

BY CLICKING THE “I ACCEPT” BUTTON OR OTHERWISE ACCEPTING THIS AGREEMENT THROUGH AN ORDERING DOCUMENT THAT INCORPORATES THIS AGREEMENT (THE “ORDERING DOCUMENT”), YOU AGREE TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND, IN SUCH EVENT, “YOU” AND “YOUR” AS USED IN THIS AGREEMENT SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU, AS AN INDIVIDUAL MAY BE HELD PERSONALLY LIABLE FOR ALL OBLIGATIONS CONTAINED HEREIN AND IN ANY ORDERING DOCUMENT.

## LENDIO FOR THE LOAN SPECIALIST AGREEMENT

This Software as a Service (SaaS) Agreement (the “Agreement”) is by and between Lendio, Inc. (“Provider”) and the individual or entity that has executed this Agreement (“Customer” or “You”). This Agreement sets forth the terms and conditions that govern orders placed by Customer for Services under this Agreement.

### **Recitals**

WHEREAS, Provider is the owner of certain proprietary computer software known as Lendio for the Loan Specialist that is used to assist lending institutions track the progress of potential borrowers and determine the likelihood of entering into a loan agreement with a potential borrower (“Lendio LS”);

WHEREAS, Provider provides and sells subscriptions for subscribers to access and use Lendio LS via a provided website or any website notified to the subscribers from time to time (the “Services”);

WHEREAS, Customer desires to use the Services for Customer’s internal business purposes, pursuant to the terms and conditions set forth herein;

WHEREAS, Provider is willing to provide access to the Services for Customer’s internal business use pursuant to the terms and conditions set forth herein; and

WHEREAS, the Parties acknowledge and agree that this Agreement shall be effective and in force upon the date Customer accepts the terms and conditions hereof (“Effective Date”).

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the Parties agree as follows:

## **Article I: Subscription**

- 1) Provider grants to Customer and Customer accepts from Provider, a limited, non-exclusive, non-transferable right to access and use the Services solely for Customer's internal business use. Customer shall not grant any access or use to the Services to any third-party and shall not grant any access or use to the Services to internal users beyond the number of Licensed Users (as defined herein) granted herein. Customer and/or Licensed Users shall not use the Services for, or on behalf of, third parties that are not authorized under this Agreement. Customer shall use its best efforts to ensure that the Licensed Users use the Services in accordance with the terms and conditions of this Agreement. Customer acknowledges that its right to use the Services will be web-based only pursuant to the terms and conditions of this Agreement and that Lendio LS will not be installed on any servers or other computer equipment owned or controlled by Customer or otherwise provided to Customer.
  - a) *Licensed User.* A Licensed User shall mean a representative of Customer that will utilize the Services for the internal business purposes of Customer and for purposes of this Agreement. The number of Licensed Users shall be determined by a fully submitted Ordering Document or other written agreement between Customer and Provider. Solely for purposes of this Article I.1.a, email communications satisfy the written agreement requirement.

## **Article II: Intellectual Property Rights**

- 1) Customer acknowledges that all right, title, and interest in and to the Services and Lendio LS, together with its codes, sequences, derivative works, organization, structure, interfaces, any documentation, data, trade names, trademarks, patents, patent applications, or other related materials (collectively, the "Provider IP"), is, and at all times shall remain, the sole and exclusive property of Provider. The Provider IP contains trade secrets and proprietary information owned by Provider and is protected by copyright, trademark, patent, and other laws relating to intellectual property. Except the right to use the Services, as expressly provided herein, this Agreement does not grant to Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses with respect to the Services or Lendio LS.
- 2) Customer shall not attempt, or directly or indirectly allow any Licensed User or other third party to attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, reverse compile, disassemble, reverse engineer, download, transmit or distribute all or any portion of the Services and/or Lendio LS in any form or media or by any means.
- 3) The provisions of this Article II shall survive the termination of this Agreement.

