

# **User Agreement for Single Family Housing Guarantee Lender Loan Closing (LLC)**

## **1.0 Introduction**

This agreement between the U.S. Department of Agriculture (USDA), Rural Development (RD) and Tidemark Federal Credit Union, hereafter known as Lender, prescribes the general procedures and policies to be followed when the USDA Lender Interactive Network Connection (LINC) is used to enter the Guaranteed Loan System (GLS) for submitting electronic data in lieu of the paper documents normally associated when conducting business with Rural Development.

The Lender and Rural Development are parties to an Agreement for "Participation in Single Family Housing Guaranteed/Insured Loan Programs of the United States Government" (referred to as the Lender Agreement). The Lender and Rural Development desire to adopt mechanisms that facilitate and streamline the delivery of the "Loan Note Guarantee" through the use of electronic communications by or between the Lender and Rural Development.

The Lender and Rural Development intend that such electronic communications shall, to the same extent as executed original written documentation, constitute their valid, enforceable agreement with respect to the subject matter thereof.

## **2.0 Definitions**

USDA LINC – the U.S. Department of Agriculture Lender Interactive Network Connection website.

## **3.0 Use of Electronic Transmissions**

The Lender and Rural Development agree that, in connection with this Agreement each agrees to be bound by the delivery or receipt of information via an electronic transmission.

The Lender agrees to be bound by, and that Rural Development is authorized to conclusively rely on, the accuracy, genuineness and good faith of the loan closing transaction received by Rural Development from the Lender.

## **4.0 System Ownership.**

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

Rural Development represents that Rural Development has the right to grant to User the rights granted by this Agreement.

### **4.2 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.

## **5.0 Terms and Conditions**

- (a) Electronic communications between Rural Development and this Agreement will occur via direct submission to the GRH LINC.
- (b) The Lender will designate a Security Administrator (SA). The SA will be responsible for assigning roles and maintaining user account information for all LINC users identified by the Lender. The SA will be required to enter all identified users in the Application Authorization Security Management (AASM) system through USDA LINC to allow user to complete electronic transactions. The transactions are based on requirements identified in the Lender's Agreement and 7 CFR 1980-D.
- (c) All electronic documents transmitted to Rural Development will be considered delivered at the time of receipt by Rural Development's processor.
- (d) Lender will be able to submit or exchange electronic or paper business documents any time during the normal operating hours of Rural Development's Electronic Web Server.
- (e) Lender agrees to maintain documentation that substantiates the electronic data transmission

for six years. Lender agrees to provide supporting documentation when requested by RD to complete the electronic transaction.

(f) The Lender signer of this Agreement should have the equivalent or higher authority as the signer of the Lender Agreement of record.

(g) Lender will notify Rural Development in writing within 15 calendar days after any change of company name or corporate charter that could necessitate a change in ID number. Upon receipt a new Agreement will be prepared and forwarded to the Lender for signature.

(h) Rural Development will notify the Lender at least 60 days in advance of any change in the technical provisions of the Agreement, such as the Guaranteed Rural Housing LINC, URL address, document format or version.

(i) All notifications required under this Agreement will be submitted in writing to the Lender contact indicated below in the approval section of this agreement.

(j) This agreement constitutes the entire agreement between the parties. No changes in the terms and conditions of this agreement shall be effective unless approved and signed by all parties. In the event a court of competent jurisdiction negates any of the provisions of this agreement, the remainder of the agreement will remain in full force and effect.

(k) In any case, where there is a conflict between this agreement and applicable RD laws or regulations, the laws or regulations will control.

(l) Individual user identification numbers and passwords may not be transferred between Lender employees and the Lender shall ensure that such transfers do not occur.

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

### **6.1 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.

### **6.2 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.

## **7.0 FORCE MAJEURE**

None of the parties in this agreement will be liable for failure to properly conduct electronic transmission of data in the event of war, accident, riot, fire, flood, epidemic, power outage, labor dispute, act of God, act of public enemy, malfunction or inappropriate design of hardware or software, or any other cause beyond such party's control. If, in RD's judgment, standard business cannot be conducted by USDA LINC and/or GLS, RD will, at its discretion, return to paper-based transactions, as appropriate, for processing the business documents described in this agreement.

## **8.0 Legal Compliance.**

### **8.1 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.

### **8.2 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.

## **9.0 Electronic Payment System**

Lenders who execute this Agreement also agree to utilize an electronic payment system via Pay.gov for the purpose of submitting guarantee fees in association with the electronic Lender Loan Closing transaction.

