

## MARKETING AGREEMENT

This MARKETING AGREEMENT ("Agreement") is made as of \_\_\_\_\_, 2009, between 1031 EXCHANGE ADVANTAGE, INC, a California corporation ("1031EA"), Fortune Cookie Consulting, Ltd. A California Corporation (FCC), and, XXXXX a California Corporation (the "Broker" and collectively with 1031EA, the "Parties").

1031EA and Broker desire to enter into this Agreement to establish certain terms and conditions regarding the referral of business by Broker to 1031EA and the referral of business (leads) between Fortune Cookie Consulting, Ltd. through its automated web based marketing system for lead generation (hereinafter AP) to Broker and the compensation which shall be paid by 1031EA to Broker and by Broker to FCC.

### AGREEMENT

#### 1. Duties and Scope of Arrangement.

(a) Non-Exclusivity. During the term of this Agreement, Broker shall work on a non-exclusive basis with 1031EA in the provision of Referrals as described as a lead for a prospect of 1031 EA services provided to 1031EA. The Parties acknowledge and agree that the arrangement under this Agreement shall be nonexclusive with respect to 1031EA and FCC. More specifically, leads generated by FCC's web based marketing system (AP), may be distributed to more than one broker on a non exclusive basis.

(b) Relationship of the Parties. The Parties acknowledge and agree that at all times they are operating as independent parties. Nothing contained herein shall constitute a partnership or joint venture between Broker or 1031EA or between FCC and 1031 EA or FCC and Broker and neither party shall at any time hold itself out to any third party to be an agent or employee of any other.

#### (c) 1031EA Responsibilities.

(i) Standard of Care. All services provided by 1031EA hereunder shall be performed in accordance with reasonable and customary standards of care.

#### (d) Duties of Broker. Broker will perform the following functions:

(i) Marketing and Promotion. During the term of this Agreement, Broker shall use commercially reasonable efforts to promote 1031EA and its services. Without limiting the foregoing, Broker shall:

(ii) Promote to the agents, salespeople and potential Referrals of Broker and its affiliates to attend, seminars produced throughout the year by 1031EA .

#### (e) Duties of FCC

(i) Operate the AP (defined hereinafter) and post non-exclusive leads to Broker's custom AP webpage as defined in the detailed in this agreement in Par 3 (c) and in the FEE Schedule "Exhibit A" attached hereto.

(f) Limitation of Authority. Broker has no authority to make any contract, create any contractual obligation, bind, obligate or otherwise commit 1031EA in any manner whatsoever. Further, Broker acknowledges and agrees that:

(i) Broker shall have no authority to use the name, logo, trademarks or service marks in any communication without the prior written consent of 1031EA.

(ii) In the event 1031EA receives, directly or indirectly, more than one request for Referred Business from any other source for the same exchange matter 1031EA may process said request and Broker agrees that 1031EA shall not be obligated or liable to Broker to pay any compensation, fees or other costs on said referral.

**ENTER YOUR SPECIFIC SERVICE OR PRODUCT CATEGORY:**

**Residential Real Estate** As used herein, the “Broker’s Market Area” shall mean a five (5) mile radius surrounding Broker’s address set forth on the signature page hereto.

(2) Broker Compensation.

(a) Amounts Paid by 1031EA

(b) 1031EA shall pay a fee to Broker in accordance with the fee schedule attached hereto as Exhibit “A” (the “Fee Schedule) provided Broker is in full compliance with all the terms of this agreement.) Broker shall pay a marketing Fee to FCC as outlined on said Fee schedule.

(3) Web Linking.

(a) Definitions. The following terms shall have the meanings set forth in this Section 5:

(i) “Home Page” shall mean the first page of a website which is displayed when accessing the associated URL (the uniform resource locator or web address).

(ii) “Links” shall mean hypertext, text, banner, logo and contextual links (the “Graphical Images”) which permit a user to go from one party’s website to another by clicking on the Graphical Image.

(b) Linking. During the term of this Agreement, Broker shall establish and maintain at least one Link from (i) the resources page (or any replacement or successor page) on website set forth on the signature page below (the “Broker’s Website”), on the Broker’s Website to 1031EA’s website located at [www.1031exchangeadvantage.com](http://www.1031exchangeadvantage.com) (the “1031EA Website”).