## **Article III: Subscription Fee**

- 1) Customer shall pay to Provider the subscription fee (the “Subscription Fee”) in the amount and for the duration that Customer has entered and agreed to pursuant to an Ordering Document for this Agreement. The Subscription Fee shall be due and payable according to the terms of the Ordering Document. Access and use to the Services and/or Lendio LS shall not begin prior to full payment in accordance with the terms of the Ordering Document.
- 2) The amount of the Subscription Fee does not include any applicable taxes. Customer is solely responsible for any and all applicable taxes.
- 3) Customer shall provide a valid credit card, ACH payment system information, bank account information authorized for automatic bill paying, or other acceptable method of payment to Provider and shall take all necessary steps to authorize automatic payment of the Subscription Fee. By agreeing to this Agreement, Customer hereby authorizes Provider to automatically charge said method of payment for all Subscription Fees due under an Ordering Document during the term of this Agreement. If, for any reason, automatic payment shall be denied, then Customer shall pay the applicable Subscription Fee, together with a one hundred and fifty dollar (\$150) late fee, to Provider within five (5) days of notice from Provider.
- 4) Any additional payment terms between Provider and Customer shall be agreed to in writing and set forth in an Ordering Document.

#### **Article IV: Accessibility/Performance; Maintenance and Support; and Use**

- 1) Accessibility/Performance: Provider shall use commercially reasonable efforts in its attempt to make the Services available twenty four hours per day, seven days per week during the Term, except for: (i) scheduled system back-up or other on-going maintenance as required and scheduled in advance by provider, (ii) disruptions caused by Customer’s misuse of the Services, (iii) disruptions caused by unscheduled system back-up or other maintenance as required, including but not limited to maintenance required as a result of Provider’s update and/or enhancement of the Services, overuse of the Services, which maintenance may cause significant downtime to the Services, or (iv) any unforeseen cause that is beyond Provider’s reasonable control, including but not limited to internet service provider or communications network failures, denial of service attacks or similar attacks, or any force majeure events set forth in this Agreement. Provider will monitor performance indicators on the systems and network infrastructure (its own and that of third party suppliers) in order to gauge the overall performance of its hosting services, and will take reasonable steps to address systems and network infrastructure as required to maintain performance of the Services. Provider further reserves the right to monitor and reasonably restrict Customer’s ability to use the Services if Customer is using excessive computing resources that are impacting the performance of the Services for other subscribers. Provider agrees to notify Customer in cases where it restricts such use and use good faith efforts to determine an appropriate alternative or work-around solution. No statement contained in this Article IV shall be found to be a representation or warranty of any kind regarding the availability of the Services.

- 2) Maintenance and Support: Provider shall maintain the Service and provide all patches and fixes to the Service at no additional cost. Provided, however, said maintenance shall not include any major releases of new versions of the Service, additional functionality, or custom programming, which Provider, at its discretion, may provide at an additional cost as otherwise agreed between the parties.
- 3) Use: In the event of any misuse of the Service and/or Lendio LS by the Customer, and as determined by Provider, Provider may limit Customer's use of the Service in any manner. Misuse of the Service and/or Lendio LS includes, but is not limited to, using the electronic mail, telephone, and/or data storage features of the Service and/or Lendio LS in a manner that harasses clients of Provider or Customer, is unlawful, or has a negative impact on Provider.

### **Article V: Data**

- 1) Borrower Data
  - a. *Provider Data*. Throughout the term of this Agreement, Provider, in accordance with a lead purchase agreement by and between Customer and Provider ("Lead Purchase Agreement"), may place data relating to potential borrowers into the Service and/or Lendio LS or make such data otherwise available for Customer ("Provider Data"). At all times, Provider is and will remain the sole and exclusive owner of all right, title, and interest in and to all Provider Data, including any intellectual property rights relating thereto. Furthermore, Customer shall be obligated to pay any and all fees due to Provider pursuant to any Lead Purchase Agreement between the Parties.
  - b. *Customer Data*. Throughout the term of this Agreement, Customer may place data relating to potential borrowers into the Service and/or Lendio LS or make such data otherwise available to Provider ("Customer Data"). Customer Data may include information that is personally identifiable data regarding potential borrowers ("Personal Customer Data"). Items of personally identifiable information shall include the full name, personal address, date of birth, and/or social security number. At all times, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including any intellectual property rights relating thereto.
  - c. *Limited License to Use Provider Data*. Subject to the terms and conditions of this Agreement, Provider hereby grants Customer a limited, non-exclusive, non-transferable, and non-sublicensable license to utilize the Provider Data to fulfill Customer's obligations contained herein. Unless Provider gives written permission, under no circumstances shall Customer transmit, sell, or otherwise transfer Provider Data to any third parties. Furthermore, Customer and Provider shall adhere to any and all obligations contained in any Lead Purchase Agreement.

