



EQUIPMENT LEASE ORIGATION AGREEMENT

THIS EQUIPMENT LEASE ORIGATION AGREEMENT (this "Agreement") is made as of this [_____] day of [_____] by and between **Finova Capital, LLC**, a Delaware limited liability company (referred to "**Finova Capital, LLC**") and [_____] a [_____] (referred to as "Source").

In consideration of the mutual promises contained herein, the parties agree as follow:

Background Statement

It is the desire of Finova Capital, LLC and Source that Source originate leases of point of sale merchant equipment to be referred/assigned to Finova Capital, LLC, and that Finova Capital, LLC provide compensation to Source for such lease referrals/assignments, in each case subject to, and in accordance with, the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration and the mutual agreements contained in this Agreement, the parties agree as follows:

1. **Merchant Referrals/Assignments.** Source will from time to time, at its discretion, refer/assign to Finova Capital, LLC equipment lease applications/agreements in the form set forth in Exhibit B hereto (each an "Equipment Lease Agreement" and, collectively, the "Equipment Lease Agreements") with those of its current and prospective merchant customers, which Source determines to refer/assign to Finova Capital, LLC for equipment leasing services. Source shall not be required under this Agreement to refer/assign merchants exclusively to Finova Capital, LLC for the provision of equipment leasing services. For bona fide merchant referrals/assignments involving merchants that are Qualified Merchants (as defined below) and accepted by Finova Capital, LLC, Source shall be entitled to receive the consideration specified on Exhibit A. "Qualified Merchant" shall mean, any merchant, which (i) is currently approved for processing, has a valid merchant processing agreement and has been assigned an active MID (merchant identification) number, and is currently processing, and (ii) as of the date the referral/assignment is made by Source to Finova Capital, LLC, has not been independently contacted by, or has independently contacted Finova Capital, LLC, with respect to equipment leasing services. Finova Capital, LLC and Source will each cooperate with the other, and will provide such assistance as is reasonably requested by the other, to successfully implement Equipment Lease Agreements with Qualified Merchants that are referred/assigned to Finova Capital, LLC by Source.

Equipment Lease Agreements to be referred/assigned to Finova Capital, LLC shall be communicated to Finova Capital, LLC from time to time in such manner as Source and Finova Capital, LLC may agree. In the absence of a written referral/assignment instrument, if Finova Capital, LLC funds and commences servicing of an Equipment Lease Agreement which has been referred/assigned by Source, such funded Equipment Lease Agreement shall be deemed to have been accepted by Finova Capital, LLC, and upon Finova Capital, LLC's funding of any Equipment Lease Agreement, all right, title and interest of Source in, to and under the related equipment leased under such Equipment Lease Agreement shall be deemed to be sold and assigned to Finova Capital, LLC on such funding date without any further action needed on the part of any party hereto or other person. From time to time, upon the request of Finova Capital, LLC, source shall execute and deliver any documents or certificates reasonably required to evidence such purchase and sale of the equipment.

2. **Credit Policy.** Finova Capital, LLC will make independent credit assessments of Qualified Merchants before agreeing to accept Equipment Lease Agreements referred/assigned to Finova Capital, LLC by Source subject to the following:

- (a) Source has submitted to Finova Capital, LLC a signed Equipment Lease Agreement.
- (b) If Finova Capital, LLC decides to accept the referral/assignment of an Equipment Lease Agreement with a particular Qualified Merchant but determines that accepting the Equipment Lease Agreement involves a greater than acceptable credit risk, (as determined by Finova Capital, LLC in its good faith discretion), Finova Capital, LLC may, at its sole discretion, contact the Source and obtain additional financial disclosure or supporting cash collateral or security deposit prior to funding Source.

3. **Independent Contractor.** Source is and shall act as an independent contractor and as such shall have no authority to incur any obligations or to make statements or representations on behalf of Finova Capital, LLC or any of its affiliates. Without limiting the foregoing, Source shall have no authority to, and agrees that it will not, amend the terms of any Equipment Lease Agreement or other agreement or instrument between Finova Capital, LLC and a merchant. Each Equipment Lease Agreement shall become effective as to Finova Capital, LLC only when set forth in such Equipment Lease Agreement. Source shall not use the name of Finova Capital, LLC or any of its affiliates or any of Finova Capital, LLC's trademarks or service marks as part of its name.

