller, has read and understands all its terms and conditions and agrees to be bound by all such terms and conditions:

### SELLER

By: \_\_\_\_\_ (Print Name & title )             (Signature)            \_\_\_\_\_ (Date)

### PURCHASER

#### FIRST FUNDS, LLC

By: \_\_\_\_\_ (Print Name)            \_\_\_\_\_ (Signature)            \_\_\_\_\_ (Date)

The undersigned principal(s) of Seller (such principals, whether shareholders, partners or other owners are referred to herein as the “Guarantor”) hereby unconditionally, jointly and severally, guarantee Seller’s performance and satisfaction of all the covenants, representations and warranties set forth in Section 4 of the Agreement. This guarantee is revolving (continuing) and shall bind Guarantor’s heirs, successors and assigns, and may be enforced by or for the benefit of any assignee or successor of Purchaser. Purchaser shall not be obligated to take any action against the Seller prior to taking any action against the Guarantor. Guarantor shall pay Purchaser for all its overhead and expenses incurred in enforcing this guarantee and underlying Agreement, including all Purchaser’s reasonable attorney’s fees. Guarantor consents to any extension or modification granted to Seller, and the release and/or compromise of any obligation of Seller or any other obligors and guarantors shall not in any way release Guarantor from his or her obligations under this guarantee. This guarantee shall be governed and construed according to the laws of the State of New York. ALL ACTIONS, PROCEEDINGS OR LITIGATION RELATING TO OR ARISING FROM THIS GUARANTEE OR UNDERLYING AGREEMENT SHALL BE INSTITUTED AND PROSECUTED EXCLUSIVELY IN THE

FEDERAL OR STATE COURTS LOCATED IN THE STATE AND COUNTY OF NEW YORK NOTWITHSTANDING THAT OTHER COURTS MAY HAVE JURISDICTION OVER THE PARTIES AND THE SUBJECT MATTER, AND GUARANTOR FREELY CONSENTS TO THE JURISDICTION OF THE FEDERAL OR STATE COURTS LOCATED IN THE STATE AND COUNTY OF NEW YORK. Service of process by certified mail to Guarantor’s address listed below or such other address that Guarantor may provide Purchaser in writing from time to time will be sufficient for jurisdictional purposes. GUARANTOR FREELY WAIVES, INsofar AS PERMITTED BY LAW, TRIAL BY JURY IN ANY ACTION, PROCEEDING OR LITIGATION ARISING FROM OR IN ANY WAY RELATING TO THIS GUARANTEE. GUARANTOR WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO PURSUE A CLAIM AGAINST PURCHASER OR ITS ASSIGNS AS PART OF A CLASS ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE ACTION. Guarantor grants continued authority to Purchaser and its agents and representatives and any credit reporting agency employed by Purchaser to obtain Guarantor’s credit report and/or other investigative reports, and to investigate any references given or any other statements or data obtained from or about Guarantor or Seller or any of Seller’s principals for the purpose of this guarantee, Agreement or renewal thereof.

Guarantor’s Signature

Print Name

Date

Social Security No.

Home Address, City, State & Zip

Home Phone

(Additional) Guarantor’s Signature

Print Name

Date

Social Security No.

Home Address, City, State & Zip

Home Phone

ADDITIONAL TERMS AND CONDITIONS OF AGREEMENT

1. **Daily Batch Amount; Use of Approved Processor.** Before 5:00 P.M. EST of the day following each day that Seller conducts business, Seller shall cause Processor or Processor’s agent to deliver to Purchaser, in a format acceptable to Purchaser, a record from Processor reflecting the total gross dollar amount of the preceding day’s credit card transactions processed by Processor for Seller, irrespective of whether such amount consists of sales or other taxes collected by Seller from its customers (“Daily Batch Amount”). In the event that Seller is unable to procure Processor’s compliance in a timely manner or as otherwise required under this section, within two (2) business days’ written notice by Purchaser to Seller of the same via facsimile to Seller at the fax number listed herein, Seller shall at its sole expense terminate its relationship with Processor and exclusively engage the services of an alternative credit card processor that Purchaser approves in writing and enter into any merchant credit card processing agreement as the alternative credit card processor may require, which credit card processor shall thereafter be referred to and included within the meaning of “Processor” herein.

2. **Collection of Future Receivables; ACH Authorization.** Purchaser will daily collect the cash attributable to the Specified Percentage of the Future Receivables based on the total Daily Batch Amount furnished to Purchaser. Seller irrevocably authorizes Purchaser, or its designated successor or assign to withdraw the Future Receivables and any other amounts now due, hereinafter imposed, or otherwise owed in conjunction with this Agreement by initiating via the Automatic Clearing House (ACH) system debit entries to Seller’s account at the bank listed above or such other bank or financial institution that Seller may provide Purchaser with from time to time (“Bank Account”). In the event that Purchaser

withdraws erroneously from the Bank Account, Seller authorizes Purchaser to credit the Bank Account for the amount erroneously withdrawn via ACH. Purchaser shall not be required to credit the Bank Account for amounts withdrawn related to credit card transactions which are subsequently reversed for any reason. Purchaser, in its sole discretion, may elect to offset any such amount from collections from Future Receivables. Seller represents that the Bank Account is established for business purposes only and not for personal, family, or household purposes. Seller understands that the foregoing ACH authorization is a fundamental condition to induce Purchaser to enter into this Agreement.