- d. *Limited License to Use Customer Data.* Subject to the terms and conditions of this Agreement, Customer hereby grants Provider a limited, royalty-free, non-exclusive, non-transferable, and non-sublicensable license to utilize the Customer Data to (i) fulfill Provider's obligations contained herein and (ii) perform various research functions to improve the Services. Under no circumstances will Provider transmit, sell, or otherwise transfer Personal Customer Data to any third parties.
  - e. *No Implied Rights.* Except for the limited license expressly provided in this Article V, nothing contained in this Agreement shall be construed as granting Customer or any third party any right, title, or interest in or to any Provider Data. Except for the limited license expressly provided in this Article V, nothing contained in this Agreement shall be construed as granting Provider or any third party any right, title, or interest in or to any Customer Data.
- 2) Security: At all times, Customer Data and Provider Data will be stored in a secure location as chosen by Provider. Personal Customer Data and documents that are uploaded to the Services, will be stored in a secure and encrypted location. Provider cannot guarantee the security of any Customer Data that is sent by Customer via email or other transmission to a third party. Provider will not send any such information via email or other transmission that cannot have continuous security. Provider will store Customer Data and Provider Data under commercially reasonable storage means, as determined in the sole discretion of Provider.
- a. *Personal Information.* "Personal Information" means any information included in either Provider Data or Customer Data that does or can identify a specific individual or by or from which a specific individual may be identified, contacted or located, such as the individual's name, address, social security number, etc., and any other information relating to an identified or identifiable individual. Personal Information includes all "nonpublic personal information," as defined under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.).
    - i. Permitted Use: Provider and Customer shall not cause or permit any Personal Information to be processed in any manner or for any purpose other than to fulfill the obligations of this Agreement and shall do so in compliance with all applicable laws.
  - b. *Customer Responsibility.* Provider shall not be responsible for any breach of Customer Data or Provider Data that is accessed due to Customer's negligence or willful acts, including, but not limited to, a third party accessing the Services and/or Lendio LS through the use of Customer's credentials, loss of any property of the Customer (i.e., lost or stolen computer hardware), or any other acts committed or omitted by Customer. Furthermore, Customer shall be liable for any and all costs, including reasonable attorneys' fees, associated with a breach of any data due to Customer's negligence as found herein.

#### **Article VI: Term, Termination, and Default**

- 1) Term: This Agreement shall commence on the Effective Date and remain in effect for a period of twelve (12) months thereafter (the “Initial Term”). This Agreement shall automatically renew for additional, successive terms of twelve (12) months (each, a “Renewal Term”) unless, at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term, either Party provides the other with written notice of its desire not to renew this Agreement. Such right of non-renewal may be exercised by either Party for any or nor cause.
- 2) Termination for Cause: In addition to any right of termination set forth elsewhere in this Agreement, either Party may terminate this Agreement, by providing thirty (30) days’ written notice to the other Party, if the other Party materially breaches this Agreement and such breach: (i) cannot be cured or (ii) being capable of cure, remains uncured for thirty (30) days after the breaching party receives written notice thereof.
- 3) Effect of Termination: Immediately upon termination of this Agreement, the Receiving Party shall cease use of all Confidential Information obtained from the other Party, except to the extent necessary for the Receiving Party to perform its obligations under this Agreement then in effect. Upon termination for any reason, all rights and subscriptions granted to Customer shall immediately terminate, and Customer shall cease using the Services and shall prohibit Licensed Users from using the Services. Furthermore, upon termination, Customer shall cease use of all Provider Data and shall not access the Services in any manner other than as set forth herein. In addition, Customer shall pay, within ten (10) days, to Provider all amounts due and outstanding as of the date of termination, including any fee incurred as a result of termination.
- 4) Default: In the event Customer breaches or attempts to breach any of the provisions of this Agreement, Provider shall have the right, in addition to such other remedies that may be available, to injunctive relief enjoining such breach or attempt to breach, Customer hereby acknowledging the inadequacy of any remedy at law.