Pay.gov is a secure government-wide Internet collection portal that is used by the federal government to collect non-tax revenue. Pay.gov allows Lenders to make payments via Automated Clearing Housing (ACH) and is free-of-charge to our Lenders. The application is web-based and Lenders have access to their accounts from any computer with Internet access. The pay.gov site is available 24 hours a day, 7 days a week (holidays included) for users to submit payments; however ACH payment processing follows the Federal Reserve holiday schedule. Timing of credit to Rural Development for payment made may take up to 48 hours. A request for Loan Note Guarantee cannot be granted until Rural Development receives payment and supportive loan closing documentation. Lenders should plan accordingly.

## **10.0 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.

## 11.0 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.

## 12.0 Approval

<b>Tax Identification Number (TIN):</b>		51-0097941	
<b>Complete legal name of Business [aka: User]</b>		Tidemark Federal Credit Union aka Tidemark FCU	
<b>Street address of User</b> (Street, City, State, Zip Code)		1941 Bridgeville Hwy , Po Box 1800 Seaford, DE 19973	
<b>Name of person executing Agreement for User</b>		Pam Fleurette	
<b>Title of person executing Agreement for User</b>		CEO	
<b>Date of Execution</b>		2-08-2018	

<b><u>Lender Security Administrator (SA) Information</u></b>			
<b>Name of SA #1</b>	Vince Setnar	<b>Name of SA #2</b>	Pam Fleurette
<b>E-mail of SA #1</b>	vsetnar@tidemarkfcu.org	<b>E-mail of SA #2</b>	pfleurette@tidemarkfcu.org
<b>Phone Number SA #1</b>	(302) 629-0100	<b>Phone Number of SA #2</b>	(302) 629-0100
<b>Fax Number of SA #1</b>	(302) 629-2583	<b>Fax Number of SA #2</b>	(302) 629-2583
<b>e-Auth ID of SA #1 *</b>		<b>e-Auth ID of SA #2 *</b>	

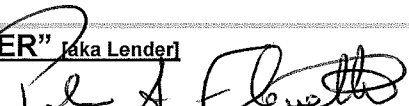
\* A Level 2 e-Auth ID can also be used for Level 1 eAuth system access.  
Level 2 e-Auth IDs can be created online, and activated via email at <http://www.eauth.egov.usda.gov>. The eAuth ID must be activated by clicking on the activate link in the email the user receives after applying for an eAuth account. Additionally, your Level 2 activation cannot occur without identity proofing by a USDA Local Registration Authority (LRA). An LRA location can be located online at <http://www.eauth.egov.usda.gov/>, Find LRA. If unsuccessful finding an LRA please send an email request to [RD.DCFO.GLB@stl.usda.gov](mailto:RD.DCFO.GLB@stl.usda.gov) stating identity proofing is needed, and providing the users name, telephone number, and e-Auth ID they created.

**Security Administrator(s) identified are valid for:**

☐ Only the location listed in the address above

☒ All locations/branches of the organization (check only one)

<p><b><u>"USER" [aka Lender]</u></b></p> <p>By  Signature</p> <p>Title CEO</p> <p><small>By executing this form, I confirm I am a duly authorized officer of the company and represent and warrant the information in this form is complete and accurate.</small></p>	<p><b><u>"Rural Development"</u></b></p> <p>By Signature Authority of the Deputy Administrator, Single Family Housing</p>
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<b>Email Address for Lender Loan Closing Agreement:</b>	<a href="mailto:RD.DCFO.GLB@stl.usda.gov">RD.DCFO.GLB@stl.usda.gov</a>
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**AGREEMENT FOR PARTICIPATION  
IN SINGLE FAMILY HOUSING  
GUARANTEED/INSURED LOAN PROGRAMS  
OF THE UNITED STATES GOVERNMENT**

**INTRODUCTION**

The purpose of this Agreement is to establish the Lender as an approved originator, servicer, or holder of single family housing loans for the Rural Housing Service (RHS), and to provide general terms and conditions for originating and servicing such loans.

Agency/Department Rural Housing Service	Participating Lender: Tidemark Federal Credit Union
Address:	Tax Identification No.: 51-0097941
	Home Office Address: 1941 Bridgeville Hwy <i>PO Box 1800</i>
	Telephone No.: (302) 629-0100

At the time of this agreement, the Lender is designated as an RHS Approved Lender, and has the authority assigned to such Lenders under Agency regulations. The Agency may, in its own discretion, change such designation upon written notification to the Lender.

