



GENERAL TERMS AND CONDITIONS

THIS ELLIE MAE SERVICES AGREEMENT (the “Agreement”) is entered into by and between **ELLIE MAE, INC.**, a California corporation with its principal place of business at 4155 Hopyard Road, Suite 200 Pleasanton, CA 94588 (“Ellie Mae”) and the **CLIENT** (“Client”) identified on the Order Form attached to these General Terms and Conditions.

RECITALS:

A. Ellie Mae has developed a line of products and services relating to mortgage and loan origination and processing.

B. Client wishes to license or subscribe to the Ellie Mae products and services identified on the Order Form attached to these General Terms and Conditions and Ellie Mae is willing to provide such products and services on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of these premises and the mutual covenants set forth below, Ellie Mae and Client hereby agree as follows:

1. SERVICES.

1.1 Services to be Provided. Subject to the terms and conditions of this Agreement, during the term hereof Ellie Mae shall provide to Client the products and services (collectively, the “Products and Services”) selected on the Order Form attached to this Agreement (the “Order Form”). Ellie Mae, its affiliates or subcontractors may perform some or all of Ellie Mae’s duties and/or obligations hereunder.

1.2 Contents of Agreement. The terms and conditions of this Agreement shall consist of these General Terms and Conditions, the Order Form, any exhibits, appendices or schedules attached hereto, and the definitions, terms and conditions set forth on the Ellie Mae Web Site at the following URL: www.elliemae.com/legal or any successor Ellie Mae Web site (the “Ellie Mae Web Site”). If this Agreement includes certain specific Products or Services, the terms and conditions posted on the Ellie Mae Web Site relating to such Products or Services shall also be incorporated into this Agreement as follows:

(a) Each Agreement automatically includes any ePASS Business Services available on the ePASS Portal and therefore includes the terms and conditions for such Services posted on the Ellie Mae Web Site (currently located at the following URL: www.elliemae.com/legal), all of which are hereby incorporated into this Agreement and agreed to by Client.

(b) If this Agreement includes any Ellie Mae Web Site Development/Hosting Services, it shall include the terms and conditions for such Services posted on the Ellie Mae Web Site (currently located at the following URL: www.elliemae.com/legal), all of which are hereby incorporated into this Agreement and agreed to by Client.

(c) If this Agreement includes any Ellie Mae Loan Origination System Software, it shall include the terms of Ellie Mae’s current Software License Agreement posted on the Ellie Mae Web Site (currently located at the following URL: www.elliemae.com/legal), all of which are hereby incorporated into this Agreement and agreed to by Client.

(d) If this Agreement includes any Ellie Mae Document Services, it shall include the terms and conditions for such Services posted on the Ellie Mae Web Site (currently located at the following URL: www.elliemae.com/legal), all of which are hereby incorporated into this Agreement and agreed to by Client.

www.elliemae.com/legal), all of which are hereby incorporated into this Agreement and agreed to by Client.

1.3 Modifications to Terms and Conditions. Ellie Mae reserves the right from time to time to amend any of the terms and conditions referred to above posted on its Web Site, or any successor Web site, effective upon posting of the revised terms and conditions on such Web site or other notice to Client. Client’s continued use of a Product or Service following any such amendment shall constitute Client’s acceptance of such amendment; provided, however, if an amendment has a material adverse effect on Client’s use of the Product or Service covered by the amended terms and conditions, Client may terminate such Product or Service without penalty during the thirty (30) days following the effectiveness of such change.

1.4 Modifications to or Termination of Services. Ellie Mae reserves the right to modify or terminate any Product or Service from time to time; however, if a change to a Product or Service has a material adverse effect on the functionality of that Product or Service, Client may terminate such Product or Service without penalty during the thirty (30) days following effectiveness of such change if Ellie Mae fails to correct the adverse effect within ten (10) days after Client’s written notice to Ellie Mae of such effect.

2. FEES AND PAYMENTS.

2.1 Fees. Client shall pay Ellie Mae fees and charges for the Products and Services to be provided hereunder (collectively, the “Service Fees”) in accordance with the Ellie Mae Standard Fee Schedules attached to this Agreement and referred to on the Order Form, as the same may be revised by Ellie Mae from time to time during the term of this Agreement, provided that any changes shall only be effective upon thirty (30) days’ notice. The Service Fees to apply during any renewal term hereunder shall be as set forth on Ellie Mae’s then-current Standard Fee Schedules for such Products and Services posted on the Ellie Mae Web site and in effect as of the commencement of such renewal periods.

