

# USER AGREEMENT

This agreement is made on the date set forth in the box below by and between the U.S. Department of Agriculture (USDA), Rural Development, and the Approved Lender, Broker or Correspondent (as defined in the Glossary set forth in Exhibit A below) named in the box below and hereinafter referred to as "User".

User represents and warrants to Rural Development that User has read all of the terms of the agreement, set forth below in Sections 1 through 11, 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 Rural Development has no obligation to perform hereunder until Rural Development 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.]**

Tax ID \_\_\_\_\_  
Complete legal name of User \_\_\_\_\_  
Street address of User \_\_\_\_\_  
(Street, City, State, Zip Code) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Type of User:    Approved Lender ☐    Broker/Correspondent ☐    (check one)

**If Broker/Correspondent, provide Associated Approved Lender's acceptance:**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approved Lender's Signature \_\_\_\_\_ Tax ID: \_\_\_\_\_  
Approved Lender's Name \_\_\_\_\_  
Approved Lender's Title \_\_\_\_\_

Name of person executing Agreement for User \_\_\_\_\_  
Title of person executing Agreement for User \_\_\_\_\_  
Date of Execution \_\_\_\_\_

**Lender Security Administrator (SA) Information** (as defined in the Glossary set forth in Exhibit A below)

Name of SA #1 _____	Name of SA #2 _____
E-mail of SA #1 _____	E-mail of SA #2 _____
Phone Number SA #1 _____	Phone Number of SA #2 _____
Fax Number of SA #1 _____	Fax Number of SA #2 _____
eAuth ID of SA #1 _____	eAuth ID of SA #2 _____

Security Administrator(s) valid for:    ☐ Only the location listed in the address above    ☐ All locations of the organization  
(check only one)

**"USER"**

By \_\_\_\_\_  
Signature  
Title \_\_\_\_\_

**"Rural Development"**

By Signature Authority of David J. Villano,  
Deputy Administrator,  
Single Family Housing

**Mailing Address  
for User Agreement  
to Rural Development:**

**Priority/Overnight**

USDA, Rural Development  
Chief, Guaranteed Loan Branch  
ATTN: Penny Nowak; Telephone: (314) 457-4209  
4300 Goodfellow Rd., Bldg. 104, South End  
2<sup>nd</sup> Floor, Post 27 D  
St. Louis, MO 63120

**Standard Mail**

USDA, Rural Development  
Chief, Guaranteed Loan Branch  
ATTN: FC-350  
P.O. Box 200011  
St. Louis, MO 63120-0011

## **1. Access to System by User.**

### **1.1 Use of System.**

(a) Subject to the terms and conditions of this Agreement, Rural Development 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 Rural Development. 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 mortgage loans for which an application or an inquiry has been made to User by a potential borrower. User's use of the System is subject to the provisions of the User Instructions and such other instructions as may be communicated by Rural Development from time-to-time in writing, including, without limitation, restrictions on the types of Loan Applications which may be entered into the System and limitations on the marketing of the System or use of the System to prescreen potential borrowers. Except to the extent otherwise provided in this Agreement or consented to by Rural Development 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 that will require the User Security Administrator and specific employees or agents of the User to specify a user identification number and password as part of the sign-on procedure. User agrees to immediately notify Rural Development (i) if user terminates the employment or agency of one of its authorized users, or (ii) in the event of any loss, theft or unauthorized disclosure or use of any user identification number or password. Individual user identification numbers and passwords may not be transferred between employees and agents, and User shall ensure that such transfers do not occur.

(c) Where User data or other materials reside on the System, Rural Development 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 Rural Development's Internet sites through User's systems.

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

### **1.2 Responsibility for Interface.**

User acknowledges that User is responsible for developing or obtaining and maintaining an interface (the "Interface") between the System and User's loan origination system. User recognizes that Rural Development has conducted limited tests on the Interface provided by a third party (the "Interface Provider") and has approved this Interface for use in connection with the System, subject to their compliance with the terms and conditions set forth in an agreement between Rural Development and the Interface Provider. User agrees that, notwithstanding any such testing and approval by Rural Development or any other actions by Rural Development related to the Interface or the Interface Provider, Rural Development shall have no responsibility for the Interface and will have no liability whatsoever arising out of or related to the Interface or the acts or omissions of any Interface Provider.

