



# Why you should offer point-of-sale financing

## Increase sales and grow revenue

Our finance program is an effective sales and marketing tool for your business. Increase sales by advertising financing options to attract more customers to your business and use one of our many promotional offers as a way to close more sales.

## Attract new customers

Use our program to advertise affordable monthly payment options in conjunction with your “buy today” sales price. By advertising a low monthly payment, you’re appealing to those customers who can’t afford the total cash price of your product or service today.

## Make your business stand out

Use our finance program as a way to distinguish yourself from the competition. Let your customers know that you can approve a wide variety of credit profiles and to come in to apply for financing today.

## Increase average ticket size

Financing helps eliminate the focus on total price, and instead shifts the focus to affordability. You’ll make your product more affordable with low monthly payments. Shift your focus away from total price and begin increasing your average ticket today.

## Increase conversion rates

By offering affordable financing options in-store and online, you’re giving your customers another way to pay. Increase conversion rates and see more “browsers” become “buyers.”

## Gain new leads through your website

We provide advertising banners for use on your website to encourage customers. Each customer, regardless of whether they’re approved or not, is sent to your personalized online portal and you’re notified via email.

## The stats are in your favor...

**\$391 Billion\***

Estimated volume of Consumer Finance spending each year in the United States

**77%\***

Consumers who used financing say the availability of financing drove their choice of retailer

**20%\***

Estimated increase in sales expected with point-of-sale financing

\* Source: <https://file.ne.org/research/report/blue-ocean-lending-for-credit-unions-point-of-sale-financing>

## Exhibit D to the Loan Program Agreement

### Merchant Rates

**Total Discount Rate:** Total Discount Rate is the percentage of the Loan proceeds under the Loan Program which the Financial Institution or Servicer subtracts from the Loan proceeds and to which Merchant will credit the Loan proceeds received as if said subtracted proceeds had been actually received by Merchant and which Merchant will credit towards Borrower's purchase or lease of goods or services from Merchant.

\* Indicates that if the Borrower makes all payments on time and additionally pays the total amount financed within the Promotional time period, then all interest is waived. Standard interest rate of 26.99% is charged when the Borrower fails to pay off the total amount financed within the promotional time period.

Product	Discount Rate	Interest Rate	Max Term	Min/Max Amount
SAC 6	2%	26.99%	48 Months	\$500 - \$10,000
SAC 12	5%	26.99%	48 Months	\$500 - \$10,000
SAC 18	7%	26.99%	48 Months	\$500 - \$10,000
SAC 24	9%	26.99%	48 Months	\$500 - \$10,000
Standard (no Promo IL)	0%	Risk-based Pricing 14.99%-34.99%	48 Months	\$500 - \$10,000

SAC same as cash / months

EXAMPLE for Home Improvement & Repair



## Welcome to LendingPoint Merchant Solutions

Contact: [admarkCapital.com](http://admarkCapital.com) Business Finance Agency (775) 234-2006 [office@admarkCapital.com](mailto:office@admarkCapital.com)

- ✓ Please complete the Enrollment Documents within this package and attach the Additional Required Documents noted below.

Enrollment Documents	Description
Merchant Enrollment Form	Describes your business, finance history, ownership and locations.
Merchant Agreement	This contract governs how LendingPoint does business with you.
Exhibit A: Payment Authorization Form	Gives permission for LendingPoint to deposit the funding amounts for completed installment contracts into the account specified.
Exhibit B: Bank Guidelines	Guidelines for how to stay in compliance while using the LendingPoint Merchant Solutions program.
Exhibit C: Marketing Guidelines	Guidelines for how to stay in compliance while marketing LendingPoint Merchant Solutions.
Exhibit D: Merchant Fee Addendum	Describes merchant and consumer fees associated with the LendingPoint Merchant Solutions program.

Additional Documents	Description
Voided Check	Copy of a voided check from the account specified in the Payment Authorization Form.

Please scan/email (pdf) completed signed agreement with void check to: [office@admarkCapital.com](mailto:office@admarkCapital.com)  
toll-free fax on request

# Merchant Enrollment Form

## Business Information

Legal Business Name	Doing Business As	
States Doing Business In	State of Incorporation	
Business Type	Federal Tax ID	
Industry Type	Products/Services Offered	
In Business Since	Sales Methods	
Delivery Timeframe	Delivery Method	
Annual Sales Revenue	Min Sales Price	Max Sales Price
Primary Email Address	Secondary Email Address	
Primary Phone Number	Primary Point of Contact	

## Finance Information

Have you filed for business or personal bankruptcy in the last 2 years?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you have any outstanding tax liens totaling over \$1,500?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you currently offer financing?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, which programs?	Estimated Monthly Finance Volume	



# Merchant Enrollment Form

## Return and Cancellation Policy

Description of Return / Cancellation Policy

## Ownership Information

(51% Ownership MUST Be Represented. If more than 2 owners, please submit additional forms)

First Name	Last Name	
Email	Phone Number	
Address		
City	State	Zip
Date of Birth	Ownership Percentage	Owner Since

First Name	Last Name	
Email	Phone Number	
Address		
City	State	Zip
Date of Birth	Ownership Percentage	Owner Since



# Merchant Enrollment Form

## Location Information

(If more than 3 locations, please submit additional forms)

Location Shortname		
Address		
City	State	Zip
Phone	Fax	Website

Location Shortname		
Address		
City	State	Zip
Phone	Fax	Website

Location Shortname		
Address		
City	State	Zip
Phone	Fax	Website

## LOAN PROGRAM AGREEMENT

This Loan Program Agreement (the “*Agreement*”), dated as of \_\_\_\_\_, by and between \_\_\_\_\_, with its principal office at \_\_\_\_\_ (“*Merchant*”), and LendingPoint, LLC., with its principal office at 1201 Roberts Blvd, Suite 200, Kennesaw, GA 30144 (“*Servicer*”), provides as follows:

WHEREAS, Servicer is engaged through its relationship with financial institution(s) in providing a consumer installment loan program that retail merchants may make available to their consumer customers for the purpose of financing the purchase of goods and services from such merchants, which includes services to (i) to present consumer loans offered by a financial institution; and (ii) provide funds to the merchant for the consumer’s purchase of goods and/or services using the proceeds of the installment loans between the financial institution and the consumer (the “*Loan Program*”); and

WHEREAS, from time to time pursuant to this Agreement, Merchant desires to make available the Loan Program for the making of installment loans to its customers to finance the purchase of goods and services from Merchant; and

NOW, THEREFORE, in consideration of the foregoing and the covenants, representations and warranties hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Merchant and Servicer hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

Capitalized terms used and not otherwise defined herein shall have the following meanings in this Agreement:

“*Applicable Law*” means, at any time, all federal, state, commonwealth and local laws, statutes, rules, regulations, court orders and decrees, administrative orders and decrees, and other legal requirements of any type applicable to any Loan (including, without limitation, the marketing and origination of a Loan to finance the purchase of goods and services and the provision of payment processing services for Merchant) and all requirements of any regulatory authority having jurisdiction over the Merchant, the Servicer and/or the Financial Institution, as any such laws, statutes, regulations, orders or requirements may be amended and in effect from time to time during the term of this Agreement.

“*Application*” means the credit application used by the Financial Institution under this Loan Program to determine whether the Merchant’s customer qualifies for a loan from the Financial Institution to finance the purchase of goods and/or services from the Merchant.

“*Borrower*” means, with respect to any Loan, each retail customer and other obligor to the extent applicable (including any co-signor or guarantor, if any) who is liable for amounts owing with respect to such Loan.

“*Business Day*” means any day other than a Saturday, Sunday or a day on which banking institutions in the State of California are authorized or obligated by Applicable Law or executive order to be closed.

“*Loan*” means a promissory note or other similar loan agreement of a Financial Institution with a Borrower under this Loan Program for the funding of a retail sale of goods or services from Merchant, using the Services and platform of Servicer (including its vendors). At the option of the Financial Institution, the Financial Institution may offer promotional term Loans under the Loan Program from time to time.

“*Confidential Information*” means:

(a) information regarding Discloser’s customers, financial condition or results of operations, financial and risk models, projections, loss or return estimates or actuals, compliance or risk management systems, loan pricing, loan performance, offer methods or pricing, computer systems, designs, sales information, sales leads, sale strategies, business strategies, business opportunities, business forecasts, techniques, costs, models, know-how, product ideas, pricing structure, software source document, formula, development details, customer provide, target market profiles, customer fees and charges, vendor pricing, organizational structure, as well as non-public information regarding pending or threatened litigation or regulatory matters involving Discloser;

(b) information regarding Discloser’s inventions, discoveries, developments, improvements, processes, systems, methods, devices, patents, patent applications, trademarks, intellectual property, know-how, trade secrets, instruments, materials, products, programs, techniques, designs, research/development activities and plans, data, specifications, computer programs/code (object and/or source), credit models, variables in credit modeling, pricing models, algorithms, costs of production, promotional methods, marketing plans/strategies, clinical plans, business opportunities, vendors, customer lists;

(c) any Borrower NPPI;

(d) information that: (i) is marked “Confidential”, “Proprietary” or in some similar way; (ii) Discloser identifies as Confidential Information when disclosed or within a reasonable time afterwards; or (iii) Recipient knows, or should know, to be confidential or proprietary to Discloser; and

(e) any third party information with respect to which Discloser is subject to restrictions on disclosure or use based on the confidential nature of such information; provided, however, that “Confidential Information” does not include any information that: (i) was publicly known or made generally available to the public prior to its disclosure hereunder; (ii) becomes publicly known or is made generally available to the public following its disclosure hereunder through no wrongful act or omission of Recipient or anyone to whom Recipient has disclosed such information; (iii) Recipient rightfully possessed without any duty of confidentiality prior to its disclosure hereunder (as clearly shown by Recipient’s records); (iv) was independently developed by Recipient without use of or reference to any Confidential Information received by or on behalf of Recipient from Discloser hereunder (as clearly shown by Recipient’s records); and/or (v) Recipient rightfully obtained from a third party, where such third party was not subject to any restrictions on disclosure with respect to such information.



“*Borrower NPPI*” means any Non-Public Personal Information of any actual or potential Borrower.

“*Financial Institution*” means the state or federally chartered financial institution that has entered into a Program Agreement with Servicer pursuant to which Servicer provides certain marketing, underwriting, and servicing activities on behalf of the financial institution in connection with a consumer loan program.

“*Loan Documents*” means all agreements, disclosures, documents, and communications relating to an Application and a Loan including but not limited to the Borrower’s Application for a Loan, any Privacy Notice, any underwriting materials, the Borrower’s credit score and credit report, any authorization for automatic payments, and the Loan executed by the Borrower.

“*Merchant*” means the person or entity that is the party to this Agreement with Servicer and engaged in the business of selling goods or furnishing services to retail customers. Where the word Merchant is used in the context of actions or inactions or other obligations or responsibilities to be undertaken by Merchant under this Agreement, said word will include the Merchant’s employees and/or agents. Merchant is responsible for its employees and/or agents’ actions or inactions under this Agreement.

“*Non-Public Personal Information*” or “NPPI” has the meaning ascribed to such term under the Federal Trade Commission and the Financial Institution’s regulatory agency Rule regarding Privacy of Consumer Financial Information implementing Section V of the Gramm-Leach-Bliley Act.

“*Services*” means those services provided by Servicer to Financial Institution in connection with its marketing, underwriting, and/or servicing on behalf of the Financial institution of Loans between the Financial Institution and Merchant’s customers and the funding of purchases by such customers by facilitating payment between the Financial Institution and Merchant and including all chargebacks and refunds due to Financial Institution when Borrower cancels or disputes a sale.

## ARTICLE II

### MERCHANT OBLIGATIONS

*Section 2.1. Non-Exclusive Use of Loan Program.* The Merchant’s rights under this Agreement are on a non-exclusive basis. Both the Servicer and the Merchant shall be free to market their products and services to, and to contract with, other parties and customers as each party deems appropriate. For the avoidance of all doubt, the Merchant and the Servicer agree that the parties to this Agreement may enter into similar agreements with other Merchants or Servicers and by entering into this Agreement, neither the Merchant nor the Servicer intend and expressly disclaim that this Agreement creates an exclusive relationship between the Merchant and the Servicer.

