



Terms and Conditions

1. CLIENT RESPONSIBILITIES

- 1.1 Market the commercial loan capabilities and services of Client, as enhanced by the Platform, to potential Borrowers.
- 1.2 Create a management structure, compensation package and marketing plan for Client's commercial lending entity.
- 1.3 Conduct regular sales meetings to monitor and improve the performance of Client's commercial lending entity.
- 1.4 Originate and close a minimum of one (1) loan through the Platform per calendar quarter.

2. CONFIDENTIALITY AND FULL DISCLOSURE

- 2.1 Client will not divulge any of CommLoan's technology, business systems, forms, policies and procedures, whether or not a part of the Platform, to any Party without the written consent of CommLoan. Any such disclosure is a breach of this Agreement and will result in immediate termination of this Agreement. In addition, CommLoan may pursue any or all remedies available to it with regard to the breach.
- 2.3 Client acknowledges that CommLoan's proprietary CUPID™ Platform for commercial real estate lending utilizes valuable intellectual property that is the exclusive property of CommLoan, and that CommLoan has applied for patent and copyright protection thereof. Client will execute and deliver to CommLoan appropriate licensing agreements for such intellectual property when presented by CommLoan.
- 2.4 Client shall furnish to CommLoan and its representatives all information and data concerning the affairs of Client, as CommLoan may reasonably request, including without limitation, information regarding the status of its licenses, permits, authorizations and approvals necessary for the conduct of its business

3. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 3.1 Client makes the following representations, warranties and covenants to CommLoan: (a) as of the date hereof; (b) as of each and every date Client submits an Application to CommLoan; and (c) as of the date any related loan is closed and funded by one of CommLoan's lenders. CommLoan shall be deemed to have relied on such

representations, warranties and covenants, regardless of any independent investigation it may have made or may hereafter make:

3.1.1 *Transaction Permitted.* The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms hereof, do not and will not violate any law, rule or regulation applicable to Client or such transactions.

3.1.2 *Due Organization; Good Standing.* If Client is an entity or organization other than an individual, Client is duly organized, validly existing and in good standing under the laws of the state governing its creation and existence during the time of its activities, with respect to the origination and closing of the commercial loans subject to this Agreement

3.1.3 *Compliance with Laws.* At all times during the Term; (a) Client will comply with all applicable state, federal and local laws and regulations and maintain any and all necessary licenses, permits, bonds, and other requirements of each jurisdiction; (b) Client will be licensed and properly qualified to transact business as a mortgage broker, commercial lender or other appropriate licensee, or will be otherwise exempt under applicable law from such licensing and qualification; (c) Client's employees are properly licensed or registered in all jurisdictions where required for the origination of commercial loans as contemplated by this Agreement and will maintain all applicable licenses, registrations and approvals in good standing during the term of this Agreement.

3.1.4 *Business Practices.* All of the Client's business practices are consistent with generally accepted best practices in the commercial lending industry and comply with all applicable laws, rules, regulations and orders relating to transactions of the kind contemplated in this Agreement.

3.1.5 *No False or Misleading Statements.* To the best of Client's knowledge, no statement or representation made or document submitted by Client to CommLoan in connection with this Agreement or in connection with any commercial loan is untrue, inaccurate, incomplete or misleading in any respect whatsoever, and Client will immediately report to CommLoan any known or believed to be false, inaccurate, altered or forged statement, representation or document which may come to its attention. All documents furnished to CommLoan 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.

3.1.6 *No Claims.* There will be no claims or defenses to repayment of any commercial loans presented to CommLoan under this Agreement by reason of any act or omission of Client or its directors, officers, agents or employees.

3.1.7 *No Other Fees.* There are no claims for finder's or broker's fees, except as otherwise set forth herein, in connection with any loan or other transaction contemplated by this Agreement. Client agrees that, with respect to any

commercial loans submitted by Client to CommLoan, should any claim be made for brokerage commissions or finder's fees by any broker or finder other than the Client by, through or on account of any acts of Client or its representatives, Client shall indemnify, defend and hold CommLoan free and harmless from and against any and all loss, liability, cost, damage and expense in connection therewith.

3.1.8 *Compliance with CommLoan Criteria.* The origination of each commercial loan complies in all respects with the terms of this Agreement. Each Application submitted was originated by Client and not by a third party. All Applications, including all commercial loan documents and information and documentation submitted in connection with such Applications, have been prepared and/or completed in accordance with applicable law and all information provided by each of Applicant and Client in such Applications are true and correct in all respects to the best of Client's knowledge and do not fail to disclose any facts which could be material or which would make such information misleading. All broker compensation has been fully disclosed to Applicant in compliance with applicable laws. The Applicant has executed and received a copy of the broker disclosure(s) as required by applicable law and there are no disputes with respect to Client's compensation in connection with the origination or closing of each commercial loan.

