

## **MERCHANT PROGRAM AGREEMENT – HOME IMPROVEMENT LOANS**

This MERCHANT PROGRAM AGREEMENT, (“Agreement”) is made and entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between Lafayette Federal Credit Union (LFCU) (“Lender”), with its principal place of business at 2701 Tower Oaks Boulevard, Rockville, MD 20852 and <Company Name> (“Merchant”) (“Originator”), a <State of Operation> corporation with its principal place of business at <Business Mailing Address> (collectively the “Parties”). This Agreement sets forth the terms between Merchant and LFCU (“Program Administrator”) relating to the LFCU Program. By participating in the LFCU Program, Merchant accepts the terms of this Agreement as follows:

### **RECITALS**

R-1 Lender is engaged in the origination and funding of various loan products as Lender may offer from time to time.

R-2 Originator is in the business of home remodeling and installation of home improvements for consumers. As used in this Agreement, “Home Improvement Project” shall mean a home remodeling or home improvement project covered by a contract between the Originator (as the contractor) and Originator’s customer (typically as the owner or purchaser).

R-3 Originator’s customers commonly require, or desire to obtain, a loan to fund payment for their Home Improvement Projects. Therefore, in the ordinary course of its business, Originator commonly arranges for its customers to obtain loans to finance payment for their Home Improvement Projects at the same time as a contract is entered. This typically involves the Originator recommending a lender to its customer, interacting directly with its customer to assist the customer to complete a loan application in the form required by the lender and transmitting the completed loan package to the lender, so that the lender can make a credit decision based on the face of the loan application and routine credit/background checks on the Originator’s customer as the proposed borrower. As used in this Agreement, an “Application” shall mean a loan application signed by the Originator’s customer as “Applicant” and submitted by Originator to Lender for a loan to finance a Home Improvement Project under one of Lender’s established lending programs. Each Application shall be submitted, either through a portal on the Lender’s website or directly through a dedicated portal on the Originator’s website, on Lender’s forms, including all related consumer disclosure documents, documents to establish the Applicant as a member of Lender and authorizations to release credit information, all in such forms as may be required by Lender.

R-4 The Parties to this Agreement wish to establish a non-exclusive relationship whereby the Originator may, in Originator’s sole discretion, submit Applications to Lender and Lender will consider Applications submitted to it by Originator in accordance with the terms and conditions provided on this Agreement.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## **AGREEMENT**

1. **Nonexclusively.** The arrangement provided for in this Agreement shall be nonexclusive. Originator is not obligated under this Agreement to submit any particular Application Package or any minimum number of Applications to Lender. Lender may, from time to time, in its sole discretion, add new loan programs or eliminate or modify existing loan programs in its sole discretion, without any consent required of the Originator and Lender is not obligated to approve any minimum number of Applications. Originator acknowledges and agrees that the sole purpose of its submission of Applications to Lender is to permit Lender to make an underwriting determination regarding the Applications, the Applicants' creditworthiness, (if applicable) the value of the property offered as collateral, and the suitability of the proposed loan as an investment for Lender and, based on its review, to either approve or deny the Application or make a counteroffer to the Applicant, as determined by Lender in its sole discretion.

2. **Originator Responsibilities.** Originator shall perform any or all of the following functions at Originator's sole expense and Originator agrees to provide and perform such functions in addition to other representations and covenants contained in this Agreement:

(a) **Submission of Applications.** Originator may submit to Lender Applications for loans consistent with the types of loan programs offered by Lender. Lender programs and guidelines may be amended from time to time. For each Application submitted by Originator to Lender, Originator shall submit a completed package which meets all of the Lender's Application requirements, as detailed at Exhibit A.

