

Plan & Cost Review Terms and Conditions

- Plan & Cost Review Services.** Plan and cost review is a third-party (“Third Party Service Provider”), pre-loan analysis of Client’s construction project documents for omissions, discrepancies, and deviations from best practices (“Plan and Cost Review Services”). The Plan and Cost Review Services will be based on required documents provided by Client. Plan and Cost Review Services includes the following evaluations: (i) plans; (ii) budget; (iii) contract; (iv) appraisal; and (v) permits. Following each Plan and Cost Review, Client will be provided with a summary of findings to supplement Client’s credit decision.
- Documents and Information.** Third Party Service Provider may rely and act upon any certificate, instrument, writing, agreement or other documents provided to Third Party Service Provider or which relates to, or results from the Services (collectively, “Documents”) that Third Party Service Provider reasonably believes to be genuine. Third Party Service Provider shall not be liable to Client or to any other party in connection with any claim arising from or in connection with: (i) forgery, false representation or false statement; (ii) Third Party Service Provider’s exercise of discretion given the circumstance at the time; and (iii) the sufficiency, correctness, form, content, execution, genuineness or validity of any Document. Client shall deliver all Documents and information necessary and/or reasonably requested by Third Party Service Provider for the performance of the Services. Until all such Documents and information is received, Third Party Service Provider shall have no duty or obligation to perform any Plan and Cost Review Services.
- Third Party Service Provider Property.** All data, information, inventions, intellectual property, including patents, trademarks, copyrights, designs and trade secrets, improvements in “know-how”, new uses and processes, and any other intellectual property right, asset or form, relating to the Services, that are conceived, generated, derived, produced or reduced to practice by Third Party Service Provider or any of its affiliates, shall be and remain the exclusive property of Third Party Service Provider, and Client agrees to assign its rights in any and all such inventions and/or related patents to Third Party Service Provider (collectively, “Third Party Service Provider Property”). Intellectual property created by Third Party Service Provider or its affiliates in the course of undertaking its duties and obligations under or during the project duration is presumed to be Third Party Service Provider Property unless otherwise stated in writing. Third Party Service Provider grants to Client a non-exclusive, non-transferable, royalty-free license to use the Third Party Service Provider Property embodied in the Services but solely to the extent necessary for Client to use and benefit from the Services as contemplated herein.
- Indemnity.** Client agrees to indemnify and hold harmless Built and Third Party Service Provider, their affiliates, and their respective directors, managers, officers, employees, agents, successors and assigns (collectively “Indemnified Party”), from and against any and all loss, liability, cost and expense, court costs and reasonable attorneys’ fees, incurred by the Indemnified Party (“Losses”) by reason of any and all actions or threatened actions, claims, demands, suits or proceedings brought against the Indemnified Party by a third party (singularly and collectively “Claims”) arising from or related to: (i) any act, error, omission in the performance of Client’s duties and obligations under a loan agreement or applicable law, including without limitation laws and regulations applicable to loan transactions; (ii) Client’s obligations relating to escrow and rehabilitation accounts; (iii) Built and/or Third Party Service Provider’s reliance on any verbal or written instructions, promises or representations made by Client; (iv) undisclosed, unobservable or latent defects or hazardous conditions with a project, including without limitation nature, type or condition of soils, containments, contamination and structural problems discoverable only through invasive inspection and techniques; (v) false, fraudulent, misleading or deceptive acts or statements made to Built and/or Third Party Service Provider by any third party, including without limitation borrowers, contractors and providers of services or materials; and (vi) Client’s failure to follow Built and/or Third Party Service Provider recommendations and any modifications or waivers Client makes or allows relating to Built and/or Third Party Service Provider standard forms, notices, systems, policies, and procedures. The obligations set forth in this section will survive the termination of this Agreement.
- Plan & Cost Review Services Limitation of Liability.** IN NO EVENT SHALL BUILT OR THE THIRD PARTY SERVICE PROVIDER BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. ANY LIABILITY THAT THIRD PARTY SERVICE PROVIDER MAY HAVE FOR ANY AND ALL LOSSES, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN INFORMED, OR OTHERWISE MIGHT HAVE ANTICIPATED THE POSSIBILITY, OF SUCH LOSSES, SHALL NOT

EXCEED, IN AGGREGATE, THE AMOUNT OF THE FUNDED DRAW REQUEST WHICH FORMS THE BASIS OF THE CLAIM. EACH BUILT AND THIRD PARTY SERVICE PROVIDER AFFILIATE SHALL ONLY BE LIABLE IN RESPECT OF THE SERVICES ACTUALLY PROVIDED BY SUCH AFFILIATE, AND SHALL NOT BE LIABLE IN RESPECT OF SERVICES PROVIDED BY ANY OTHER AFFILIATE. THE PROVISIONS OF THIS SECTION WILL SURVIVE THE TERMINATION OF THE RESPECTIVE AGREEMENT.

6. **Plan & Cost Review Services Warranty Disclaimer.** BUILT AND THIRD PARTY SERVICE PROVIDER DO NOT MAKE AND SPECIFICALLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTEES OF ANY KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, WITH RESPECT TO THE SERVICES. THE SERVICES ARE FOR THE USE AND BENEFIT OF CLIENT ONLY AND THIRD PARTY SERVICE PROVIDER EXPRESSLY DISCLAIMS ANY CLAIM THE SERVICES ARE FOR THE USE OR BENEFIT OF ANY THIRD PARTIES INCLUDING, WITHOUT LIMITATION, BORROWERS, CONTRACTORS AND SUPPLIERS OF SERVICES OR MATERIALS. IN THE PERFORMANCE OF THE SERVICES, THIRD PARTY SERVICE PROVIDER DOES NOT ACT AS A MORTGAGE BROKER, ORIGINATOR, SERVICER OR COLLECTION AGENCY. CLIENT REPRESENTS, WARRANTS AND COVENANTS THAT CLIENT IT HAS OBTAINED LEGAL ADVICE AND IS NOT RELYING ON THIRD PARTY SERVICE PROVIDER FOR THE PROVIDING OF LEGAL ADVICE. CLIENT HEREBY ASSUMES ALL RISKS, DUTIES AND RESPONSIBILITIES IN CONNECTION WITH ANY SERVICES OFFERED BY CLIENT TO CONSUMERS AND FOR COMPLIANCE WITH APPLICABLE LAWS, STATUTES, RULES AND REGULATIONS RELATING TO CONSTRUCTION LENDING. THE PROVISIONS OF THIS SECTION WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.