User recognizes that Rural Development's specifications for the Interface may change from time to time and User agrees that it will at all times use only the version of the Interface which complies with the most recent set of specifications provided by Rural Development to the Interface Provider. To assist User to comply with the provisions of the preceding sentence, Rural Development agrees to notify User, either directly or by notice to the Interface Provider used by User, of any such specification changes (it being understood that Rural Development will endeavor to provide at least sixty (60) days' notice of any major

specification changes and as much notice as is practicable under the circumstances of any minor changes and changes which Rural Development desires to have implemented on an emergency basis). User further recognizes and agrees that, under certain circumstances, Rural Development may terminate the authority of an Interface Provider to continue to provide the Interface, in which event such Interface Provider will be unable to continue to provide the most current version of the Interface, and User will be responsible for obtaining a current Interface from a new Interface Provider.

User recognizes that it is responsible for controlling access to the System through User's loan origination system and the Interface. User will permit Rural Development, 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 Rural Development with a list of the names of its authorized users of the system with their identification numbers.

## **2. System Ownership.**

### **2.1 Rural Development's Representation.**

Rural Development represents that Rural Development 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 Rural Development.

## **3. Warranties; Limitation of Liability.**

### **3.1 No Warranty.**

It is Rural Development's desire to operate a System, which satisfies the performance objectives established by Rural Development, as previously communicated by Rural Development to User. However, Rural Development makes no representation or warranty with respect to the System (except to the extent expressly provided otherwise in Sections 2.1 and 5.1 of this Agreement). In addition, Rural Development makes no representation or warranty with respect to any of the data obtained, provided or transmitted by or through the System, including without limitation, any credit reports described in Section 4(a) below. 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 Third Party Services.**

Certain products and services belonging to or provided by entities other than Rural Development may from time-to-time be provided or made accessible to User through the System (collectively referred to as "Third Party Products"), such as mortgage insurance, collateral assessments, in file credit reports, merged credit reports, flood determination services and various types of borrower, property and mortgage-related data. User acknowledges that Rural Development neither endorses nor has any responsibility whatsoever for such Third Party Products or the entities providing such Third Party Products. Furthermore, Rural Development has no obligation at any time to continue to provide or make accessible through the System any particular Third Party Products. Without limiting the foregoing, User hereby waives, releases Rural Development from any and all claims against Rural Development arising out of or related to such Third Party Products.

### **3.3 No Liability.**

Rural Development 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.**

(a) User agrees that the System may use the Subscriber Number(s) issued to User by various credit repositories to retrieve credit reports on the borrowers in connection with each Loan Application and that any credit reports retrieved by the System may result in a notation in the borrower's file that an inquiry or inquiries, as applicable, were made by User. User authorizes the System to obtain the aforesaid credit reports on behalf of User and to transmit the credit reports to User. User hereby agrees to provide Rural Development with all of such credit reports through the System.

(b) Rural Development may use, reproduce and retain (i) all data for auditing and other purposes that pertains to loans that Rural Development may guarantee, (ii) all data generated utilizing the System that pertains to the functionality or performance of the System, (iii) all data necessary or useful in assisting Rural Development 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 Rural Development'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 Rural Development pursuant to any other agreement(s) between User and Rural Development.

### **5. Legal Compliance.**

#### **5.1 Rural Development's Representations and Warranties.**

(a) Rural Development represents and warrants that it will comply with all applicable laws and regulations in its operation of the System.

(b) The parties acknowledge that the System may require User to input certain information related to each applicant, such as the individual's race, which User is prohibited by law from using as a basis for granting or denying credit (collectively "limited use information"). The limited use information is being collected by Rural Development for regulatory compliance and similar purposes.

(c) Rural Development represents and warrants that (i) Rural Development did not use limited use information to design the System in a manner prohibited by the Equal Credit Opportunity Act (ECOA) or other applicable laws, and (ii) the System will not use limited use information to discriminate against any applicant (A) on the basis of race, color, religion, national origin, sex, age (provided the applicant has the capacity to contract) or marital status, (B) because all or part of the applicant's income derives from any public assistance program, or (C) because the applicant has in good faith exercised any right under ECOA.

#### **5.2 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 in accordance with the requirements of ECOA. User further represents and warrants that User will rely upon its own counsel to ensure compliance with ECOA and other applicable laws.