Originator will develop the equipment, protocols, data structures and software ("Interface") consistent with Lender's requirements that establish and permit the electronic transmission of data between the Originator's data systems and Lender's data systems in a format that permits the data to be (i) transmitted from Originator's system to the Lender's system for processing, and (ii) transmitted from the Lender's system back to the Originator's system upon completion of such processing. The Originator shall facilitate electronic communications with the Lender through the Interface. The Credit Union shall have no obligation to review an Application until it has been made available to the Credit Union using such Interface. The Originator shall take commercially reasonable steps to cause all data electronically transmitted by Applicants to be considered to be a "writing" or "in writing" and when properly authenticated to be deemed for all purposes to have been "signed".

(b) **Compliance with Laws and Regulations.** Originator will comply with all applicable local, state and federal laws and regulations, including but not limited to the Equal Credit Opportunity Act, the Fair Credit Reporting Act, Regulation Z and other regulations issued by the federal banking agencies and the FTC under the Gramm-Leach-Bliley Act, and as well as other regulatory requirements relevant to the loan covered by each Application in the jurisdiction where the Home Improvement Project is being undertaken as well as the services provided to Applicants and related marketing efforts (the "Legal Requirements").

(c) **Additional Services.** Originator shall perform additional services as may be requested by Lender to evaluate the loan request and/or close the loan, including providing additional documents that may be reasonably necessary for Lender to evaluate the loan Application or for Originator to otherwise comply with the terms of this Agreement.

(d) **Further Assurances.** Originator further acknowledges that:

- (i) The Applications submitted to Lender shall become the property of Lender upon receipt.
- (ii) The Originator shall disclose to all Applicants that no Application shall be considered by Lender for approval or denial until Lender has received a completed Application, together with all required supporting documentation.
- (iii) Lender will only accept Applications submitted to Lender by Originator for loans intended to finance payment by the Applicant to Originator for a Home Improvement Project pursuant to a contract between Originator and the Applicant.
- (iv) Originator shall have no authority to make any contract, create any contractual obligation, bind, obligate or otherwise commit Lender by any promise or representation, except as Lender shall have provided Originator specific written authorization to bind Lender in a particular transaction.
- (v) Originator shall have no authority to use Lender's name or logo in any solicitation, including, without limitation, advertising or marketing promotions, without the specific prior written consent of Lender.
- (vi) In the event Lender receives multiple Applications from a single Applicant, Lender may process all of the Applications, and Originator agrees that Lender will not be liable to Originator in any respect for doing so.

(e) **Complaint Management.** Originator will promptly notify Lender in writing of any material complaint by a borrower on a loan subject to this Agreement, within three (3) business days of receiving the complaint, as well as notify Lender of Originator's resolution of the complaint. To the extent that the borrower complaints is not resolved, or the borrower or his or her representative resubmits a substantially similar or related complaint, Originator will immediately notify Lender, investigate the merits of such complaint, and notify Lender of the results of such investigation prior to providing resolution of the Borrower's complaint.

(f) **Reserve Account.** To the extent required by Lender, Originator agrees to establish a restricted Lender reserve account to be funded by a designated percentage of loan proceeds, with funds in such reserve account to be available to offset Lender losses on loans or to the extent Lender chooses to apply such funds towards amounts owed by Originator to Lender under this Agreement. Should Lender choose to establish such a reserve account under this paragraph, the parties will execute an addendum to be provided by Lender.

3. **Lender's Responsibilities.** Lender will perform the following functions:

(a) **Evaluate Completed Applications.** Subsequent to Originator's submission of a completed Application to Lender in accordance with the terms and conditions of this Agreement, Lender shall underwrite and consider whether to approve or deny the Application, or to make a counteroffer to the Applicant. Lender will have sole responsibility for loan underwriting, preliminary approval and notice of final approval or denial. Lender shall use its best efforts to be responsive to Originator, but is under no obligation to Originator to approve or deny any Application within a prescribed period of time. Lender shall approve or deny an Application solely for its own benefit and account and, in making such determination, Lender expressly disclaims any inference Originator may draw as to the general quality or acceptability of the underlying Application or the related Application Package.

