

# TERMS OF USE

## LENDER JOINING THE FINSYNC LENDING NETWORK

Updated 3-2-20

### **Agreement and Acceptance of Terms**

This Terms of Use Agreement, along with any exhibits or amendments to this Agreement, (this “Agreement”) sets forth the terms and conditions under which FINSYNC, Inc. (“FINSYNC”) admits you (“You” or “Lender”) as a member of the FINSYNC lending network (the “FINSYNC Lending Network”).

#### **Lender understands that:**

By accepting this Agreement, or by using the services provided by FINSYNC, Lender represents that Lender has the capacity to be and agree to be bound by this Agreement.

Lender will not have access to the service if Lender does not agree to all the terms of this Agreement and any future amendments.

### **Description of Service**

FINSYNC is in the business of providing businesses a private, secure platform for sending and receiving electronic payments (ACH and card) with electronic remittance details (the “**Payments Service**”). Users (the “FINSYNC Users” or “FINSYNC User”) can subscribe to additional software features that help them manage cash flow and automate accounting (the “**Cash Flow Management Software**”), and easily apply for various types of financing from You (the “**Financing Services**”).

#### **Payments Service**

As a member of the FINSYNC Network, You will receive reports no less than quarterly on the payments volume processed on behalf of the business customers You referred to FINSYNC for the Payments Service.

#### **Cash Flow Management Software**

When business customers You referred to FINSYNC go beyond the Payments Service and subscribe to the Cash Flow Management Software, You will be notified and You will receive reports no less than quarterly detailing the services subscribed to by the FINSYNC Users.

#### **Financing Services**

When You join the FINSYNC Network, You are provisioned a lender’s portal (the “Lender’s Portal”) and are then able to receive loan applications from FINSYNC Users with whom You already have a relationship with or new customers in search of a relationship whom appear to fit within your risk profile.

When You receive a loan application through your Lender’s Portal, You benefit from advanced analytics, better communication tools and seamless access to other lenders who will help You

approve and fund more loans

### **Cost to Join the FINSYNC Lending Network**

There is no fee to join the FINSYNC Network. Use of the Lender's Portal is free until You have used your Lender's Portal to fund one or more loans, and thereafter the fee for ongoing usage becomes \$350 per month per Lender user ("Lender User"), a Lender User employee that logs into the Lender's Portal to receive loan applications and communicate with FINSYNC Users. One Lender User should be sufficient to handle one hundred or more loan applications per month.

### **Registration Information**

In order to join the FINSYNC Lending Network, you will need to enroll online and accept these terms or cause these terms to be accepted offline. To establish a Lender's Portal, you will need to provide your email address to which alerts will be sent when new loan applications are submitted for your review and reply. Required registration information may change from time to time.

### **Electronic Correspondence**

By providing us with your email address, you agree to receive all required notices electronically, to that email address. It is your responsibility to provide us with advance notice if your email address has changed or if you would like to assign alerts over to a new email address moving forward.

### **Lender Promotion**

Lender, if Lender chooses, can have a marketing landing page as an extension of the FINSYNC website in addition to other co-branded material and promo codes. All online applications through such Lender's landing page or using a Lender promotional code will go directly to Lender and no other member of the FINSYNC Lending Network if an applicant signs up for the FINSYNC Services. Any Lender promotional code may be tied to one or more pricing concessions as mutually agreed upon from time-to-time.

FINSYNC will use commercially reasonable efforts to match Lender with qualified FINSYNC Users who do not already have an account with another lender that is a member of the FINSYNC Lending Network and who needs a business loan that meets Lender's eligibility matrix ("Eligibility Matrix"). Lender will be able to maintain and make edits to its Eligibility Matrix through the Lender Portal.

### **FINSYNC Promotion**

Lender will use commercially reasonable efforts to advertise it is part of the FINSYNC Network and promote FINSYNC's Payments Service, Cash Flow Management Software and Financing Services.

### **Revenue Share to Lender**

After Lender has enrolled one or more customers, Lender will be presented a revenue share agreement that will provide Lender a source of revenue on FINSYNC's subscription and transaction-based services.

## **Customer Support**

FINSYNC is responsible for all customer support related matters regarding the FINSYNC Service.

## **Publicity**

Lender may use FINSYNC's logo and other marketing material in an effort to grow its business, and FINSYNC may use Lender's logo on its website and other marketing materials to help drive business and awareness to Lender. Each party shall comply in all respects with the other party's brand policies and standards before using such party's logos and other trademarks in public.

## **Customer Underwriting; Due Diligence**

When FINSYNC Users submit loan requests to Lender through the Lender Portal, the Lender will be electronically notified that a current or prospective customer wishes for a loan subject to satisfactory terms. Lender, in its sole discretion, shall conduct its due diligence of FINSYNC Users to determine whether to extend a loan to the applicant. Lender will have access to all the financial information a FINSYNC User has agreed to share through the Lender Portal. Lender will complete the due diligence and underwriting review using the data obtained through the Lender Portal with respect to the loan application in accordance with Lender's custom and practice. Lender may request additional information from a FINSYNC User through the Lender Portal or by contacting the FINSYNC User directly. Upon completion of Lender's own due diligence, Lender shall notify a FINSYNC User whether or not the FINSYNC User has been approved by Lender or another member of the FINSYNC Lending Network using the Lender Portal or by the Lender's preferred method. Lender may, in Lender's sole discretion, extend a loan to a FINSYNC User directly or by working in concert with other members of the FINSYNC Lending Network.