(c) Fees. Neither Broker nor 1031EA shall charge the other party any fees in connection with the web linking contemplated under this Agreement. FCC shall charge Broker Fees for participating in its AP network as outlined on the attached FEE Schedule and 3 (d) herein.

(d) AP Program. The AP Program is a web based lead generation marketing system operated by FCC to generate leads for Affiliates. A lead is a prospective purchaser or seller of real estate. Broker receives exposure for its products & services on the 1031EA website in the Property Affiliates section as part of the AP program. 1031 EA allows FCC to operate the AP program to provide services to its clients and affiliates for which 1031 EA is not compensated by anyone. Broker may receive leads, where available, from FCC as the operator of the AP program. Said leads will be e-mailed to broker and posted to his custom affiliate page on the 1031 CRM, located at [www.1031crm.com](http://www.1031crm.com). The affiliate page is accessible with broker’s user name and password provided herein: UN\_\_\_\_ Password: \_\_\_\_\_. The parties acknowledge, that the AP is a web based marketing service for the generation of leads of prospect purchasers and/or sellers of real estate and neither 1031 EA nor FCC provides brokerage services.

(e) Trademarks and Other Proprietary Information.

(i) 1031EA Trade Names & Logo. Subject to the terms and conditions of this Agreement, 1031EA hereby grants to Broker a limited license to use 1031EA’s logo and

trade name, "1031 Exchange Advantage, Inc.", (collectively, the "Marks") during the term of this Agreement on the Broker's Website .

(f) Intellectual Property. Except as expressly licensed under this Agreement, 1031EA shall retain all rights and interests in the 1031EA Website. FCC shall retain all rights in the 1031 CRM and the AP program—located at [www.1031crm.com](http://www.1031crm.com).

(g) Indemnity. Broker, 1031 EA and FCC agree to indemnify one another and hold one another harmless from and against any claims, demands, causes of action and judgments (collectively, the "Claims") by any third party arising out of any breach or alleged breach of this agreement.

(4) Representations, Warranties and Covenants of Broker and 1031EA. Broker hereby represents, warrants and covenants to 1031EA and 1031EA warrants and covenants to Broker that they are each in good standing, validly organized, in compliance with all laws and regulations, and are duly licensed as are its employees, where necessary, where required, nor do they have any claims filed against the companies.

(a) Authorization. Each of the persons executing and delivering this document on behalf of Broker is authorized to do so.

(b) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of Broker in accordance with its terms.

(c) RESPA. Broker has performed and will continue to perform its own due diligence relating to the non-applicability of the Real Estate Settlement Procedures Act ("RESPA") to this Agreement and the transactions contemplated hereunder (including, without limitation, the payment of referral fees), and is satisfied with the same.

(5) WARRANTY. THIS AGREEMENT IS AN AGREEMENT FOR SERVICES. EXCEPT AS EXPRESSLY SET FORTH HEREIN, 1031EA SPECIFICALLY DISCLAIMS ALL WARRANTIES WITH REGARD TO 1031EA WEBSITE, ANY TAX, ACCOUNTING OR LEGAL ADVICE WHICH MAY BE CONTAINED IN ANY 1031EA DOCUMENTS.

(6) DAMAGES. IN NO EVENT SHALL 1031EA BE LIABLE TO BROKER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF DATA, LOSS OF BUSINESS OR OTHER LOSS ARISING OUT OR RESULTING FROM THIS AGREEMENT

(7) Termination.

(a) Termination for Convenience. Either party may terminate this Agreement at any time with or without cause, with ninety (90) days prior written notice to the other party. The Parties may also terminate this Agreement with mutual written consent at any time. (8) Miscellaneous.

(b) Governing Law. This Agreement shall be governed by and construed and enforced under the laws of the State of California, without regard to its conflict of laws principles. The sole and proper venue for any action brought with respect to this Agreement shall be San Diego, California.

(c) Entire Agreement. This Agreement is the final and exclusive statement of all agreements and understandings between the Parties with respect to the subject matter described herein.

(d) Electronic Acceptance of Terms. This Agreement may be accepted by Broker and shall be fully enforceable though electronic acknowledgement of terms at [www.1031crm.com](http://www.1031crm.com) upon broker signing on to the site with his username and psswrđ.