(b) **Loan Commitments and Documentation**. Any and all loan commitment letters to an Applicant shall be effective only if approved and executed by Lender. Oral commitments, and commitment letters or contracts not meeting the above requirements, shall not be valid or binding on Lender under any circumstances. Lender shall have no obligation whatsoever to Originator to approve or fund any loan which is not approved in writing by an authorized representative of Lender, and Originator shall inform each person solicited by Originator of the foregoing. If Lender decides to make a loan and the loan is accepted by Applicant, preparation of closing loan documents and funding of the loan transaction will be completed by the Lender.

#### 4. **Loan Funding: Compensation**.

(a) **Fees Paid by Applicants to Originator**. In consideration for services performed by Originator, compensation may be paid by Applicant to Originator if provided for in a separate agreement between Originator and Applicant, which Originator shall disclose to Applicant in accordance with Legal Requirements. Lender is not and will not be a party to any agreement between Originator and an Applicant, and Lender is not responsible for collection of Originator's compensation from Applicant. Originator will disclose any such Originator compensation to Lender as part of the Application process.

(b) **Amounts Paid by Originator**. Lender shall have no obligation or responsibility to collect, pay or remit any compensation due to Originator from an Applicant/borrower or any other person. Any compensation (such as rate buy-downs, rebate or other fees) to be paid by Originator to Lender on any loan is set forth at Exhibit C and subject to adjustment by Lender from time to time at its sole discretion, and such adjustments will be effective with respect to loans funded after Lender provides written notice to Originator, and such Lender Compensation shall be earned upon loan funding and will be withheld by Lender from the loan funding amount to be transferred to Originator. Promptly after Applicant accepts a loan commitment issued by Lender, Lender will communicate such approval to Originator. However, each loan originated by Lender will not be funded until after Borrower provides Lender a Certificate of Completion, in a form reasonably acceptable to Lender, reflecting the Home Improvement Project has been satisfactorily completed and accepted by Applicant executing Lender's required loan documentation. Lender will fund the loan by originating an automated clearinghouse ("ACH") transfer to Originator's designated account consistent with Originator's authorization and instructions provided at Exhibit B to this Agreement. Originator agrees to provide to Lender, at all times during the term of this Agreement, appropriate ACH authorization forms consistent with Exhibit B's requirements, duly executed by Originator and completed with Originator's account information, and name, address, and contact person for each financial institution at which Originator maintains accounts.

(c) **No Other Originator or Finder's Fees**. Originator agrees that Lender shall not be liable for any claims for finder's or broker's fees, except as otherwise set forth herein, in connection with any loan or other transactions contemplated by this Agreement. Originator agrees that, with respect to any loan submitted by Originator to Lender, Originator shall expressly disclose in writing to Lender all broker's or finder's fees or commissions that may be payable in connection with each Application at the time it submits such Application to Lender. Should any claim be made for brokerage commissions or finder's fees that were not disclosed to Lender as provided above, Originator shall indemnify, defend and hold Lender free and harmless from and against any and all loss, liability, cost, damage and expense in connection therewith.

5. **Originator's Representations and Warranties.** Originator hereby represents and warrants to Lender as follows upon Originator's execution hereof and with respect to each loan submitted to Lender by Originator:

(a) To the best of Originator's knowledge, no statement or representation made or document submitted to Lender in connection with this Agreement or any Application is untrue, inaccurate, incomplete or misleading in any respect whatsoever, and Originator will immediately report to Lender any known or believed to be false, inaccurate, altered or forged statement, representation or document which may come to its attention. The statements and representations in this Agreement and all Applications submitted to Lender are made on an on-going basis and shall be true, complete and accurate throughout the term of this Agreement. All documents furnished to Lender have been prepared and executed and copies delivered as required by law and are completed, signed and initialed and all signatures and initials are authorized and genuine.

(b) To the best of Originator's knowledge there is no current, pending or threatened bankruptcy, foreclosure, or other litigation pending or threatened against any Applicant or related to the property securing any Applicant's loan, except as Originator advises Lender in writing at the time of delivery of the affected Application to Lender.