3.1.9 *No Adverse Circumstances.* Client has no knowledge of any circumstances or conditions with respect to any Application, mortgaged property, Applicant or Applicant's credit standing that reasonably could be expected to cause a lender, third party investor and/or secondary market acquirer to regard the related commercial loan as an unacceptable investment, cause the commercial loan to become delinquent or adversely affect the value or marketability of the commercial loan.

3.1.10 *No Other Agreements.* Except as otherwise permitted by CommLoan, Client has not made, directly or indirectly, any payment on the commercial loan, the Application, or any fee paid for goods and services rendered in connection with the origination and closing of the commercial loan, or on any other loan of Applicant from any other person or entity. Client has also not made any agreement with any Applicant providing for any variation of the interest rate, schedule of payment or other terms and conditions of the commercial loan; and Client has not received a request for approval of or notice of any proposed assumption, loss draft or payoff of the commercial loan.

3.2 Client and CommLoan each represents and warrants to the other as follows:

3.2.1 *Authorized Agreement.* The execution and delivery of this Agreement, and the performance of the transactions contemplated by this Agreement, are within its powers, have been duly authorized by all necessary corporate action, do not require any consent or other action by and in respect of or filing with any third party or governmental body or agency and do not, and will not, contravene, violate or conflict with or constitute a default under any provision of applicable law, regulation or published interpretive guidance or ruling. This

Agreement, when executed by both Parties, will constitute their valid and binding obligations, enforceable in accordance with their respective terms, except: (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

3.2.2 *No Breach.* The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default under, or conflict with, any material agreement, indenture or other instrument to which CommLoan or Client, respectively, is a party or by which either is bound, any judgment, decree, order or award of any court, governmental body or arbitrator, or any law, rule or regulation applicable to the Parties.

3.2.3 *No Action or Proceeding.* No claim, action, suit, investigation or other proceeding shall be pending or threatened before any court or governmental agency which presents a substantial risk of the restraint or prohibition of the transactions contemplated by this Agreement or the obtaining of material damages or other relief in connection therewith.

4. DEFAULTS AND REMEDIES

4.1 *Default- Failure to Generate Minimum Loan Volume.* If Client fails to originate and close the minimum loan volume established under Section 1.4 above, CommLoan, in its sole discretion, may terminate this Agreement upon 30 days notice to Client.

4.2 *Other Default.* If either Party fails to perform any other obligation under this Agreement, or breaches any of its covenants, warranties or representations set forth herein, the defaulting Party (i) will have twenty (20) days within which to cure such default to the reasonable satisfaction of the non-defaulting Party, and (ii) shall immediately provide written notice of such default to the non-defaulting. If the defaulting Party requires more time to effectuate a cure than provided under Subsection 4.2 (i) above, it shall, prior to the expiration of such period, request such longer period in writing, which period may be approved or rejected by the non-defaulting Party in its reasonable discretion.

4.3 *Remedies.* If a default hereunder remains uncured beyond the time frame allowed under Section 4.2 above, the non-defaulting Party will have such rights and remedies as may be available at law or in equity, including the right to immediately terminate this Agreement, and the right to sue for, and recover any damages caused by such default, and including also the rights of specific performance and injunctive relief.

5. INDEMNIFICATION

5.1 Client will indemnify, hold harmless and defend CommLoan, its agents, servants, directors, officers, employees, successors, assigns, and its affiliates (the "**CommLoan Indemnified Parties**") from and against any and all losses, claims, demands, damages, expenses or costs (collectively, "**Damages**") which in any way arise out of or relate to any alleged act or omission of Client or any of its directors, officers, employees or agents, whether in connection

with or based upon (i) any breach of this Agreement by Client, (ii) any act or omission by Client with respect to the commercial loans or the Approved Loans, (iii) Client's compliance with loan criteria, (iv) any litigation, claim or other proceeding commenced against CommLoan as a result of CommLoan providing services to Client hereunder and, or (v) any other Damages incurred or sustained by the CommLoan Indemnified Parties as a result of a claim or demand asserted against or involving Client by a governmental or regulatory authority or a third party expressly acting on behalf of a governmental or regulatory authority (including, for this purpose, any private attorney general action or claim) that involves (a) any act or omission of Client involving the commercial loans or the Approved Loans and/or (b) a violation or breach of this Agreement or any other written agreement or contract to which Client is subject. CommLoan reserves the right to approve Client's selection of attorneys, hired by Client, to protect CommLoan's interests.