#### **Article VII: Confidentiality**

- 1) In addition to, and in no way limiting the requirements relating to the Provider IP as set forth in Article II of this Agreement, Customer shall use its reasonable efforts (but in no case less than the efforts used to protect its own proprietary information of a similar nature) to protect all proprietary, confidential, and/or non-public information pertaining to or in any way connected to the Service, Lendio LS, Provider’s financial, professional and/or other business affairs, and this Agreement (the “Confidential Information”).
- 2) Customer shall not disclose or publicize the Confidential Information without the Provider’s prior written consent.
- 3) The terms of confidentiality and non-disclosure contained herein shall survive the termination of this Agreement and remain in full force until the Confidential Information no longer qualifies as Confidential Information as determined by Provider.

- 4) The restrictions on disclosure shall not apply to information which was: (i) generally available to the public at the time of disclosure, or later available to the public other than through fault of the Customer; (ii) already known to the Customer prior to disclosure pursuant to this Agreement; (iii) obtained at any time lawfully from a third-party under circumstances permitting its use or disclosure to other; or (iv) required by law or court order to be disclosed.

**Article VIII: Representations and Warranties; Limited Warranty; and Warranty Disclaimer**

- 1) **Representations and Warranties:** Each Party represents and warrants to the other that (i) it is duly organized and is validly existing in good standing under the laws of the jurisdiction in which it is organized, (ii) it has full power and authority to enter into and perform its obligations under this Agreement, (iii) it has the right to disclose all of the information disclosed to the other Party hereunder, (iv) it has all of the rights necessary to grant the license to the Service and/or Lendio LS as contained and granted to herein (nothing in this paragraph shall add to or reduce the license granted in this Agreement), (v) this Agreement constitutes a binding obligation of each Party and is fully enforceable in accordance with its terms, and (vi) it will at all times comply with all applicable federal, state, and local laws and regulations.
- 2) **Limited Warranty:** Provider warrants that it has the power and authority to grant the subscription for the Services granted to Customer hereunder. EXCEPT FOR THE WARRANTY SET FORTH HEREIN, THE SERVICES ARE PERFORMED “AS IS,” AND PROVIDER DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.
- 3) **Warranty Disclaimer:** Each Party recognizes that there are many uncertainties in the business contemplated by this Agreement and acknowledges and agrees that, other than as expressly set forth in this Agreement, no representations, warranties, or guarantees of any kind have been made by the other Party concerning the prospects for earned revenues.

**Article IX: Limitation of Liability and Indemnification**

- 1) **Limitation of Liability:** Customer represents that it accepts sole and complete responsibility for: (a) the selection of the Services to achieve Customer’s intended results; (b) use of the Services; (c) the results obtained from Services; and (d) the terms of any contracts between Customer and any third party. Provider does not warrant that the Customer’s use of the Services will be uninterrupted or error-free. EXCEPT FOR A BREACH OF ARTICLE VII (CONFIDENTIAL INFORMATION), TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES,

AGENTS, SUBCONTRACTORS OR SOURCES BE LIABLE TO THE OTHER PARTY UNDER ANY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY FOR (A) COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, OR (B) ANY AMOUNT IN EXCESS OF THE AGGREGATE AMOUNTS RECEIVED FROM THE OTHER PARTY HEREUNDER DURING THE SIX (6) MONTH PERIOD PRIOR TO THE DATE ON WHICH THE CLAIM OR CAUSE OF ACTION GIVING RISE TO LIABILITY AROSE. FURTHERMORE, NEITHER PARTY SHALL BE RESPONSIBLE OR LIABLE TO THE OTHER PARTY FOR THE PERFORMANCE, PAYMENT, OBLIGATION, LIABILITY, FRAUD OR BREACH OF ANY CLIENT. IN NO EVENT SHALL EITHER PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBCONTRACTORS OR SOURCES BE LIABLE TO THE OTHER PARTY UNDER ANY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, OR LOST PROFITS OR DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

