

## **ALLOYA MASTER LOAN PARTICIPATION AGREEMENT**

This ALLOYA MASTER LOAN PARTICIPATION AGREEMENT (the "Agreement") is made between Alloya Corporate Federal Credit Union ("Alloya") with its principal office located at 184 Shuman Blvd, Suite 400, Naperville, IL 60563 and the Eligible Organization executing this Agreement.

### **I. General**

1. **Eligible Organizations.** All Parties to this Agreement are "eligible organizations" as defined below. Eligible organizations may agree to buy and/or sell a participation interest of any qualifying Loan or pool of Loans from another Party to this Agreement. Loans offered for sale may be a Party's Closed Loans or Loans they intend to close. The Seller, Buyer, Secondary Seller and Servicer of a Loan or pool of Loans will be identified in a Loan Participation Certificate. The Loan Participation Certificate also sets forth the contractual and economic terms of the Participation Interest.
2. **Product Operating Agreement.** Alloya will establish separate terms and conditions in a Product Operating Agreement to coordinate the purchase and sale of participation Loan(s) between eligible organizations, including Alloya, using the Alloya Loan Participation Platform ("Platform") that assists interested Parties to offer and identify available participation Loans, and assist in issuing the Loan Participation Certificate on behalf of eligible organizations.
3. **Alloya as Agent.** Alloya will act as Agent and provide participation servicing to eligible organizations by providing, but not limited to, due diligence assistance, reporting, collecting monthly payment remittances and providing disbursements to originating and participating eligible organizations.
4. **NCUA Regulations.** All references and requirements herein must comply with the participation Loan regulations of the National Credit Union Administration ("NCUA"). 12 C.F.R. Section 701.22 ("the NCUA Regulation").

### **II. Definitions**

1. **Agent.** Alloya appointed by Seller and Buyer to settle Loan participation transactions and aggregate and disperse disbursement reports and participant remittance amounts to participant(s) on a monthly basis.
2. **Annual Percentage Rate.** With respect to a Loan, the annual rate of finance charges stated in the Contract evidencing such Loan.
3. **Borrower.** As to any Loan, the borrower(s) and/or co-borrowers in respect thereof (or other primary obligor(s), guarantor(s) responsible for the repayment thereof) or any other person who is obligated for making any payments under such Loan and the related Loan Documents.
4. **Business Day:** Any day that is not (i) a Saturday or Sunday, or (ii) any other day on which a commercial banking or federal institutions are authorized or obligated by law or executive order to be closed.
5. **Buyer.** A Party that purchases a portion of a Loan that has been originated by another Party. The Buyer must have internal written Loan participation policies that comply with the NCUA Regulation.
6. **Eligible Organization.** Any credit union, credit union organization or financial organization. Financial organization means any federally chartered or federally insured financial institution; and any state or federal government agency and its subdivisions.

7. **Loan.** All outstanding obligations of a Borrower as evidence by a closed-end or open-end Loan agreement(s), or a group of Loans that has been originated by an eligible organization as more fully described in the Loan Participation Certificate.
8. **Loan Documents.** All documents evidencing the terms and agreements of the respective Loans sold under this Agreement, documents evidencing a security interest and documents pertaining to the Loan underwriting. Loan Documents may include, but are not limited to:
  - (A) The note or Loan agreement;
  - (B) The documentation required to comply with underwriting standards (e.g. Loan application, income and account verifications);
  - (C) The Security instrument in secured Loans (e.g. mortgage or vehicle title), appraisals, verifications of Loan to value ratio, UCC filings, and any required insurance coverage;
  - (D) If personal guarantees are required, the guaranty agreement and related security documents on the guarantors' interests, and
  - (E) All other documents that pertain to agreed conditions of the Loan, including post-closing financial statements and income tax returns as may be required by other Loan Documents. In the case of closed-end mortgage secured Loans underwritten to the standards of the secondary market, Loan Documents include all documents required to comply with those respective standards.
9. **Originating Lender.** The Party with which the Borrower originally contracts for a Loan and who sells participations to other Participants.
10. **Participant.** Any Party that owns a participation interest of a Loan under this Agreement.
11. **Participation Interest.** The undivided proportionate legal rights to the Loan purchased or retained by a Participant. This is also referred to as a Participation.
12. **Platform.** A Loan Participation Platform ("Platform") provided by Alloya to eligible organizations through Alloya's Premier View System. The Platform allows authorized users with full or limited authority to view, purchase and/or sell Loan participations, review reports, audit transactions, perform due diligence and provide remittance and reporting functions as well as other administrative functions (the "transactions").
13. **Purchase Price.** With respect to the purchased Loans, the purchase price percentage set forth in the Loan Participation Certificate multiplied by the pro rata share of the outstanding Loan balance at the date of purchase, plus accrued and unpaid interest from the date interest was last paid through the date of purchase as indicated in the Loan Participation Certificate.
14. **Repurchase Price.** With respect to the purchased Loans, the repurchase price shall be equal to the Buyer's Share of:
  - (A) The then outstanding principal balance of the Participation Interest (less unreimbursed expenses, if any, of Seller), plus
  - (B) The accrued and unpaid interest on the Loan to the date of purchase.
15. **Seller.** A Party also known as the Originating Lender to this Agreement that originates a Loan and sells a participation interest of the Loan to a Party to this Agreement.
16. **Secondary Seller.** A Buyer that sells a participation interest previously purchased from a Seller.
17. **Servicer.** Any Party as designated by a Seller that has the responsibility to service the participated Loan, i.e. to collect Loan payments, remit the respective portions to the Participants, and engage in collection efforts if required.

