

LOSS MITIGATION WEB APPLICATION **USER AGREEMENT**

This agreement (Agreement) is made by and between the Rural Housing Service of the U.S. Department of Agriculture (USDA) (hereinafter referred to as the "Agency") and the Approved Lender or Loan Servicer (as defined in the Glossary of Terms set forth in Exhibit A below) named in the box below and hereinafter referred to as "User." This Agreement is effective upon execution by the User.

User represents and warrants to the Agency that User has read all of the terms of this Agreement, understands such terms, and agrees to be bound by all of such terms, and has executed this Agreement in the box below in witness of such representation, warranty and agreement. **User further acknowledges that the Agency has no obligation to perform hereunder until the Agency provides notice of approval to User in writing pursuant to paragraph 1.1(d) herein.**

[User must complete all blank spaces below and must sign below for this Agreement to be effective.]

<p>Taxpayer Identification Number (TIN) of User: _____</p> <p>Complete legal name of User: _____</p> <p>Street address of User: _____ (Street, City, State, Zip Code) _____</p> <p>Type of User: <input type="checkbox"/> Approved Lender <input type="checkbox"/> Approved Loan Servicer (check one)</p>			
<p><u>User Security Administrator Information</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; padding: 5px;"> <p><u>Security Administrator #1</u> Name: _____ E-mail: _____ Phone number: _____ Fax number: _____ eAuthentication ID*: _____</p> </td> <td style="width: 50%; vertical-align: top; padding: 5px;"> <p><u>Security Administrator #2</u> Name: _____ E-mail: _____ Phone number: _____ Fax number: _____ eAuthentication ID*: _____</p> </td> </tr> </table> <p>* eAuthentication accounts are created online at http://www.eauth.egov.usda.gov/ and activated via e-mail. User cannot use the Loss Mitigation Web Application unless the Security Administrator has a valid, activated eAuthentication account with Level 1 Access.</p> <p>Security Administrator(s) valid for: <input type="checkbox"/> Only the location listed in the address above <input type="checkbox"/> All locations of the User (check only one)</p>		<p><u>Security Administrator #1</u> Name: _____ E-mail: _____ Phone number: _____ Fax number: _____ eAuthentication ID*: _____</p>	<p><u>Security Administrator #2</u> Name: _____ E-mail: _____ Phone number: _____ Fax number: _____ eAuthentication ID*: _____</p>
<p><u>Security Administrator #1</u> Name: _____ E-mail: _____ Phone number: _____ Fax number: _____ eAuthentication ID*: _____</p>	<p><u>Security Administrator #2</u> Name: _____ E-mail: _____ Phone number: _____ Fax number: _____ eAuthentication ID*: _____</p>		
<p><u>User</u></p> <p>By executing this Agreement, I confirm that I am a duly authorized officer of User and represent and warrant that I have complete authority to enter into this Agreement on behalf of User.</p> <p>By: _____ Signature</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p><u>Agency</u></p> <p>By Signature Authority of the Deputy Administrator, Single Family Housing, USDA, Rural Housing Service</p>		
<p>Mailing Address USDA, RHS Contact Housing Services Branch National Financial and Accounting Operations Center 4300 Goodfellow Blvd. Building 104, Post H50, FC-1322 St. Louis, MO 63120 Telephone: 877-636-3789</p>	<p>Send Completed/Signed Loss Mit User Agreement to: RD.NFAOC.HSB@STL.USDA.GOV</p>		

1. Access to System by User.

1.1 Use of System.

(a) Subject to the terms and conditions of this Agreement, the Agency grants to User a non-exclusive right to use the System, including any updates and enhancements to the System, the Output of the System and the User Instructions and other documentation for the System that may be provided to User by the Agency. The term "System" and any other capitalized term not defined in the text of this Agreement will have the meaning set forth in the Glossary attached to this Agreement as Exhibit A. User will cause data to be entered into the System only with respect to potential loss mitigation actions (e.g., special forbearance, loan modification, pre-foreclosure sale, deed in lieu of foreclosure). User's use of the System is subject to the provisions of the User Instructions and such other instructions as may be communicated by the Agency from time to time in writing. Except to the extent otherwise provided in this Agreement or consented to by the Agency in writing, User will not permit any third parties to use the System, either directly or indirectly through User.

(b) User access to the System is dependent upon the eAuthentication system, which will require the User Security Administrator and specific employees or agents of the User to specify a user ID and password as part of the sign-on procedure. User agrees to immediately notify the Agency (i) if User terminates the employment or agency of any of its authorized users, and (ii) in the event of any loss, theft or unauthorized disclosure or use of any user ID or password. Individual user IDs and passwords may not be transferred between employees and agents, and User shall ensure that such transfers do not occur. User will permit the Agency, from time to time and upon at least fifteen (15) days' notice to User, to audit or review User's controls and procedures related to access to the System. User agrees to provide the Agency with a list of the names of its authorized users of the System with their user IDs.