2.2 Payment; Late Fees. All Service Fees shall be due and payable as stated on the Ellie Mae Standard Fee Schedule for such Service Fees and shall be overdue if not paid on the due date stated on such Standard Fee Schedule. All other invoices relating to this Agreement shall be due and

payable upon presentment and shall be overdue if not paid within thirty (30) days after the date of such invoice. Overdue accounts and any other fees and expenses not paid to Ellie Mae in accordance with this Agreement will be charged a late fee at the rate of one and one-half percent (1-1/2%) per month, or the maximum rate allowed under applicable law if lower, commencing with the date payment was first due.

2.3 Taxes. The Service Fees and all other amounts payable to Ellie Mae hereunder are net amounts to be received by Ellie Mae, exclusive of all taxes, duties, and assessments, and are not subject to offset or reduction because of any costs, expenses, taxes, duties, withholdings, assessments or liabilities incurred by Client or imposed on Ellie Mae in the performance of this Agreement or otherwise due as a result of this Agreement. Client shall be responsible for and shall pay directly, any and all taxes, duties and charges of whatever kind incurred, including without limitation all sales and use taxes, in the performance of this Agreement. This Section 2.3 shall not apply to taxes based solely on Ellie Mae's income.

3. PROPRIETARY RIGHTS.

3.1 Ownership and Use of Trademarks. Ellie Mae's trademarks, tradenames, service marks, logos, other names and marks, and related product and service names, design marks and slogans (collectively, the "Ellie Mae Marks") are the sole and exclusive property of Ellie Mae. Client agrees not to display or use any of the Ellie Mae Marks in any manner without Ellie Mae's express prior written consent.

3.2 Ownership of the Ellie Mae Products and Services.

(a) The content, organization, graphics, design, compilation, magnetic translation, digital conversion and all other aspects of the Ellie Mae Products and Services, and all documentation relating thereto, are the property of Ellie Mae and/or its licensors and all right, title and interest in and to such property shall remain with Ellie Mae and/or its licensors, both during the term of and after any expiration or termination of this Agreement. Client acknowledges that Ellie Mae and/or its licensors have copyright, trade secret and other intellectual property rights in the Ellie Mae Products and Services and the documentation relating thereto, and that all such copyright, trade secret and other intellectual property rights remain the exclusive property of Ellie Mae and/or its licensors at all times. without the express prior written consent of Ellie Mae.

(b) CLIENT AGREES THAT IT SHALL NOT, IN WHOLE OR IN PART, AT ANY TIME DURING THE TERM OF OR AFTER ANY EXPIRATION OR TERMINATION OF THIS AGREEMENT: (i) SELL, ASSIGN, SUBLICENSE, LEASE, RENT, TIMESHARE, GRANT A SECURITY INTEREST IN, DISTRIBUTE OR OTHERWISE TRANSFER ANY OF THE ELLIE MAE PRODUCTS OR SERVICES, OR ANY DOCUMENTATION RELATING THERETO; (ii) COPY, REPRODUCE, RETRANSMIT, DISSEMINATE, SELL, DISTRIBUTE, PUBLISH, BROADCAST, CIRCULATE, COMMERCIALY EXPLOIT OR CREATE DERIVATIVE WORKS BASED ON, ANY OF THE ELLIE MAE PRODUCTS OR SERVICES OR ANY SUCH DOCUMENTATION; OR (iii) ALLOW ANY PERSON OR

ENTITY TO DO ANY OF THE ACTS DESCRIBED IN (i) THROUGH (ii) ABOVE.

4. DISCLAIMER OF ELLIE MAE WARRANTIES.

4.1 Limited Warranty. Ellie Mae represents and warrants to Client that any Services to be provided by Ellie Mae hereunder will be performed in a manner consistent with industry standards reasonably applicable to the performance thereof.

4.2 Disclaimer of Warranties. CLIENT EXPRESSLY UNDERSTANDS AND AGREES AS FOLLOWS:

(a) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 4.1 ABOVE, ELLIE MAE EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY ELLIE MAE PRODUCTS AND SERVICES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF ELLIE MAE HAS BEEN INFORMED OF SUCH PURPOSE. CLIENT'S USE OF THE ELLIE MAE PRODUCTS AND SERVICES IS AT CLIENT'S SOLE RISK. THE ELLIE MAE PRODUCTS AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. NO AGENT OF ELLIE MAE IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF ELLIE MAE AS EXPRESSLY SET FORTH HEREIN.

(b) ELLIE MAE MAKES NO WARRANTY THAT (i) THE ELLIE MAE PRODUCTS AND SERVICES WILL MEET CLIENT'S REQUIREMENTS, (ii) THE ELLIE MAE PRODUCTS AND SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE ELLIE MAE PRODUCTS AND SERVICES WILL BE ACCURATE OR RELIABLE, OR (iv) ANY ERRORS IN THE ELLIE MAE PRODUCTS AND SERVICES WILL BE CORRECTED.

