**Partner Agreement**

This Partner Agreement (this “**Agreement**”) is made and effective as of the date of the last signature below (the “**Effective Date**”) by and between Encore Capital Finance, Inc., d/b/a Adesso Capital, a Delaware corporation, located at 8434 East Shea Blvd. Bldg. B Suite 100 Scottsdale, AZ. 85260 (“**Adesso**”) and South Dakota Retailers Association, a non-profit South Dakota entity, 320 E. Capitol Ave., Pierre, SD 57501 (“**Partner**”). Each Adesso and Partner are a “**Party**” or collectively as “**Parties.**”

WHEREAS Adesso is engaged to assist businesses, including restaurants, with their applications for the certain tax credits (e.g. Employee Retention Tax Credit, FICA tip credit), and locating and securing business financing (“**Adesso Services**”);

WHEREAS, Partner is a non-profit organization with a mission to serve its members which include businesses in the foodservice and hospitality industry, which in part includes providing information, programs, and services to its members.

WHEREAS, Partner’s members consist of entities, partnerships, or sole-proprietorships (“**Members**”), and the Parties agree that such Members who may benefit from the Adesso Services.

NOW THEREFORE, the Parties agree as follows:

1. **ADESSO SERVICES**
2. Employee Retention Credits (ERC)
	1. Consult with Partner Members and potential Partner members assess eligibility for ERCs
	2. Secured a signed agreement and authorization to represent the Partner Members and potential Partner member
	3. Collect from Partner Members and potential Partner members all documents and information required, including but not limited to detailed payroll records, tax records, and, as needed, company financials
	4. Calculate all ERC that may be due Partner Member and potential Partner member
	5. File amended Payroll Tax returns on behalf of the Partner Member and potential Partner member, inclusive of the ERC
	6. Collect Fees from the Partner Member and potential Partner member
	7. Monitor status of filed Payroll Tax returns with IRS
3. Credit for Employer Social Security and Medicare Taxes Paid on Employee Tips (FTC)
	1. Consult with Partner Members and potential Partner members and assess eligibility for FTC
	2. Secured a signed agreement and authorization to represent the Referred Customer
	3. Collect from Partner Members and potential Partner members all documents and information required, including but not limited to detailed payroll records, tax records, and, as needed, company financials
	4. Calculate the FTC may be due the Partner Member and potential Partner member
	5. File with IRS the appropriate documentation (e.g. IRS from 8846) on behalf of the Partner Member and potential Partner member
	6. Collect Fees from the Partner Member and potential Partner member
4. Business Financing
	1. Guide Members and Non-Members on financing options and the process
	2. Discuss financing needs or requests
	3. Complete applications for financing, and submit qualified applicant information to Adesso lending partners (Adesso is not a lender)
	4. Review financing offers for acceptance by applicant
	5. Enable fulfillment of accepted offers via the lender
	6. Collect Fees from applicant
5. **ADESSO RESPONSIBILITIES TO PARTNER**
6. Adesso will support Partner’s marketing of Adesso’s Services and other products as needed via:
	1. A hosted website and enrollment capabilities
	2. Other marketing materials that may be used by Partner and Partner’s staff to promote Adesso Services
7. Provide training of Partner’s staff who will be referring Members and Non-Members to Adesso
8. Maintain at all material times any and all licenses, registrations and permits necessary in order to lawfully engage in the activities contemplated by this Agreement
9. Comply in all material respects with all federal, state and local laws relating to its business and to the transactions contemplated by this Agreement
10. Keep complete and accurate records of its activities relating to the performance of this Agreement, including but not limited to a list of all Member and Non-Members located in the home state of Partner who utilized Adesso Services, the date such services were provided, the Fee to Adesso, and other records necessary or appropriate for Adesso to confirm its compliance with this Agreement (collectively, “**Books and Records**”). Adesso shall maintain such Books and Records for a period not less than one (1) year following the termination of this Agreement.
11. Remain a properly organized and validly existing entity in good standing under the laws of the state of its organization.
12. **PARTNER OBLIGATIONS**
13. Serve as a non-exclusive referral partner for Adesso Services
14. Act diligently and in good faith as a partner and referral agent for Adesso and Adesso Services
15. Promote in a reasonable manner Adesso and Adesso Services in publications, mailings (including email), campaigns, and the like
16. Furnish in a timely and accurate manner information requested by a Member or non-Member about either Adesso Services, or services that Adesso provides
17. Not, and shall undertake reasonable efforts to ensure its employees, agents, representatives and contractors do not, make any representations or warranties related to Adesso or Adesso Services except to the extent such representations and warranties are contained in materials provided to Partner from Adesso specifically for distribution
18. Not make any false, deceptive, or misleading statement with respect to Adesso or Adesso Services
19. Comply in all material respects with all federal, state and local laws applicable to Partner’s performance and obligations under this agreement
20. Remain a properly organized and validly existing entity in good standing under the laws of the state of its organization.
21. **COMPENSATION**
22. Commissions.
23. Adesso shall pay Partner a ten percent (10%) of all Fees Adesso receives from all Adesso Services provides during the term of this Agreement to restaurant and other foodservice businesses located in South Dakota, whether a Member of Partner or not. As used herein, “**Fees**” means the amount of charges, commissions, or fees which Adesso earns and actually receives for providing Adesso Services.
