

AUDITING AGREEMENT

This auditing agreement is entered into effective December 1 2020 (the “Effective Date”) between UPSTART NETWORK, INC. (“Upstart”), RESOURCES LEGACY FUND as fiscal sponsor for the Student Borrower Protection Center (“RLF/SBPC”), and the NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. (“LDF”) (collectively “the Parties”).

WHEREAS, LDF and/or RLF/SBPC expressed concerns that Upstart’s lending platform may potentially produce an unjustified disparate impact on Black student loan borrowers and other borrowers of color in violation of the Equal Credit Opportunity Act (“ECOA”) and the Fair Housing Act (“FHA”) through a report published on February 5, 2020 and other correspondence with Upstart, and on August 25, 2020 requested information regarding Upstart’s lending platform;

WHEREAS, members of the United States Senate Committee on Banking, Housing, and Urban Affairs published a report on July 31, 2020 detailing various concerns about the use of education data by various lenders and underwriters, including Upstart;

WHEREAS, Upstart made certain changes to its lending platform but denies all wrongdoing; and

WHEREAS, the Parties have agreed that additional testing and reporting would serve all of their best interests;

NOW, THEREFORE in consideration of the promises and mutual covenants contained herein, the Parties, intending to be legally bound by the terms set forth below, agree as follows:

1. **Effective Date.** This Agreement shall be effective as of the Effective Date.
2. **Term of Agreement.** This Agreement shall remain in effect for a period of two (2) years from the publication of the first Periodic Report as detailed below.
3. **Appointment of Auditor.** The Parties agree that, within thirty days following the execution of this Agreement, Upstart shall execute a written agreement with Relman Colfax LLP (“Relman”) for Relman to act as a neutral, independent, third-party monitor (“Auditor”) to conduct ongoing fair lending testing of Upstart’s platform as detailed below:
 - a. Auditor shall, after consulting with the Parties and reviewing the categories and quality of data Upstart maintains, identify any test or tests that it reasonably believes appropriate to assess Upstart’s compliance with ECOA and the FHA (if applicable) by assessing the lending outcomes from Upstart’s underwriting model (“Model”) to determine if the Model causes or results in an adverse impact on any protected class and, if so whether there are less discriminatory alternative practices that maintain the Model’s predictiveness (“Auditor Tests”). To assist Auditor in identifying appropriate test(s), Upstart agrees to make available to Auditor a sufficient sample of representative data that the Auditor reasonably believes necessary to determine the appropriate Auditor Tests, including how

many iterations of each Auditor Test must be run prior to completion of any Report as defined below. The Parties acknowledge and agree that the Auditor shall consider in good faith any feedback provided by the Parties in connection with the development of the Auditor Tests. The Auditor shall provide the Parties with the methodology to be used in connection with the proposed Auditor Tests for review prior to performing the Auditor Tests.

- b. Upstart and Auditor shall enter into an audit and data access agreement (“Auditor Agreement”) pursuant to which Upstart and Auditor will agree (i) on the terms and conditions related to the method of access and confidentiality or security of Upstart’s loan level data and certain other information about Upstart’s platform and underwriting model needed to perform the Auditor Tests, (ii) that Upstart shall pay all fees, costs, and other expenses related to Auditor’s work pursuant to this Agreement provided the costs of such engagement will not exceed \$1,750,000 in the aggregate and subject the last sentence of this Paragraph 3.b, (iii) that Auditor’s compensation shall not depend in any part on the conclusions of any test or content of any Initial Report, Periodic Report, or Recommendations (defined below), and does not create an attorney-client or otherwise privileged relationship of any kind; and (iv) that Auditor and/or third party vendors engaged by Auditor shall acknowledge that the information provided by Upstart in connection with any audit, including but not limited to proprietary information related to the Model, lending outcomes, default rates and similar matters, may constitute material non-public information and agrees that Auditor and/or its third party vendors will refrain, directly or indirectly, from trading in Upstart’s securities (including any options, convertibles or other derivative securities) during the term of this Agreement nor otherwise disclose such information except pursuant to this Paragraph 3. Notwithstanding anything to the contrary in this Agreement, Upstart shall not be required to disclose sensitive proprietary technical information about its Model such as source code, and specific algorithmic information beyond what Auditor determines is reasonably necessary for the Auditor to complete Auditor Tests, the Initial Report, Periodic Reports, or Recommendations. The Parties agree that in the event the costs contemplated in clause (ii) above exceed \$600,000 in the first 12 months of the Agreement, the Parties will meet at the end of the 12-month period to negotiate in good faith modifications to this Agreement and the Auditor Agreement that will reduce the Auditor costs for the remainder of the term, including but not limited to a reduction in the number of Periodic Reports to be delivered. No changes to the testing or reporting structure shall be made until such a meeting is held between the Parties.
- c. The Parties acknowledge and agree that during the term of the Agreement the Auditor may change the methodologies and testing techniques identified as part of the process detailed Paragraph 3(a) above to perform the Auditor Tests, *provided, however*, that prior to making any such change the Auditor shall seek input from the Parties. The Auditor shall consider in good faith any feedback provided by the Parties in connection with any modifications to methodologies or techniques