2) Indemnification:

- a. Customer shall defend, indemnify, and hold Provider and its affiliates and their successors and assigns, and their respective directors, officers, employees, agents, and/or subcontractors harmless from and against all third party claims, causes of actions, suits and proceedings, liabilities, damages, losses, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) arising out of or relating to Provider's performance of its obligations herein ("Claim"). Provider shall promptly notify the Customer of all threats, claims and proceedings relating to any Claim and provide the Customer with reasonable cooperation, at the Customer's expense, in the defense and/or settlement of such Claims. Customer shall not settle or agree to any compromise with respect to any Claim on Provider's behalf without the Provider's prior written approval, which shall not be unreasonably withheld.
- b. Provider shall defend, indemnify, and hold Customer and its affiliates and their successors and assigns, and their respective directors, officers, employees, agents, and/or subcontractors harmless from and against all third party claims, causes of actions, suits and proceedings, liabilities, damages, losses, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) arising out of or relating to any security breach of the Services and/or Lendio LS ("Data Breach Claim"). Each Party shall promptly notify the other Party of any Claim. Customer shall provide the Provider with reasonable cooperation, at the Provider's expense, in the defense and/or settlement of such Data Breach Claims. Customer shall not settle or agree to any compromise with respect to any Data Breach Claim on Provider's behalf without the Provider's prior written approval, which shall not be unreasonably withheld.

## Article X: Miscellaneous

- 1) Notice and Demands: Notice, demand, or other communication mandated to be given by this Agreement by either Party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, facsimile transmission, or electronic mail to the addresses as found in an Ordering Document.
- 2) Governing Law; Forum Selection: This Agreement shall be governed exclusively by the laws of the State of Utah, without regard to its conflicts of laws principles. The Parties hereto agree to submit to the exclusive jurisdiction of, and venue in, the courts in Salt Lake County in Utah in any dispute arising out of or relating to this Agreement.
- 3) Compliance with Laws: Customer shall use the Services in accordance with any and all applicable local, state, and/or federal laws.
- 4) Headings: Any headings used herein are for convenience only and they form no part of the Agreement and shall not affect the interpretation thereof.
- 5) Severability: If any provision of this Agreement shall be held illegal, void, or unenforceable, the remaining portions of the Agreement shall remain in full force and effect.
- 6) No Waiver: The delay or failure of either Party to exercise any right under this Agreement or to take any action against the other Party in the event of any breach of this Agreement shall not constitute a waiver of such right, or any other right under this Agreement. Any waiver of any right must be made in writing.
- 7) Successors and Assigns: This Agreement shall be binding upon and inure to the benefit of the Parties hereto and to their respective heirs, representatives, successors, and permitted assignees. This Agreement may not be assigned, transferred, shared, or divided in whole or in part by either Party without the prior written consent of the other Party. Such consent shall not be unreasonably withheld. The dissolution, merger, consolidation, reorganization, sale, or other transfer of a controlling interest of a Party does not constitute an assignment of this Agreement.
- 8) Independent Contractor: Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorize either Party to act as an agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise bind the other Party in any manner.
- 9) Force Majeure: Provider will not be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the control of Provider, including, but not limited to labor difficulties, contractor difficulties, problems with telecommunications providers, government restriction, fire, flood, storm, act of God, war, malicious damage, or any natural disaster.

- 10) Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.
  
- 11) Contract in Entirety, Amendments: This Agreement (including Ordering Documents, exhibits, amendments, and addenda, which are incorporated herein by reference) sets forth the entire understanding of the Parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous letters of intent, agreements, covenants, negotiations, arrangements, communications, representations, understandings, or warranties, whether oral or written, by any officer, employee or representative of either Party relating thereto. There are no other understandings, statements, promises or inducements, oral or otherwise, contrary to the terms of this Agreement. This Agreement may only be amended or modified by a writing signed by authorized representatives of both Parties.