*Section 2.2 No Authority to Bind Financial Institution.* Merchant shall not make any agreement or commitment to any consumer, applicant, or Borrower on behalf of Financial Institution or Servicer without Financial Institution’s or Servicer’s prior approval, nor shall Merchant misrepresent any

of Financial Institution's potential or actual loan terms or requirements to a consumer, applicant, or Borrower. Merchant has no authority to bind or obligate Financial Institution or Servicer except as Financial Institution or Servicer shall expressly authorize in writing. Merchant will transmit to Financial Institution information received from an applicant or Borrower in a timely, unaltered, and accurate manner, and Merchant will inform any applicant or Borrower in an accurate and timely manner of Financial Institution's or Servicer's requests for information, documents, and other requirements of such applicant.

*Section 2.3 Services to be Performed by Merchant. (a) Introduction to Loan Program.* Merchant will make its customers aware of the Loan Program and allow its customers to make Applications for Loans offered by Financial Institution. The introduction shall include but not be limited to informing the customer about the ability to finance the purchase of goods and services including promotional terms, if available, and the Application process.

(b) *Application Processing.* Upon the request of a customer, Merchant will provide access to Servicer's application platform and all other necessary forms that may be required. Merchant may submit the Application and other required information in accordance with Financial Institution guidelines, attached to this Agreement as Exhibit B (the "Guidelines") as may be amended from time to time.

(c) *Training.* Merchant will provide each of its employees appropriate training in the Loan Program and will ensure employees' familiarity with the Guidelines. Merchant is responsible for its employees' conduct and compliance with this Agreement and the Loan Program.

(d) *ACH Debit and Credit Authorization.* Merchant grants Servicer and the Financial Institution authorization to ACH electronically debit and credit Merchant's bank account listed in Exhibit A to this Agreement for sums due to or owing from Merchant to Servicer or the Financial Institution under this Agreement.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF THE MERCHANT

Merchant represents and warrants as of the date hereof, and agrees that it shall be deemed to make and renew each representation and warranty on and as of each date it makes available financing by the Financial Institution to its customers, as follows:

*Section 3.1. Due Organization and Good Standing.* The Merchant is a business entity (a corporation, partnership, sole proprietorship, LLP or limited liability company, limited liability partnership, S corporation or nonprofit, as indicated by Merchant to Servicer, duly organized, validly existing, and in good standing under the laws of its state of its organization;

*Section 3.2. Authority and Capacity.* The execution, delivery, and performance by the Merchant of this Agreement are within its corporate, organizational, LLP, limited liability company or partnership powers, as applicable, have been duly authorized by all necessary corporate, limited liability company, organizational, LLP or partnership action, as applicable, and

do not contravene the Merchant's charter, articles of incorporation or by-laws (if a corporation), articles of association or operating agreement (if a limited liability company or LLP or unincorporated organization) or partnership agreement (if a partnership) or any law or contractual restriction binding on or affecting the Merchant. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the Merchant's due execution, delivery, and performance of this Agreement. This Agreement is, when the Agreement is signed, the Merchant's legal, valid, and binding obligation enforceable against the Merchant in accordance with its terms.

*Section 3.3. Sale of Goods and Services.* All representations made by Merchant to an applicant or Borrower related to the goods and/or services sought to be or sold and financed under this Agreement with Loans were complete and correct. The quality of the goods and/or services sold meet or exceed applicable standards sufficient to ensure that (a) Borrower will have no claims against Merchant (i) for unfair or deceptive trade practices or (ii) under the FTC's Rule Regarding Preservation of Consumers' Claims and Defense (Holder in Due Course Rule) and its state law counterparts. Further, Merchant has not done nor will do any act or thing, or omitted or failed to do any act or thing, which may adversely affect a Loan, and the Borrower is a bona fide good faith purchaser in the ordinary course of Merchant's business. Merchant will not charge a fee or increase the sales price of goods or services financed under the Loan Program. The sales price of all goods and/or services financed under the Loan Program will be identical to their cash price.

*Section 3.4. Origination of Loans and Loan Documents.* Merchant did not engage in discriminatory practices in the manner in which it makes available the Loan Program or assisted any consumer with any Application or Loan which could result in claims of violation of Applicable Law, including but not limited to fair lending laws such as the Equal Credit Opportunity Act and Regulation B or its state law counterparts. The Loans were made available to consumers pursuant to Financial Institution's established standards as provided to Merchant by Servicer from time to time. The information provided by or on behalf of the Borrower Loan Documents accurately depict the information provided by the Borrower and has not be altered or modified by Merchant. Any statements by Merchant to Servicer or Financial Institution relating to the Borrower, product or service being sold, or delivery of the product or service to the Borrower were verified by Merchant and are accurate in all material respects.

*Section 3.5. Compliance with Loans and Regulations.* Merchant will comply with all Guidelines, and under Applicable Law. Merchant will comply with all material obligations under all contracts to which it is a party to the extent that such obligations might affect any of the Loans or any of Merchant's agreements or obligations hereunder or otherwise to Borrowers. Merchant has done and Merchant will do no act or thing which may adversely affect the Loans, the Borrower, applicant, this Agreement or Merchant's obligations thereunder.

*Section 3.6. Loan Validity and Enforceability.* Merchant has no knowledge of any fact that would impair the Loan's validity or enforceability. The signature of Borrower on the Loan and all other documents is genuine and the Loan will not be subject to the claim or allegation of fraud or identity theft. Merchant has no knowledge of any event which indicates or suggests the prospective uncollectability of the Loan. Merchant has not made any oral or written promise, affirmation, warranty or representation to Borrower regarding the Loan or the terms of financing that is not contained in the Loan or contrary thereto.