24. Adesso shall pay Partner $500 for each restaurant or hospitality entity, business, or partnership that Partner directly refers to Adesso for Adesso Services through Partner’s direct efforts to inform such entity or business of Adesso and Adesso Services; no commission is owed when the entity or business learns of or contacts Adesso through Partner’s general or indirect marketing or informational materials (e.g. Partner’s website and web content, blogs, general emails or mailings, etc.) or through third-parties or Adesso’s own marketing efforts and informational materials.
25. Promotion/Marketing. Adesso will pay to Partner an amount equal to the current annual membership with Partner on behalf and for the account of each new restaurant or hospitality entity, business, or partnership (a) for whom Adesso provides one or more Adesso Services during the term of this Agreement, and (b) from whom Adesso receives a Fee for such Adesso Services. Such membership fee will be the initial membership fee for a non-Member who qualifies for membership, is willing to become a Member of Partner, and otherwise completes all other requirements to become a Member of Partner (no amount will be owed if the non-Member does not qualify, does not desire to become a Member, or otherwise fails to complete all requirement to become a Member).
26. Payment. Adesso will make Payments to Partner on a monthly basis based on the Fees Adesso receives in the prior month. Payment will be no later than the seventh business day of each month, although Adesso may choose to make interim payments during the month in in its sole and complete discretion. Payment shall be made via ACH funds transfer to Partner’s designated bank account. Adesso will provide the Partner with access to a compensation report with each payment, and a monthly report listing the commission and payment calculations.
27. **TERM**
28. This Agreement shall commence on the Effective Date and continue for a period one full calendar year.
29. Termination. Either party may terminate this Agreement either:
	1. For convenience, without cause or reason, upon written notice delivered at least thirty (30) days prior to the effective date of termination; or
	2. For breach of this Agreement if the other Party fails to cure a breach within ten (10) calendar days from written notice identifying the alleged breach.
30. Immediate Termination. Either Party may, upon written notice to the other Party, immediately terminate this Agreement without a right to cure for any of the following of the other Party:
31. Is insolvent or admits it cannot pay its debts in the ordinary course;
32. Is the subject of a petition in bankruptcy, receivership, or liquidation which is not dismissed with sixty (60) days; or
33. Is the subject of an administrative, civil, or criminal investigation by a governmental agency regarding fraud.
34. Effect of Termination. Upon termination, unless otherwise agreed:
35. Adesso shall be responsible to pay those commissions earned through the date of termination.
36. Each Party shall remove reference to the other Party in any marketing and promotional materials, websites (except for previously published articles or blogs)
37. Each Party shall remove or disable any links from one website or webpage from one Party to the other
38. Each Party shall comply with its obligations with respect to return or destruction of Confidential Information as set forth in Section 6.5 below.
39. **CONFIDENTIAL INFORMATION.**
40. Definition. The Parties agree and designate as “**Confidential Information**” the terms of this Agreement (but not the fact of), all financial information, accounting information, member lists and identities, customer and vendor information, specifications, pricing and fee information, trade secrets, and information by its nature is sensitive and not both generally known and easily accessible to the public. Confidential Information shall not include information or date that (a) was, is, or has become general public knowledge and accessible to the public through no fault or action of receiving Party; (b) was rightfully in the receiving Party’s possession free of any obligation of confidence at or subsequent to the time such Confidential Information was communicated to it; or (c) was developed by a Party independent of and without reference to or use of any Confidential Information of the other Party. Notwithstanding the first sentence of this Section 6.1, Adesso may, without violation of this Section 6, utilize and disclose to third-parties identities and information of Partner’s members as it reasonably determines in order to perform under and comply with this Agreement.
41. Duties. Each Party receiving Confidential Information, as well as its subsidiaries, employees, agents, and representatives who receive Confidential Information, shall: (a) hold all Confidential Information in strict confidence; (b) protect all Confidential Information with the same degree of care that recipient uses to protect its own confidential and proprietary information, but in no case less than a reasonable degree of care; and (c) use the Confidential Information solely for performance under this Agreement. Further, a receiving Party shall not disclose Confidential Information of the other Party to any other party except to its employees, agents, and representatives who: (x) need access to the Confidential Information in order for the recipient to perform under this Agreement, (y) are informed of its confidential nature, and (z) are bound by confidentiality obligations no less restrictive than the terms of this Agreement. Each Party shall refrain from reverse engineering, decompiling, or disassembling any software or other technical programs disclosed to it by the other Party.
42. Notice of Unauthorized Access. If a Party becomes aware of any unauthorized access to or disclosure of the other Party’s Confidential Information, it shall notify the other Party in writing as promptly as practicable and use reasonable efforts to limit any damage that may be caused to the Discloser as a result of such access or disclosure.
43. Ownership. All Confidential Information supplied by one Party to another pursuant to this Agreement shall remain the exclusive property of the disclosing party.
44. Return. Upon termination of this Agreement, each Party shall promptly return, or upon the other Party’s request, destroy, the other Party’s Confidential Information. If requested, each Party shall provide a written certification and attestation signed by duly authorized officer or director stating compliance with this sub-section 6.5.
45. **LICENSE TO MARKS**