**PART I - GENERAL REQUIREMENTS**

This part sets forth the requirements for participation in single family housing guaranteed/insured loan programs of the Federal Government. Notwithstanding any other provisions of this Agreement, should there be a conflict between this Agreement and any statute or Agency rule or regulation, the latter shall prevail.

**A. Duties and Responsibilities of the Agency**

1. Payment on Claims. The Agency agrees to make payment on its claims in accordance with the terms of the guarantee/insurance and consistent with Agency regulations.
2. Information on Regulations and Guidelines. The Agency shall make all reasonable efforts to provide the Lender with information concerning regulations and guidelines that the Lender is required to follow to be in compliance with the Agency's guaranteed/insured loan program.
3. Personnel Available for Consultation. The Agency shall make personnel available for consultation on interpretations of Agency regulations and guidelines. The Lender may consult with Agency personnel regarding unusual underwriting, loan closing, loan servicing, and loan liquidation questions.
4. Agency Review of Lender Actions. In conducting reviews of specific actions taken by the Lender, the Agency shall determine the propriety of any decision made by the Lender based on the facts available at the time the specified action was taken. It is understood by the Agency and intended by this Agreement that the Lender has the authority to exercise reasonable judgment in performing any non-supervised act within its authority. However, the Agency reserves the right to question any act performed or conclusion drawn by the Lender which is inconsistent with this Agreement or Agency regulations or guidelines.
5. Lender Right to Appeal Adverse Actions. The Agency shall clearly state in its regulations which adverse actions taken by the Agency may be appealed by the Lender. The regulations shall provide procedures and requirements for such appeals.

**B. General Requirements for the Lender**

1. Eligibility to Participate. The Lender, to be an approved participant with the Agency in its guaranteed/insured loan program, must be a corporation or other acceptable legal entity, as defined by Agency regulations, with legal authority to participate in the program.
  - The Agency will determine whether the Lender meets all eligibility requirements for participation in the Agency's guaranteed/insured loan program.
  - The Lender must continue to meet the Agency's lender eligibility requirements at all times, as determined by the Agency, during the terms of this Agreement.
2. Knowledge of Program Requirements. The Lender is required to obtain and keep itself informed of all program regulations and guidelines, including all amendments and revisions of program requirements and policies.
3. Notification. The Lender shall immediately notify the Agency in writing if the Lender:
  - Ceases to possess the minimum net capital and/or an acceptable level of liquidity/working capital, as required under this Agreement;
  - Becomes insolvent;
  - Has filed for any type of bankruptcy protection, has been forced into involuntary bankruptcy, or has requested an assignment for the benefit of creditors;

- Has taken any action to cease operations, or to discontinue servicing or liquidating any or all of its portfolio guaranteed/insured by the Agency;
  - Has changed its name, location, address, tax identification number, or corporate structure;
  - Is no longer maintaining the fidelity bond and/or errors and omissions policy required by the Agency;
  - Has become delinquent on any Federal debt, or has been debarred, suspended, or sanctioned in connection with its participation in any Federal guaranteed/insured loan program; or
  - Has been debarred, suspended, or sanctioned in accordance with any applicable state licensing or certification requirement or regulation.
4. Financial Responsibilities. The Lender and its principals shall demonstrate financial responsibility and sound business practices.
- The Lender shall satisfy, at all times, any requirement for minimum net capital and/or acceptable level of liquidity/working capital specified in Agency regulations.
  - In accordance with Agency regulations, the Lender shall maintain, at all times, a fidelity bond and/or a mortgage servicing errors and omissions policy, at its own expense, to cover losses incurred as a result of dishonest, fraudulent or negligent acts of employees or other parties acting on behalf of the Lender. The amount of coverage shall be defined by Agency regulations. The Agency may, as required, be listed as "loss payee" on the policy.
5. Employees. The Lender shall maintain a staff that is well trained and experienced in origination and/or loan servicing functions, as necessary, to assure its capability in adequately performing its responsibilities under this Agreement and Agency regulations and guidelines.
6. Facilities. The Lender shall operate its facilities and branch offices in a prudent and businesslike manner.
7. Policies. The Lender is required to establish and maintain adequate written policies for loan origination and servicing, including plans for quality control monitoring of production and servicing activities. Plans will be subject to review upon the request of the Agency to ensure the plans meet the Agency's requirements.
8. Escrow Accounts. The Lender must establish separate mortgage escrow accounts, as required by the guaranteed/insured loan program and by applicable Federal and State laws and regulations. All escrow accounts must be fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. Lenders without the capacity to escrow funds must have a process in place that ensures taxes, insurance and annual fees are paid when due.
9. Reporting Requirements. The Lender recognizes that the Agency, as guarantor/insurer, has a vital interest in ensuring that all acts performed by the Lender regarding the subject loans are performed in compliance with this Agreement and Agency regulations and guidelines. Information on the status of guaranteed/insured loans is necessary for this purpose, as well as to satisfy budget and accounting reporting required by the Department of the Treasury and the Office of Management and Budget.
- The Lender agrees to electronically provide the Agency with all data required under Agency regulations and any additional information necessary for the Agency to monitor the health of its guaranteed loan portfolio, and to satisfy external reporting requirements. Examples of data which may be required are:
    - The number and amount of guaranteed/insured loans outstanding, the number and dollar amount of collections on loans outstanding during the reporting period, and the number and amount of guarantee/insured loans made for the reporting period,
    - An aging schedule showing the number and amount of past due loans in each of the following categories: (1) 31-60 days, (2) 61-90 days, (3) 91-180 days, and (4) over 180 days; or
    - The number and amount of the past due loans rescheduled during the reporting period.
  - The Lender also agrees to provide to the Agency, as requested or as required by regulations:
    - Copies of audited financial statements, reports on internal controls, and management letters of the Lender, which should be completed at least on an annual basis,
    - Copies of compliance audits or agreed-upon procedures letter conducted of any underwriting and/or servicing function performed by the Lender; and
    - Such other information as may be required for the Agency to properly monitor the Lender's performance.