5.2 CommLoan will indemnify, hold harmless and defend Client, its agents, servants, directors, officers, employees, successors, assigns, and its affiliates (collectively, the "**Client Indemnified Parties**") from and against any and all Damages incurred by the Client Indemnified Parties arising out of or based upon CommLoan's breach of this Agreement, except to the extent that any such breach arises from any Client Indemnified Party's negligence, bad faith and/or willful misconduct.

5.3 An indemnified Party under this Section will promptly notify the indemnifying Party in writing of any action or claim for which it seeks to be indemnified pursuant to this Section and will cooperate with the indemnifying Party at the indemnifying Party's sole cost and expense. The indemnifying Party will immediately take control of the defense and investigation of such action or claim and will employ counsel reasonably acceptable to the indemnified Party to handle and defend the same, at the indemnifying Party's sole cost and expense. The indemnifying Party will not settle any action or claim in a manner that adversely affects the rights of the indemnified Party without the indemnified Party's prior written consent, which will not be unreasonably withheld or delayed. An indemnified Party's failure to perform any obligations under this Section will not relieve the indemnifying Party of its obligations under this Section except to the extent that the indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified Party may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

6. RELATIONSHIP OF PARTIES

6.1 *Independent Contractor.* Client and CommLoan agree that Client is neither an agent nor employee of CommLoan and may not be construed as such by reason of this Agreement. It is acknowledged and agreed by the Parties that Client is an independent contractor and is hereby expressly prohibited from holding itself out as an agent, representative or employee of CommLoan or having any endorsement from or affiliation with CommLoan. Client shall have no authority to sign on behalf of CommLoan or to commit CommLoan in any manner whatsoever. This Agreement shall not be deemed to appoint Client as an attorney-in-fact of CommLoan or create a power of attorney in Client. Client shall not make express or implied representations or warranties to prospective Borrowers that conflict with the authority set forth in this Agreement. Client is specifically prohibited from using CommLoan's name in any form of advertising or otherwise without CommLoan's prior written consent.

6.2 *No Implied Agreement.* Except as stated elsewhere in this Agreement, Client is not required to submit any commercial loans to CommLoan. CommLoan is not obligated to underwrite, close or fund any commercial loans. CommLoan shall have the sole discretion of determining what commercial loans it may elect to underwrite, close and/or fund.

7. GENERAL

7.1 *Advertising and Trademark.* Client shall not engage in any form of advertising whatsoever utilizing either the name of CommLoan or any subsidiary or affiliate of CommLoan or any of the product names, trade names, symbols or trademarks of any of CommLoan's loan products, unless specifically licensed in writing to do so.

7.2 *Governing Law.* This Agreement will be interpreted in accordance with the laws of the State of Arizona, without regard for the principles of conflicts of laws. Any litigation connected with this Agreement will be venued in a state or federal court in Maricopa County, Arizona.

7.3 *Dispute Resolution.* Except as set forth in the next sentence, any controversy, claim or dispute between the Parties hereto arising out of or related to this Agreement or the rights of the Parties hereunder shall be resolved pursuant to an arbitration proceeding ("**Arbitration Proceeding**") on the terms set forth on Exhibit A, attached hereto. The provisions of the previous sentence shall in no way limit the right of any Party to exercise self-help remedies or to obtain provisional, ancillary, or equitable remedies (including without limitation temporary restraining orders or preliminary or permanent injunctions from a court of competent jurisdiction) before, after, or during the pendency of any Arbitration Proceeding. The exercise of such remedies shall not waive the right of any Party to resort to arbitration. The Parties each acknowledge and agree that to the extent any legal proceeding other than an Arbitration Proceeding is permitted by this Section, the Superior Court of Maricopa County, Arizona, and the associated appellate and federal courts, shall have exclusive jurisdiction over such legal proceedings.

7.4 *Force Majeure.* No Party will be liable for damage arising from or delays in processing or other nonperformance caused by such events as accidents, fires, telecommunication failures, temporary equipment failures, failures or fluctuations in electrical power, heat, light or air conditioning, labor disputes, strikes, riots, war, governmental regulations, third party non-performance, acts of God or other causes over which such Party has no control.

7.5 *Binding Effect; Assignment.* The rights and obligations of this Agreement shall bind and inure to the benefit of the Parties (including their respective officers, directors, employees, agents and affiliates) and their respective heirs, executors, successors and assigns. No Party shall have the right to assign this Agreement or any rights or obligations hereunder and any attempted assignment in violation of this Agreement shall be void.