## EXHIBIT A FEE SCHEDULE

- **Forward Exchanges:**

- 1 **Generally.** 1031EA will pay Broker a fee on Referrals where the Broker was the procuring cause in accordance with Agreement and the schedule below:

**Fee Schedule:**

Monthly Exchange Balance	Fee Percentage
\$1 to \$9,999,999	5%
\$10,000,000 to \$14,999,999	15%
\$15,000,000 to \$29,999,999	20%

- 1 1031 EA may change the Tax Free or No Fee policy at any time without notice.

. Currently, the referral fee is calculated by:

1. Multiplying the applicable exchange balances by 2%;
2. Subtracting client refunds, adjustments, fees and interest payments due Referrals; and
3. Multiplying the result of the foregoing by the fee percentage.

The Federal Funds Rate is published in Federal Reserve Statistical Release H.15. The amount of interest income received by 1031EA is dependent on, among other things, the depository institution and current market rates.

- 2 **Downstream Referrals.** Fees will also be paid on referrals received from the original Broker Referrals. E.g. If a Referral from the Broker refers another client, a fee will be paid to the Broker on that second generation referral. Such fees will be limited to second generation referrals only.

**Reporting Verifications:** Broker shall have the responsibility to review the 1031 EA CRM, for all contacts for which you are asking to receive credit. Any contacts who are not registered in the CRM must be brought to the attention of the CRM administrator in writing prior to the 10<sup>th</sup> of the month following end of quarter. Commissions will be paid within 45 days after end of quarter.

You agree to pay fees at the following rate for membership in the AP program to FCC:

1. Program Fee \$175.00 per month to maintain your name in our database. Waived.
2. Marketing Fee based on the number of properties you feature in our database at \$500 per month per property. Waived.
3. Transaction Fee.\* Based on the following schedule on COE of property being acquired or sold by a prospect who has been communicated to Broker (lead) per this agreement:
  - \$ 5000 Based on Property Investment Value of up to \$ 1 million dollars
  - \$ 10,000 Based on Property Investment Value over \$ 1,000,001 and up to 2 million dollars
  - \$ 20,000 Based on a Property Investment Value of \$ 2,000,001 up to 3 million dollars
  - \$ 30,000 Based on a Property Investment Value of more than 3 million dollars
  - \$40,000 Based on a Property Investment Value of \$ 3,000,001 and more up to \$4,000,00
  - \$50,000 Based on a Property Investment Value of \$4,000,001 and above

\*Transaction Fees are due on all leads provided to Affiliate for any purchases or sales (a "transaction") which occurs within twelve (12) months of the provision of the lead to Affiliate. Affiliate agrees these fees are NOT brokerage charges. The transaction fee is due and payable if

and when a transaction closes and is due on or about the date of the closing of title for the Property Investment which closes and is purchased or is sold by the lead.

Affiliate agrees to update the 1031CRM in the "Notes" section of the lead's name record with status on the prospect transaction as info is available. Affiliate agrees to furnish FCC with accurate timely information regarding the existence of a prospective sale/purchase involving the lead and the affiliate's products/services so that FCC will be informed when a transaction fee is due.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**"FCC"**

Fortune Cookie Consulting, Ltd.  
A California Corporation

By:

\_\_\_\_\_  
David P. Greenberger, President

1416 Cressa Court  
Carlsbad, Ca 92024

Attention: David P. Greenberger, Esq.  
Chief Executive Officer &  
President

Telephone: (866) 944-1031  
Facsimile: (858) 332-1777  
e-mail: david@1031exchangeadvantage.com

**"1031EA"**

1031 Exchange Advantage, Inc.  
A California Corporation

By:

\_\_\_\_\_  
David P. Greenberger, President

681 Encinitas Blvd.  
Suite 403  
Encinitas, Ca 92024

Attention: David P. Greenberger, Esq.  
Chief Executive Officer &  
President

Telephone: (866) 944-1031  
Facsimile: (858) 332-1777  
e-mail: david@1031exchangeadvantage.com

**"BROKER"**

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By:

\_\_\_\_\_

Its:  
Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
e-mail: \_\_\_\_\_

**Broker Website:www.**