*Section 3.7. Litigation, Compliance with Laws.* There is no litigation, proceeding or governmental investigation pending, or any other injunction or decree outstanding which might materially affect any of the Loans or any of Merchant's agreements or obligations hereunder. Additionally, to Merchant's knowledge there is no litigation, proceeding, or governmental investigation existing, pending, or threatened, or any order, injunction or decree outstanding against or relating to Merchant, which could have a material adverse effect upon the Loans or any of Merchant's agreements or obligations hereunder that has not been disclosed by Merchant to Servicer or its counsel in writing, , nor does Merchant know of any basis for any such litigation, proceeding, or governmental investigation. Merchant has not violated any Applicable Law in a way that could materially affect any Loan or any of Merchant's agreements or obligations hereunder.

*Section 3.8. Statements Made.* No representation, warranty or written statement or representation made by Merchant furnished to Servicer or Financial Institution in connection with the transactions contemplated hereby by Merchant contains or will contain any untrue statement of material fact or omit to state a material fact necessary to make the statements contained herein or therein not misleading.

## **ARTICLE IV**

### **REPRESENTATIONS AND WARRANTIES OF THE SERVICER**

Servicer represents and warrants as of the date hereof, and agrees that it shall be deemed to make and renew each representation and warranty on and as of each date it offers the Loan Program to Merchant, as follows:

*Section 4.1. Due Organization and Good Standing.* Servicer is a corporation, validly existing and in good standing under the laws of its incorporation. To the extent required by Applicable Law, Servicer is properly licensed and qualified to transact business in all appropriate jurisdictions.

*Section 4.2 Authority and Capacity.* Servicer has all requisite power, authority and capacity to enter into this Agreement and to perform the obligations required of it hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have each been duly and validly authorized by all necessary action. This Agreement constitutes the valid and legally binding agreement of the Servicer enforceable in accordance with its terms, subject to bankruptcy laws and other similar laws of general application affecting rights of creditors and subject to the application of the rules of equity, including those respecting the availability of specific performance.

*Section 4.3 Program Agreement.* Servicer has a valid contract ("Program Agreement") with a Financial Institution to engage in consumer loan marketing, underwriting, and servicing activities on behalf of the Financial Institution that allows it to offer the Loan Program to Merchant.

*Section 4.4 Litigation.* There is no action, suit or proceeding or investigation pending or to Servicer's knowledge, threatened against Servicer that, if determined adversely to Servicer, would adversely affect the Loans or the execution, delivery or enforceability of this Agreement.

## ARTICLE V

### MERCHANT COMPENSATION

*Section 5.1 Fees and Charges.* Merchant may pay fees to Servicer for each Application approved by Financial Institution; *provided* the Financial Institution and Borrower enter into a Loan as the result of Merchant's making available to the consumer the Loan Program. The fees vary based on the loan terms and may be amended from time to time and are provided upon Merchant approval in an addendum to this Agreement titled Merchant Fee Addendum.

*Section 5.2 Settlement.* It is anticipated that when the Financial Institution makes a Loan, the Borrower will authorize the Financial Institution to make payment of the proceeds of the Loan to Merchant. Under the Program Agreement with the Financial Institution, Servicer will be designated to assist Financial Institution with the distribution of Loan proceeds. Merchant hereby acknowledges and agrees that Servicer may act as processor and/or paying agent with respect to transferring funds in and out of account(s) designated by Merchant in order to settle amounts due to or from Merchant in connection with the Loans and/or the Loan Program.

*Section 5.3 Purchase of Loans.* (a) If any of the following events occur Merchant unconditionally agrees to purchase any Loan made pursuant to this Agreement, accept assignment of the Loan and pay Financial Institution or its assignees (via Servicer) , upon demand, the Purchase Price as defined below: (i) the Borrower returns the goods and services purchased under any Loan; (ii) any representation, warranty, agreement, obligation or covenant of Merchant contained in this Agreement is breached, not fully performed, untrue, incomplete, or inaccurate; (iii) there is any dispute, claim, defense, lawsuit, arbitration or action concerning any statements, promises, acts or omissions of Merchant with respect to the purchase transaction or any part thereof related to a Loan, including, but not limited to, the discussion or negotiation of the terms and conditions of the Loan and/or the purchase of the goods and services, or any insurance, warranty, service contract, gap waiver or other products sold or financed in connection with any Loan; (iv) Merchant fails to comply with or is alleged to have failed to comply with any Applicable Law or to hold any required registrations, licenses, permits, or governmental authorizations required to conduct its business and to sell the goods and services; (v) Merchant's service results in the death of or injury to Borrower; or (vi) Merchant fails to perform any of its obligations under this Agreement. All Loans purchased by Merchant under this Agreement shall be assigned to Merchant, without recourse, and without warranties or representations, expressed or implied. Any liability of Merchant to Servicer under this Agreement or any Assignment shall not be affected or limited by any waiver, compromise, settlement, extension or variation of the terms of the Loan or release of any Borrower. Servicer shall not be required to seek any recourse against any security, Borrower or other person before being entitled to enforce the rights, including payment by Merchant under this Section.

(b) In the event of purchase due to the Borrower's return of the goods and services as described under subsection (i) above, the Purchase Price shall be calculated based on the number of days that have elapsed since the execution of the Loan. For returns that occur within thirty (30) days following execution of the Loan, the Purchase Price shall be the amount paid to the Merchant in connection with the Loan. For returns that occur between thirty (30) and sixty (60)

days following execution of the Loan, the Purchase Price shall be the above stated amount plus a fee equal to two percent (2%) of the principal balance of the Loan. For returns that occur between sixty (60) and ninety (90) days following execution of the Loan, the Purchase Price shall be the above stated amount plus a fee equal to three percent (3%) of the principal balance of the Loan. For returns that occur more than ninety (90) days following execution of the Loan, the Purchase Price shall be the full payoff amount of the Loan. In the event of a purchase due to the occurrence of any of the other events described in Section 5.3(a), the Purchase Price shall be the amount of the total of payments remaining unpaid at the time of Servicer's demand, less any unearned interest. In all cases the Purchase Price shall also include all of Servicer's attorneys' fees and costs incurred with respect to said Loan.

(c) For the avoidance of doubt, Merchant agrees that Sections 5.3(a)–(c) hereof apply to any Loan subject to a claim or defense arising under the FTC's Holder In Due Course Rule.

