

FICS End User License Agreement

LPOne®

WARNING: THIS IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AN INDIVIDUAL OR AN ENTITY), THE END USER, AND FINANCIAL INDUSTRY COMPUTER SYSTEMS, INC. (HEREINAFTER “FICS”). YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE CLICKING ON THE “SUBMIT REGISTRATION” BUTTON ON THE REGISTRATION WINDOW. BY CLICKING ON THE “SUBMIT REGISTRATION” BUTTON, YOU ARE CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE “CANCEL” BUTTON TO CANCEL YOUR REGISTRATION.

1. Definitions.

- A. “Application Processor” means any entity that maintains a web site with a hyperlink to access FICS' LPOne® Software from which End User gains access to the Services, and/or any entity with which the End User applies for a loan through such software.
- B. “End User” means any person or entity, who gains access to the Services from a hyperlink on a web site of the Application Processor and has registered to use the Services provided by Application Processor via FICS' LPOne® Software.
- C. “LPOne® Software” means that certain software developed by and belonging to FICS which allows the Application Processor to provide Services to the End User.
- D. “Services” means execution of the LPOne® Software to perform any of the following: receive loan application input from the End User; submit such loan application input to the Application Processor; retrieve data on the End User's loan application from a database which is maintained by the Application Processor; display such data to the End User on this web site on the World Wide Web that is accessible via a hyperlink from the Application Processor web site; and execution of LPOne® Administrative Database software to maintain End User information, including registration information such as a password.
- E. “Loan Producer® Database” means software licensed for use from FICS to the Application Processor to enable loan application processing functionality for the Application Processor.

2. License. This agreement grants you a non-transferable, non-assignable, and non-exclusive license to use the Services provided by the LPOne® Software via this web site that is accessible via a hyperlink from the Application Processor's web site, subject to the terms and conditions of this agreement.

3. Restrictions. You shall not attempt to or (1) access the Services in any manner other than via a direct hyperlink from the Application Processor's web site; (2) convey, without the prior written consent of FICS, any information to any third party that would enable such third party to access or provide access to the Services, such information including without limitation any password and IP Address for accessing the Services; (3) sabotage, destroy, hinder, or alter in any way the Services provided by Application Processor, including the software executed to perform such Services; and (4) copy, revise, reverse engineer, decompile, or disassemble the software executed to perform such Services in whole or in part or permit any third party to attempt to do the same. Violation of any of the restrictions set forth in this Section 3 by you shall result in immediate termination of the license granted in Section 2 above.

4. Term. The license is effective until any of the following occur: (1) FICS, at FICS' sole discretion, terminates the license for any reason or no reason at all, (2) FICS stops providing the LPOnline[®] Software for any reason or no reason at all, (3) the Application Processor fails to maintain a direct hyperlink to the Services and/or the LPOnline[®] Software on the Application Processor's web site, or (4) the End User fails to comply with any term or condition of this agreement, at which times the license shall terminate automatically.

5. NO WARRANTIES.

IT IS HEREBY EXPRESSLY UNDERSTOOD BY YOU THAT FICS IS PROVIDING SERVICES TO YOU WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, THAT MAY ARISE EITHER BY AGREEMENT BETWEEN THE PARTIES OR BY STATUTE OR OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, NON-INFRINGEMENT, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, ELECTRONIC SECURITY OR FREEDOM FROM VIRUSES. THE SOFTWARE USED IN PROVIDING THE SERVICES (I.E., THE LPONLINE[®] SOFTWARE) IS ALGORITHMIC IN NATURE; IT MERELY PERFORMS MATHEMATICAL ANALYSIS ON DATA INPUT BY THE END USER AND/OR DATA QUERIED FROM THE APPLICATION PROCESSOR'S LOAN PRODUCER[®] DATABASE. LPONLINE[®] SOFTWARE'S OUTPUT, AND THE QUALITY THEREOF, RELIES ON THE CONTENT OF THE DATA INPUT TO IT, AND IS NOT A SUBSTITUTE FOR SELLING ADVICE, OR ANY OTHER FORM OF HUMAN DECISION MAKING. FICS FURTHER MAKES NO WARRANTY AS TO THE SUCCESS OF ANY TRANSACTION FOR WHICH THE SERVICES MAY BE USED, OR SATISFACTION OF ANY USER WHO MAY RELY ON THE SERVICES, INCLUDING THE DATA OUTPUT BY THE LPONLINE[®] SOFTWARE. YOU RELY ON THE SERVICES, INCLUDING DATA OUTPUT BY SUCH SERVICES, EXPRESSLY AT YOUR OWN RISK. FICS IS NOT RESPONSIBLE FOR ANY NONPERFORMANCE OF ITS SOFTWARE OR THE SERVICES PROVIDED THEREBY WHETHER CAUSED BY INOPERABILITY OF HARDWARE, OR FAILURE OF THE APPLICATION PROCESSOR OR END USER TO OPERATE HARDWARE OR THE SOFTWARE REQUIRED FOR THE SERVICES IN ACCORDANCE WITH APPLICABLE ONLINE USER'S MANUALS, FAULT OF THE APPLICATION PROCESSOR'S LOAN PRODUCER[®] DATABASE AND/OR DATA CONTAINED THEREIN, OR FAULT OF PROGRAMMING OR OTHER ERROR BY FICS OR BY ANY OTHER CAUSE WHATSOEVER.

6. NO LIABILITY FOR DAMAGES.

IN NO EVENT SHALL FICS BE LIABLE FOR ANY DAMAGES OR CLAIMS WHATSOEVER, INCLUDING ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES AS A RESULT OF YOUR USE OF THE SERVICES OR FICS' PERFORMANCE OR BREACH OF THIS AGREEMENT HOWSOEVER CAUSED, EVEN IF FICS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. Title.

A. Ownership of Proprietary Rights: All right, title and interest in and to all copyright, trade secret, patent, trademark (including, without limitation the trademark "LPOnline[®]") and other proprietary rights in and to all software and documentation provided by FICS to Application Processor to perform the Services for the End User, including the LPOnline[®] Software and LPOnline[®] Administrative Database software, as well as any further modifications, enhancements, upgrades, point releases and derivative works of and to such software and documentation and all physical

embodiments of same shall at all times belong to, vest and remain vested in FICS. End User agrees that it shall be a material breach of this agreement for End User to contest or dispute such ownership by FICS in any way.

B. Trademarks and Trade Names: No right is granted hereunder for End User to use any trademark (including without limitation the trademark “LPOnline[®]”) or trade name of FICS.

8. Privacy. FICS maintains an information security program to protect any nonpublic personal information to which it may have access to by virtue of this agreement. To the extent FICS does have access to nonpublic personal information, use of such is limited to use necessary to carry out its obligations hereunder.

9. Governing Law. This agreement shall be governed by the laws of the State of Texas notwithstanding any conflicts of law principles. All disputes hereunder shall be resolved in the applicable state or federal courts of Texas. The parties consent to the jurisdiction of such courts, agree to accept service of process by mail, and waive any jurisdictional or venue defenses otherwise available.

10. Waiver. No waiver by either party of any default shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this agreement.

11. Severability. If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from this agreement.

12. ENTIRE AGREEMENT.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND FICS AND SUPERSEDES ALL PREVIOUS AGREEMENTS REGARDING THE LPONLINE[®] SOFTWARE AND/OR SERVICES PROVIDED THEREBY, WHETHER ORAL OR WRITTEN. FURTHERMORE, UPON NOTICE PUBLISHED ON-LINE, FICS MAY AT FICS' SOLE DISCRETION MODIFY THESE TERMS AND CONDITIONS, AS WELL AS CHANGE OR DISCONTINUE THE LPONLINE[®] SOFTWARE.