Each party grants, during the Term, to the other Party a limited, non-exclusive license to reasonably use the other Party’s name, logos, brand, and trademarks (“**Marks**”) for performance under this Agreement, including the cooperative marketing of the partnership and opportunities contemplated herein. Notwithstanding the forgoing, a Party using the other Party’s Mark(s) shall first obtain approval and consent to such use of such, with such consent not to be unreasonably withheld, delayed, or conditioned. It is the responsibility of each Party to inform the other of any changes to their Marks and provide a reasonable period within which for the other to update existing marketing and promotional materials.

1. **DATA AND PRIVACY**

Each Party agrees that it is committed to protect the privacy of personal information, as such term may be defined under any applicable law, including but not limited to the *California Consumer Privacy Act*, which may be collected from consumers (“**PII**”). Accordingly, each Party agrees that during the term of this Agreement (i) the collection and use of PII by such Party shall be in accordance with all applicable law and its privacy policy and (ii) it shall maintain a privacy policy posted on its website. Without limiting the foregoing, each Party shall comply with all applicable laws, rules, and regulations governing privacy and/or data protection that are applicable to such Party with respect to performance under this Agreement.

1. **NATURE OF RELATIONSHIP**

Nothing in this Agreement shall be construed as creating a joint venture, partnership, agency, employer/employee, or similar relationship between the Parties, or as authorizing either Party to act as the agent of the other. Neither party shall have the authority to bind the other Party to any contractual terms or agreements it enters into with customers. Nothing in this Agreement shall create any obligation between either Party and any third party. Under no circumstances shall any third party be considered a third-party beneficiary under this Agreement or be entitled to any rights or remedies under this Agreement.