*Section 5.4 Disputes and Chargebacks.* Servicer shall notify Merchant when a Borrower has made an inquiry or dispute subject to Section 5 of this Agreement. Merchant agrees to investigate and make a good faith effort to resolve each such inquiry or dispute referred to it by Servicer or received directly from Borrower. Within fifteen (15) business days from the date Servicer sends an inquiry or dispute to Merchant, Merchant shall notify Servicer in writing of the resolution thereof or the action Merchant will take to resolve the inquiry or dispute. Merchant shall provide Servicer with all such information as Servicer may reasonably request in connection therewith. The determination of whether a matter has been satisfactorily resolved will be made by Servicer in its sole discretion and judgment. If, at the end of the fifteen (15) business day period, the inquiry or dispute is not resolved or Servicer has not been informed of the resolution of the action Merchant will take to resolve the inquiry or dispute and thereafter Merchant resolves the matter within five (5) business days, Servicer may require Merchant to reimburse to Servicer the outstanding loan balance of the Loan, or disputed portion thereof, as applicable, purchase the Loan as per this Section 5.3 or set off from any future funding due Merchant an amount equal to all disputed amounts (a "Chargeback"). Servicer shall have the option, and Merchant authorizes Servicer, to process any Chargebacks electronically through debit of Merchant's remittance account into which Servicer deposits Loan proceeds. To the extent an inquiry or dispute occurs prior to Servicer or Financial Institution having transferred the Loan proceeds to Merchant, Servicer or Financial Institution may withhold said transfer until said is resolved to their satisfaction by Merchant. If Servicer processes a Chargeback and the inquiry or dispute is subsequently resolved, Servicer will reimburse Merchant for the non-disputed amount.

## ARTICLE VI

### REMEDIES

*Section 6.1 Merchant's Indemnification.* Merchant hereby agrees to indemnify, defend and hold harmless Servicer and Financial Institution and their respective Affiliates, trustees, officers, directors, agents, employees and representatives (hereinafter collectively referred to as the "*Indemnified Servicer Parties*"), from and against, and agrees promptly to pay on demand or reimburse each of them with respect to, any and all liabilities, claims, demands, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees and costs) (collectively, "*Damages*") incurred by such Indemnified Servicer Party by reason of: (i) any

material breach by Merchant of any covenant or agreement herein or the material inaccuracy of any representation or warranty of Merchant contained in this Agreement; and/or (ii) any fraud or other willful misconduct committed by Merchant, or any party acting on its behalf, in connection with the transactions contemplated in this Agreement, or (iii) any claims relating to Merchant's acts or omissions related to any Loan; *provided, however*, that Merchant shall have no obligation to indemnify the Indemnified Servicer Parties from and against any Damages to the extent such Damages result from the proposed indemnitee's gross negligence or willful misconduct.

*Section 6.2 Servicer's Indemnification.* Servicer hereby agrees to indemnify, defend and hold harmless Merchant and its respective Affiliates, trustees, officers, directors, agents, employees and representatives (hereinafter collectively referred to as the "*Indemnified Merchant Parties*") from and against, and agrees promptly to pay on demand or reimburse each of them with respect to, any and all Damages incurred by such Indemnified Merchant Party by reason of (i) any material breach by Servicer of any covenant or agreement herein or the material inaccuracy of any representation or warranty of Servicer contained in this Agreement; and/or (ii) any fraud or other willful misconduct committed by Servicer, or any party acting on its behalf, in connection with the transactions contemplated in this Agreement and (iii) any claims relating to Servicer's acts or omission related to any Loan; *provided, however*, that Servicer shall have no obligation to indemnify the Indemnified Merchant Parties from and against any Damages to the extent such Damages result from the proposed indemnitee's gross negligence or willful misconduct.

*Section 6.3 Notice of Claim.* A party seeking indemnification under this Article V (an "*Indemnified Party*") shall give prompt written notice to the other party (the "*Indemnifying Party*") of any claim for which it may seek indemnity, provided the failure to do so will not relieve the Indemnifying Party unless such materially and adversely prejudiced the Indemnifying Party's ability defend against such claim. The Indemnifying Party shall defend such claim, action, suit or proceeding with counsel reasonably satisfactory to the Indemnified Party, and the Indemnified Party shall cooperate in the defense. Until the Indemnifying Party takes over the defense, the Indemnified Party may defend against the claim and any reasonable costs incurred by the Indemnified Party prior to the Indemnifying party taking over the defense will be promptly reimbursed by Indemnifying Party to the Indemnified Party. The Indemnified Party may have separate counsel who shall be employed by the Indemnified Party at the Indemnified Party's expense; *provided*, that the Indemnifying Party shall pay the reasonable attorney's fees and expenses of such separate counsel if, in the opinion of counsel to the Indemnifying Party, the interests of the Indemnified Party and the Indemnifying Party are adverse such that separate counsel for the Indemnified Party is required. Knowledge by the Indemnified Party of any breach or non-compliance hereunder shall not constitute a waiver of the Indemnified Party's rights and remedies under this Agreement, provided the Indemnified Party has notified the Indemnifying Party of such breach or non-compliance in a timely manner. The Indemnifying Party may not, without the prior written consent of the Indemnified Party (which shall not be unreasonably withheld), settle, compromise or consent to entry of any judgment or order or other seek to terminate a pending or threatened claim.

*Section 6.4 Limitation of Liability.* In no event will either Servicer or Merchant be liable to the other party to this Agreement for special, indirect, incidental, punitive or consequential damages, including, without limitation, loss of profit or loss of business or business opportunity, regardless of the form of action whether in contract, tort, or otherwise.

## ARTICLE VII

### TERMINATION

*Section 7.1. Servicer's Termination for Cause.* Notwithstanding anything to the contrary contained herein, Servicer shall have the right to immediately terminate this Agreement for cause. For purposes of this Section 7.1, "cause" shall include any of the following:

- (a) Merchant's breach of any of the representations, warranties and/or covenants contained in this Agreement;
- (b) Filing of a petition for relief by or against Merchant, under the U.S. Bankruptcy Code or any other applicable insolvency or reorganization statute; or
- (c) Institution of any receivership or conservatorship with respect to Merchant.

