

FLOOD ZONE DETERMINATION AGREEMENT

Terms and Conditions

1. **Background:** This Flood Zone Determination Agreement shall include these Terms and Conditions, the Schedule of Supplemental Terms and Conditions, and the Client Information Addendum attached hereto (all of which are incorporated herein by this reference and collectively comprise and shall be referred to herein as this "Agreement"). Subject to the terms and conditions of this Agreement, Client shall order from FIS flood zone determinations, life of loan ("Life of Loan") monitoring, HMDA census data, and related information and reports (collectively, the "Services") for loans secured by residential (up to 1-4 multi-family) or commercial property referred to FIS by Client. All information provided by FIS or its suppliers to Client in conjunction with the Services shall be referred to herein as "Provider Information."

2. **Basic Service:** For each property referred to FIS by Client, FIS shall: (a) make a determination, given the best information available, as to whether the improvements on the Subject Property (as defined in Section 4 below) are located in a Special Flood Hazard Area ("SFHA") as set forth on the applicable Federal Emergency Management Agency ("FEMA") flood map effective at the time of the determination; and (b) deliver a report ("Certification") to Client of such determination on a Standard Flood Hazard Determination Form. Client may use the Certification in connection with the loan transaction for which it was ordered. If Client is not a mortgage lender, Client may transfer a copy of the Certification to the mortgage lender funding such transaction.

3. Life of Loan Service:

a. **FIS Responsibility.** Upon Client's request for Life of Loan Service and payment of the applicable fee, FIS will make a determination and deliver a Certification for each order as provided in Section 2 (Basic Service) above; and, for the term of the loan identified on the order for the Subject Property, FIS will provide the following Life of Loan services (the "Life of Loan Services"): (1) monitor such property for changes to the: (A) SFHA as a result of FEMA flood map revisions; and (B) community participation status of such property located in an SFHA making flood insurance for such property unavailable; and (2) notify Client of any such change within 60 days of the effective date of the applicable flood map revision or community participation revision.

b. **Client Responsibility.** If a loan covered by FIS's Life of Loan Services is paid off, declined or cancelled, Client shall notify FIS within 30 days of such loan payoff, decline or cancellation. If a loan covered by FIS's Life of Loan Services is sold and/or servicing is transferred to a subsequent mortgagee, the Client shall notify FIS within 30 days of such sale or transfer. Notification from Client under this Section 3(b) shall be made by mutually acceptable electronic or other means. Failure of Client to timely notify FIS shall release FIS of any obligation to provide services under FIS's Life of Loan Services for the applicable loan(s) of Client.

4. **Orders:** Client orders and FIS Certifications shall be transmitted via mutually acceptable electronic or other means. Client shall furnish a correct and complete property street address and, if available, a legal description and/or a tax parcel number (the "Subject Property") for each order. Client acknowledges that FIS: (a) shall have no responsibility to verify that the legal description or tax parcel number matches the street address furnished by Client for the Subject Property; and (b) will use the street address furnished by Client to locate the Subject Property even in case of a conflict between the street address and either the legal description or the tax parcel number furnished by Client. Normally, FIS will deliver a Certification within 24 hours of receipt of a complete order, but in no event will a response to an order be delivered later than 48 hours after receipt of the order without FIS notifying Client of a delay in processing (e.g., additional research may be required), excluding Saturdays, Sundays and national banking holidays. It is the responsibility of Client to verify that FIS has both (x) received an order for Basic Service if Client has not received a response within two business days, and (y) acknowledged receipt of an order for Life of Loan Services on its invoice for such Services.

5. **Certain Remedies**: If Client is delinquent more than sixty (60) days in any payment or has otherwise breached any term of this Agreement, FIS shall have the unrestricted right to suspend or terminate Services immediately, without prior notice, including any orders currently in process. Should FIS, or any of its suppliers, suspect or become aware of any past or continuing misuse or unauthorized use of any Client Account Code, Password or system used to access Services, then FIS reserves the right to cancel Client Account Codes/Passwords and terminate access to Services immediately, with or without prior notice to Client. Client waives any and all claims for damages arising out of any rejection of orders or any suspension, cancellation or termination of this Agreement or of any Services. Any such rejection, suspension, cancellation or termination shall not limit any other right or remedy to which FIS is otherwise entitled or discharge any obligation of Client arising hereunder.

6. **Compliance with Law**: Client agrees that it will comply with all applicable federal, state and local laws, rules, and regulations, as amended from time to time, as they relate to its requests for and use of the Services, including without limitation any required disclosures to Client's consumer customers ("Consumers"). FIS agrees that it will comply with all applicable federal and state laws, rules, and regulations, as amended from time to time, as they relate to its provision of Services.