### III. Relationship of Parties

1. **Requirement to Sell or Purchase.** The Parties to this Agreement are Eligible Organizations. By entering into this Agreement, a Party is not obligating itself to either sell or purchase a Participation Interest in any Loan.
2. **Partner and Joint Venturers.** It is agreed that Seller and Buyer are not partners or joint venturers. Seller shall hold legal title to the Loans with respect to which Participation Interests are sold under this Agreement.
3. **Seller as Servicer.** Seller or its agent shall act as servicing agent "Servicer" on behalf of Buyer for the exclusive purpose of administering and servicing each Loan. Seller shall not be considered in any way a fiduciary with respect to any Loan, and Seller shall not owe to Buyer any fiduciary duty with respect to any Loan.

### IV. Sale of Participations

1. **Participation Interest.** The Parties agree that any Participation Interest meeting the NCUA Regulation may be sold or purchased by the Parties. A sale of a percentage ownership interest in the Loan(s) and Loan Documents shall in no way be construed as an extension of credit by the participants to the Seller or Secondary Seller.
2. **Participation Retention Requirement.** Through the assistance of the Platform, an eligible organization acting as a Seller, may sell to a Buyer, or acting as a Buyer may buy from Seller, a participation interest in a Loan or Loan(s) made by Seller from time to time to its members or customers ("Borrowers"); provided that Originating Lender shall retain at the time of sale, and shall retain for the life of the Loan, not less than ten (10) percent of the principal amount of each Loan (even if applicable state law permits a lesser percentage).
3. **Loan Participation Certificate.** The Seller or Secondary Seller shall provide to all Buyers a Loan Participation Certificate, which must be agreed to and executed by a Buyer and returned to the Seller prior to the completion of a sale of any Loan participation.
4. **True Sale.** It is the express intent of Seller and Buyer that each conveyance of any Participation Interest by Seller to Buyer hereunder be, and be treated for all purposes as, a true sale by Seller of such Participation Interest. Seller and Buyer are solely responsible for confirming a true sale accounting treatment.
5. **Vesting of Participation Interest.** Upon Buyer's payment of the purchase price for any Participation interest in any Loan, Buyer shall immediately become vested, to the extent of its Participation Interest, with beneficial ownership of the Loan and any and all of the documents of every nature in the possession of Seller relating to such Loan. Each Participant is the holder of the equitable title to that Participant's pro rata share of each Loan.
6. **Seller Right to Repurchase.** Seller shall have the right, at its sole and absolute discretion, to repurchase all Buyer's ownership interest in all remaining outstanding Loans if and only if the number of outstanding Loans subject to the Loan Participation Certificate issued pursuant to this agreement have an aggregate principal balance amount equal to less than the "Clean-up" percentage of the Total Principal Amount of Loan(s) as stated and agreed to in the Loan Participation Certificate. The repurchase price shall be equal to the Buyer's Share of:
  - (A) The then outstanding principal balance of the Loan (less unreimbursed expenses, if any, of Seller), plus
  - (B) Accrued and unpaid interest on the Loan to the date of purchase

- V. **Underwriting Standards.** Each Buyer is solely responsible for making its own determination as to the quality and creditworthiness of any Loan(s) sold by a Seller or Secondary Seller pursuant to this Agreement. Each Buyer acknowledges that it will, independently and without reliance upon Seller, Secondary Seller, or Agent, and based

on its review of such Loan Documents as it shall deem appropriate, continue to make its own credit decisions in purchasing or not purchasing any Loan participation under this Agreement. Each Buyer is solely responsible for determining that the Loan it wishes to participate in is a Loan which it would be empowered to grant or purchase pursuant to applicable laws, rules or regulations and its own Loan policies and guidelines. Seller shall have no obligation to provide additional due diligence information on behalf of a Secondary Seller in a Resale transaction.

**VI. Recourse Element of Sales.** The Loan Participation Certificate will indicate whether the participation interest is being offered on a non-recourse or recourse basis.

- 1. Non-Recourse Basis.** If the sale is on a non-recourse basis, the Seller is obligated to repurchase a Loan only if Buyer can demonstrate that there was a material misrepresentation of fact or negligence in application of underwriting standards by Seller, intentional or otherwise by Seller or its Secondary Seller within eighteen (18) months of the sale as set forth in this Agreement. Seller or Secondary Seller is not obligated to repurchase a Loan that goes into default. In the case of a Loan default by a Borrower, Servicer shall engage in collection efforts for the benefit of the Buyer.
- 2. Recourse Basis.** The Loan Participation Certificate shall state all relevant recourse terms, if applicable.

**VII. Sale, Assignment or Transfer of Participation Interests**

- 1. Authority to Sell, Assign, Encumber, Transfer or Sub-Participate Participation Interests.** A Buyer, in accordance with this Section VII, including Agent, may sell, transfer, encumber, assign or sub-participate all or any part of its Participation Interest in any of the Loan(s) subject to the terms of this Agreement and advances on such Loans and may pledge, hypothecate, or transfer its respective Participation Interests in such Loans to its government regulator. Any sale, transfer, or assignment must be in compliance with all NCUA, other Federal and/or applicable State regulations. Agent agrees that it will provide notice to Seller in the event that a Buyer sells, transfers, encumbers, assigns, or sub-participates all or any part of Buyer's participation interest. Buyer agrees that no such sale, transfer, encumbrance, assignment, or sub-participation or other transfer shall in any way modify or abrogate the liabilities and obligations owed by Buyer to Seller under this Agreement. After any sale or transfer of a Participation Interest in a Loan pursuant to this Agreement, the Participation Interest of Seller and other Participation Interest in the same Loan will be ratably concurrent, and none will have any priority over the other. This Section VII has no effect upon the right and authority granted to Seller under this Agreement to satisfy the whole of such Loan, or to execute releases under appropriate circumstances, and, if required, Participant will join therein. Similarly, this Section VII shall not effect the right of a Participant to merge with a non Participant.
- 2. Re-Sale Requirements.** Participants, including Agent, may, in accordance with this Section VII, sell, assign, or transfer all or any part of its Participation Interest. Agent will update the Platform with the new Participation Interest once the Loan Participation Certificate has been signed and the payment transaction has been completed.
- 3. Rights of Third Parties on Resale of a Participant's Interest.** In the event a Participant or any successor or assignee of Participant, in accordance with Section VII.1, resells all or a portion of its Participation interest to a third party (or Parties), such third Parties shall succeed to all of the rights of Buyer for the portion purchased, and such resale will be evidenced by a new Loan Participation Certificate or Certificates which Buyer or its successor or assignee shall issue through the Agent, in the same form as the Loan Participation Certificate attached hereto and which shall set forth the Amount (or percentage of pool) of the underlying Loans being resold.

**VIII. Administration and Servicing of the Loans**

- 1. Identity of Servicer and Duties.** In the absence of an agreement to the contrary in the Loan Participation Certificate, Participant hereby appoints the Servicer, initially Seller, on an exclusive basis (and Servicer

accepts such appointment) to manage, administer, and to bill, collect and to otherwise service, the Purchased Loans, including the repayment of installments, sums and other payments, receivables and other collections attributable to, under and with respect to the Purchased Loans purchased pursuant to the Participation Agreement (collectively, "Services"). In performing Services hereunder, Participant grants to Servicer full power and authority to do or cause to be done any and all things in connection with such Services of the Purchased Loans which Servicer may deem necessary, desirable or advisable to carry out its duties under this Agreement. Servicer will be responsible for segregating, reporting and delivering to Agent, the pro rata share of actual principal and interest collections as described in Sections VIII.6. and VIII.7. below. Servicer will also be responsible to provide monthly participation reports to Agent before the date of each month listed with requirements as described in the Loan Participation Certificate – Schedule 1- Loan Participation Summary, as sample of which is attached hereto. Agent, shall then distribute all remittances to Participants according to their pro rata share. Agent shall also provide reports to Participants documenting all remittance and other data as provided by Servicer. Servicer shall take collection actions as provided in this Agreement. Remittances and reporting dates are stated in the Participation Certificate. Servicer shall not, however, be considered in default if extenuating circumstances cause delays in remittances or reports.

2. **Servicing Agents.** Servicer may, at any time, engage one or more subcontractors, including but not limited to sub-servicers, auction agents, collection agents, repossession agents, insurance tracking agents, and/or attorneys (collectively "Subcontractors"), to perform any or all of the Services under this Agreement. Subcontractors will be insured and bonded as required by applicable law. No such delegation, however, will relieve Servicer of its duties and obligations to perform Services as provided in this Agreement.
3. **Fees.** Servicer may charge a fee for its services. The fee may be recognized in the yield which Servicer realizes as a Participant and may not be separately stated, or the fee may be separately charged as provided in the respective Loan Participation Certificate. Servicer shall receive all default penalties and late charges payable by the defaulting member / Borrower.
4. **Reimbursement of Costs.** It is agreed that any necessary extraordinary services which may be proper under this Agreement, such as the foreclosure of mortgages, property maintenance and improvement, property management, the sale of any foreclosed real estate, repossession of collateral, court actions and similar extraordinary expenses, shall be contracted or done by Servicer at its customary cost for such services, provided such cost is reasonable. Servicer will be responsible for the disclosure of such costs to Participants, and each such Participant shall be required to pay promptly its pro rata share of such extraordinary expenses incurred under this Agreement. These costs may be separately stated and billed or withheld from any monthly remittances as reported to Agent. To the extent that Servicer is able to recover its costs, the costs of collection shall be reimbursed in the same proportion as contributed by the Participants.
5. **Servicing Responsibilities.** Servicer represents that, in undertaking responsibility for performance of the services specified in this Agreement, it will exercise the same degree of care, which shall be at least commercially reasonable, that Servicer exercises with respect to the administration and servicing of Loans for Servicer's own account. Servicer shall be responsible for the execution of all appropriate notices and all other acts necessary to perfect title in the Buyer, the Buyer's successors and assignees, as the case may be, as to the ownership of the respective Participation Interests in the Loans sold under this Agreement and for preserving all rights in said Loans and administering them in all respects consistent with applicable law and regulations, and for servicing the same in a manner consistent with good lender practices. Servicer shall be required to monitor the performance of Borrower and guarantors as required by the Loan Documents and Seller's Loan policy. If necessary, Seller shall take action to obtain compliance and/or action to protect the Participants' interests as may be permitted by the Loan Documents and principles of law and equity.
6. **Remittance.** Servicer will be responsible for reporting, and delivering to Agent for all Participants, by or before the date of each month listed in the Loan Participation Certificate the pro rata share of actual

principal and interest collected.

7. **Prepayments.** If a prepayment is made on any Loan, Servicer will be responsible for reporting and delivering to Agent for all Participants, the pro rata portion of the amount of principal prepaid in accordance with the remittance schedule set forth in the Loan Participation Certificate. Funds received on the account of the Borrower for the purpose of paying taxes, assessments, insurance premiums, or other similar purposes will be retained and disbursed by Servicer at its discretion.

8. **Allocation of Funds Recovered Under the Statutory Lien.** In the event that:

- (A) A member/Borrower is in default on a Loan participated under this Agreement and has other Loans with the respective Seller herein,
- (B) Said Loans are in default,
- (C) Funds are recovered from the member/Borrower's account(s) under any applicable state or federal statutory lien or other assets not specifically pledged as collateral for specific Loan, and
- (D) The funds recovered are not sufficient to cure all Loans in default,

Seller and/or Servicer shall apply the amount received on a pro rata basis in relationship to the amount of the defaults on each Loan. This sharing of collateral does not apply to collateral and share specifically pledged to secure a particular Loan, in which case the lien and the lien priority of the collateral and shares will be honored by Seller.

9. **Servicer's Authority Regarding Loan Modifications and Collections.**

- (A) It is agreed that the exclusive right to decide how the Loans sold under this Agreement shall be serviced and collected is hereby vested exclusively in Servicer. Participants are not authorized to give directions to Servicer in connection with these matters, unless agreed to in an amendment documented in the Original Loan Participation Certificate. Servicer shall not, without consent of Original Participants, commingle acquired security with any other property held by Servicer.
- (B) Servicer shall not have the authority, without the prior consent of Participants, unless required through an approved bankruptcy plan to:
  - (1) Decrease the interest rate,
  - (2) Modify the payment schedule,
  - (3) Modify the amount of credit or release collateral, guarantors or makers,
  - (4) Make or consent to any amendments in the Loan Documents,
  - (5) Waive, or release any claim against any Borrower, co-maker, or guarantor or,
  - (6) Make or consent to any substitution, exchange, or release of collateral.Any specific exceptions to these limitations shall be documented in the Loan Participation Certificate as an Amendment to this Agreement.

Participant, if properly notified according to the terms of this Agreement, shall provide its written consent and concurrence or its objection within five (5) business days of Seller's request for action. If such written consent and concurrence or objection is not received within that time period, such consent and concurrence shall be deemed to have been granted. In the event that Participant shall provide timely notice to Seller of its refusal to grant its consent as requested under this section VIII. 9.B., such Loans shall thereafter be eligible for repurchase by Seller in accordance with Section IX of this agreement.

- (C) Servicer may permit a "skip a payment" arrangement with any debtor without consent of the Participant, if such an arrangement is consistent and in compliance with Seller's own policies for such matters, and such policies are provided to Buyer during the due diligence period and acknowledged in the Loan Participation Certificate.