## **Fundings without Network Participation**

In the event Lender and a FINSYNC User enter into a loan agreement through FINSYNC's Lender Portal, Lender will promptly set an initial target funding date, establish the initial funding amount, and process the initial funding to FINSYNC User either through the Lender Portal or directly in accordance with Lender's custom and practice. Thereafter, Lender may provide other financial accommodation to the FINSYNC User under the terms and conditions of the agreed upon loan.

## **Fundings with Network Participation**

In the event Lender and a FINSYNC User are not able to enter into a loan agreement, Lender will be able to connect with other members of the FINSYNC Lending Network through the Lender Portal in order to present the FINSYNC User with other loan options available and, in such the event such efforts result in a loan to such a FINSYNC User, FINSYNC will help promptly set an initial target funding date, establish the initial funding amount, and process the initial funding to FINSYNC User either through the Lender Portal or directly in accordance with lead lender's custom and practice.

## **Rights in Collateral**

Lender shall solely and exclusively own all right, title, and interest in and to collateral as determined in the Lender's loan agreement with its customer and all proceeds and payments thereof. All collections from customer with respect to loans extended by Lender received by FINSYNC shall be held by FINSYNC in trust for the benefit of Lender and shall be disbursed,

remitted, and delivered to Lender or deposited per Lender's instructions in accordance with the provisions herein.

### **Data Protection**

The parties acknowledge that third party data received under this Agreement may be subject to confidentiality rules or restrictions under applicable law, in particular if the matter concerns FINSYNC User information, customer information or non-public personal information ("Third Party Confidential Data"). The parties hereby agree to not use or disclose such Third Party Confidential Data received as a result of the performance of this Agreement except in accordance with the applicable laws, rules and regulations. Each Lender and FINSYNC will employ appropriate policies and guidelines and undertake appropriate technical and organizational measures to ensure compliance with this section and protect the privacy of such Third Party Confidential Data.

### **Security Audit**

No less than once per calendar year, FINSYNC will retain a certified public accounting firm (i) to perform a SSAE-16 audit that includes FINSYNC's security management systems and (ii) to produce a SSAE-16 SOC 2 Type II report. FINSYNC will provide such report to Lender within the first 365 days of this Agreement and within ten (10) days after receipt of such report for subsequent years during the term of this Agreement, and such report will be considered Confidential Information disclosed by FINSYNC pursuant to this Agreement.

### **Intellectual Property**

Each party acknowledges that the copyright, trademarks, trade names, patents, know-how and other intellectual property rights of each party used or subsisting in or in connection with the obligations of each hereunder are the property of each such party or its licensors. Neither party shall during or at any time after the termination of this Agreement in any way infringe or dispute the ownership by the other (or any such other party) thereof. During the term of this Agreement, each party hereby grants to the other party a limited, revocable, non-exclusive, non-assignable, non-transferable right and license to use the trademarks and trade names of the other party in connection with promotion as described in this Agreement. Without FINSYNC's prior written consent, Lender shall not (i) copy or reproduce any FINSYNC software (other than for normal system operation and for backup purposes); (ii) remove any proprietary notices from any FINSYNC software (e.g., copyright and trademark notices); or (iii) translate, adapt, vary, modify, disassemble, decompile or reverse engineer any FINSYNC software.

### **Confidential Information**

"Confidential Information" means all information that is confidential, proprietary or Third Party Confidential Data provided by the disclosing party to the receiving party for use in connection with this Agreement but does not include information that is not Third Party Confidential Data that (i) the receiving party already knows, (ii) becomes generally available to the public except as a result of disclosure by the receiving party in violation of this Agreement, and (iii) becomes known to the receiving party from a source other than the disclosing party on a non-confidential basis. Confidential Information also includes the terms of this Agreement, all trade secrets, processes, proprietary data, information or documentation, or any pricing or product information the disclosing party provides to the receiving party.

## **Protection of Confidential Information**

Each party shall hold and deal with in strict confidentiality the Confidential Information of the other party. Each party shall establish administrative, technical and physical safeguards and adopt the following measures to protect the confidentiality of Confidential Information of the other party: (i) hold all Confidential Information in the strictest of confidence; (ii) safeguard all Confidential Information with the same degree of care to avoid unauthorized disclosure as it uses to protect its own Confidential Information of a similar nature, which necessarily includes the care required by applicable law; (iii) insure the security of Confidential Information; (iv) protect against any anticipated threats or hazards to the security or integrity of Confidential Information; and (v) protect against unauthorized access to or use of Confidential Information that would result in substantial harm or inconvenience to either party. Neither party shall use, or assist or permit another party to use, any of the other party's Confidential Information for any purposes other than the performance of its duties hereunder. The receiving party will limit access to Confidential Information to its employees with a need to know the Confidential Information and will instruct those employees to keep the information confidential.