7. **Consumer Information**: Client and FIS agree that each shall comply with its respective responsibilities to protect the nonpublic personal information of Client's Consumers as required by Subtitle A of Title V of the Gramm-Leach-Bliley Financial Modernization Act of 1999 (15 U.S.C. 6801 et seq.), as it may be amended from time to time, and the rules and regulations promulgated thereunder (the "Privacy Act"). Specifically:

- a. Client, a "financial institution" (as defined under §509 of the Privacy Act), shall disclose the "nonpublic personal information" (as defined under §509 of the Privacy Act) of a Consumer ("Consumer Information") to FIS only under circumstances in which, and for purposes for which, it is permissible to do so under the Privacy Act; and
- b. FIS, a "Service Provider" (as defined under the Privacy Act), shall:
 - (1) utilize and disclose Consumer Information exclusively for the purposes contemplated by this Agreement and for no other purposes whatsoever;
 - (2) disclose Consumer Information to no person or entity except those of FIS's employees, agents, and other representatives, or to subcontractors, licensors or vendors, whose access to the information is necessary to accomplish the purposes of this Agreement;
 - (3) protect Consumer Information with all measures reasonably necessary to secure the information from unauthorized or improper disclosure, dissemination or use; and
 - (4) not disclose such information to any other person that is a nonaffiliated third party of both Client and FIS, unless such disclosure would be lawful under the Privacy Act if made directly to such other person by Client.

8. **Certain Limitations on Use**: All Provider Information furnished by or for FIS in response to Client requests for Services is for the exclusive use of Client solely in connection with the transaction for which it is ordered. Client shall at all times hold Provider Information and other non-public proprietary business information of FIS and its suppliers in strict confidence and disclose it only to persons with a "need to know" and whose duties reasonably relate to the legitimate business purposes for which such information is obtained. Client shall not sell, transfer, license or sublicense to third parties any Provider Information except as may be specifically permitted in this Agreement. Client shall not capture, store or use copies of any Provider Information except as necessary for archiving or document retention purposes related to the transaction for which it is ordered. Provider Information shall not be used to build or to validate any electronically searchable database of consumer or real estate related information.

9. Security of Provider Information: Client is responsible to take precautions to secure any system or device used to access Services and to protect all Provider Information furnished by or for FIS. Without limiting the generality of Client's responsibility, Client agrees to adhere to the requirements set forth below.

- a. Client Account Codes/Passwords shall be secured and disclosed only to authorized personnel.
- b. Client Account Codes/Passwords shall not be discussed by telephone with any unknown caller.
- c. Client shall provide adequate physical security and network security (e.g., firewalls, network monitoring, encryption, user authentication and access controls) for any system operated by or for Client to obtain Services or to transmit or store Provider Information.
- d. Client shall review, monitor and update its systems and procedures for security issues as frequently as necessary to ensure the integrity and effectiveness of its security measures.
- e. Client shall secure hard copies and electronic files of Provider Information and protect them against release or disclosure to unauthorized persons.
- f. Client shall shred, erase or otherwise destroy copies of Provider Information when no longer needed and when it is permitted to do so by applicable federal, state and local regulation(s).
- g. Client shall immediately notify FIS if Client knows or has reason to know of any unauthorized access to or use of any Services. Client acknowledges that if Client's system is used improperly, or if any unauthorized personnel use Client Account Codes/Passwords, then Client may be held responsible for financial losses, fees, or monetary charges that may be incurred.

Third-party Remote Access Systems: If Client is set-up to deliver orders for Services to, and to receive Provider Information from, FIS via one or more third-party networks or web-sites (each a "Third-party Remote Access System" or "TPRAS"), then the following shall be applicable: (a) FIS may accept a Client order by delivery of the requested product, a confirmation notice, or, if applicable, a time service delay notice; (b) Client's use of any TPRAS shall be governed by the provider's terms of service, policies, and procedures applicable to the use thereof; (c) FIS may terminate Client's use of any TPRAS to request or receive Services at any time, in FIS's sole discretion, without notice by, or liability to, FIS; and (d) FIS assumes no liability or responsibility for the performance or non-performance of any TPRAS provider.

10. Claims:

- a. **Remedies if Subject Property is in an SFHA.** In the event that: (1)(A) FIS issues a Certification on a Subject Property that incorrectly states that the insurable improvements thereon are "not in" an SFHA, per the FEMA flood map effective at the date of the Certification; or (B) FIS issues a Certification covered by Life of Loan Services and FIS breaches its notification obligations set forth in section 3.a.(2) with respect to a Subject Property where: (i) the flood hazard status of such property changes from "not in" to "in" an SFHA as a result of a FEMA flood map revision; or (ii) the community participation status of a Subject Property located in an SFHA changes making flood insurance for such property unavailable; and (2) an uninsured flood loss occurs to such insurable improvements on the Subject Property; and (3) on the date of such flood loss (the "Flood Date") the Borrower (as defined in Section 11.d. below) is still the owner of the Subject Property and the Subject Property is still secured by the loan of Mortgagee (as defined in Section 11.d. below); and (4) Mortgagee is legally obligated to Borrower for such flood loss for failure to notify the Borrower that the Subject Property is in an SFHA or that the change of community participation status has made flood insurance unavailable; and (5) before the Flood Date, neither FIS nor any other source shall have notified Mortgagee that the Subject Property is in an SFHA; and (6) after the date of the Certification but before the Flood Date, there shall not have been earlier flood damage at the Subject Property; then FIS shall be liable to Mortgagee for the lowest of the following: (i) the amount that would have been paid under the terms and limits of a National Flood Insurance Protection ("NFIP") policy as if an NFIP policy had been in effect for the Subject Property; or (ii) Mortgagee's total losses and liability resulting from such flood loss; or (iii) the outstanding principal balance of the loan identified on the Certification; or (iv) two hundred fifty thousand dollars (\$250,000.00) for residential properties or five hundred thousand dollars (\$500,000.00) for commercial properties.

- b. **Remedies if not in an SFHA.** In the event that: (1)(A) FIS issues a Certification on a Subject Property that incorrectly states that the insurable improvements thereon are “in” an SFHA, per the FEMA flood map effective at the date of the Certification; or (B) FIS issues a Certification covered by Life of Loan Services and FIS breaches its notification obligations set forth in section 3.a. with respect to a Subject Property where the flood hazard status of such property changes from “in” to “not in” an SFHA as a result of a FEMA flood map revision; and (2) Mortgagee is legally liable to the Borrower for incorrectly notifying the Borrower that the Subject Property is in an SFHA and the resulting payment of nonmandatory insurance premiums on an NFIP policy; and (3) no claim has been made against such policy for a flood loss, whether or not paid; then FIS shall be liable to Mortgagee for any nonmandatory NFIP insurance premiums paid by the Borrower to cover the Subject Property after the date of the loan (if clause (1)(A) applies) or after the date of the breach (if clause (1)(B) applies) as applicable, until the first to occur of: (i) FIS or some other source notifies Mortgagee that the Subject Property is not in an SFHA; or (ii) the Subject Property is placed in an SFHA; or (iii) Borrower sells the Subject Property; or (iv) Mortgagee’s lien secured by the Subject Property is released. Any refund of premiums to which Borrower is entitled shall reduce the amount otherwise payable hereunder.
- c. **Remedies for Regulatory Matters.** In the event that a regulatory agency with jurisdiction over Client assesses a penalty against Client related solely to a Certification issued by FIS, FIS shall indemnify and hold Client harmless from the amount of such penalty; provided that Client: (1) promptly notifies FIS of any examination or investigation that may lead to the assessment of any such penalty; and (2) authorizes FIS, at its expense, to: (A) participate in the applicable regulatory agency proceeding; and (B) defend, appeal or settle, any such penalty; but only to the extent any such proceeding or penalty is related to a Certification issued by FIS.
- d. **Definitions.** For purposes of this Section 11, items a. through e. (regarding Claims): (1) “Borrower” shall mean the original purchaser of the Subject Property to which the Certification relates, provided that “Borrower” shall not include subsequent transferees of such property; and (2) “Mortgagee” shall mean the mortgagee of such property designated as “Lender” on such Certification, and if the notification requirements below are satisfied within the period specified, “Mortgagee” shall also include a subsequent mortgagee to which a loan covered by Life of Loan Services is sold and/or servicing is transferred.
- e. **Submission of Claims.** Claims related to FIS Certifications or Life of Loan Services shall be submitted to FIS within sixty (60) days of: (1) the date of the uninsured loss; or (2) the date Mortgagee or Borrower discovers that the insurable improvements are not in a Special Flood Hazard Area, as applicable. Failure to notify FIS of any claim within the applicable sixty (60) day period shall release FIS of any obligation with respect to any such claim for which timely notice was not given. For Certifications issued and Life of Loan Services obtained during the term of the Agreement, the provisions of this Section 11 shall survive termination or expiration of the Agreement, provided that required notices are timely given to FIS.
- f. **Disclaimer.** The Provider Information furnished by or for FIS has been obtained from sources deemed reliable. However, FIS and its suppliers do not guarantee: (1) the accuracy or completeness of Provider Information or any Service, except as provided in this Section 11; or (2) that the furnishing of Services will be uninterrupted. CLIENT ACKNOWLEDGES AND AGREES THAT, EXCEPT AS PROVIDED IN THIS SECTION 11, FIS MAKES NO WARRANTY, REPRESENTATION OR UNDERTAKING, AND SHALL HAVE NO LIABILITY TO CLIENT (OR ANYONE CLAIMING THROUGH CLIENT) WITH RESPECT TO ANY FIS FLOOD HAZARD CERTIFICATION OR LIFE OF LOAN SERVICES, AND THAT THERE ARE NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR PROVIDED BY LAW, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES RELATING TO FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. IN NO EVENT SHALL FIS BE LIABLE TO ANY PERSON OTHER THAN CLIENT.