1. **INDEMNIFICATION**
2. Partner agrees to defend, indemnify, and hold harmless Adesso, and Adesso’s affiliates, directors, officers, employees, and successors, from and against any and all liabilities arising from or arising out of any third-party claims relating to any (i) negligent act or omission, including any fraud, misrepresentation or wrongdoing, by Partner in connection with the performance of this Agreement, or (ii) any breach of this Agreement by Partner.
3. Adesso agrees to defend, indemnify and hold harmless Partner and Partner’s affiliates, directors, officers, employees, and successors, from and against any and all liabilities arising from or arising out of any third-party claims relating to any (i) negligent act of omission and any fraud, misrepresentation or wrongdoing by Adesso in connection with the performance of this Agreement, and (ii) any breach of this Agreement by Adesso.
4. Procedure. Any person or party seeking defense or indemnification shall, as a condition to such defense or indemnification, (a) provide prompt written notice to the party from whom defense or indemnification is sought promptly, (b) promptly provide all documents and information requested; (c) make itself reasonably available for interview and depositions; and (d) appear and attend any hearings, mediations, arbitrations, trials, or other proceedings where (i) their appearance is required, or (ii) reasonably necessary in the reasonable opinion of the party providing defense and/or indemnification, in which case such party shall pay the direct expenses for travel and the federal per diem rate for food and lodging.
5. **LIMIT OF LIABILITY**

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

1. **AMENDMENTS AND ASSIGNMENT**

This Agreement may be amended only by a written agreement signed by both parties. Partner may not assign, transfer, use as collateral or security, hypothecate, or sell its rights under this Agreement, or delegate its duties hereunder, without the prior written consent of Adesso, which shall not be unreasonably delayed or withheld. Notwithstanding the forgoing, Partner may, without consent of Adesso, assign the entirety of Agreement in connection with the sale, merger (by operation of law or otherwise), or transfer of all or substantially all of its assets.

1. **NON-WAIVER**

The waiver or failure of either party to exercise in any respect any right provided in this Agreement shall not be deemed a waiver of any other right or remedy to which the party may be entitled.

1. **REMEDIES**

The Parties agree and acknowledge that any disclosure of information in breach of the confidentiality provision in Section 6 will cause immediate, irreparable and continuous damage to the non-breaching Party for which there is no adequate remedy at law. The Parties acknowledge and agree that in the event of breach or violation or threatened breach or violation of Section 6, the aggrieved Party shall be entitled to temporary, preliminary, and permanent injunctive relief enjoining such breach, violation, or threatened breach or violation, and such other legal and equitable remedies as may be provided by applicable law.

1. **NOTICE**

Any notice or other communication provided to a Party shall be in writing and shall be given to the appropriate Party in person or by a recognized overnight courier as follows:

**If to Adesso:**

Damon Maletta

Adesso Capital

8434 E. Shea Blvd., Bldg. B, Ste 100

Scottsdale, AZ 85260

**If to Partner:**

1. **GOVERNING LAW AND FORUM**

This Agreement, and all claims and disputes arising out of this Agreement, shall be governed and construed by Arizona state law without regard to any rules regarding conflicts of laws. Any actions or suits arising out of or related to the formation, negotiation, execution, and performance (or non-performance) of this Agreement, including any interpretation or construction, shall be brought only in state or federal court located in Maricopa County, Arizona, and both Parties consent to the jurisdiction and venue of such court and waive all defenses and arguments as to improper or inconvenient forum.

1. **SEVERABILITY; SURVIVAL**

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such portion shall be severed in only so much as is necessary for the remaining portion to be valid and enforceable, and this Agreement, including all other terms, will remain in full force and effect. Sections 4, 6, and 10-19 shall survive any termination or cancellation or cancellation of this Agreement.

1. **ENTIRE AGREEMENT**

This Agreement sets forth the entire agreement between the parties hereto relating to the subjects herein and fully supersedes all prior discussions, agreements and understandings between the parties.

1. **COUNTERPARTS/ELECTRONIC SIGNATURES**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. The signatures to this Agreement may be evidenced by facsimile or electronic (e.g. .pdf) copies reflecting one or more parties’ signatures hereto, and any such facsimile or electronic copy shall be sufficient to evidence the signature of such party or parties as if it were an original signature.

**IN WITNESS WHEREOF**, the Parties execute this Agreement as of the dates indicated below:

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| --- | --- |
| **Encore Capital Finance, Inc.**By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Damon Maletta, PresidentDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **South Dakota Retailers Association**By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |