

BANK ON FAMILY PROTOTYPE TEST PARTICIPATION AGREEMENT

This Prototype Test Participation Agreement (“Agreement”) is entered into on this ____ day of _____, _____ by and between the Filene Research Institute, Inc. (“Institute”) and _____, (“Credit Union”), with headquarters in _____, _____.

WHEREAS, the Institute desires the Credit Union to participate in certain research set forth in the Scope of Work outlined in Article 2 of this Agreement (“Scope of Work”) for the purposes of testing various aspects of the Concept, defined below, within their organization and with selected Credit Union members, as directed by the Institute; and

WHEREAS, the Credit Union desires to actively participate in certain activities and research set forth in the Scope of Work for the educational benefit of their own organization as well as of the entire credit union movement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and consideration below, Institute and Credit Union agree as follows:

ARTICLE 1 DEFINITIONS

- a) “Institute” means the Filene Research Institute, Inc., a non-profit corporation organized to conduct scientific research and educational programs of current and future interest and value to the credit union movement and to the general public, and any agents Filene Research Institute may select to perform work related to this agreement on its behalf.
- b) “Credit Union” means the entity participating in this prototype test and offering the Concept to its members based on the terms of this Agreement.
- c) “Concept” means the systems, processes, web sites, code, reporting mechanisms, intellectual property, and use cases associated now or at any point in the future with the idea currently known as Bank on Family, developed by the Institute and its agents.
- d) “Prototype Test” means the specific activities detailed in the Scope of Work.
- e) “Treatment Group” means Credit Union members who will be offered the Concept based on criteria determined solely by the Institute.
- f) “Control Group” means Credit Union members who will not be offered the Concept based on criteria determined solely by the Institute.

ARTICLE 2 PROTOTYPE TEST SCOPE OF WORK

- a) The Scope of Work includes implementing the Concept at the Credit Union, tracking the results of the implementation, and reporting them for the periods detailed herein. The sole purpose of this Agreement is to allow Credit Union members access to the Concept for testing and evaluation of how it supports certain consumer objectives and business processes. The key phases of the Prototype Test are as follows:
 - 1. Credit Union selection and training: August 1 – November 15, 2017.
 - 2. Prototype Test period: November 1, 2017 – March 1, 2020 consisting of two overlapping phases:
 - a. Usage of the Concept by the Credit Union: November 1, 2017 – August 1, 2018.
 - b. Data collection and reporting by both parties: November 1, 2017 – April 1, 2020.
 - 3. Data analysis and report production by the Institute: November 1, 2017 – June 15, 2020.

- b) The specific activities that the Credit Union agrees to perform associated with the Prototype Test include the following:
1. Identify by October 15, 2017, one primary Credit Union contact with which the Institute will coordinate all activities and communications.
 2. Share with all relevant Credit Union employees any descriptions, overviews, and other training materials to be used to raise awareness of and familiarity with the Concept.
 3. Attend all bi-weekly check-in calls or webinars to be scheduled by the Institute.
 4. Promotion of the concept for 6 months or until 25 Concept loans..
 5. Make available to the Institute electronically including the following data elements: (1) From the Credit Union (a) number of on time payments (b) purpose of the loan, (c) number of enrolled who opened new accounts, (d) number of products with new account. (2) From the Credit Union credit report (a) trades: number active, (b) trades: number of on-time payments, (c) trades: mix of credit types, (d) trades: available credit, (e) number of hard inquiries, (f) Inquiries: type of hard inquiry, (g) score: type and name, (h) derogatory trades: \$ total balance of derogatory.
 6. Permit the Institute and its agents to track, analyze, and report on Concept usage statistics, behaviors, and opinions of Credit Union members and employees during the Prototype Test period.
- c) The specific activities that the Institute or its agents agrees to perform associated with the Prototype Test include the following:
1. Provide telephone and/or web systems for all Prototype Test check-in calls.
 2. Maintain data supplied to the Institute by the Credit Union or made available via the Concept system for the purposes of analysis and reporting.
 3. Use industry-standard methods to ensure the confidentiality of all member-level data reported by the Credit Union and held by the Institute or its agents.
 4. Contact Credit Union members of the Treatment Group or Control Group via e-mail or other electronic means to survey their feedback and opinions about the Concept, with at least 10 business days' notice to the Credit Union prior to any member contact.
 5. Report Credit Union-level data and results of the Prototype Test to the Credit Union via an individual call and written summary after the completion of the Prototype Test period.
 6. Aggregate and report Prototype Test data for publication based on timelines and using methods solely determined by the Institute. At no time will the Institute publicly report any specific data identifiable to an individual Credit Union member.
 7. Provide consideration and recognition opportunities to the Credit Union as outlined in Article 3 of this Agreement.

ARTICLE 3 CONSIDERATION AND RECOGNITION

As consideration for complete performance under terms of this Agreement the Institute agrees to perform the following:

- a) Waive all fees or charges for Credit Union and member use of the Concept during the Prototype Test period.
- b) Recognize the Credit Union's participation on Filene.org during the Prototype Test period.
- c) Include the Credit Union's name in any final reports that may be published relating to the results of the Prototype Test, whether in print, online, or via any other means.
- d) Provide the Credit Union with summarized data specific to the Credit Union's performance and participation of its members and employees in the Prototype Test.
- e) If the Institute decides, at its sole discretion, to further offer the Concept in a commercialized format in the future, permit Credit Union to maintain access to Concept with a 20% discount off fees or charges

assessed to Credit Union for use of the commercialized Concept for a maximum consecutive period of 12 months.

ARTICLE 4 NO WARRANTY/NO MAINTENANCE

- a) Credit Union acknowledges that the Concept is a preliminary version and not subject to any license agreement or any other agreement with Institute. Institute has no obligations whatsoever to offer the Concept for productive use or any other use. In addition, Institute has no obligation to include or remove certain functionality from the Concept in any future version or in any product. Credit Union and Institute mutually acknowledge and agree that it would be imprudent and unreasonable to rely upon the expectation of entering into a contract regarding the productive use of the Concept.
- b) Credit Union acknowledges that Institute may, but is not obligated to, provide maintenance or support services for the Concept.
- c) **THE CONCEPT AND ANY DOCUMENTATION HEREUNDER ARE PROVIDED TO CREDIT UNION AS-IS. NO WARRANTIES ARE MADE OR IMPLIED BY THE INSTITUTE OR ITS AGENTS TO THE CREDIT UNION, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY, FUNCTIONALITY, AVAILABILITY, SUITABILITY FOR USE, ACCURACY, OR OTHER ASPECTS OF THE CONCEPT PROTOTYPE, SUBSEQUENT DATA ANALYSIS, OR REPORTING DERIVED FROM THE USE THEREOF. THE CREDIT UNION AGREES THAT THE INSTITUTE AND ITS AGENTS ARE OFFERING USE OF THE CONCEPT FOR RESEARCH AND EVALUATION PURPOSES ONLY.**
- d) **IRRESPECTIVE OF THE LEGAL REASONS, UNDER NO CIRCUMSTANCES SHALL INSTITUTE OR ITS LICENSORS BE LIABLE TO CREDIT UNION OR ANY OTHER PERSON OR ENTITY FOR ANY AMOUNT OF DAMAGES, INCLUDING, BUT NOT LIMITED TO, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS, OR EXEMPLARY OR PUNITIVE DAMAGES EVEN IF INSTITUTE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

ARTICLE 5 NO TRANSFER OF OWNERSHIP RIGHTS

- a) During the term of this Agreement, the Institute grants to the Credit Union a non-transferable, non-exclusive, limited license to use the Concept for the exclusive purpose of testing and evaluation purposes.
- b) The Credit Union shall not remove notices or notations in the Concept that refer to copyrights, trademark rights, patent rights and other intellectual property rights. Any and all patent rights, copyrights, trademark rights and other rights in the Concept, as well as any improvements, inventions, design contributions or derivative works conceived or created by either party in or to the Concept, including source code, shall remain the exclusive property of the Institute and/or its licensors. Except for the limited license rights expressly granted herein, this Agreement does not transfer any proprietary right or interest in the Concept to the Credit Union. Between the Credit Union and the Institute all title to and rights in the Concept, operational know-how and business secrets related thereto vest exclusively in the Institute and/or its licensors, notably copyright and rights of authorship, rights to inventions, and any other industrial and intellectual property rights. All license rights not expressly granted to the Credit Union in this Agreement are reserved by the Institute and its licensors.
- c) The Credit Union shall not be entitled to license, sell, lease, rent, outsource or otherwise transfer or make available Concept to third parties.

ARTICLE 6 TERM AND TERMINATION

This Agreement shall remain in effect from the date written above until December 31, 2020, and may be terminated by either party by giving written notice to the other party at least 90 days in advance of a specified date of termination.

**ARTICLE 7
DATA PROTECTION AND CONFIDENTIALITY**

- a) Each party shall comply with the applicable data protection laws and regulations.
- b) Each party agrees, on its own behalf and on behalf of any agents it utilizes to perform its responsibilities under this Agreement, that the materials, information, and know-how (in any format) which the other party or its affiliates ("Disclosing Party") provides to such party or its affiliates ("Receiving Party") or to which Receiving Party gains access in the course of performing its responsibilities hereunder (collectively, "Confidential Information"), are, as between the parties, the property of the Disclosing Party. Receiving Party shall hold said materials and information in trust and confidence using the same degree of care as it uses to avoid unauthorized use, disclosure, or dissemination of its own confidential information of a similar nature, but not less than reasonable care. Said information and materials shall be used by Receiving Party only within the scope of its rights and responsibilities under this Agreement, shall not be disclosed to employees of the Receiving Party who do not have a need for access to same, and shall not be disclosed to third parties by Receiving Party without Disclosing Party's prior written approval. Credit Union agrees that Institute may provide access to Credit Union's Confidential Information to Institute's consultants and contractors to the extent that such disclosure is necessary in order for such third parties to perform the services for which they have been retained by Institute and provided that such third parties have executed a non-disclosure agreement prior to any such access with restrictions at least as strict as those contained in this Agreement.
- c) The confidentiality obligations set forth in this Section shall not apply to information and materials: (i) that are or subsequently become publicly available without Receiving Party's breach of any duties it owes to Disclosing Party (provided that this exclusion does not apply to "Customer Information" as defined herein); or (ii) was known to Receiving Party prior to Disclosing Party's disclosure; or (iii) became known to Receiving Party from a source other than Disclosing Party, other than by the breach of an obligation of confidentiality owed to Disclosing Party; or (iv) is independently developed by Receiving Party. In addition, the Receiving Party may disclose Confidential Information as required to comply with lawful requests or binding orders of regulators or other governmental entities that have jurisdiction over it; provided that the Receiving Party (a) gives the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or other appropriate remedy, and (b) discloses only such Confidential Information as is required by the governmental entity, and (c) uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed.
- d) Upon the request of Institute at any point during the term of this Agreement, but in any event upon termination of this Agreement, Credit Union shall surrender to Institute within five business days (or such other time frame which the parties agree to in writing) all Confidential Information and all copies and summaries of the same, in a useable format as agreed upon by the parties. Credit Union shall comply with said request without regard to any disputes then existing between the parties. Notwithstanding the foregoing, each party may retain such Confidential Information of the other party to the extent necessary to comply with applicable laws and regulations or Recipient's retention policy, provided that the confidentiality of such information shall be maintained until such Confidential Information is destroyed.

**ARTICLE 8
MISCELLANEOUS**

- a) Credit Union shall perform its obligations hereunder in compliance with all applicable laws, rules, and regulations, and in such a manner so as to not cause Institute to be in violation of applicable laws, rules or regulations.

- b) Credit Union shall not use the name, trade name(s), logos, trademarks, service marks, or other identifiers of Institute or the Concept in any media releases, annual reports, service proposals to third parties, endorsements, advertising, or other public communications, whether digital or otherwise, without the prior written consent of Institute.
- c) All notices, authorizations, consents, or other communications hereunder (except day-to-day communications) shall be made in writing and shall be mailed, certified mail, return receipt requested and postage prepaid, to following addresses:

Institute: Filene Research Institute
 Attn: Marnie Gerhardt
 Phone: 608-661-3748
 Address: 612 W. Main St., Suite 105, Madison, WI 53703
 Email: marnieg@filene.org

Credit Union: _____
 Attn: _____
 Phone: _____
 Address: _____
 Email: _____

- d) The construction, interpretation and enforcement of this Agreement shall be governed by the substantive law of the United States of America and the State of Wisconsin, without regard to its conflict of law provisions. For matters subject to litigation hereunder, the parties consent and submit exclusively to the jurisdiction and service of process of the courts of the state of Wisconsin or the courts of the United States located in Wisconsin and those courts competent to hear appeals from those courts. If Credit Union's place of business is outside the United States, Credit Union agrees to formally resolve disputes pursuant to the arbitration provisions set forth by Institute and provided to Credit Union on request.
- e) Irreparable harm shall be presumed if either party breaches any covenant of this Agreement relating to its obligations of confidentiality or the other party's proprietary rights, and the breaching party shall not oppose the granting of an injunction to the aggrieved party.
- f) Credit Union may not sell, assign, or transfer any rights or interests created under this Agreement or delegate any of its duties, without the prior written consent of Institute. Any such assignment or delegation without the written consent of Institute shall be void.
- g) A party shall not be liable for any failure of or delay in the performance of this Agreement if such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event, however, after thirty (30) days of nonperformance due to a force majeure event, the other party may terminate this Agreement without penalty.
- h) No provision of this Agreement may be amended, modified or waived except in a written instrument signed by a duly authorized representative of each of Credit Union and Institute.
- i) Construction. The terms of this Agreement have been fully reviewed and negotiated by the parties and express their mutual intent. Any presumption or principle that the language is to be construed against any party shall not apply.
- j) Should any part, term or provision of this Agreement be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.
- k) Any right or obligation of the parties under this Agreement that, by its nature, should survive termination or expiration of this Agreement shall survive termination of this Agreement indefinitely.

l) Counterparts. This Agreement may be executed in counterparts and/or by the exchange of original, facsimile and/or electronic (.PDF) signature pages, which taken together shall constitute one single agreement between the parties.

m) Entire Agreement. This Agreement (including all attachments) is intended by the parties to be the final expression of their agreement, and it constitutes the full and entire understanding between the parties with respect to the subject matter.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date written above.

FILENE RESEARCH INSTITUTE

_____ CREDIT UNION

By: _____
Name: Marnie Gerhardt
Title: Innovation Manager
Date: _____

By: _____
Name: _____
Title: _____
Date: _____