## **Nondisclosure**

All Confidential Information disclosed under this Agreement will remain the exclusive and confidential property of the disclosing party. The receiving party will not disclose the Confidential Information of the disclosing party and will use at least the same degree of care, discretion and diligence in protecting the Confidential Information of the disclosing party as it uses with respect to its own confidential information. Notwithstanding the foregoing, the receiving party may disclose Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it, (ii) as appropriate to respond to any summons or subpoena or in connection with any litigation, and (iii) to the extent necessary to enforce its rights under this Agreement. Upon the request of the disclosing party, the receiving party will return or destroy all Confidential Information of the disclosing party that is in its possession.

## **Lender Indemnification**

FINSYNC shall indemnify Lender, and its respective equity owners, members, managers, officers, directors, employees, agents, representatives and Affiliates (collectively the "Lender Indemnified Parties") and hold such Lender Indemnified Parties harmless against all claims arising from or related to FINSYNC's acts or omissions in connection with or arising under (a) this Agreement or any Servicing Agreement or the performance of its obligations herein or therein; (b) the performance of the FINSYNC Services or any FINSYNC Servicer Duties under any Servicing Agreement; or (c) incurred as a result of FINSYNC's willful misconduct or gross negligence with respect to FINSYNC's failure to perform its duties and obligations hereunder or any Servicing Agreement. If any of the Lender Indemnified Parties has knowledge of any such event, such Lender Indemnified Party shall promptly advise FINSYNC of any actual or pending actions or circumstances which could reasonably give rise to any action contemplated and described herein. FINSYNC shall be entitled to manage resolution to such action and the Lender Indemnified Parties shall cooperate with FINSYNC in connection thereto.

## **FINSYNC Indemnification**

Lender shall indemnify FINSYNC, and its respective equity owners, shareholders, officers, directors employees, agents, representatives and Affiliates (collectively the "FINSYNC Indemnified Parties") and hold such FINSYNC Indemnified Parties harmless against all claims

arising from or related to Lender's acts or omissions in connection with or arising under (a) this Agreement or any loan, or the performance of its obligations herein or therein; or (b) incurred as a result of Lender's willful misconduct or gross negligence with respect to Lender's failure to observe its duties and obligations hereunder. If any of the FINSYNC Indemnified Parties has knowledge of any such event, such FINSYNC Indemnified Party shall promptly advise Lender of any actual or pending actions or circumstances which could reasonably give rise to any action contemplated and described herein. Lender shall be entitled to manage resolution to such action and the FINSYNC Indemnified Parties shall cooperate with Lender in connection thereto

## **LIMITATION OF LIABILITY**

WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, (I) IN NO EVENT SHALL EITHER PARTY OR ITS RESPECTIVE SUPPLIERS, AFFILIATES, EMPLOYEES, AGENTS, AND SUBSIDIARIES BE LIABLE FOR INDIRECT, CONSEQUENTIAL, OR SPECIAL DAMAGES, LOST PROFITS, DAMAGE TO THE OTHER PARTY'S BUSINESS REPUTATION, LOSS OF USE OF EQUIPMENT OR ANY ASSOCIATED EQUIPMENT, COSTS OF SUBSTITUTED FACILITIES, EQUIPMENT, OR SERVICE, DOWN-TIME COSTS, OR CLAIMS OF ANY CUSTOMER ARISING FROM THIS AGREEMENT OR ITS PERFORMANCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, COSTS OR CLAIMS, AND (II) IN NO EVENT SHALL EITHER PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT OF FEES PAID BY LENDER TO FINSYNC HEREUNDER OR UNDER ANY SERVICING AGREEMENT.

## **Termination**

Each party may terminate this Agreement by sending written notice of termination to an officer of the other party no less than ninety (90) days prior to termination date. Any right or obligation of the parties or provision in this Agreement which, by its express terms is to survive termination of this Agreement, will survive any such termination.

## **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the State of Georgia.

## **Relationship of the Parties**

Nothing contained herein will be deemed to create an employment relationship between the parties hereto. Neither party is authorized to enter into any contract or commitments on behalf of the other, or assume any obligation for, or otherwise bind the other party financially or otherwise, nor will it represent that it has such authority.

## **Assignment**

This Agreement shall be binding on and shall inure to the benefit of the parties and their respective successors in interest and assigns. If this Agreement is assigned, the assignee shall agree to be bound by the provisions of this Agreement. Either party to this Agreement may assign this Agreement (including by operation of law or through a merger or similar change of control transaction) without the prior written consent of the other party.

## **Amendment**

The parties may add additional terms to this Agreement including additional programs, promotions and revenue sharing opportunities that are customary for promotions of this nature, including but not limited to those related to custom software development, working with bank partners, creating new markets, by incorporating additional terms and conditions in one or more Addenda to this Agreement signed by both parties.

### **Entire Agreement**

This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof. No change, addition or amendment will be made except by written document signed by the parties hereto.