- 10. Records Maintenance.** Servicer is responsible for maintaining, or requiring the maintenance of, a complete set of books and records, meeting industry standards, as to all the Loans in which each Participant has acquired a Participation Interest under this Agreement, including but not limited to a record of each receipt and each disbursement. In addition to ensuring that the customary monthly reports and remittances are provided by the date listed in the Loan Participation Certificate, Servicer shall ensure that such reports are accompanied by a monthly report of any Loan delinquencies and charge-off / recovery activity, including all necessary information for Buyer to complete standard call report information.
- 11. Additional Advances.** It is agreed that Servicer, at its discretion, may make additional advances with respect to Loans in good standing for taxes and collateral insurance premiums and that the Participant will have been deemed to have participated pro rata in the advance and shall promptly pay its pro rata participation share. The Participation Certificate shall be deemed to have been amended to include the additional advance amount. Servicer shall seek reimbursement of the advance from the member/Borrower. In the case of every advance, records must be retained as required under this Agreement identifying and describing each advance.
- 12. Notification Requirements.** Servicer shall have a duty to use due diligence to ascertain, and to notify the other Participants of any failure of any member/Borrower to perform any obligation under the applicable Loan. It is understood, however, that no notice need be given to the other Participants of any facts other than those of which Servicer shall have actual notice.
- 13. Default by Member/Borrower.**
- (A) In the event of a default in the payment of principal or interest by a member/Borrower on any Loan sold hereunder, then as to such Loan, remittances of principal or interest to Participants hereunder shall not be required until collected from the Borrower or from the account of the member/Borrower.
  - (B) Any failure by a member/Borrower to pay the full amount of principal and interest due under the terms of any note or Loan document shall be construed as a default under this Agreement. All Participants shall be notified of delinquency at the next scheduled reporting period.
  - (C) In the event of a default of a Loan, Servicer shall then undertake collection efforts that are appropriate in Servicer's sole reasonable business judgment, taking into account the amount of the debt and the likelihood of recovery, including, but not limited to, hiring of legal counsel, repossession of collateral, filing of court actions, obtaining judgments and execution thereon. Servicer's obligation under this paragraph will not be deemed breached if Servicer is prevented from taking action because of application of the automatic stay that arises if the member/Borrower becomes a debtor in bankruptcy, provided that Servicer takes lawful and reasonable steps to protect the interests of Seller and Participant(s) in the bankruptcy.
  - (D) At any time after default, Seller will have the option to repurchase the Buyer's participation interest, with Buyers consent, upon giving ten (10) business days written notice.
- 14. Default by Servicer / Participant.** Any of the following acts or occurrences shall constitute an event of default by such party under this Agreement (each, an "Event of Default"):
- (A) The failure by either Participant or Servicer to observe or perform in any material respect any covenant or agreement required to be performed or the failure to make any payment required to be made under the terms of this Section VIII of this Agreement, which failure continues unremedied for a period of twenty (20) business days after written notice of such failure shall have been given and received to the party required to make such payment or perform such covenant; provided, however, in the event that the breach is of such nature that it cannot reasonably be cured within such twenty (20) business day period, such party shall not be in default if it commences to cure the breach within such twenty (20) business day period and diligently prosecutes such cure to completion within thirty (30) days after notice of breach;



- (B) The entry with respect to either Participant or Servicer of a decree or order for relief by a court or agency or supervisory authority having jurisdiction under any present or future federal or state bankruptcy, insolvency or similar law; or
- (C) A conservator, receiver or liquidator is appointed with respect to either Participant or Servicer in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings.

**15. Remedies and Indemnification.** If an Event of Default has occurred with respect to a Party and is uncured as set forth in Section VIII. 14., the other Party may exercise any right or remedy available to it under this Agreement or under applicable law, provided, however, Participant's sole and exclusive remedy in the event that Servicer fails to follow its customary servicing practices with respect to any purchased Loan is to cause Seller to repurchase such purchased Loan(s) in accordance with Section IX. of this Agreement. Except as specifically otherwise limited or conditioned in this Agreement, each party shall indemnify the other against loss or damage caused by the breach of any representation, warranty, covenant or provision contained in Section VIII. of this Agreement and such indemnification shall survive termination of this Agreement unless such loss or damage was the result of the indemnified party's gross negligence or willful misconduct.

**16. Liability of Servicer.** Servicer shall be responsible to Participant and Seller for all payments actually received by Servicer on purchased Loans less any amounts to which Servicer is properly entitled to hereunder. However, in no event shall Servicer be liable for errors or omissions in remittances by Agent or any consequential, incidental or special damages including, but not limited to, damages for loss of funds, data, profits, goodwill or prospective business opportunity. In the event of any error, mistake or breach (collectively "Errors") of this Section VIII. of this Agreement by Servicer or its Agent, the parties agree that the measure of Servicer's liability shall be limited to:

- (A) the out-of-pocket costs paid by Participant and/or Seller to third parties to correct such Errors, and
- (B) any amount which Participant and/or Seller is unable to collect with respect to any Purchased Loan as a direct result of Servicer's Errors after making reasonable efforts to do so. In no event, shall Servicer's liability exceed the amounts paid to Servicer by Participant and/or Seller for the Services to which the Error pertains. The only warranties made by Servicer are the specific obligations contained in this Section VIII. of this Agreement, and there are no other warranties, express or implied.

**17. Force Majeure.** Notwithstanding anything herein to the contrary, neither party shall be considered in default hereunder or have any liability to any party for any failure to perform if such failure arises from any of the following causes:

- (A) acts of God,
- (B) terrorism or public enemy, or
- (C) fire, flood or war.

**IX. Repurchase of Loans by Seller.** Seller shall have the right, at its sole and absolute discretion, to repurchase Buyer's ownership interest in one or more Loans, upon the terms set forth in this Section and in the circumstances described in Sections VIII. 9.B. and VIII. 15. above. The repurchase price shall be for an amount equal to Buyer's participation interest in said Loan(s) unpaid principal, plus accrued interest. The provisions of this Section IX. shall not be construed as obligating Seller to repurchase Buyer's ownership interest in any Loans or as granting Buyer the right to demand Seller repurchase such ownership interest.

**X. Substitution of Servicer**

1. Participant(s) holding a majority of a Loan Participation Interest may remove Servicer and substitute a new Servicer if, Servicer, without reasonable business justification, fails to engage in active collection of any debt upon thirty (30) days' written demand by a Participant, provided that the Borrower is in default by more than ninety (90) days and the default remains uncured. For purposes of this Agreement, the active collection of a debt shall mean the filing and prosecution of a lawsuit to collect the debt or obtain the



collateral and/or attempting, through extra judicial means, to repossess collateral and sell the collateral as permitted by law.

2. The substituted Servicer must be a Party to this Agreement and may be an appointing Participant.
3. The original Servicer and all other Parties shall cooperate with the substituted Servicer in the transfer of the servicing duties, including the execution of any documents related to the role and actions of the substituted Servicer.

#### **XI. Warranties and Representations**

1. **Seller's Warranties.** Seller makes the following representations and warranties to the Participants, each of which, (together with all other factual statements contained herein) Seller represents to be true and correct in all material respects:
  - (A) Seller represents and warrants that it is the owner of the Loans and is authorized to sell the Participation Interests described in the Loan(s) it offers to sell and that as of the date Buyer buys an undivided Participation Interest in any Loan, Seller will issue a Loan Participation Certificate in evidence thereof.
  - (B) All Loans described in such Loan Participation Certificate are intended to be made or have been made by Seller pursuant to and in compliance with all applicable federal and state laws, rules, and regulations as from time to time amended, including and to the extent applicable to Seller: usury limitation, the Truth-in-Lending Act of 1968, the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act, the Fair Housing Act, and NCUA Rules and Regulations.
  - (C) All Borrowers are or will be credit union members of Seller.
  - (D) No Loan has been sold, transferred, assigned, encumbered or pledged by the Seller to any person other than the Buyer.
  - (E) The outstanding principal balance of the Loans is as stated in the Participation Certificate.
  - (F) Where a Loan is presently in existence:
    - (1) There are no events of defaults under the Loan and / or under the Loan Documents.
    - (2) No Loan has been classified on the books of the Seller.
    - (3) No Loan is presently on nonaccrual status.
    - (4) No Loan is subject to any reaffirmation agreement arising from the Borrower's or makers's bankruptcy.
    - (5) The terms of the Loan have not previously been renegotiated as a result of a prior deterioration in the Borrower's financial condition.
    - (6) The warranties in this section may not be applicable in the event a Participation Interest is being sold by a Secondary Seller.
  - (G) To the extent required under applicable law, the security agreements under the Loan were (and / or will be) properly recorded in order to result in the valid perfection of a security interest on the collateral subject the lien priority, if any, set forth in the Participation Certificate.
  - (H) No conduct by Seller, not apparent on the face of written matter provided to Participant(s), violates applicable laws or rights of Borrower so as to affect the fully collectability of the Loan, or provide Borrower or co-maker(s) or guarantor(s) with any defense to their obligations under the Loan Documents. Non-Qualified Mortgages, as defined by the Consumer Financial Protection Bureau's rule on Ability to Pay/Qualified Mortgages, shall be explicitly disclosed to Buyer, who shall assume the same risk of collectability of the Loan as Seller.
  - (I) Seller represents and warrants that after the execution of this Agreement, it shall notify original Participants by the next monthly required reporting date should Seller, whether acting as Seller or in any other capacity, learn or have any knowledge of a change in conditions or requests by Borrower(s) which may have a material effect on the collectability of the Loan(s).
  - (J) Seller has no knowledge of any fact not apparent on the face of the written documentation provided to original Buyers, which would materially and adversely affect the Loan(s).