(c) There will be no claims or defenses to repayment of any loan brokered to Lender under this Agreement by reason of any act or omission of Originator or its directors, officers, agents or employees.

(d) Originator has no adverse information concerning any Applicant which it has not communicated to Lender. Originator has disclosed to Lender in writing any personal or financial involvement of Originator in the transactions associated with or relating to each loan.

(e) Originator is knowledgeable in all aspects of consumer lending and with respect to all duties, obligations, limitations, and requirements imposed upon Originator under all applicable Legal Requirements.

(f) Originator has complied with all terms and conditions of this Agreement, and all Legal Requirements applicable to Originator, both generally and in Originator's handling of each Application and the preparation of the related documents and materials who respect to each loan.

(g) Under and according to the laws of all jurisdictions in which Originator is undertaking the transactions contemplated by or affected by the Agreement, Originator and each of its employees, agents and independent contractors (1) is in good standing; (2) is duly qualified and licensed to perform its obligations hereunder; (3) will, during the term hereof, maintain such qualifications and licenses; and (4) if not a natural person, is a corporation, a partnership, or limited liability company (as indicated in the Introductory paragraph of this Agreement) duly organized and validly existing.

(h) If Originator is not a natural person, the execution and delivery of this Agreement by Originator and the performance by Originator of the obligations by it to be performed hereunder have been duly authorized by all necessary corporate, partnership or company action.

(i) The execution and delivery of this Agreement by Originator and the performance by Originator of the obligations by it to be performed hereunder do not, and will not, violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or

award presently in effect having applicability to Originator or of the Articles of Incorporation, By-laws, Partnership Agreement, or Operating Agreement, if applicable, of Originator.

(j) This Agreement constitutes, when duly executed and delivered by Originator, a legal, valid and binding obligation of Originator against Originator in accordance with its terms.

(k) There are no actions, suits or proceedings pending nor, to the knowledge of Originator, threatened against or affecting Originator or the properties of Originator, any of Originator's affiliates, or any other company under which Originator is conducting business, before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

(l) To the best of the Originator's knowledge after its commercially reasonable efforts to inquire into the same (i) any Applicants who have provided transaction information, including loans, through the Originator's website, are competent and acting with legal capacity to enter into the loan at the time of the electronic transmission of such information; (ii) no loan has been obtained by fraud or fraudulent representations; (iii) the terms of any loan or loan document have not been varied in any way (between the time provided by the Applicant and the time delivered to the Lender).

(m) The Originator has complied with all applicable Legal Requirements in connection with the loans, including the marketing of the loan, the Home Improvement Project and Originator's services. Originator will comply with Legal Requirements on an ongoing basis in providing the Home Improvement Project services to each consumer Applicant who obtains the same through financing under this Agreement.

(n) Originator will perform the services provided with respect to each Home Improvement Project in a workmanlike, timely manner that is consistent with industry standards and with the terms of Originator's contract entered into with each Applicant.

(o) Originator shall has Applicant sign and date a Certificate of Completion upon completion of the Home Improvement Project and provide to Lender, and as of the date of the Certificate of Completion, there is to be no material work remaining to be performed or material fact uncommunicated to Lender. However, there may be minor "punch list" items to be completed by Originator, provided that Originator has identified in writing to Applicant a complete list of outstanding "punch list" list and a date by which said items will be completed. Originator shall not have Applicant sign Certificate of Completion unless Applicant acknowledges" punch list" items as "non-material" and in no way impact the Applicants responsibility to repay the Loan once funded. Applicant shall be advised that upon Loan Disbursement, repayment is required whether or not "punch list" items are completed.

(p) The Interface, and all other technology utilized or provided by the Originator under this Agreement which is: (a) developed by the Originator in conjunction with a third-party; (b) sublicensed from any third-party; and/or (c) otherwise integrated into or utilized in conjunctions with the Interface and all other technology utilized or provided by the Originator under this Agreement will interface in a materially error-free manner and be compatible in all material respects with the Lender's current communications network, data processing systems, and/or related systems (including those third-party software products and services utilized by the Lender).