*Section 7.2. Merchant's Termination for Cause.* Notwithstanding anything to the contrary contained herein Merchant shall have the right to terminate this Agreement for cause. For purposes of this Section 7.2, "cause" shall include any of the following:

- (a) Servicer's material breach of any of the representations, warranties and/or covenants contained in this Agreement;
- (b) Filing of a petition for relief by or against Servicer, under the U.S. Bankruptcy Code or any other applicable insolvency or reorganization statute; or
- (c) Institution of any receivership or conservatorship with respect to Servicer.

With respect to Merchant's right to terminate this Agreement for cause, Merchant agrees to first provide notice to Servicer of a cause event detailing the circumstances of such event. Servicer shall have thirty (30) days to cure a cause event. In the event Servicer cures the cause event, this Agreement shall continue in full force and effect. Should Servicer not cure the cause event, Merchant may proceed to immediately terminate this Agreement.

*Section 7.3. Termination Without Cause.* Either party may terminate this Agreement upon sixty (60) days prior written notice of such termination. Such notice shall include the effective date of termination.

*Section 7.4. Effect of Termination.* Upon termination of this Agreement, this Agreement shall have no further force and effect except for those provisions identified in Section 7.5 of this Agreement, which provisions shall survive any such termination and continue in effect thereafter.

*Section 7.5. Survival of Obligations and Covenants.* Notwithstanding anything to the contrary expressed in this Agreement, the terms of this Agreement Articles II, III, IV, V, VI, VIII, and IX shall continue and survive any termination of this Agreement.



## ARTICLE VIII

### CONFIDENTIALITY

*Section 8.1. Disclosure of Confidential Information.* From time to time, in connection with the operation of this Agreement and/or the transactions contemplated by this Agreement, one party (“*Discloser*”) may disclose Confidential Information to the other party (“*Recipient*”), whether in writing, orally, or by allowing inspection of tangible objects (*i.e.*, documents, tapes disks, prototypes, samples, plants or equipment).

*Section 8.2. Handling of Confidential Information.* Recipient shall:

(a) Hold Confidential Information in the strictest confidence and use it solely to fulfill its obligations hereunder or the Loan Program. If a breach occurs, Recipient will promptly notify the Discloser in writing and cooperate in taking corrective actions in relation thereto at Recipient’s expense;

(b) Disclose Confidential Information only to those personnel and third-party service providers of Recipient who need to receive such Confidential Information in connection with one or more of the permitted uses described in paragraph (a) of this Section 8.2; provided that Recipient must: (i) inform any such personnel or service provider of the confidential nature of such Confidential Information; (ii) take commercially reasonable steps to ensure that any such personnel and service providers do not violate the provisions of this Article VIII; and (iii) immediately notify Discloser if Recipient has reason to believe any such personnel or service provider has violated or intends to violate the provisions of this Article VIII; and provided further that Recipient will be liable for any acts or omissions of any such personnel or service provider in breach of this Article VIII;

(c) Not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects embodying Confidential Information;

(d) Not make any copies of Confidential Information other than necessary to performing its duties under this Agreement or the Loan Program unless previously authorized in writing by Discloser. Any information relating to the consumer, applicant or Borrower provided to or held by the Servicer or related to the Loan (“*Loan Confidential Information*”) shall be property owned by Servicer and may be used for any purpose by Servicer;

(e) If authorized to make copies of Confidential Information, reproduce on such copies any proprietary rights and/or confidentiality notices appearing on the original Confidential Information in the same manner as on the original; and

(f) Use its commercially reasonable best efforts to protect and maintain the confidentiality of the Confidential Information, which protections shall be at least equivalent in scope and effect to the measures taken by Recipient to protect its own confidential or proprietary information of a like or similar nature, but in no event less than a commercially reasonable level of such protection.

*Section 8.3. Special Protections for Borrower Information.* Each party agrees to protect Non-Public Personal Information (“NPPI”) about the Borrowers in compliance with Applicable Laws (collectively, the “Safeguarding Rules”). Each party warrants and represents to the other party that it has and agrees to maintain physical, electronic, and procedural controls and safeguards required by Applicable Law to protect NPPI from unwarranted disclosure. Each party will implement and maintain appropriate measure designed to meet the following objectives: (a) to ensure the security and confidentiality of Borrower NPPI; (b) to protect against anticipated threats or hazards to the security or integrity of such information; and (c) to protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to a Borrower. Each of the Merchant and the Servicer agrees that it shall promptly notify the other in writing of any breach of the Safeguarding Rules or the provisions of this Article VIII.

*Section 8.4. Compelled Disclosure.* Recipient may disclose Confidential Information belonging to Discloser to the extent required to be disclosed by Applicable Law, provided that Recipient:

- (a) provides Discloser with written notice of such requirement to disclose as soon as practicable once learning of such requirement, if such notice is not prohibited by Applicable Law;
- (b) consults with Discloser on the advisability of seeking confidential or protective treatment for some or all of the Confidential Information at issue; and
- (c) assists Discloser as reasonably requested by Discloser and at Recipient’s expense, in obtaining a protective order or otherwise securing confidential treatment for such Confidential Information.

*Section 8.5. Return or Destruction of Materials.* Recipient shall return or destroy (at Recipient’s election), and provide a written certification of such, all Confidential Information belonging to the Disclosure to which not also owned by the Recipient, including without limitation all copies, compilations, summaries, analysis or other materials containing the Disclosure’s Confidential Information, within ten (10) business days after the earlier of (a) termination of this Agreement or (b) Disclosure’s written request for such return or destruction. Recipient does not have to destroy any regular automated backup tapes containing said Confidential Information and further may maintain one copy of such Confidential Information that is requirement by any Applicable Law or internal document retention policy, subject to any such retained Confidential Information continuing to be subject to the terms of this Section VIII of this Agreement.