11. **Limitation of Liability:** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, UNDER NO CIRCUMSTANCES WILL FIS OR ANY OF ITS SUPPLIERS HAVE ANY OBLIGATION OR LIABILITY TO CLIENT HEREUNDER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, WARRANTY, OR OTHERWISE, FOR

ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL PUNITIVE, OR EXEMPLARY DAMAGES INCURRED BY CLIENT, REGARDLESS OF HOW SUCH DAMAGES MIGHT ARISE, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE, LOST PROFITS, LOSS OF REPUTATION, LOSS OF DATA, INJURY TO PROPERTY, COST OF CAPITAL, COST OF SUBSTITUTE PROPERTY, OR CLAIMS OF CLIENT FOR SUCH DAMAGE, EVEN IF FIS WAS AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

THE REMEDIES SET FORTH IN SECTION 11 HEREOF SHALL BE THE SOLE AND EXCLUSIVE REMEDIES OF CLIENT FOR ANY BREACH BY FIS OF ITS OBLIGATIONS UNDER THIS AGREEMENT. IN ANY EVENT, AND NOTWITHSTANDING ANYTHING CONTAINED IN SECTION 11 OR ELSEWHERE IN THIS AGREEMENT THAT MAY BE TO THE CONTRARY, FIS SHALL HAVE LIABILITY ONLY FOR DETERMINATIONS MADE WITH RESPECT TO PROPERTIES FOR WHICH CLIENT MAKES OR UNDERTAKES TO SERVICE A MORTGAGE LOAN, ON OR SUBSEQUENT TO THE DATE FIS NOTIFIES CLIENT OF THE RESULTS OF FIS'S DETERMINATION.

12. Indemnification: Client shall indemnify and hold FIS and its suppliers harmless from any liability, damages, cost or expense, including reasonable attorneys' fees and costs, arising out of or resulting from: (a) any breach or nonperformance by Client of any obligations to be performed by Client under this Agreement; (b) Client's negligence, malfeasance, or tortious conduct; (c) any claim based on Client's use of any third-party remote access system provider; and (d) Client shall indemnify and defend FIS from all claims of third parties arising out of Client's actions, representations or omissions related to the Services. Client acknowledges that the Services are furnished in reliance upon Client's indemnities hereunder. Such indemnities shall survive any termination or expiration of this Agreement.

13. Intellectual Property: Without the prior written consent of the owner thereof, Client shall not use, or permit its employees, agents or subcontractors to use, the trademarks, service marks, logos, names or any other proprietary designations, whether registered or unregistered, of FIS or any of its suppliers, their affiliates or any third-party involved in supplying Provider Information furnished by or for FIS under this Agreement. Nothing in this Agreement shall be deemed to grant Client any right, title or interest (including any license, sublicense, copyright interest, or other proprietary right) in or to any form, process or computer program utilized in the delivery of the Services by or for FIS or any of its suppliers.

14. Equitable Relief: In the event that Client breaches its obligations of confidentiality or its obligations regarding the unauthorized use of any Service or any FIS name, intellectual property or proprietary information, Client acknowledges that FIS may be irreparably injured by such breach and shall be entitled to equitable relief, including injunctive relief and specific performance. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement, but shall be in addition to all other remedies available at law or in equity.

15. Force Majeure: None of FIS, any of its suppliers, or Client shall be liable for any delay or failure to perform under this Agreement (other than for payment obligations hereunder) if and to the extent that such delay or failure is caused by events beyond the reasonable control of such person including, without limitation, acts of God or public enemies, riot, terrorism, labor disputes, equipment malfunctions, computer downtime, software defects, material or component shortages, supplier failures, embargoes, rationing, acts of local, state or national governments or public agencies, utility or communication failures or delay, fire, earthquakes, flood, epidemics, riots or strikes. Each party agrees to strive to develop and maintain adequate backup systems, procedures and resources to assure its respective performance.