proposed by the Auditor. Updated Auditor Tests shall be implemented in the next Periodic Report testing period.

- d. During the term of this Agreement, the Auditor shall conduct the Auditor Tests pursuant to the methods and repetitions identified pursuant to Paragraph 3(a) above.
- e. Upstart agrees to provide to Auditor, within a reasonable period of time upon Auditor's request, access to the data, documents, and other information to enable Auditor to perform the Auditor Tests, as provided in more detail in the Auditor Agreement and Paragraph 3(a) above.
- f. No later than February 28, 2021, Auditor shall prepare an initial report describing the history and impact of Upstart's use of education data; the discussions between the parties; the changes made to Upstart's lending platform, if any, in response to inquiries made by RLF/SBPC and LDF; and the scope of and reasons for the ongoing audits ("Initial Report"). In preparing the Initial Report, Auditor may solicit any relevant information from the Parties. Such Initial Report shall be subject to the review procedures set forth in Paragraphs 3(h), 3(i) and 3(j) below.
- g. During the term of this Agreement, Auditor shall prepare a report to be provided to each of Upstart, RLF/SBPC and LDF in the format to be mutually agreed by the Parties in advance, no later than thirty days after the end of each 4 calendar month period during the term, detailing (i) the Auditor Tests conducted, (ii) the results from each Auditor Test, (iii) trends or changes observed from prior Reports, (iv) less discriminatory alternatives that maintain the Model's predictiveness and meet any other legitimate business need ("Recommendations"), (v) an update about whether and to what degree Upstart addressed Recommendations from prior reports, and (vi) the summary that will be made public ("Periodic Report"). The Parties agree that the public summary contemplated in clause (vi) above ("Public Summary") will summarize the general findings of the applicable Periodic Report, any best practices identified, including specific Recommendations that have shown to be effective, and any aspects of the Model that raise particular fair lending concerns or implicate novel insights on educational equity that serve the public interest. The Periodic Reports shall be subject to the review procedures set forth in Paragraphs 3(h), 3(i) and 3(j) below. The first period covered by a Periodic Report shall commence no later than the April 1, 2021.
- h. Auditor shall provide a confidential copy of each Initial Report, or any Periodic Report (each a "Report" and collectively, the "Reports") to the Parties prior to making any Report public. Upon receipt of any Report from Auditor, the Parties shall have two weeks to provide input or feedback concerning the methodologies, findings, or Recommendations of the Report, as applicable, including the commercial reasonableness of implementing any of Auditor's proposed Recommendations. Such input or feedback shall be in writing and provided to all other Parties and Auditor. A Party's failure to provide input or feedback on any

Report within the two-week period shall waive that Party's right to provide feedback on that Report but shall not waive any rights to provide input or feedback on any future reports.