3. **Processing Trial; Commencement of Agreement.** After this Agreement has been signed by Seller but prior to Purchaser's acceptance, the parties shall conduct a processing trial of four or fewer business days in order to ensure that the Seller's credit card transactions are being correctly processed through Processor and that Purchaser timely receives the Daily Batch Amount in a satisfactory manner and format. Nothing herein shall create an obligation upon Purchaser to enter into this Agreement. The Agreement shall commence upon Purchaser's payment to Seller of the Purchase Price.

4. **Seller's Covenants, Representations and Warranties.** Seller and Guarantor represent, warrant and covenant the following as of this date and during the term of this Agreement:

- a. Seller shall conduct its business and use the Purchase Price in the ordinary course of its business consistent with past practice and for the stated purpose(s) set forth on the face of this Agreement;
- b. Seller shall not take any action to discourage the use of credit cards which are settled through Processor or to permit any event to occur which could have an adverse effect on the use, acceptance or authorization of credit cards for the purchase of Seller's services and products;
- c. Within two (2) business days of its receipt of the notice described in Section 1 herein, Seller shall *at its sole expense* terminate its relationship with Processor and exclusively engage the services of an alternative credit card processor that Purchaser approves in writing and enter into any merchant credit card processing agreement as the alternative credit card processor may require;
- d. Seller shall not change its arrangements with Processor in any way which is adverse to Purchaser;
- e. Seller shall not change the credit card processor through which the major credit cards are settled from Processor to another credit card processor or to permit any event to occur that could cause a diversion of any of Seller's credit card transactions to another processor without Purchaser's prior written consent;
- f. Seller represents that as of the this date, all Seller's credit card sales and transactions are being processed exclusively with Processor;
- g. Seller shall not sell, dispose, convey or otherwise transfer its business or assets without the express prior written consent of Purchaser;

- h. Seller shall furnish Purchaser with the bank statements for its Bank Account and any and all other accounts to which proceeds from Seller's sales are deposited within seven (7) days' of any such request by Purchaser;
- i. Seller shall unconditionally ensure that the cash Seller receives from Processor attributable to the Specified Percentage of the Future Receivables is immediately thereafter available to Purchaser for collection via ACH from Seller's Bank Account;
- j. Seller shall not attempt to revoke its ACH authorization to Purchaser set forth in this Agreement or otherwise take any measure to interfere with Purchaser's ability to collect the cash Seller receives from Processor attributable to the Specified Percentage of the Future Receivables;
- k. Seller shall not close its Bank Account or change the bank account into which Processor deposits the Future Receivables to another account without Purchaser's prior written consent;
- l. Seller shall not conduct its businesses under any name other than as disclosed to Purchaser or change any of its places of business without Purchaser's written consent; and
- m. Seller represents that the information it furnished Purchaser in this Agreement and preceding application, including without limitation, Seller's processing statements, is true and accurate in all respects and fairly represents the financial condition, result of operations and cash flows of Seller at such dates, and since the dates therein, there has been no material adverse change in the business or its prospects or in the financial condition, results of operations, or cash flows of Seller.

5. **Agency; Modifications & Amendments; Entire and Final Agreement.** Purchaser does not have any power or authority or control over Processor's actions with respect to the processing of Seller's credit card transactions. Purchaser is an entirely separate and independent entity from the Processor and ISO (if any) and their respective agents. Neither Processor nor ISO (if any) is Purchaser's agent and neither is authorized to waive or alter any term or condition of this Agreement and their representations shall in no way affect Seller's or Purchaser's rights and obligations set forth herein. This Agreement contains the entire and final expression of the agreement between the parties, and may not be waived, altered, modified, revoked or rescinded except by a writing signed by one of Purchaser's executive officers. All prior and/or contemporaneous oral and written representations are merged herein. No attempt at oral modification or rescission of this Agreement or any term thereof will be binding upon the parties.

6. **Governmental Approvals.** Seller possesses and is in compliance with all permits, licenses, approvals, consents and other authorizations necessary to conduct its business. Seller is in compliance with any and all applicable federal, state, and local laws and regulations. Seller possesses all requisite permits, authorizations and licenses to own, operate and lease its properties and to conduct the business in which it is presently engaged.

7. **Exclusive Use of Processor.** Seller understands that services of Processor are the exclusive means by which Seller may process its credit card transactions.

8. **Sale of Future Receivables; Non-Consumer Transaction.** Seller and Purchaser agree that the Purchase Price paid by Purchaser in exchange for the Specified Amount of Future Receivables is for the purchase and sale of the Specified Amount of Future Receivables and is

not intended to be, nor shall it be construed as, a loan or an assignment for security from Purchaser to the Seller. Seller, Purchaser and Guarantor hereto acknowledge and agree that neither party is a “consumer” with respect to this Agreement and underlying transaction, and neither this Agreement nor any guarantee thereof shall be construed as a consumer transaction.