2. **Buyer's Warranties.** The Buyer makes the following representations and warranties to Seller, each of which Buyer represents and warrants to be true and correct in all material respects as of the date hereof, and unless otherwise specified, throughout the term of this Agreement:
  - (A) Buyer has the right, power and authority to purchase its Participation Interest in a Loan, such authority having been granted by the Buyer's Board of Directors;
  - (B) Buyer has, independently and without reliance upon Seller or Agent (except upon the providing of due diligence information and selection of sample Loans), undertaken its own due diligence of any Loan Participation, and as a result thereof, made its own decision to purchase its Participation Interest and sign any Loan Participation Certificate as part of this agreement, and further, acknowledges that neither Seller or Agent, its designees nor the respective officers, directors, employees, agents and representatives thereof, assume any responsibility for the performance by the Borrower(s) or a guarantor(s) of their respective obligations in connection with any Loan and the Loan Document;
  - (C) The purchase of the Participation Interest is for the Buyer's own account, unless previously disclosed, and not with a specific purpose to making any distribution, sale, transfer, assignment or other disposition thereof except in strict accordance with the terms and provisions of this Agreement, and that the Buyer acknowledges that it is able to bear the economic risk and possible adverse consequences of its purchase of the Participation Interest in the event of a default of any participated Loan;
  - (D) The total of the Participation Interest, when added to Buyer's existing Loans, if applicable, neither exceeds regulatory limits on Loan portfolio concentration, Loans to one Borrower or associated Borrowers, or has otherwise received regulator approval to exceed any such limits;
  - (E) Buyer (i) has adopted applicable policies, which it has reviewed as necessary, and (ii) has performed its own due diligence with respect to its purchase of the Participation Interest and to the extent required, utilized services of an independent party with adequate experience;
3. **Custody of Loan Documents.** It is agreed that Servicer shall retain possession of the Loan Documents (or copies thereof, if Servicer is not Seller), and shall be responsible for seeing that all title evidence and policies of insurance for the account of all Participants hereunder are properly maintained. At its own cost, any Party, or Party's representative or regulator, including the NCUA and its examiners or supervisory agents, has the right at any reasonable time during normal business hours to request and have access to and examine any and all books, records and documents relating to any Loan(s) in which the Party has a Participation Interest or relating to any of the matters covered by this Agreement. Seller may charge any Party its usual and customary fee for any research or document copies.
4. **Warranties and Representations Effective as of Closing.** Seller further represents and warrants that as of both; (i) the date of the original Loan Participation Certificate and (ii.) the closing date of the Loan Participation, it is not aware of any material misrepresentation on any Loan(s).
5. **Mutual Warranties.** Each Party warrants that neither the Loan(s) nor this Agreement violate any provision of State or Federal law applicable to it and by participating in the Agreement each Party warrants that it is not exceeding its maximum credit limit to one Borrower.
6. **Acknowledgment of Limitation of Seller's Warranties.** Buyer acknowledges that Seller has made no representation or warranty of any kind, whether expressed or implied, with respect to the validity, collectability or enforceability of the Loan(s), the financial condition of Borrower or guarantor, the validity and enforceability of the Loan Documents except as expressly set forth in this Agreement and the documentation provided to Buyer. Buyer has based its decision to purchase a Participation Interest upon the Buyer's own independent evaluation of the Loan Documents provided by Seller and Seller's expressed warranties. Seller acknowledges that all Buyers of a Participation Interest in its Loans have a right to rely upon Seller's warranties with regard to any Loan Participation purchase of Loans originated by Seller.

## **XII. Events of Default**

### **1. Seller's Insolvency.** In the event of any of the following:

- (A) The insolvency of Seller,
- (B) The filing by or against Seller of a petition under any provision of bankruptcy law, or of an assignment for the benefit of creditors,
- (C) The appointment by any public or supervisory authority of any person or firm in charge of Seller or its assets,
- (D) A deliberate, conscious and uncorrected breach by Seller of any covenant or agreement herein or in any Participation Certificate,
- (E) The involuntary sale of any Loans or advances covered by this Agreement, or
- (F) The issuance by an appropriate public monitoring or supervisory authority of a cease and desist order, or its equivalent, against Seller or its directors and officers involving the safety, soundness, or financial viability of Seller;

It is agreed that the Party having the greatest Participation Interest in the Loans as reflected on Seller's books and records shall automatically succeed to all rights, titles, status and responsibilities which Seller may have regarding the holding and servicing of said Loans and advances. Such person or firm shall exercise all of the powers hereinabove granted to Seller.

### **2. Participant Default.** If any Participant fails to provide funds for the payment of any obligation (including shared litigation costs), the Seller is authorized to supply the same, and it shall be reimbursed from the first funds available for the account of the defaulting Party.

## **XIII. Responsibilities of Agent.** Agent may provide the following services to each eligible organization signing this Agreement. This may include Agent who may act as a Buyer, Participant, or Secondary Seller under this Agreement.

- 1. Purchase and Sale of Participations.** Agent may assist both Seller and Buyer in transactions to purchase participations and may receive a fee from the sale from either the Seller or Buyer or both. Agent may also enter into transactions to purchase participations from Seller and may act as a Secondary Seller without giving prior notice to Seller.
- 2. Administration of Participations.** Agent may provide assistance to both Seller and Buyer in the administration of the Loan Participations and may receive a fee from these services from either the Seller or Buyer or both. Services provided may include but are not limited to providing due diligence documentation, document preparation and storage, participation reporting, remittance and disbursement services for sales and monthly payments, Loan analytics and / or other ancillary services.
- 3. Warranty and Representation.** Except as otherwise provided herein, Agent makes no warranty or representation to a Participant with respect to any Loan Participation purchased by a Participant under this Agreement or with respect to any Loan Documents, relating to such Loan, and shall not be responsible for any statements, warranties or representations (whether written or oral) made in or in connection with a Loan or Loans or any Loan Documents relating thereto or for the financial condition of any Borrower or any guarantor or for the value of any collateral.

## **XIV. Controlling Law and Venue.** This Agreement shall be interpreted under the laws of the State where the main office of the Seller is located.

## **XV. Privacy.** The Parties acknowledge and agree to execute a separate Loan Participation Platform Confidentiality Agreement.

## **XVI. Hold Harmless.** The Parties warrant and covenant that each will act in accordance with the law applicable to their respective powers to buy and sell Participation Interests. Each Party shall indemnify and hold harmless the other Parties for any direct (but not consequential) losses sustained (including reasonable costs and

attorneys fees) as a direct and proximate result of a Party's intentional or negligent failure to comply with the applicable laws and regulations, discharge its duties or honor its representations and warranties in this Agreement.