4. **Warranties and Representations.** Source expressly represents and warrants to Finova Capital, LLC, with respect to each Equipment Lease Agreement with a Qualified Merchant referred/assigned by Source to Finova Capital, LLC, that:



- (a) All executed documents submitted to Finova Capital, LLC by Source were duly and validly executed by the person or entity that purported to have executed such documents;
- (b) The equipment subject to the Equipment Lease Agreement is completely and accurately described in the Equipment Lease Agreement and has been actually delivered to, and accepted by, the Qualified Merchant under the terms and conditions of the Equipment Lease Agreement and any related merchant processing agreement, without any claims of non-conformity or offset by the Qualified Merchant;
- (c) All representations or warranties made by Source to Finova Capital, LLC or a Qualified Merchant with respect to a particular leasing transaction (including any related merchant processing agreement) are true, correct and not false or fraudulent in any respect; and
- (d) All financial information as well as bank, trade and credit assessments received or prepared by Source with respect to the Qualified Merchant have been provided to Finova Capital, LLC. No known negative financial information or credit ratings have been deleted from the information submitted to Finova Capital, LLC by Source.

Should there be a breach of any warranty or representation mentioned above, or should:

- (i) Finova Capital, LLC discover that Source, and/or its Third-Party Representatives misrepresented any material fact pertaining to an Equipment Lease Agreement, the related merchant processing agreement) or a Qualified Merchant;
- (ii) Qualified Merchant claim that Source breached any representation, or warranty contemplated by this Agreement;
- (iii) Finova Capital, LLC not be able to successfully ACH debit the Qualified Merchant for their first three payments due under the Equipment Lease Agreement;
- (iv) The merchant ceases processing at any time during the first three months of the lease term;
- (v) It is determined that the merchant does not meet Qualified Merchant status;
- (vi) Finova Capital, LLC receives a dispute from a Qualified Merchant regarding the Equipment Lease Agreement, determined by Finova Capital, LLC to be reasonable and in good faith, due to any actions of Source and/or its Third-Party Representatives or to Qualified Merchant's relationship with Source and/or its Third Party Representatives; or
- (vii) Source is in breach of Section 7 hereof,

then Source shall, at the request of Finova Capital, LLC, promptly (but in any event within 10 calendar days of such request) purchase such Equipment Lease Agreement and the equipment leased thereunder for the original amount funded to Source under this Agreement in connection with the acceptance of the Equipment Lease Agreement hereunder by Finova Capital, LLC together with an administrative charge as provided on Exhibit A hereto for each Equipment Lease Agreement purchased by Source under this Section 4. Any such purchase by Source shall be on an "as is, where is" basis and without representation or warranty on the part of Finova Capital, LLC.

5. **Source-Initiated Purchase of Equipment and Lease.** In the interest of maintaining good customer relations with any Qualified Merchant, Source may at any time purchase an Equipment Lease Agreement between Finova Capital, LLC and such Qualified Merchant which has been referred/assigned by Source to Finova Capital, LLC hereunder from Finova Capital, LLC (on an "as is, where is" basis and without representation or warranty on the part of Finova Capital, LLC) for an amount equal to all monthly lease charges for the remainder of the applicable lease period together with the fair market value of the Equipment, which will be calculated in accordance with such Equipment Lease Agreement, provided that the rights provided to Source pursuant to this Section 5 shall terminate as to a particular Equipment Lease Agreement at such time as Finova Capital, LLC has assigned the Equipment Lease Agreement or any rights thereunder to a third party or subsidiary or affiliate of Finova Capital, LLC.

6. **Disclosure of Information.** Source shall, in connection with each Equipment Lease Agreement referred/assigned to Finova Capital, LLC, keep Finova Capital, LLC fully informed of all material information known to Source concerning the Equipment Lease Agreement, or the equipment subject thereto, including any changes occurring or learned of subsequent to such referral/assignment. Without limiting the foregoing, (i) Source shall use its reasonable efforts to keep Finova Capital, LLC informed of any material changes to the related Qualified Merchant's bank account when notified by such Qualified Merchant, and (ii) Source shall cooperate and share



information with Finova Capital, LLC regarding related Qualified Merchants as necessary or appropriate to enable Finova Capital, LLC to manage credit risk associated with such Qualified Merchants. Source shall use commercially reasonable efforts to assist Finova Capital, LLC as reasonably requested by Finova Capital, LLC in collecting delinquent receivables from the Qualified Merchant, and shall make available to Finova Capital, LLC, to the extent not required to satisfy Source's own receivables from such Qualified Merchants and to the extent permitted by law, funds held or available to Source under the terms of the applicable merchant processing agreement with the relevant processor, provided that Finova Capital, LLC provides Source with the Equipment Lease Agreement or other written documentation signed by such Qualified Merchant evidencing Finova Capital, LLC right to recover amounts due to Finova Capital, LLC against such funds.