9. **No Right to Repurchase.** Seller acknowledges that it has no right to repurchase the Specified Amount of Future Receivables from Purchaser.

10. **Sale of Additional Pool of Future Receivables; Schedules; Right of First Refusal.** In the event that Seller wishes to sell and Purchaser agrees to purchase an additional pool (or additional pools) of future credit card processing receivables, this Agreement shall serve as a Master Agreement which sets forth all of the terms and conditions governing any such sale. In such an event, the parties shall execute additional schedules setting forth the Purchase Price, Specified Percentage and Specified Amount applicable to that additional pool of future receivables. The terms listed on such schedule shall take effect upon Purchaser’s receipt of the complete Specified Amount herein or upon a date agreed to by the parties in writing, with the terms and conditions of this Agreement otherwise fully applicable. Nothing herein shall obligate either party to sell and purchase additional pools of credit card processing receivables; however, Seller grants Purchaser the option of first refusal to purchase any such pool of additional future receivables that Seller may wish to sell.

11. **Default.** A “Default” shall include, but not be limited to, any of the following events: (a) The breach by Seller of any covenants contained in this Agreement; (b) Any representation or warranty made by the Seller in this Agreement, proving to have been incorrect, false or misleading in any material respect.

12. **Remedies.** In the event of a Default, Purchaser shall be entitled to all remedies available under law, including the right to non-judicial foreclosure. In the event of Seller’s default under Section 4 herein, Purchaser will be entitled to liquidated damages equal to the amount by which the cash attributable to the Specified Amount of Future Receivables exceeds the amount of cash received from Future Receivables that Purchaser had previously collected under this Agreement, which amount Purchaser may automatically debit from Seller’s Bank Account via ACH without notice to Seller. No failure on the part of Purchaser to exercise, nor any delay in exercising any right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise of any other right. The remedies provided hereunder are cumulative and not exclusive of any remedies provided by law or equity.

13. **UCC-1 Financing Statements.** Seller authorizes Purchaser to file one or more UCC-1 Financing Statements prior to each sale of Future Receivables for purposes of providing public notice of the purchase by Purchaser from Seller of the Specified Amount of Future Receivables. The UCC-1 Financing Statements will state that the sale of the Future Receivables is an outright sale and not an assignment for security.

14. **Notices.** All notices, requests, demands and other communications hereunder, including disputes or inaccuracies concerning information furnished to credit reporting agencies shall be, unless otherwise provided herein, in writing and shall be delivered by mail, overnight delivery or hand delivery to the respective parties to this Agreement at their respective address listed on the face of this Agreement or at such other address that either may provide the other with in writing from time to time.

15. **Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of Seller, Purchaser and their respective successors and assigns, except that Seller shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of Purchaser which consent may be withheld at Purchaser's sole discretion. Purchaser may assign this Agreement without notice to Seller.

16. **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Seller consents to the jurisdiction of the federal and state courts located in the State and County of New York and agrees that such courts shall be the exclusive forum for all actions, proceedings or litigation arising out of or relating to this Agreement or subject matter thereof, notwithstanding that other courts may have jurisdiction over the parties and the subject matter thereof. Service of process by certified mail to Seller's address listed on the face of this Agreement or such other address that Seller may provide Purchaser in writing from time to time will be sufficient for jurisdictional purposes.

17. **Purchaser's Costs of Enforcement, Attorney's Fees.** Purchaser shall be entitled to receive from Seller and Seller shall pay to Purchaser, all Purchaser's costs and expenses, including Purchaser's collections overhead and Purchaser's reasonable attorney's fees, in enforcing any of the terms of this Agreement, regardless of whether or not a legal action has been commenced.

18. **Severability.** In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

19. **Waiver Of Jury Trial; Limitation On Action: PURCHASER AND SELLER KNOWINGLY, WILLINGLY AND VOLUNTARILY WAIVE, INSOFAR AS PERMITTED BY LAW, TRIAL BY JURY IN ANY ACTION, PROCEEDING OR LITIGATION BROUGHT BY PURCHASER, SELLER OR GUARANTOR HERETO ARISING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT OR UNDERLYING TRANSACTION. SELLER SHALL COMMENCE ANY ACTION OR COUNTERCLAIM BASED IN CONTRACT, TORT OR OTHERWISE ARISING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT OR UNDERLYING TRANSACTION WITHIN ONE YEAR OF THE ACCRUAL OF THAT CAUSE OF ACTION AND NO SUCH ACTION MAY BE MAINTAINED WHICH IS NOT COMMENCED WITHIN THAT PERIOD. SELLER KNOWINGLY, WILLINGLY AND VOLUNTARILY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO PURSUE A CLAIM AGAINST PURCHASER AS PART OF A CLASS ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE ACTION.**

*End of Agreement*