(c) NO ACCOUNTING, FINANCIAL, LEGAL OR TAX ADVICE OR COUNSEL IS GIVEN, OR SHALL BE DEEMED TO HAVE BEEN GIVEN, BY ANY ELLIE MAE PRODUCTS AND SERVICES.

5. LIMITATION OF LIABILITY.

5.1 Exclusion of Consequential Damages. IN NO EVENT SHALL ELLIE MAE OR ITS LICENSORS OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, REVENUE, GOODWILL, DATA, OR USE, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION), OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES INCURRED BY CLIENT OR ANY THIRD PARTY, IN ANY WAY RELATING TO THIS AGREEMENT OR RESULTING FROM THE USE OF OR INABILITY TO USE ANY ELLIE MAE PRODUCTS OR SERVICES, OR THE PERFORMANCE OR NON-

PERFORMANCE OF ANY ELLIE MAE PRODUCTS OR SERVICES, INCLUDING THE FAILURE OF ESSENTIAL PURPOSE, EVEN IF ELLIE MAE HAS BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

5.2 Limitation of Liability. IN NO EVENT SHALL ELLIE MAE'S AGGREGATE LIABILITY FOR ALL DAMAGES TO CLIENT AND ANY THIRD PARTIES EXCEED THE AMOUNT OF SERVICE FEES PAID HEREUNDER BY CLIENT TO ELLIE MAE DURING THE PRECEDING TWELVE (12) MONTHS. In addition, Ellie Mae shall not be liable for any loss resulting from a cause over which Ellie Mae does not have direct control, including without limitation failure of electronic or mechanical equipment or communication lines; telephone or other interconnect problems; bugs, errors, configuration problems or incompatibility of computer hardware or software; failure or unavailability of Internet access; problems with Internet service providers or other equipment or services relating to Client's computers; problems with intermediate computer or communications networks or facilities; problems with data transmission facilities or Client's telephones or telephone service; or unauthorized access, theft, operator errors, severe weather, earthquakes or labor disputes. Ellie Mae is not responsible for any damage to Client's computers, software, modems, telephones or other property resulting from Client's use of the Ellie Mae Products or Services.

5.3 Applicability of Limitations. The limitations contained in this Section 5 shall apply to all causes of action in the aggregate, whether based in contract, warranty, tort or any other legal theory (including strict liability).

6. INDEMNIFICATION. Client shall defend, indemnify and hold harmless Ellie Mae, its officers, directors, employees, shareholders, agents and representatives, from and against all claims, losses, causes of action, liability, damages, costs and expenses (including without limitation reasonable attorneys' fees, costs and expenses) relating to, arising from, or in connection with Client's breach or violation of this Agreement, state or federal banking, lending or securities laws and regulations, or any third party's rights, including without limitation infringement of any copyright, violation of any proprietary right or invasion of any privacy rights. The obligations set forth in this Article 6 shall survive any expiration or termination of this Agreement.

7. TERM AND TERMINATION.

7.1 Term. The initial term of this Agreement shall be one (1) year, commencing on the Effective Date set forth on the Order Form. Thereafter, the term of this Agreement shall automatically renew for successive terms of one (1) year each unless either party shall have given written notice at least thirty (30) days prior to such renewal date of its intention not to renew, in which event the term of this Agreement shall expire upon the expiration of the then-current term. In addition to the foregoing, this Agreement may be terminated by either party at any time for convenience upon sixty (60) days' notice, and otherwise in accordance with Sections 7.2, 7.3 and 7.4 below.

7.2 Termination for Breach. Either party may terminate this Agreement effective upon written notice if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days (ten (10) days in the case of any nonpayment of money) after written notice of the same.

7.3 Termination for Insolvency. Either party may terminate this Agreement immediately if the other party (i) becomes insolvent, (ii) makes a general assignment for the benefit of creditors, (iii) becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; (iv) becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing, or (v) is liquidated, voluntarily or otherwise.

7.4 Effect of Termination. Notwithstanding any expiration or termination of this Agreement, the provisions of Sections 2, 3, 4, 5, 6, 7 and 8 shall continue in full force and effect, as well as any other provisions of this Agreement which by their terms are intended to survive expiration or termination. Neither party will be liable to the other for any termination or expiration of this Agreement in accordance with its terms; provided, however, that Client will remain liable for all applicable Service Fees and other charges accrued hereunder prior to such expiration or termination.

8. GENERAL PROVISIONS.

8.1 Independent Contractor. Each of the parties to this Agreement is an independent contractor and shall not be considered or deemed to be an agent, employee, joint venturer, or partner of the other party. Neither party shall have, or shall hold itself out as having, any right, power or authority to create any contract or obligation, either express or implied, on behalf of, in the name of, or binding upon the other party or shall act in a manner which expresses or implies a relationship other than that of independent contractor.