(c) Where User data or other materials reside on the System, the Agency will use reasonable care to avoid loss, alteration or improper access to User data and other materials. User shall be responsible for implementing appropriate procedures to protect data and other materials and shall be responsible for security breaches caused by its employees, agents or contractors, including without limitation, any access or entry into the System or any third party system not covered by this Agreement. User shall use reasonable care to prevent unauthorized third parties from gaining access to the System or password-protected portions of the Agency's Internet sites through User's systems.

(d) User's right to use the System and the Agency's obligation to perform hereunder shall not accrue until the User has been notified, in writing, that it has been approved by the Agency for use of the System.

1.2 Responsibility for Interface.

User may utilize an interface between the System and User's loan servicing system. User agrees that the Agency shall have no responsibility for the interface and will have no liability whatsoever arising out of or related to the interface.

2. System Ownership.

2.1 Agency's Representation.

The Agency represents that it has the right to grant to User the rights granted by this Agreement.

2.2 Ownership.

User acknowledges that it has no ownership or other interest in the System, except to the extent of the rights expressly granted herein. All applicable rights to copyrights, trade secrets, patents, trademarks and other rights in and to the System and any modifications or enhancements made to the System will belong to and remain with the Agency.

3. Warranties; Limitation of Liability.

3.1 No Warranty.

The Agency makes no representation or warranty with respect to the System (except to the extent expressly provided otherwise in Section 2.1 of this Agreement). In addition, the Agency makes no representation or warranty with respect to any of the data obtained, provided or transmitted by or through the System. EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, THE SYSTEM AND ALL DATA ARE BEING PROVIDED TO USER "AS IS" AND ALL WARRANTIES ARE EXPRESSLY EXCLUDED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF ACCURACY AND THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

3.2 No Liability.

The Agency will have no liability under this Agreement or related in any respect to the System (including, without limitation, under any other agreement with User related to the System) for consequential, exemplary, indirect or incidental damages, even if it has been advised of the possibility of such damages.

4. Data.

The Agency may use, reproduce and retain (i) all data for auditing and other purposes that pertain to loans that the Agency may guarantee, (ii) all data generated utilizing the System that pertain to the functionality or performance of the System, (iii) all data necessary or useful in assisting the Agency in the diagnosis or correction of any irregularity, error, problem, or defect in the System, the measurement of software or service usage, the protection or security of the System or password-protected areas of the Agency's Internet sites, the performance of System or network maintenance, or evaluation of its software or services, or any improvement, upgrades or enhancements thereto, (iv) all data necessary or useful in performing its obligations under this Agreement, providing reports to User or responding to User requests, and (v) all data that User is required to report or make available to the Agency pursuant to any other agreement(s) between User and the Agency.

5. Legal Compliance: User's Representations and Warranties.

(a) User represents and warrants that it is licensed to conduct business in all jurisdictions where it is necessary for User to be licensed to comply with its obligations under the terms of this Agreement. User further represents and warrants that it will comply with all applicable laws and regulations in its use of the System and any Output of the System.

(b) User represents and warrants that it, or another party acting on behalf of User, will provide an adverse action notice to each applicant to whom it determines not to extend credit when required to do so under the Equal Credit Opportunity Act (ECOA). User further represents and warrants that User will rely upon its own counsel to ensure compliance with ECOA and other applicable laws.

6. Reliance on the System.

User represents and warrants that it will not rely exclusively on the System in determining whether or not to extend loss mitigation to a borrower.

7. Assignment.

User may not assign any of its rights or obligations under this Agreement in any manner whatsoever without the Agency's prior written consent. Any attempt by User to assign any of its rights or obligations hereunder without such prior written consent is void.

8. Term; Termination.

(a) This Agreement will commence when the Agency notifies User in writing under paragraph 1.1(d). Each party reserves the right to terminate this Agreement at any time for any reason in its sole discretion upon two (2) days' notice to the other party. Notwithstanding the provisions of Section 10(b) below, at the terminating party's option, notice will be deemed sufficient if made by telephone and confirmed in writing within two (2) business days, in which case notice will be deemed to have been given at the time of the telephone call.

(b) In the event the Agency terminates this Agreement without cause User will not be entitled to receive any damages.

9. Confidential Information.

(a) The parties agree that the following information, to the extent that it or any of it is disclosed to User by the Agency, will be deemed confidential information for purposes of this Agreement, whether or not the information is specifically marked or otherwise designated as such: (i) any specifications or implementation plans for the System, (ii) all information concerning the Agency's business strategies and plans, (iii) all information concerning the design of the System and any components thereof, (iv) all users' manuals and other System-related documentation, and (v) the terms of this Agreement.