*Section 8.6. Ownership of Confidential Information.* Except for Loan Confidential Information (which shall be the property of the Servicer), the Confidential Information (and related copies and materials) shall be the sole and exclusive property of the Discloser thereof. Recipient has no rights under any of Discloser’s patents, copyrights, trademarks, trade secrets or with respect to any of Discloser’s other intellectual property, except if and as expressly set forth herein. Recipient may not use Confidential Information to apply for or secure any patents or any other intellectual property rights.

**ARTICLE IX**

**AUDIT**

Merchant shall afford Servicer and Financial Institution and their authorized representatives (including internal and external auditors and governmental entities with regulatory authority over either party (collectively, the “Auditors”)) upon the giving of reasonable prior notice access, during normal business hours, to the books and records and other information relating to the Loan Program along with Merchant’s personnel, and permit such representatives to make copies as may be necessary for the purposes of auditing the Loan Program and compliance with Applicable Law or this Agreement. Such audits shall not materially interfere with Merchant’s business and shall be conducted during normal business hours, upon reasonable advanced written notice to Merchant.

**MISCELLANEOUS**

*Section 9.1. Costs and Expenses.* Except as specifically provided to the contrary in this Agreement, Servicer and Merchant shall each bear its own accounting, legal and related costs and expenses in connection with the negotiation and preparation of this Agreement and the performance by each of Servicer and Merchant of its respective obligations arising under this Agreement. If a lawsuit is brought by a party to this agreement against the other party, the prevailing party in said lawsuit shall be entitled to its reasonable attorney fees and costs.

*Section 9.2. Independent Contractors.* This Agreement does not in any way create the relationship of joint venture, partnership, or principal and agent between Servicer and Merchant. Each party agrees that there are no third parties who are intended to be beneficiaries of the rights and obligations provided in this Agreement.

*Section 9.3. Notices.* All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of delivery if personally delivered, the next day if sent via overnight delivery via a national commercial delivery service, the day of actual delivery via U.S. mail with proof of delivery:

- (a) If to the Servicer, to:

LendingPoint, LLC  
Attn: Legal Department  
1201 Roberts Blvd, 200  
Kennesaw, GA 30144

- (b) If to Merchant, to:

\_\_\_\_\_  
\_\_\_\_\_

or to such other address as Servicer or Merchant shall have specified in writing to the other.

*Section 9.4. Governing Law.* The construction of this Agreement and the rights, remedies, and obligation arising by under, through, or on account of it shall be governed by the internal laws of the State of Georgia without regard to its conflicts of laws principles, except to the extent the same are preempted by the laws of the United States. EACH PARTY UNCONDITIONALLY AND IRREVOCABLY WAIVES THEIR RESPECTIVE TO A JURY TRIAL FOR ANY CLAIM OR CAUSE OF ACTION RELATING, DIRECTLY OR INDIRECTLY, TO THIS AGREEMENT OR CONFIDENTIAL INFORMATION. Each party represents and warrants that said party knowingly waived its jury rights following consultation with legal counsel or after consciously choosing not to seek legal advice. In event of any litigation, a copy of this Agreement may be filed with the court.

*Section 9.5. Modification; Entire Agreement; No Waiver of Rights.* This Agreement may not be modified except by a document signed by both the Merchant and the Servicer. Neither Party may assign this Agreement without the prior written consent of the other Party, which such consent not to be unreasonably withheld, provided, however, that no such consent is required for a Party to: (a) assign this Agreement to an Affiliate; or (b) assign or transfer this Agreement in its sole discretion in case of merger, acquisition, or sale of substantially all of the Party's assets. The foregoing notwithstanding, Servicer may assign this Agreement without the prior written consent of Merchant. The Parties agree that this Agreement constitutes the entire agreement and understanding between the Parties and supersede all prior or contemporaneous understandings, representations, or agreements relating to the subject matter hereof. Any representations, promises or agreement not expressly contained this Agreement shall no force or effect. The failure of either party to exercise any right given to it under this Agreement or to insist on strict compliance of any obligation under this Agreement shall not constitute a waiver of any right, including the right to insist on strict compliance in the future.

*Section 9.6. Mutual Construction.* Each Party acknowledges and agrees that this Agreement resulted from an "arms' length" negotiation, and will not be construed in favor of or against a Party by reason of the identity of the drafter. This Agreement shall be deemed to have been drafted by both the Merchant and the Servicer. Therefore, any ambiguities shall not be construed against either party.

*Section 9.7. Captions.* Paragraph captions in this Agreement are for ease of reference only and shall be given no substantive or restrictive meaning or significance whatsoever.

*Section 9.8. Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed to be an original, all such counterparts shall constitute one and the same agreement, and PDF copies of said documents and signatures thereon will be deemed originals. Regardless of the number of counterparts, they shall constitute only one agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than one counterpart.

*Section 9.9. Binding Effect.* This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties hereto and their successors and assigns,

any rights, obligations, remedies or liabilities. The foregoing notwithstanding, Servicer may not assign this Agreement without the prior written consent of Merchant.

*Section 9.10. Severability.* In case any provision or obligation under this Agreement shall be deemed invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation, shall not in any way be affected or impaired thereby.

*Section 9.11. Exhibits.* The Exhibits attached to this Agreement are part of and are incorporated into this Agreement.

[Parties' Signatures on next page.]

IN WITNESS WHEREOF, the Servicer and Merchant have caused this Agreement to be duly executed as of the date first above written.

**Servicer: LendingPoint, LLC.**

**Merchant:** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

# Exhibit A to Loan Program Agreement

## Merchant’s ACH Payment Authorization Form

Financial Institution Name	
Name on Account	Account Type
Transit/ABA Number (9 Digits)	Account Number

Merchant does hereby authorize LendingPoint, LCC. (“Servicer”) to electronically credit and debit via ACH Merchant’s above bank account in Servicer’s performance under to the terms stated in the attached Loan Program Agreement. Merchant understand that this authorization will remain in full force and effect until Merchant until after Merchant provides five (5) business days prior written notice to Servicer that Merchant is revoking this authorization. Servicer needs reasonable prior written notice to clear out pending transactions and effectuate termination of the ACH authorization.