7. **Customer Non-Interference.** Source agrees that Source will not in any way, interfere with any business relationship between Finova Capital, LLC and any merchant. Source will not do or perform any act which will induce a merchant to cease making payments due in accordance with the Equipment Lease Agreement. Source agrees that Source will not solicit any merchant, customer, company, business or individual which is leasing or financing equipment from or through Finova Capital, LLC (whether during the primary term of the applicable agreement or any renewal period). Source acknowledges and agrees that Finova Capital, LLC retains the right of first refusal for any equipment lease upgrade to be requested by Source in respect of any Equipment Lease Agreement which has been referred/assigned by Source to Finova Capital, LLC and accepted and funded by Finova Capital, LLC.

8. **Equipment Provider.** Finova Capital, LLC and Source agree that Source can utilize any Finova Capital, LLC approved third party equipment provider that provides Finova Capital, LLC with make, model, serial number, and date of delivery of each unit leased, via a data file transfer. If Source does not utilize an Finova Capital, LLC-approved third party equipment provider Source must submit documentation similar to Exhibit D attached ("Delivery and Acknowledgment Form") on the delivery and acceptance of equipment by the Qualified Merchant prior to lease funding of the Equipment Lease Agreement.

9. **Third Party Representatives.** If Source utilizes any agents, independent contractors, or any third parties ("Third Party Representatives") to refer/assign any Equipment Lease Agreement to Finova Capital, LLC, Source shall provide a list of such Third-Party Representatives to Finova Capital, LLC, such list to be updated on a quarterly basis. Source's utilization of any such Third Party Representatives shall not relieve Source of its obligations hereunder, and Source shall be liable and responsible for the actions of its Third Party Representatives and shall, on demand, indemnify and hold Finova Capital, LLC and its officers, directors, employees, agents and affiliates harmless from and against any and all Losses (as such term is defined in Section 15 hereof) which arise out of or is attributable to the actions of such Third Party Representatives.

10. **Equipment Maintenance.** Finova Capital, LLC and Source agree that, as between Source and Finova Capital, LLC, Source or Source's equipment provider is solely responsible for the help desk, customer service, repair, replacement, swap out and refurbishment of any and all point of sale equipment to Qualified Merchants whose Equipment Lease Agreements have been referred/assigned to Finova Capital, LLC and accepted by Finova Capital, LLC.

11. **Funding Requirements.** On each business day, Finova Capital, LLC shall pay Source the fees contemplated on Exhibit A hereto in full payment for all referred/assigned Equipment Lease Agreements with Qualified Merchants accepted and funded by Finova Capital, LLC on the immediately preceding business day. The fees will be paid by cash transfer to the account designated on Exhibit C by Source provided that there are such fees owed to Source. If there is money owed to Finova Capital, LLC pursuant to this Agreement (including, without limitation, under Section 4 or Section 5 above), Finova Capital, LLC is hereby authorized by Source, without notice or demand (which are hereby expressly waived), to set off, recoup and to appropriate and apply any and all funds of Source held by Finova Capital, LLC or any of its affiliates under this Agreement and any other agreement with Finova Capital, LLC or any of its affiliates against and on account of Source's obligations to Finova Capital, LLC under this Agreement, whether such obligations are liquidated, unliquidated, fixed or contingent. Finova Capital, LLC may, but is not required to, exercise the rights described in the preceding sentence by direct debit to Source's account designated on Exhibit C. This offset right is in addition to all other remedies available to Finova Capital, LLC. Statements to reconcile the lease funding will accompany the transaction.

12. **Expenses of Source.** Except for fees to which Source becomes entitled as contemplated by Exhibit A hereto, Finova Capital, LLC shall not be liable for any expenses whatsoever incurred by Source in connection with any Equipment Lease Agreements originated by Source, or any other expenses incurred by Source in connection with this Agreement.

13. **Electronic Credit Application.** Source may, from time to time, electronically submit to Finova Capital, LLC credit information obtained from a Qualified Merchant; provided that Source shall have first obtained from the Qualified Merchant a signed credit application in compliance with applicable law. Source shall provide a signed credit application to Finova Capital, LLC with respect to any Qualified Merchant upon request. An original copy shall be maintained by Source and available to Finova Capital, LLC for at least one year after the date of application.

14. **Term of Agreement.** The term of this Agreement is three years from the date of this Agreement, and shall automatically renew for additional one-year periods unless terminated in accordance with this Section 14. Finova Capital, LLC has the right to terminate this Agreement immediately if the financial performance of the Source's portfolio does not meet Finova Capital, LLC's expectations, Source engages in any fraud or has excessive complaints by merchants against Source as determined by Finova Capital, LLC in its sole discretion.



Either party shall have the right to terminate this agreement on 30 days prior written notice. If either party shall become insolvent, be placed in receivership, or seeks relief or has a petition filed against it under any provision of the federal bankruptcy code, the other party may terminate this Agreement immediately by written notice, which shall be effective upon its receipt.

15. **Indemnification.** Subject to the other terms and conditions of this Agreement, each party shall indemnify, defend and hold harmless the other party and its officers, directors, employees, agents and affiliates from and in respect of any Losses incurred or suffered by the other party arising from the indemnifying party's breach of any representation or warranty hereunder or its negligence (including negligent performance of, or negligent failure to perform, any of its obligations hereunder), intentional misconduct (including intentional failure to perform properly any of its obligations hereunder) or unreasonable delay in performing any of its obligations hereunder. For purposes of this Agreement, the term "Losses" or "Loss" shall mean any claims, losses, liabilities, damages, costs and expenses, including without limitation reasonable fees and expenses of attorneys and other advisors, court costs and other dispute resolution costs, incurred by the party to be indemnified. In addition, if any federal or state, local or foreign taxes, fees, charges or other like assessment or charge whatsoever are or become due in connection with the sale and purchase of any equipment by Source to Finova Capital, LLC hereunder, Source shall be responsible for, and shall indemnify and hold Finova Capital, LLC harmless from and against, and shall pay, any and all such sales, transfer, and similar taxes imposed upon Source or Finova Capital, LLC by any taxing jurisdiction or authority solely to the extent that such taxes arise out of the sale and purchase of the Equipment hereunder; provided, further, however, that the foregoing obligation to pay and indemnify shall not extend to, and Source shall have no obligation to pay any such taxes of Finova Capital, LLC levied or based on the net income of Finova Capital, LLC.

16. **Limitation of Liability.** Notwithstanding anything in this Agreement to the contrary, in no event shall Source or Finova Capital, LLC, or their respective affiliates or any of their respective directors, officers, employees or agents, be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages where foreseeable or whether either party or any other entity has been advised of the possibility of such damages.

17. **Governing Law; Venue; Waiver of Jury Trial.** THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN NEGOTIATED AND MADE IN, AND SHALL BE GOVERNED AND INTERPRETED UNDER THE LAWS OF THE STATE OF NEW JERSEY. EACH PARTY HERETO IRREVOCABLY CONSENTS THAT ANY LEGAL ACTION OR PROCEEDING AGAINST IT UNDER, ARISING OUT OF OR IN ANY MANNER RELATING TO THIS AGREEMENT MAY BE BROUGHT IN ANY COURT OF THE STATE OF NEW JERSEY LOCATED IN BERGEN COUNTY. EACH PARTY HERETO, BY THE EXECUTION AND DELIVERY OF THIS AGREEMENT, EXPRESSLY AND IRREVOCABLY ASSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF ANY OF SUCH COURTS IN ANY SUCH ACTION OR

PROCEEDING, AND FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF ANY COMPLAINT, SUMMONS, NOTICE OR OTHER PROCESS RELATING TO SUCH ACTION OR PROCEEDING BY DELIVERY THEREOF TO IT IN THE MANNER PROVIDED IN SECTION 21 HEREOF. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY WAIVES ANY CLAIM OR DEFENSE IN ANY SUCH ACTION OR PROCEEDING BASED ON ANY ALLEGED LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS OR ANY SIMILAR BASIS. NOTHING IN THIS AGREEMENT SHALL AFFECT OR IMPAIR IN ANY MANNER OR TO ANY EXTENT THE RIGHT OF EITHER PARTY TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE OTHER PARTY IN ANY JURISDICTION OR TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW. EACH PARTY HERETO HEREBY UNCONDITIONALLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY, ANY DEALINGS BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF OR THEREOF, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN THE PARTIES HERETO. The scope of this waiver is intended to be all encompassing of any and all disputes that may be filed in any court (including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law statutory claims). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