- XVII. Severability.** The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.
- XVIII. Notices.** All communications between Seller, Servicer, Secondary Seller, Participant and Buyer in respect of, or notices, requests, directions, consents or other information sent under, this Agreement shall be in writing, addressed to the other Party at its notice address specified on the signature page to this Agreement or at such other address, facsimile number or e-mail address as such Party may subsequently request in writing in accordance with this Section. All such communications and notices shall be effective upon receipt.
- XIX. Prepayment Penalties.** The Parties acknowledge that federal and some state chartered credit unions may not receive prepayment penalties. The Participants that are permitted to receive prepayment penalties agree to limit the prepayment penalties they receive to the pro rata portion of their Participation Interest and that any excess penalties would be returned to the Borrower or not collected.
- XX. Entire Agreement.** This Agreement, in conjunction with any Loan Participation Certificate and Loan Participation Summary contains the entire agreement between the Parties hereto and cannot be modified in any respect except by an agreement in writing signed by all Parties. Any Amendments to this agreement for specific Loan Participations shall be documented in the Loan Participation Certificate.
- XXI. Counterparts.** This Agreement may be executed in counterparts, and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Transmission by facsimile or other form of electronic transmission of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

**LOAN PARTICIPATION CERTIFICATE**

**PARTICIPATION CERTIFICATE NO.** \_\_\_\_\_

**Unique Pool ID**

Seller: Selling Eligible Organization  
Buyer: Buying Eligible Organization  
Secondary Seller: Secondary Seller: (if applicable)  
Participation Purchase Amount: Dollar Amount  
Purchase Date: Closing Date

This certifies that the undersigned Seller or Secondary Seller has received from the undersigned Buyer the Participation Purchase Amount in the principal sum stated herein and the Seller hereby sells, conveys, assigns, transfers, and issues to the Buyer under the Alloya Master Loan Participation Agreement ("Agreement") an undivided Participation Interest (subject to the terms and conditions of said Agreement) in the Loan(s) described herein (see Schedule 1 - Loan Participation Summary and Schedule 2 – Loan Schedule).

It is agreed that Buyer shall receive the interest rate set forth in the Loan Participation Summary – Schedule 2 on its pro rata Participation Interest, as well as its pro rata participation in the amount of any interest collected pursuant to an automatic or negotiated increase in the interest rate on any of said Loans. Seller will be entitled to the remainder of the interest. Servicer shall be entitled to any default penalties and late fees.

The rights and obligations of the Parties to this Participation Certificate are governed by the Agreement, which is fully incorporated herein by reference. The terms of the Participation in the above referenced Loan(s) are set forth in the attached Schedule 1 - Loan Participation Summary incorporated herein by reference.

WHEREFORE, the Parties execute this Loan Participation Certificate on the dates indicated.

Seller: Selling Credit Union or  
Secondary Seller if applicable

DATE of Transaction  
Date

By: SAMPLE Participation Certificate

Buyer: Buying Credit Union

DATE of Transaction  
Date

By: SAMPLE Participation Certificate

Schedule 1  
**LOAN PARTICIPATION SUMMARY**

Loan Participation Certificate Number: **UNIQUE POOL ID**

**Roles of the Parties:**

Seller:  
Buyer:  
Servicer:  
Secondary Seller: (If applicable)

**Loan Information:**

Type of Loan(s):  
Number of Loans:  
Total Principal Amount of Loan(s):  
Weighted Avg Coupon of Loan(s):

**Transaction Details:**

Percentage of Loan(s) Sold to Buyer:  
Seller Retained Amount  
Purchase Price of Participation Interest:  
Effective Date of Sale:  
Buyer Participation Amount  
Buyer Purchased Accrued Interest  
Premium/Discount Amount  
Total Participation Purchase Amount  
Servicer Fee  
Recourse or Non-Recourse Basis:  
Clean Up Provision:

Servicer Fee %  
☐ Recourse  
Yes/No %

☐ Non-Recourse

**Alloya Fees:**

Buyer/Seller Marketplace Fee  
Other Fee:  
Buyer AUM Servicing Fee:  
Seller AUM Servicing Fee:

**Servicing Dates:** (This is editable)

The accounting cut-off date is on the last calendar day of each month.  
The payment remittance due date to Agent is on or before the 5<sup>th</sup> business day of each month.  
The reporting due date to Agent is on or before the 5<sup>th</sup> business day of each month.

**Monthly Reporting Requirements** (This is editable)

Remittance and Trial Balance Report(s) must include pool id number, Loan number or other identifier, Loan date, interest rate, Loan status, due date, last paid date, current balance, original balance, current payment, current principal and interest payments, delinquency status, and bankruptcy / repossession / foreclosure status.

**Amendments to Master Participation Agreement** (This is editable)

Specific Amendments per transaction can be added here.

Schedule 2  
**LOAN SCHEDULE ADDENDUM**

Loan Participation Certificate Number: **UNIQUE POOL ID HERE**

Loan ID	Loan Type	Borrower Name	Loan Balance	Original Amount	Loan Origination Date	Loan Current Balance Amount	Loan Interest Rate	Loan Current Payment Amount	Loan Next Payment Date	Loan Accrued Interest
---------	-----------	---------------	--------------	-----------------	-----------------------	-----------------------------	--------------------	-----------------------------	------------------------	-----------------------

SAMPLE