(q) The Interface and all other technology and/or any related software provided by the Originator under this Agreement utilize state-of-the-art security procedures in keeping with the current industry standards including, without limitation, at a minimum 256-bit encryption and prompt certification and installation of all security updates and patches from third party vendors.

(r) The Interface, and all other technology, and/or any related software provided by the Originator under this Agreement shall in no way materially adversely affect the Lender's computer, network, data, and/or related systems.

(s) The Interface, and all other technology, and/or any related software provided by the Originator under this Agreement do not contain any viruses, "time bombs", "worms", "backdoors", "drop dead dates", or other disabling features that in any way may materially adversely affect the Lender's use thereof. If defects are detected, such defects will be promptly corrected.

(t) The Interface and all other technology, and/or any related software provided by the Originator under this Agreement constitute the most current "general release" of such programs and have been fully beta-tested.

(u) The Interface and all other technology utilized, and any forms or communications provided or utilized by the Originator under this Agreement are (and will remain throughout the term of this Agreement) in compliance with all applicable Legal Requirements, including the Americans with Disabilities Act and similar applicable disability and civil rights state laws and all mandated and/or industry recognized disability and other accessibility laws, regulations, standards and guidelines.

(v) No material, product or other aspect of any technology, trade secret or other intellectual property utilized by the Originator in connection with the origination of loans under this Agreement will infringe on or violate any patent, copyright, trade secret, trademark or other proprietary right of any third party, or is libelous, defamatory or illegal. The Originator has all licenses, approvals, or other authorizations required for any third party intellectual property content on the Originator's website, except for content provided by or through the Originator.

6. **Independent Contractor**. Originator acknowledges and agrees that Originator is an independent contractor, and that neither Originator nor any of its employees shall be considered employees of Lender for any purposes. Originator shall not represent nor conduct itself in any manner which could lead a person to infer that Originator was or is the agent, employee, representative, partner, or co-venturer of Lender, or that Originator has the authority to make any contract, create any contractual obligation or bind Lender in any way. Originator hereby represents and warrants to Lender, for itself and its employees, as follows:

(a) Services under this Agreement shall be performed outside all of the places of business of Lender and Originator is responsible for the costs of Originator's principal place of business where Originator's services are performed;

(b) Originator has a principal place of business for Originator's services that is eligible for a business deduction for federal income tax purposes;

(c) On the date of this Agreement, Originator is responsible for filing, at the next applicable filing period, a schedule of expenses with the Internal Revenue Service for Originator's business;

(d) To the extent required by laws applicable to Originator, Originator has established as of the date of this Agreement, or will establish within a reasonable period thereafter, an account with the department of revenue in each state where Originator does business, and with such other state agencies as are required by the particular case, for Originator's business for the payment of all state taxes normally paid by employers and businesses; and

(e) On the date of this Agreement, Originator is maintaining a separate set of books or records that reflect all items of income and expenses of Originator's business.

7. **Survival of Representations and Warranties.** All representations and warranties given herein by Originator shall survive termination of this Agreement, as well as any loan closing, approval, or denial.

8. **Notice of Representations and Warranties.** Originator agrees that, should any of the representations and warranties made by Originator in this Agreement or any instrument delivered in connection herewith be or become untrue or inaccurate at any time in any material respect, Originator shall give prompt notice thereof to Lender. This covenant shall survive any loan closing, approval or denial, and shall continue in full force and effect after the termination of this Agreement.

9. **Financial and Other Information: Updates.** Originator shall submit to Lender, upon Lender's request, Originator's financial statements for the most recent twelve-month period, which statements shall accurately and completely disclose any material adverse changes that have occurred in Originator's financial condition. In addition, Originator agrees to provide Lender (a) such financial, licensing or other information as Lender may request from time to time, in the form requested by Lender, for purposes of confirming that Originator continues to comply with all applicable Legal Requirements and (b) on an on- going basis without specific request from Lender, written notice of any material change in Originator's financial condition, Originator's corporate structure, and of any pending or threatened litigation which will or may have a material impact on Originator's financial condition.

10. **Indemnification.** Originator agrees to indemnify, hold harmless and defend Lender, its agents, servants, directors, officers, employees, successors, assigns, and its affiliates (the "Indemnified Parties") from and against any and all losses, claims, demands, damages, expenses or costs which in any way arise out of or relate to any alleged act or omission of Originator or any of its directors, officers, employees or agents, whether in connection with an Application, a loan, a Home Improvement Project, or this Agreement including, but not limited to, the miscommunication of information to Borrower through the use of Originator's documents to convey information. Originator's indemnification obligations shall include reasonable attorneys' fees incurred by any Indemnified Party, with or without suit, in defending against any and all claims by any third parties, including without limitation, Applicants and governmental agencies. Originator shall give Lender immediate notice of any suit or action instituted against Originator which arises out of the Originator's activities hereunder, and Lender shall have the right to participate in any such suit or action. Lender reserves the right to approve Originator's selection of attorneys, hired by Originator, to protect Lender's interests.

11. **Term.** This Agreement shall commence on the date first above written and shall continue until terminated by either party. This Agreement may be terminated immediately by either party for any reason upon delivery of written notice. Termination shall not affect the obligations of the Parties with respect to any event occurring before termination; provided, however, that (a) Lender shall be entitled to determine, at its sole option, whether to decline or continue to proceed



with any Applications pending at the time of such termination and (b) any such Application which Lender does elect to continue to process shall be subject to the terms and conditions of this Agreement as if the Agreement had not been terminated. Originator shall, within five (5) days of the termination of this Agreement, deliver to Lender a list of any Applications submitted to Lender prior to the termination of this Agreement which are pending as of the date of termination of this Agreement. To that extent all applications that have been submitted and approved will be honored at the current rate and term structure effective at the time of approval regardless of whether or not the contract work has been initiated.

12. **Confidentiality.** Originator acknowledges and agrees that confidential data and non-public personal information relating to Lender's membership and consumers, as well as Lender's marketing, strategies, business operations, and business systems (collectively, the "Confidential Information") may come into Originator's possession in connection with this Agreement. Originator understands that Lender is a federally-insured, federal credit union and is subject to a number of federal and state laws regarding the privacy of Lender's membership and consumer information.

(a) Originator shall maintain the confidentiality of and protect Lender's Confidential Information in accordance with all relevant state and federal laws, regulations, rules and guidelines. Originator, on behalf of itself and its officers, employees, agents, successors and assigns, understands and agrees to implement, utilize, and maintain best industry practices to secure and protect Confidential Information from unauthorized access, destruction, use, modification, or disclosure, and agrees that it will not retain copies of any such information and that it will not use or disclose such Confidential Information to its commercial advantage or in any other manner except in the performance of this Agreement.

(b) If Originator is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena or other judicial, governmental or administrative process) to disclose any Confidential Information, Originator will provide Lender with prompt written notice thereof so that Lender may seek an appropriate protective order or waive, in such instance, compliance with the applicable provisions of this Agreement. If, failing the entry of a protective order or the receipt of a waiver hereunder, Originator, in the opinion of its counsel, is compelled to disclose Confidential Information, Originator may disclose that portion of the Confidential Information which its counsel advises it in writing that it is compelled to disclose. The Lender expressly consents to the entry of a protective order with regard to this non-disclosure agreement, it being understood that mere money damages would be insufficient in the event of the breach of this Section 12.

(c) For electronic communications, Lender and Originator will only transmit Confidential Information to each other in an encrypted format under procedures to be established by Lender. Originator will store all Confidential Information in a manner which utilizes the highest level of security available, including, without limitation, 256-bit encryption for electronically stored Confidential Information.