- i. After the Parties have provided any input or feedback regarding any Report, the Auditor and the Parties shall, within thirty (30) days thereafter, make all reasonable efforts to address the input or feedback concerning the methodologies, findings, or Recommendations of the Report, as applicable, to address all Parties' concerns. Such reasonable efforts shall include, but are not limited to, holding meetings to discuss points of disagreement; exchanging further information; and providing written explanations for any decisions or objections. The Parties and Auditor shall collaborate to the maximum extent possible to agree upon the Recommendations in each Report, including the most effective and commercially reasonable way to implement each Recommendation.
- j. Auditor shall, to the maximum extent possible, consider the Parties' feedback in finalizing each Report, after which Auditor shall make such report (or the Public Summary in the case of each Periodic Report) public. If the Parties and Auditor are unable to reach agreement as to any part of any Report, however, Auditor shall have the final authority to determine whether any modifications are necessary with respect to each Report to address any concerns raised by the Parties pursuant to Paragraphs 3(h) and 3(i) above; and, if such modifications are necessary, the substance of those modifications, *provided, however*, that: (i) in no event shall Auditor include the specific results of how Upstart performed on any Auditor Test, or any proprietary or commercially sensitive information of Upstart, in a Report that is made public; and (ii) Auditor shall consider the legitimate business needs of Upstart in determining any Recommendation before including it in any public Report or Public Summary. To the greatest extent reasonably possible, the Parties and Auditor shall work together to ensure that any public Report, including any Public Summary, does not suggest or imply any legal liability for Upstart and acknowledges that Upstart has voluntarily entered into this Agreement. Specific results do not include information necessary to describe if any impact is observed in connection with any Recommendation, concerns related to a particular variable provided the variable is publicly known, or discussion around Recommendations, including less discriminatory alternatives and the predictiveness of certain variables to the extent necessary for explaining why a Recommendation may be a less discriminatory alternative, why a particular practice may cause an unjustified disparate impact on a protected group, or why a particular practice should be followed, provided no proprietary or commercially sensitive information is included in any Recommendation. For purposes of each Report, all education-related variables and all general categories used by Upstart to group variables shall be considered publicly known, such that they may be included in any Report (including any Public Summary) subject to the procedures set forth in Paragraphs 3(h), 3(i), and 3(j), *provided, however*, that any discussion of education-related variables in a public Report or Public Summary shall only discuss those variables' predictiveness to the extent necessary to describe why a Recommendation may be a less discriminatory alternative, why a particular

practice may cause an unjustified disparate impact on a protected group, or why a particular practice should be followed.

- k. Upstart agrees to adopt, implement, and maintain for the entire term of this Agreement the Recommendations in each Periodic Report within a commercially reasonable time upon the finalization of such Testing Report. If any Recommendation must be submitted to any relevant regulatory body, Upstart agrees to promptly submit such Recommendation to the relevant regulatory body and, absent objection from such regulatory body, adopt and implement such Recommendation. Notwithstanding the foregoing, the Parties agree that Upstart will retain discretion to determine the actual methods and/or technical modifications needed to implement any Recommendations provided such methods will achieve the equivalent fair lending improvement of such Recommendation and are consistent with all previous Recommendations.
- l. LDF and RLF/SBPC agree that, for the entire term of this Agreement, neither shall themselves file nor represent another party in filing any lawsuit against Upstart regarding its platform's potential violations of ECOA or the FHA.
- m. Subject to Paragraph 3(k), should Upstart refuse to implement or maintain any Recommendation in any Periodic Report for any reason or otherwise breach any other provision of this Agreement and such breach remains uncured for a period of 30 days after Upstart has been provided notice thereof, neither LDF nor RLF/SBPC shall be bound by Paragraph 3(l) above and either may immediately terminate this Agreement in a writing to Auditor and all other Parties.
- n. Auditor shall, as appropriate, expressly acknowledge that its reports do not address disparities that exist in any other lending platforms and with other creditors that may rely on any other more traditional metrics related to applicant or borrower creditworthiness, including FICO scores, debt-to-income ratios, or other similar information.
- o. The Parties agree that (i) all draft versions of all Reports, including any Reports that have not yet been subjected to or are undergoing the review procedures outlined in Paragraphs 3(h), 3(i), 3(j) above, and (ii) the Periodic Reports except for the Public Summary, are confidential and shall not be disclosed to any third party for any reason, except to the extent any Party retains a third-party vendor for purposes of assessing and providing feedback on any Report, and provided that such third-party vendor shall be disclosed to all other Parties and required to maintain their confidentiality. In the event a court or regulatory agency of competent jurisdiction requires disclosure of any Report protected from disclosure by this Paragraph 3(o) from any Party, such Party must provide all other Parties with prompt notice of such demand and cooperate to the greatest extent permitted under law with any Party's efforts, at such Party's sole cost, to prevent or limit such disclosure.