7.6 *Headings.* The headings to the sections and exhibits of this Agreement are included merely for convenience of reference and do not affect the meaning of the language included therein.

7.7 *Severability.* In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, the other provisions of this Agreement will remain in full force and effect.

7.8 *Rights to Injunctive Relief.* Both Parties acknowledge that the other Party's confidential information is special, unique and extraordinary and that remedies at law may be inadequate to provide full compensation in the event of a breach relating to either Party's obligations, representations, and warranties herein and the non-breaching Party will therefore be entitled to seek injunctive relief in the event of any such breach without proving damages or posting bond.

7.9 *Attorney's Fees.* Should either Party hereto initiate a legal or administrative action or proceeding ("Action") to enforce any of the terms or conditions of this Agreement, the prevailing Party (as determined by the court or other fact-finder) will be entitled to recover from the losing Party all actual costs of the Action, including without limitation attorneys' fees and reasonable court costs.

7.10 *Counterparts.* This Agreement may be executed in two or more counterparts, each of which will be deemed an original. For purposes hereof, although a facsimile copy of this Agreement, including the signature pages hereto, will be deemed to be an original, the parties agree to promptly execute and deliver original agreements after the facsimile transmissions have been signed.

7.11 *Entire Agreement.* This Agreement, including the exhibits attached hereto and incorporated herein and the documents incorporated therein, constitute the entire Agreement and understanding between the parties, and integrate all prior discussions between the parties related to its subject matter. To the extent any conflict exists between this Agreement and any prior agreement between the Parties, the terms and conditions of this Agreement will control. Except as otherwise set forth herein, no modification of any of the terms herein will be valid unless in writing and signed by an authorized representative of each Party. Despite the date and effective date of this Agreement, it shall apply to any and all loans originated by Client to CommLoan in the last ninety (90) days.

7.12 *Modification and Waiver.* No termination, cancellation, modification, amendment, deletion, addition or other change in this Agreement, or any provision hereof, or waiver of any right or remedy herein provided, shall be effective for any purpose unless specifically set forth in writing signed by an authorized officer of the Party or Parties to be bound thereby. The waiver of any right or remedy in respect of any one occasion shall not be deemed a waiver of such right or remedy in respect of such occurrence or event on any other occasion. CommLoan may, without any notice to Client, extend, compromise, renew, release, modify, adjust or alter, by operation of law or otherwise, any of the obligations of an Applicant or other persons obligated under a commercial loan without releasing or otherwise affecting the obligations of Client with respect to such commercial loan or otherwise under this Agreement.

7.13 *Further Assurances.* Each Party agrees, upon the written request of the other Party, to deliver to such other Party, from time to time, any additional instruments or documents as such other Party reasonably believes are necessary to carry out the intent of this Agreement, and to cooperate with such other Party to the extent reasonably necessary to enable such other Party to comply with the requirements of this Agreement.

ADDENDUM A
ALTERNATIVE DISPUTE RESOLUTION

1. Mediation:

Claims, disputes, or other matters in controversy arising out of or related to this Agreement shall be Subject to mediation as a condition precedent to a binding dispute resolution process. Therefore, the Parties shall endeavor to resolve their Claims by mediation, which, unless the Parties mutually agree otherwise, shall be administered by the American Arbitration Association. A request for mediation shall be made in writing, delivered to the other Party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the Parties or court order. If an arbitration is stayed pursuant to this Section, the Parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Phoenix, Arizona, unless another location is mutually agreed upon. Written agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

2. Arbitration:

Any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the Parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other Party to this Agreement, and filed with the person or entity administering the arbitration. The Party filing a notice of demand for arbitration must assert in the demand all Claims then know to that Party on which arbitration can be demanded.

A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the statute of limitations, which statutes are hereby made applicable to the arbitrable Claims. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

The award rendered by the arbitrator or arbitrators shall be a reasoned award and may award any remedy or relief which the arbitrator deems just and equitable. The award shall be final and

judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by Parties to the Agreement shall be enforceable under applicable law in any court having jurisdiction thereof.

3. Consolidation or Joinder:

Either Party, at its discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a Party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

Either Party, at its sole discretion, may include by joinder, persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the Party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

The Parties will grant to any person or entity who is made a party to a consolidated arbitration conducted under this Section, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner or Contractor under this Agreement.

4. Applicable Law:

The laws of the State of Arizona apply to this Contract and all alternative dispute resolution proceedings shall be conducted under A.R.S. §§ 12-2228 and 12-3001, et seq.