The below signing person does represent and warrant that they are authorized on Merchant’s behalf to execute this ACH debit and credit payment authorization for the purpose of ACH authorization under the Loan Program Agreement. The below signing person does hereby indemnify and hold the Servicer and the Servicer’s bank harmless from any damage, loss or claim resulting from all actions taken pursuant to this authorization.

Merchant’s Legal Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name of Person Signing: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit B to Loan Program Agreement

### Bank Guidelines

- It is against the law to discriminate against any protected class or group when offering the loan program.
- It is against the law to discourage any customer or potential customer from attempting to qualify for the loan program for any reason.
- The borrower's ID MUST be checked:
  - ID must be valid and current
  - Must be issued from a US State or Federal entity
  - Verify the ID with what was submitted on pre-qualification form
    - Name
    - ID Number
    - Date of Birth
- The borrower must have a SSN number and valid email address
- The merchant may complete and submit information on the customer's behalf under the following conditions:
  - The customer gives permission for the merchant to do so
  - The merchant must read to the customer or allow the customer to read all disclosures, terms, and disclaimers
- The merchant must have all marketing, promotions, and web content approved by Servicer prior to distribution that meets all items covered in Exhibit B.
- The merchant must not knowingly falsify any information.
- The merchant must not advise consumers to provide incorrect or false any information or omit material information.
- The merchant must read to the customer or allow the customer to read, all disclosures, terms, and disclaimers.
- The merchant must properly convey the terms of the loan program.
- The merchant must not couple a Loan Program approval with a different finance program approval to achieve the desired total loan amount, otherwise known as stacking.
- The merchant must not provide loans to merchant's employees or family members.
- The merchant must sell any products or services financed under the Loan Program at the same price such goods or services could be purchased in cash.

**If you, as the merchant, feel that either you or your staff does not fully understand any of the elements above, please contact LendingPoint Merchant Solutions at 888-912-4376 and ask for the VP of Operations. We will schedule an immediate training.**



# Exhibit C to Loan Program Agreement

## Marketing Guidelines

When you partner with Servicer, we work together to promote financing to your customers to ensure that your Servicer marketing conforms to applicable law, including but not limited to Regulation Z and the Truth in Lending Act.

In order to adhere to the law and market financing in a way that is transparent and non-deceptive, certain disclosures about the terms and cost of financing must be displayed alongside any marketing campaigns. Businesses that promote credit products also must ensure that their practices are not unfair, deceptive, or abusive (also known as "UDAPP"). Servicer can immediately disable your account if you fail to comply with the law in these areas. Failure to comply also may result in additional legal and regulatory action from Servicer, your customers, or outside parties, and may have other legal or regulatory ramifications.

**Before you publish or send any promotional material that includes mention of any Loan Program products, you must receive formal approval of those materials from the Servicer compliance team at [merchantsupport@lendingpoint.com](mailto:merchantsupport@lendingpoint.com). Please allow the compliance team 3-5 business days to review all material.**

All of your marketing materials must adhere to the guidelines below.

### GENERAL GUIDELINES

- **It is unlawful for a provider of consumer financial services to engage in any "unfair, deceptive, or abusive act or practice" when offering a consumer financial product or service.** Regulators may view a representation, omission, act or practice to be deceptive when it is material and misleads or is likely to mislead a customer. The representation, omission or act must be considered from the perspective of the "reasonable consumer." Acts or practices that may be deceptive include misleading cost or price claims, offering to provide a product or service that is not available, or omitting material limitations or conditions from an offer. Keep the following guidelines in mind:
  - **Avoid statements that could create confusion about the fact that our platform includes products that are closed-end, installment loans.** These include statements that suggest that Loan Program financing is an ongoing/revolving credit, like a line of credit or credit card.
  - **Avoid statements that could suggest a "no strings attached" relationship** when the customer would become contractually obligated to repay a loan, which may have an impact on his or her credit.
  - **If specific credit terms are stated (e.g., No Interest), the merchant must communicate those terms to consumers.**
  - **Promotional language must clearly and accurately convey material limitations or conditions on the terms or availability of products and services.** These conditions may include promotional features, expiration dates, prerequisites for obtaining particular products or services, or conditions for canceling services.
  - **Any Email Marketing campaigns mentioning** LendingPoint, the Servicer, or the Financial Institution and/or the Loan Program must comply with the CAN-SPAM Act.

## **NO INTEREST (IF PAID IN FULL) PROMOTIONAL MARKETING**

Servicer offers this marketing tool to allow your customers to use financing to pay for your product or services. Please make sure you are accurately explaining all terms and conditions of the no interest (if paid in full) offer. **If you or your team needs additional training around do's and don'ts, please contact our support team at [merchantsupport@lendingpoint.com](mailto:merchantsupport@lendingpoint.com).** Additionally, any marketing material or web content mentioning "no interest" must include the following disclaimer:

- Interest accrues during the promotional period, but all interest is waived if the entire purchase balance is paid in full before the end of the promotional period and you make all required monthly payments on or before their due dates. Terms may vary based on creditworthiness, amount of loan, and length of term.
- Any mention of "No Interest" must also have "(if paid in full)" and the appropriate duration "for x months" directly after.

## **BRANDING**

It is important to maintain the integrity of the Servicer brand by the following:

- Do not use the Servicer logo in advertisements or promotions without prior consent
- Do not mask or alter Servicer's brand including but not limited to:
  - White labeling Servicer as an in-house financing program
  - Changing Servicer materials with different content/color/design

## **APPROVED LANGUAGE**

- We have partnered with LendingPoint to give you a simple way to make your purchase with no hidden fees.
- Make easy monthly payments on your purchase.
- Provide some basic information and get a quick decision to see if you pre-qualify for options that help split your purchase into monthly payments.
- Spread your purchase over time with fixed, monthly payments.
- Buy Now, Pay Later
- Check your rate
- Finance your purchase with no interest (if paid in full) for x months
  - Disclosure: Interest accrues during the promotional period, but all interest is waived if the entire purchase balance is paid in full before the end of the promotional period and you make all required monthly payments on or before their due dates. Terms may vary based on creditworthiness, amount of loan, and length of term.