(d) Originator shall immediately, permanently, and irretrievably destroy, delete, and erase all hard copy and all electronically-stored Confidential Information once use of such Confidential Information is no longer required pursuant to the terms of this Agreement in accordance with the FTC's Final Regulation on Consumer Information and Records Disposal (16 CFR 682), and certify in writing within thirty (30) days that it has done so.

(e) In the event that there is a breach of Originator's systems which in any way involves Confidential Information, Originator shall take appropriate immediate action to prevent further unauthorized access to or use of Lender's Confidential Information, including, but not limited to, providing immediate written notice to Lender and conducting a prompt and thorough data security investigation to determine the nature, extent, and duration of the security breach, and notify and cooperate with law enforcement as necessary.

(f) Originator agrees to indemnify, defend and hold Lender harmless from and against all claims, loss, cost or damages that Lender may incur arising from or relating to a breach of this confidentiality agreement in any manner by Originator or its officers, employees, agents, successors, and assigns.

(g) Lender (and/or its regulator(s)) may, at any time during the term of this Agreement and upon reasonable notice to Originator, inspect Originator's practices and controls and/or require reasonable documentation from Originator to verify that Originator has complied with its obligations pursuant to this Section.

(h) The parties agree that this Section shall survive the termination of this Agreement.

**13. Lender Remedies for Originator's Breach of Warranty or Fraud or Misrepresentation, or Early Payment Default,**

(a) In relation to any loan originated under this Agreement, if any of Originator's representations or warranties under Section 5 of this Agreement are breached, or if Originator engages in fraud or misrepresentation under this Agreement, notwithstanding any other provisions of this Agreement, Originator will, upon request of Lender, purchase the affected loan within five (5) business days after such request, whether or not the loan is in default, for the unpaid balance of principal and interest owing thereon, including, but not limited to, any reasonable collection, attorneys', or servicing fees and costs incurred by Credit Union related to the loan. Originator authorizes Lender to exercise this remedy by means of a chargeback against any account of Originator with Lender, and/or by ACH charge against accounts of Originator with other financial institutions pursuant to Originator's authorization and instructions provided at Exhibit B to this Agreement. Originator agrees to provide to Lender, at all times during the term of this Agreement, appropriate ACH Authorization forms consistent with Exhibit B's requirements, duly executed by Originator and completed with Originator's account information and name, address, and contact person for each financial institution at which Originator maintains accounts.

(b) In relation to any loan originated under this Agreement, if the borrower fails to make any of the first three (3) payments due under the loan, notwithstanding any other provisions of this Agreement, Originator will, upon request of Lender, purchase the affected loan within five (5) business days after such request, whether or not the loan is in default, for the unpaid balance of principal and interest owing thereon, including, but not limited to, any reasonable collection, attorneys', or servicing fees and costs incurred by Credit Union related to the loan. Originator authorizes Lender to exercise this remedy by means of a chargeback against any account of Originator with Lender, and/or by ACH charge against accounts of Originator with other financial institutions pursuant to Originator's authorization and instructions provided at Exhibit B to this Agreement. Originator agrees to provide to Lender, at all times during the term of this Agreement, appropriate ACH authorization forms consistent with Exhibit B's requirements, duly executed by Originator and completed with Originator's account information, and name, address, and contact person for each financial institution at which Originator maintains accounts.

14. **Notices.** Any notice necessary to be given hereunder will be sufficient if in writing and delivered whether personally or by mail, first class postage prepaid, or by nationally recognized overnight carrier, to the address set forth on the signature page of this Agreement. Notices sent by first class mail shall be deemed received three (3) business days following the date when mailed. Notices personally delivered or sent by overnight courier shall be deemed received upon the earlier of actual receipt or two (2) business days after sending.

15. **Facilities.** Lender will have no responsibility or obligation to provide Originator with any personnel, material, facilities or equipment required for Originator to perform under this Agreement.

16. **Assignment.** Neither this Agreement nor any duties or obligations hereunder may be assigned by Originator without the prior written consent of Lender.