8.2 Entire Agreement. This Agreement, consisting of the components identified in Section 1.2 above, sets forth the entire understanding and supersedes all prior and contemporaneous agreements between the parties relating to the subject matter contained herein and merge all prior and contemporaneous discussions, agreements and understandings, both verbal and written, between them regarding such subject matter. Except as otherwise provided herein, no modifications, additions, or amendments to this Agreement shall be effective unless set forth in a writing referencing this Agreement and signed by a duly authorized representative of the party to be bound thereby. All provisions of this Agreement shall take precedence over any conflicting terms and conditions of any purchase orders, invoices or other instruments which may be issued by either party, unless otherwise agreed by both parties in writing.

8.3 Publicity. Client hereby consents to Ellie Mae's reference to Client by name in any promotional or marketing material and in any Ellie Mae customer list, including on

Ellie Mae's Web site and including any Client trademark(s) or trade name(s), without the prior disclosure to or approval of Client, but provided that such use is subject to Ellie Mae's compliance with Client's reasonable guidelines for trademark usage.

8.4 Notices. Every notice or other communication required or contemplated by this Agreement shall be in writing and shall be deemed received and effective (i) on the date of personal delivery, (ii) on the date it is officially recorded as delivered to the intended recipient when sent by postage prepaid, return receipt requested, registered or certified mail (airmail if available), or the equivalent of registered or certified mail under the laws of the country where mailed, or in the absence of such record of delivery, the effective date shall be deemed to be the fifth (5th) business day after it was deposited in the mail, (iii) on the date it is officially recorded as delivered to the intended recipient when sent by internationally recognized overnight courier, such as Federal Express, DHL or UPS, or in the absence of such record of delivery, the effective date shall be deemed to be the third (3) business day after delivery to such courier, or (iv) the date transmitted by facsimile with a confirmation copy sent simultaneously by one of the other methods permitted under this Section 8.4, in each case addressed to the addresses specified in the Introduction to this Agreement. Notice not given in writing shall be effective only if acknowledged in writing by a duly authorized representative of the party to whom it was given.

8.5 Governing Law. The validity, construction and enforceability of this Agreement shall be governed in all respects by the law of California applicable to agreements negotiated, executed and performed in California between California corporations without regard to its conflicts of laws rules, regardless of whether one or more of the parties shall now be or hereafter become a resident of another state or country. The United Nations' Convention On Contracts For The International Sale Of Goods shall not apply to this Agreement.

8.6. No Waiver of Rights. All waivers hereunder must be made in writing, and failure at any time to require the other party's performance of any obligation under this Agreement shall not affect the right subsequently to require performance of that obligation. Any waiver of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision or a waiver or modification of the provision.

8.7 Dispute Resolution And Arbitration. Any and all disputes relating to or arising in connection with this Agreement shall be resolved by exclusive, binding arbitration. In such case, both parties agree to the appointment of three (3) arbitrators, with one arbitrator selected by each party, and the third selected by the American Arbitration Association ("AAA"). The arbitration shall be conducted in Santa Clara County, California in accordance with the commercial arbitration rules, regulations and procedures of the AAA, and the decision of the arbitration panel shall be final and binding on both parties. Judgment on the arbitrators' award may be entered by any court having jurisdiction. Each party to this Agreement hereby consents to the jurisdiction and venue of the U.S.

federal and California state courts located in Santa Clara, California for such purposes.

8.8 Attorneys' Fees. If any action or proceeding shall be commenced to enforce or interpret this Agreement or any right arising in connection with this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party, all reasonable attorneys' fees, costs and expenses incurred by such prevailing party in connection with such action or proceeding and any negotiations to avoid such action or proceeding.

8.9 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision of this Agreement is determined by a court of applicable jurisdiction to be prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, so that the remainder of that provision and all remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.

8.10 Assignment. Except as otherwise expressly provided hereunder, neither this Agreement nor any rights or obligations hereunder may be assigned in whole or in part by either party without the prior written consent of the other party, except that the rights and obligations of Ellie Mae may be transferred or assigned to another entity in connection with a reorganization, merger, consolidation, acquisition or other restructuring involving all or substantially all of its voting securities and/or assets. Subject to the limitations of the preceding sentence, this Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective successors and assigns.

8.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute only one and the same instrument. Execution and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a party hereto shall constitute a valid and binding execution and delivery of this Agreement by such party. Such facsimile copies shall constitute enforceable original documents.

8.12 Headings. The subject headings of the Sections and other subdivisions of this Agreement are included for the purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

8.13 Non-Solicitation. During the term of this Agreement and for a period of one year after any expiration or termination of this Agreement, each party agrees that it will not, and will ensure that its affiliates do not, directly or indirectly, solicit or attempt to solicit for employment any persons employed by the other party.