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

## **6. Reliance on the System; Nondisclosure of Output.**

User represents and warrants that it will not rely exclusively on the System in determining whether or not to extend credit to any applicant. The output from this System is only a recommendation as to whether the proposed loan is eligible for a Rural Development guarantee.

## **7. Assignment.**

User may not assign any of its rights or obligations under this Agreement in any manner whatsoever without Rural Development's prior written consent.

## **8. Term; Termination.**

(a) This Agreement will commence on when Rural Development 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 11(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 Rural Development terminates this Agreement without cause User will not be entitled to receive any damages.

## **9. Access to System Output by Sellers and Mortgage Service Providers.**

Rural Development hereby consents that User may permit any authorized Mortgage Service Provider, approved by Rural Development to have access to System output on User's behalf. Any such access must be effectuated in accordance with the terms of the User Instructions.

## **10. Confidential Information.**

(a) The parties agree that the following information, to the extent that it or any of it is disclosed to User by Rural Development, 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 Rural Development'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 Rural Development all copies of any confidential information previously delivered to User or otherwise in User's possession or control; provided that, at Rural Development's request, User will immediately destroy all such information and documentation and all copies received from Rural Development 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 Categorization and similar output in User's file with respect to the loan to which such output relates.

(c) Rural Development will protect confidential information in accordance with Federal privacy laws.

## **11. Miscellaneous.**

(a) This Agreement is the complete and exclusive statement of the parties' agreement with respect to the terms of User's right to use 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 Rural Development under the terms of this Agreement, including, but not limited to, notice from Rural Development 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 in paper or "hard copy" form 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 Rural Development 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) Rural Development 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.**

(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 exhibits are hereby incorporated by reference into this Agreement. Any conflict between the provisions of such exhibits 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," "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 Rural Development.

(i) Rural Development has entered into this Agreement pursuant to the signature authority of its Deputy Administrator for Single Family Housing. Rural Development represents and warrants that said officer has complete authority to enter into this Agreement on behalf of Rural Development, and that

Rural Development shall be bound by all of the terms of this Agreement upon User's execution of this Agreement by this officer. 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.

(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 regulations, power failures, earthquakes, or other disasters.

Exhibits:

A -- Glossary of Terms

## Exhibit A - Glossary of Terms

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

1. **Applicant(s) or Borrower(s):** The borrower(s) or proposed borrower(s) under a Loan Application.
2. **Approved Lender:** A lender with an approved lender's agreement from Rural Development.
3. **Broker:** A person or entity that specializes in loan originations and is compensated by commission for matching borrowers with lenders. A broker performs some or most of the loan processing functions, such as assisting in the completion of loan applications and ordering and obtaining credit reports, appraisals, and title reports, but does not fund loans or originate loans in its own name.
4. **Correspondent:** An entity that, in the ordinary course of business, sells the mortgage loans that it funds and originates in its own name to other lenders. A correspondent performs similar loan processing functions as a broker.
5. **eAuthentication:** A Government-wide security access system.
6. **ECOA:** The Equal Credit Opportunity Act.
7. **Loan Application:** The loan and Applicant or Borrower information that User enters into the System in order to obtain a Rural Development guarantee loan recommendation.
8. **Mortgage Service Provider:** An entity engaged to perform, for a Broker or Correspondent, part of the mortgage application processing, underwriting, funding or post-closing functions, but not any activities related to obtaining an application for a Home Mortgage. The entity is typically paid on a fee basis for services performed, with the payment of fees not being contingent on mortgage approval or closing.
9. **Security Administrator:** The employee assigned by the User to delegate access to the System for user identification numbers and passwords for specific employees or agents of the User.
10. **Subscriber Number:** The identification number provided by each credit repository to a User ordering credit information from the repository.
11. **System:** The Guaranteed Underwriting System (GUS), an automated underwriting system owned by Rural Development. The term "System" also includes the 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 Rural Development, User or a third party.
12. **User Instructions:** Instructions for use of the System, given by Rural Development 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 Rural Development's Internet site.
13. **Home Mortgage:** A home mortgage guaranteed by Rural Development that a Broker, Correspondent, or Mortgage Service Provider, or entity completely or partially originated, processed, underwrote, packaged, funded, or closed.