17. **Non-Waiver.** Waiver or forbearance by Lender with respect to any breach of this Agreement or of Originator's representations or warranties shall not constitute a waiver of breach of any other provision of this Agreement, and shall not affect Lender's right to redress a breach of any other provision or of any subsequent breach of a similar or dissimilar nature.

18. **Attorneys' Fees.** If any action at law, in equity, or by arbitration is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, including costs allocable to in-house attorneys', in addition to any other relief to which such prevailing Party may be entitled.

19. **Insurance.** During the period in which the services are to be performed, in addition to statutorily-required workers compensation insurance, Originator shall, at Originator's expense, obtain and keep in force a policy of Comprehensive General Liability Insurance and comprehensive Dishonesty, Disappearance and Destruction Insurance with an insurance carrier(s) rated at least "A" by A.M. Best, each in an amount of not less than \$1,000,000 per occurrence of bodily injury and property damage or loss combined and shall insure Originator with lender as an additional insured. Compliance with the above requirement shall not, however, limit the liability of Originator hereunder.

20. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereto, and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding. Each Party acknowledges that no representations, inducements, promises or agreements, oral or written, have been made by any Party, or anyone acting on behalf of a Party, which is not embodied in this Agreement. This Agreement shall not be amended except in a writing signed by Lender and Originator.

21. **Severability.** Each part of this Agreement is intended to be severable. In the event any provision of this Agreement is deemed invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect the remaining portions of this Agreement, which shall remain in full force and effect and shall be binding on the Parties.

22. **Force Majeure.** Neither party shall be liable for its failure or delay in the performance of its obligations under this Agreement due to strikes, wars, revolution, fire, flood, explosion, earthquakes, government regulations or other causes beyond its reasonable control; and a reasonable extension of the time to perform shall be extended in such circumstances.

23. **Governing Law.** This Agreement and all questions relating to its validity, interpretation, performance, and enforcement (including without limitation, provisions concerning limitations of action), shall be governed by and construed in accordance with the internal laws of the State of Maryland, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary. Originator agrees to submit to the personal jurisdiction of the State of Maryland. This Agreement shall also be interpreted consistent with the National Credit Union Act and its implementing Regulations.

**SIGNATURE PAGE FOLLOWS**

This Agreement is hereby executed by:

LAFAYETTE FEDERAL CREDIT UNION

Signed: \_\_\_\_\_ Date \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ORIGINATOR

Company Name: \_\_\_\_\_

Signed: \_\_\_\_\_ Date \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT A**

### **PRE-APPROVALS**

A pre-approval may be issued based on the information as contained in the following:

- Submitted loan application
- Information contained in Applicant(s) credit report
- Copy of signed sales contract between Applicant and Originator

### **COMPLETED PACKAGE**

A “completed package” shall contain, at a minimum, the following documentation and may be submitted either by Originator or by Applicant:

- Completed Credit Union Loan Application
- Proof of Income (if needed) as defined by Lender
- Copy of signed sales contract between Applicant and Originator
- Copy of valid, unexpired photo ID
- Verification of Applicant’s ownership of home where project was completed
- Completed & Signed Contractual Loan Document Package
- UCC Filing
- Clearance of Collection, Judgment or Delinquent credit accounts (if applicable)
- Signed Certificate of Completion and Satisfaction
- Lafayette Federal Credit Union Membership

The above documentation is required in order for a loan to be funded.

**EXHIBIT B**

**AUTHORIZATION FOR AUTOMATIC TRANSFER OF FUNDS THROUGH THE  
AUTOMATED CLEARING HOUSE (ACH)**

Refer to "ACH Credit Origination" form

Refer to "ACH Debit Origination" form

**EXHIBIT C**  
**RATES AND FEES**

**Refer to the following Schedules for Pricing and Fee information:**

Schedule A: Program Specific Limitations

Schedule D: Loan Characteristics – Quantitative Guidelines