(b) User agrees that it will not disclose any confidential information to any third party. Upon the termination of this Agreement, User will immediately return to the Agency all copies of any confidential information previously delivered to User or otherwise in User's possession or control; provided that, at the Agency's request, User will immediately destroy all such information and documentation and all copies received from the Agency or otherwise in its possession or control and certify in writing that such actions have been taken. Notwithstanding the foregoing, User will have the right to retain a copy of any System Output in User's file with respect to the loan to which such Output relates.

(c) The Agency will protect confidential information in accordance with Federal privacy laws.

10. Miscellaneous.

(a) This Agreement is the complete and exclusive statement of the parties' agreement with respect to the parties' rights, duties, and obligations in connection with User's use of the System, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written, between the parties relating to such subject matter.

(b) Any notice required or permitted to be given by the Agency under the terms of this Agreement, including, but not limited to, notice from the Agency of User Instructions or of an amendment to the terms of the Agreement, may be given through the System or via electronic mail. All other notices required under this Agreement to be in writing must be printed on paper and will be deemed delivered (i) when delivered in person or by a reputable express mail carrier, or (ii) three (3) business days after deposited in the United States mail in each case addressed as set forth in the introduction of this Agreement. Notices to the Agency must be sent to the attention of Chief, Guaranteed Loan Branch. Each party may change its address for such notice purposes, and/or the person(s) to whom such notices should be sent, by giving written notice of its new address and/or such person(s) to the other party in accordance with the provisions of this section.

(c) The Agency may amend the terms of this Agreement at any time through notice to User setting forth the terms of such amendment. **User's use of the System at any time after the effective date of an amendment shall constitute User's consent to the terms of the amendment.** Notice will be given on or before the effective date of any such amendment.

(d) The failure of either party to exercise in any respect any right or remedy provided for herein will not be deemed a waiver of such right or remedy. No waiver at any time of any provision of this Agreement will be deemed a waiver of any other provision of this Agreement at that time or a waiver of that or any other provision of this Agreement at any other time.

(e) If any provision of this Agreement is held invalid, illegal or unenforceable, such provision will to that extent be deemed omitted from this Agreement, and the remaining provisions of the Agreement will continue to be valid and enforceable and will not be affected in any way.

(f) This Agreement is binding upon the parties hereto and their respective successors and (subject to the provisions of Section 7 above) assigns. Subject to the provisions of Section 3, the rights and remedies of the parties are cumulative and are in addition to, and not in lieu of, all rights and remedies available at law and in equity. All of the parties' rights, obligations and agreements under this Agreement (other than User's right to use the System) which arise prior to the termination of this Agreement will survive such termination.

(g) The provisions of the exhibit are hereby incorporated by reference into this Agreement. Any conflict between the provisions of the exhibit and the remainder of the Agreement will be resolved in favor of the remainder of the Agreement.

(h) User agrees that it will not use in any marketing, promotional or advertising materials the name "Rural Development," "USDA" or any names similar thereto or derivative therefrom, or any logos associated therewith, unless it shall first have received the express written consent of the Agency.

(i) The Agency has entered into this Agreement pursuant to the signature authority of its Deputy Administrator for Single Family Housing. The Agency represents and warrants that the Deputy Administrator for Single Family Housing has complete authority to enter into this Agreement on behalf of the Agency, and that the Agency shall be bound by all of the terms of this Agreement upon User's execution of this Agreement. User represents and warrants that its officer executing this Agreement has complete authority to enter into this Agreement on behalf of User, and that User shall be bound by all of the terms of this Agreement upon its execution of this Agreement. User's right to use the System and the Agency's obligation to perform under this Agreement are subject to the provisions of paragraph 1.1(d) above.

(j) Neither party shall be responsible for delays or failure of performance resulting from acts beyond the reasonable control of such party. Such acts shall include, but not be limited to, acts of God, strikes, walkouts, riots, acts of war, terrorist attacks, epidemics, failure of vendors to perform, governmental laws or regulations, power failures, earthquakes, or other disasters.

(k) User represents and warrants that all information that it has provided to the Agency in the course of registering as a User, and upon which the Agency has relied in agreeing to permit User to access and use the System, is true and correct.

Exhibits:

A -- Glossary of Terms

Exhibit A - Glossary of Terms

As used in this Agreement, the terms listed below will have the following meaning:

1. **Approved Lender or Loan Servicer:** A lender or loan servicer with an approved lender or loan servicing agreement from the Agency.
2. **eAuthentication:** A Government-wide security access system.
3. **Output:** A letter from the Agency approving or denying a loss mitigation action proposed by the User via the System.
4. **Security Administrator:** The employee assigned by the User to manage access to the System by employees of the User.
5. **System:** The Loss Mitigation Web Application, a Web-based system owned by the Agency. The term "System" also includes any Output of the System and any updates, enhancements and documentation (such as the User Instructions) made available to User for the System, together with all copies of the foregoing, whether made by the Agency, User or a third party.
6. **User Instructions:** Instructions for use of the System, given by the Agency to User from time to time through required training, or by notification through the System, including notification to User to review and follow instructions posted on the Agency's Internet site.