

## **TERMS OF USE**

### **CREDIT UNION JOINING THE FINSYNC NETWORK**

**Updated 11-1-2020**

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

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

#### **Credit Union Understands That:**

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

Credit Union will not have access to the service provided by FINSYNC if Credit Union does not agree to all the terms of this Agreement and any future amendments.

Continued use of the services shall constitute acceptance of updated versions of this Agreement.

#### **Description of FINSYNC Services**

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, process payroll and automate accounting (the “Cash Flow Management Software”), and easily apply for various types of financing from You (the “Financing Services”).

## **Description of FINSYNC Network**

FINSYNC created the FINSYNC Network to help FINSYNC Users get in sync with You online, resulting in a high-level style of relationship Credit Unioning and better business outcomes for all parties.

## **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 with whom You have a relationship.

## **Cash Flow Management Software**

When the business customers with whom You have a relationship 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 Network**

There is no upfront fee to join the FINSYNC Network. FINSYNC charges \$350 per month per Credit Union user ("Credit Union User") for use of the Lender's Portal. A Credit Union User is an employee of the Credit Union that logs into the Lender's Portal to receive loan applications and communicate with FINSYNC Users. Credit Unions who

join the Network as a Charter Member will have the Charter Member price and other benefits.

### **Registration Information**

In order to join the FINSYNC Network and receive loan applications through your Lender's Portal, 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 FINSYNC with advanced notice if your email address has changed or if You would like to assign alerts over to a new email address moving forward.

### **Credit Union Promotion**

FINSYNC agrees that it will provide Credit Union with the first right to consider any loan application submitted through the Lender's Portal when FINSYNC is aware that the applicant is a customer of the Credit Union because the applicant has synced an account with FINSYNC that is with the Credit Union. In the event applicant syncs Credit Union accounts with multiple members of the FINSYNC Network, the applicant will be directed to the Credit Union with whom they have the best relationship as determined by FINSYNC asking the applicant that question.

Optionally, Credit Union 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 loan applications through such Credit Union's landing page or using a Credit Union promotional code will go directly to Credit Union and no other member of the FINSYNC Network. Any Credit Union 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 Credit Union with qualified FINSYNC Users who do not already have an account with another Credit Union within the FINSYNC Network and who need a business loan that meets Credit Union's eligibility matrix ("Eligibility Matrix"). Credit Union will be able to maintain and make edits to its Eligibility Matrix through the Lender's Portal.

### **FINSYNC Promotion**

You have the option to promote that You are part of the FINSYNC Network to attract and retain more business customers, increase revenue and improve relationship development. You may promote the Payments Service (as an alternative to Zelle or other similar services) and the Cash Flow Management Software (as an alternative to QuickBooks or other similar services) and the Financing Services (as a better way to apply for financing online and the new way Credit Unions and online lenders are working together to approve more loans).

### **Revenue Share to Credit Union**

After Credit Union has enrolled one or more customers as FINSYNC Users, Credit Union will be presented a revenue share agreement (the "Revenue Share Agreement") that will provide Credit Union a source of revenue on the Payments Service and the Cash Flow Management Software. You can also earn revenue on the Financing Services when You work with other lenders to fund loans that You would have otherwise not made, in addition to the revenue You earn when You use your own funds to approve and close more loans.

### **FINSYNC Network – Insurance Broker**

If your Credit Union is or ever becomes an insurance broker, we can help You get in sync with your business customers in need of insurance with You through an Insurance Portal (the "Insurance Portal"). The terms and cost of the portal will be covered through a separate agreement.

### **Customer Support**

FINSYNC is responsible for all customer support related matters regarding the Payments Service and Cash Flow Management Software. FINSYNC and Credit Union will work together to support customers through the Lender's Portal and Financing Services.

## **Publicity**

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

## **Fundings without Network Participation**

In the event Credit Union and a FINSYNC User enter into a loan agreement through the Lender's Portal, Credit Union 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's Portal or directly in accordance with Credit Union's custom and practice. Thereafter, Credit Union 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 Credit Union and a FINSYNC User are not able to enter into a loan agreement, Credit Union will be able to connect with other members of the FINSYNC Network through the Lender's Portal in order to present the FINSYNC User with other loan options available and, in the event such efforts result in a loan to a FINSYNC User, FINSYNC 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's Portal or directly in accordance with lead lender's custom and practice. After funding, FINSYNC will share any fee earned and passed along by lead lender with Credit Union pursuant to the previously mentioned Revenue Share Agreement.

### **Rights in Collateral**

Credit Union shall solely and exclusively own all right, title, and interest in and to collateral as determined in the Credit Union's loan agreement with its customer and all proceeds and payments thereof. All collections from customer with respect to loans extended by Credit Union received by FINSYNC shall be held by FINSYNC in trust for the benefit of Credit Union and shall be disbursed, remitted, and delivered to Credit Union or deposited per Credit Union'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 Credit Union 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-18 audit that includes FINSYNC's security management systems and (ii) to produce a SSAE-18 SOC 2 Type II report. FINSYNC will provide such report to Credit Union 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, Credit Union 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.



## **Credit Union Indemnification**

FINSYNC shall indemnify Credit Union, and its respective equity owners, members, managers, officers, directors, employees, agents, representatives and Affiliates (collectively the "Credit Union Indemnified Parties") and hold such Credit Union 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 Credit Union Indemnified Parties has knowledge of any such event, such Credit Union 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 Credit Union Indemnified Parties shall cooperate with FINSYNC in connection thereto.

## **FINSYNC Indemnification**

Credit Union 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 Credit Union'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 Credit Union's willful misconduct or gross negligence with respect to Credit Union'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 Credit Union of any actual or pending actions or circumstances which could reasonably give rise to any action contemplated and described herein. Credit Union shall be entitled to manage resolution to such action and the FINSYNC Indemnified Parties shall cooperate with Credit Union 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 Credit Union 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, till such date (the "Termination Date"), this Agreement will continue on a month-to-month basis. 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 Credit Union partners, creating new markets, by incorporating additional terms and conditions.

### **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.