16. Entire Agreement; Amendments; Severability Waiver: This Agreement sets forth the entire understanding and agreement between FIS and Client and supersedes any prior or contemporaneous oral or written agreements or representations regarding the subject matter hereof. Client may be required to execute an addendum with additional terms and conditions related to a particular Service before such service is furnished to Client. Current FIS product descriptions are available from FIS and are incorporated herein by reference; such descriptions are subject to change from time to time. The applicable product description in effect at the time an order for a Service is accepted shall govern such order unless otherwise agreed by Client and FIS. No other changes in this Agreement may be made except in a writing executed by an officer of FIS and an authorized representative of Client. Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any

other part of its provisions. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.

17. **Notices:** Any notice that either party may desire to give to the other party must be in writing and may be given by personal delivery, by mailing the same registered or certified mail, return receipt requested, postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party hereinafter set forth, or such other address and to such persons as the parties may hereafter designate. Any such notice shall be deemed given upon receipt if by personal delivery, three (3) business days after deposit in the United States Mail, if sent by mail pursuant to the foregoing, or one (1) business day after timely deposit with a reputable overnight delivery service.

To FIS: FIS Flood Services
1521 North Cooper Street
Suite 400
Arlington, TX 76011
Attn: Mark Reedy
Fax: (800) 662-6347

With a copy to: FNIS Flood Services, L.P.
601 Riverside Avenue
Jacksonville, FL 32204
Attn: Legal Department
Fax: 904-854-4207

18. **Parties in Interest:** This Agreement shall inure solely to the benefit of Client and FIS, and no provision hereof is intended or shall be construed to provide or confer upon any other person or entity any direct, third party beneficiary or other derivative legal or equitable right, interest, remedy, benefit or claim arising from or in connection with the respective responsibilities, obligations and liabilities of Client and FIS.

19. **Governing Law; Venue; Attorneys' Fees:** This Agreement, and all of the respective rights, duties, responsibilities, obligations and liabilities of the parties hereto, shall be interpreted and construed pursuant to and in accordance with the internal laws (but not the conflicts of law) of the State of Texas. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Tarrant County, Texas. Should any arbitration, legal action or proceeding be commenced by either party in order to enforce this Agreement or any term hereof, or in connection with any alleged dispute, breach, default or misrepresentation in connection with any provision hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred arising under such arbitration or proceeding, including costs of investigation, experts, negotiation and preparation of any settlement arrangements, in addition to such other relief as may be granted.

20. **Assignment.** Neither this Agreement nor any rights or obligations hereunder may be assigned by Client without the prior written consent of Fidelity. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Neither the terms of this Agreement nor any performance hereunder shall be construed to create any rights in any person other than the parties to this Agreement.

Schedule of Supplemental Terms and Conditions

Term

- | | |
|------------------|------------------------------------|
| a. Initial Term | Two (2) years from the date hereof |
| b. Renewal Terms | Successive one (1) year terms |

This Agreement shall be renewable for successive Renewal Terms, as set forth above, without notice unless either party shall have given notice at least thirty (30) days prior to the expiration of the Initial or any Renewal Term of its intent not to renew the Agreement. For Certifications issued during the Term of the Agreement, the provisions of Section 11, Claims, shall survive termination or expiration of the Agreement provided that required notices regarding such claims are timely given to FIS.

FLOOD ZONE DETERMINATION AGREEMENT

Client Information
Company Name ("Client"):
Street Address (No PO Boxes):
City, State, ZIP:

Client selects FIS as their Exclusive Primary Non-exclusive flood zone determination Service Provider.

The undersigned duly authorized representative of Client (and if applicable, its Principal Owner) hereby authorizes and gives consent for FIS or its assigns to obtain, from time to time, credit and other public record reports on Client, any "D/B/A" of Client and the Principal Owner of Client. Such reports are for their confidential use to confirm the information supplied by or for Client and in connection with any extension of credit to, or any review or collection of the account of, Client and the Principal Owner of Client. Client has read and understands this Agreement. Client certifies that all information provided to FIS is true, accurate and complete. When accepted by FIS in its discretion, this Agreement establishes the agreement between the parties with respect to the subject matter hereof.

CLIENT

FNIS FLOOD SERVICES, L.P. DBA FIS FLOOD SERVICES

Authorized Signature

Authorized Signature

Name

Mark Reedy

Name

Title

President

Title

Date

Date