4. **Succession of Auditor.** Upstart agrees not to terminate the Auditor Agreement absent good cause, which cause shall be set forth in a writing to RLF/SBPC and LDF prior to any termination. In the event of any termination by Upstart or if Auditor is no longer able to perform its contractual obligations for any reason, the Parties agree to identify, select, and enter into a written agreement with a new auditor within a reasonable time, and in no event no later than 30 days, after the termination or expiration of Auditor's contractual obligations. Such replacement auditor shall be engaged on substantially similar terms to those set forth in Paragraph 3(b). The term of this Agreement shall be extended by one day for each day between the termination of the Auditor Agreement and the execution of a new auditor agreement with a new auditor agreed to by all Parties.
5. **Additional Agreements.** In exchange for the commitments discussed in this Agreement, LDF and RLF/SBPC agree (i) to withdraw their August 25, 2020 request for information and (ii) for the term of this Agreement, not to make any publicly disparaging statements (orally or in writing or in any medium) regarding any no-action letter issued by the Consumer Financial Protection Bureau to Upstart relating to Upstart's use of artificial intelligence techniques and alternative data in its Model.
6. **No Admission; Remedies.** Nothing in this Agreement shall constitute an admission of liability under any rule or statute. The Parties agree that any breach of this Agreement shall entitle the non-breaching Party to terminate, upon 30 days' written notice, this Agreement in its entirety, and that except as set forth in the last sentence of this Paragraph 6, such termination shall be the sole remedy for the breach. Each party agrees not to bring legal action to enforce the terms of this Agreement in the event of an alleged breach. Notwithstanding the foregoing the Parties agree that any breach of Paragraph 3(o) may cause the other party irreparable injury and agree that, in the event of such breach or threatened breach, a Party will be entitled to injunctive relief to enforce the provisions Paragraph 3(o).
7. **Authority to Sign.** The signatory for each Party represents that they have the authority, right and power to execute this Agreement on behalf of the Party as designated with the signatory's name.
8. **Integration.** This Agreement represents the only agreement between the Parties with respect to the subject matter herein and supersedes any and all prior agreements, written or otherwise, that differ in any way from the terms of this Agreement. No Party shall have the right to assign this Agreement (or any portion hereof) without the prior written consent of the other Parties. Any assignment without such consent shall be void and is a material breach hereof.
9. **Modification.** This Agreement may be modified only in writing signed by the duly authorized representatives of both Parties.
10. **Counterparts.** This Agreement may be signed in separate counterparts, with all such counterparts taken together as a single agreement with the same effect as if all

signatures were made on a single document. A scanned copy of an original signature shall be accepted as an original signature for the purposes of this Agreement.

11. **Choice of Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of California.
12. **Survival.** The provisions set forth in Paragraphs 3(o), and Paragraph 6 shall survive the termination of this Agreement

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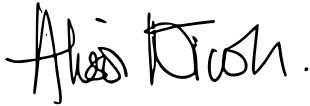
Dated: December 1, 2020

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Upstart Network, Inc.

By: _____

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Resources Legacy Fund, as fiscal sponsor for
the Student Borrower Protection Center

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the Student Borrower Protection Center

By: _____

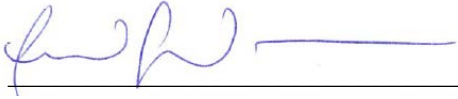
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Seth Frotman
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