18. **Confidentiality.** "Confidential Information" means all information provided by one party to the other under this Agreement that is competitively sensitive and not generally known to the public, including, without limitation, any material or information relating to merchant identification, merchant credit analysis, customer lists, marketing plans, technical information, business policies, procedures, customs and forms. Source and Finova Capital, LLC will (i) not disclose to any third party (other than its affiliates, attorneys, tax, financial and other professional advisors and permitted assignees) or use any of the other party's Confidential Information except as expressly permitted in this Agreement; (ii) take all reasonable measures to maintain the confidentiality of all Confidential Information of the other party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own most valuable Confidential Information, (iii) not use the Confidential Information except as contemplated under this Agreement; and (iv) not copy or otherwise reproduce the Confidential Information except as necessary in connection with the performance of its obligations under this Agreement or as otherwise expressly authorized by the other party. "Confidential Information" will not include information that (a) is or becomes publicly known through publication or otherwise and through no wrongful act of the other party; (b) is received from a third party



without similar restriction and without breach of this Agreement; or (c) is approved for release or use by written authorization of the other party. In addition, Confidential Information may be disclosed (y) if required to be disclosed under law or judicial order by a court of competent jurisdiction or to enforce a party's rights under this Agreement against the other party in any proceeding relating to such enforcement or (z) by Finova Capital, LLC or any of its affiliates to its financing partners (and their respective attorneys and tax, financial and other professional advisors) in connection with any sale or financing transactions involving the Equipment Lease Agreements or rights thereunder. Finova Capital, LLC and Source each acknowledge that the disclosure of the other party's Confidential Information would cause substantial harm to such party that could not be remedied by the payment of damages alone. Accordingly, Finova Capital, LLC and Source each will be entitled to preliminary and permanent injunctive relief and other equitable relief for any breach or threatened breach of this Section 18.

19. **Assignment.** This Agreement is freely assignable by Finova Capital, LLC. Finova Capital, LLC will give Source notice of any such assignment promptly following the effectiveness of the assignment. In addition, Finova Capital, LLC may freely assign Equipment Lease Agreements or any of its rights thereunder without the consent of, or notice to, Source. Source shall not assign this Agreement without the prior written consent of Finova Capital, LLC (which consent shall not be unreasonably withheld or delayed). Any attempted assignment in violation of this Agreement shall be void and of no effect. This Agreement shall be binding on and inure to the benefit of the parties hereto and their successors and permitted assigns.

20. **Survival.** Sections 4, 6, 7 and Sections 9 through (and including) 22 of this Agreement shall survive termination, cancellation or expiration of this Agreement.

21. **Notices.** Any notice or other communication under this Agreement must be given in writing and except for routine reports and other operational communications, must be either (a) delivered in person or by nationally recognized courier service, (b) mailed by certified, registered or express mail, postage prepaid, or (c) transmitted by facsimile mechanism provided that (i) receipt is confirmed electronically



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or telephonically, and (ii) any notice so given is also sent for delivery as provided in clause (a) or (b), to the address for notices of the other party specified on the signature page to this Agreement.

22 **Entire Agreement.** This Agreement, when executed by both Finova Capital, LLC and Source, shall (together with any Exhibits and Schedules hereto which shall constitute a part of this Agreement) constitute the entire agreement as between the parties, and shall supersede all prior agreements whether in writing or otherwise. No amendment or modification of this agreement shall be effective unless in writing and duly executed by Finova Capital, LLC and Source.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be executed as of the day and year first set forth above.

Finova Capital, LLC

[Source]

By: _____
Name: Paul Hayden

By: _____
Name: _____

Title: SVP, Product

Title: _____

Address for Notices: 365 W. Passaic Street Suite 490
Rochelle Park, NJ 07662

Address for Notices: _____

The undersigned unconditionally guarantees to Finova Capital, LLC the prompt payment and performance when due of all of the obligations of the Source under this Agreement and all related documents executed by the Source in connection with it (collectively, the "Origination Agreement Documents"). In this personal guaranty (this "Guaranty"), the words "you" and "your" refer to the Guarantor and your permitted successors and assigns. Finova Capital, LLC shall not be obligated to proceed against the Source or enforce any other remedy before proceeding against you to enforce this Guaranty. Notwithstanding any changes made to the Agreements in the course of Finova Capital, LLC's dealings with the Source, this Guaranty will remain in effect with respect to the Agreements as so changed even if you are not notified of the changes and will remain in effect even if the Agreements are no longer enforceable against the Source via termination or otherwise. You waive all presentments, demand for performance, notices of protest, notices of dishonor, notices of acceptance of this Guaranty and all other notices to which you may have a right. You agree to pay Finova Capital, LLC all the expenses incurred by Finova Capital, LLC in enforcing this Guaranty. You may not assign this Guaranty without Finova Capital, LLC prior written consent. This Guaranty shall be governed by the law of the state of New Jersey, and you consent to the non-exclusive jurisdiction of the federal and state courts located in Bergen County, New Jersey in any action to enforce this Guaranty and you waive any right to assert this is an inconvenient forum.

[Guarantor]

By: _____
Name: _____

Address for Notices: _____