### C. Underwriting Requirements

1. Responsibility. The Lender is responsible for following the requirements for originating, servicing, and collecting all loans under the Agency's guaranteed/insured loan program. The Agency shall specify which actions performed by the Lender are non-supervised acts and which acts require the Agency's review and approval. Both supervised and non-supervised actions must be performed in accordance with the Agency's regulations or guidelines.
2. Origination/Underwriting Process. The Lender shall, in accordance with Agency's regulations and guidelines:
  - Determine if loan applicants meet the general eligibility requirements of the Agency's guaranteed/insured loan program;
  - Determine whether or not the applicant is delinquent on any Federal debt. The Lender shall use private credit reports and any credit history available from a Federal database to ascertain whether the applicant has a delinquent Federal debt outstanding. If the applicant has a Federal debt delinquency, the Lender must suspend processing of the application. In accordance with Agency guidelines, the Lender may resume processing of the application if the applicant provides documentation from the Federal agency holding the delinquency that the debt has been repaid or that the delinquency has been otherwise resolved. The loan file must

- include appropriate documentation;
  - Ensure that the value of any collateral property or property to be purchased is determined by a qualified appraiser, including a state licensed or certified appraiser when required by Agency regulations. Lenders are responsible for being aware of and satisfying any other appraisal requirements in Federal and state law or regulation that exceed Agency requirements; and
  - Underwrite loans after viewing and determining the acceptability of the applicant's credit history and loan repayment ability, and the adequacy of any collateral securing the loan.
3. Origination – Disapproval. The lender will disapprove applications where the applicant does not qualify for a guaranteed/insured loan under the requirements and procedures of the Agency.
  4. Legal Closing. All loans guaranteed/insured by the Agency shall be closed by attorneys, escrow departments of lending institutions, or other person(s) or entities skilled and experienced in conducting loan closings. The Lender shall:
    - Ensure that documents, including the mortgage and any security agreements, chattel mortgagees or equivalent documents relating to it, have been properly signed, are valid, and contain terms enforceable by the Agency;
    - Ensure that a clean and defensible title is obtained, that is, the property is free and clear of all encumbrances and liens, unless waived in writing by the Agency;
    - Ensure that all closing documents required to be recorded are submitted to recording offices in a timely and accurate manner after closing;
    - Ensure that security interests in collateral are perfected according to applicable regulatory requirements and procedures;
    - Obtain title insurance policy or other title evidence acceptable to the Agency, in accordance with Agency guidelines;
    - Ensure that all required hazard insurance is obtained in accordance with Agency regulations;
    - Collect all fees and costs due and payable by the borrower in the course of the loan transaction and disburse payment directly to the responsible parties for services rendered;
    - Ensure that all loan proceeds are used as authorized;
    - The Lender must provide the Agency with documentation that all closing conditions have been met within 30 days of loan the closing. The Lender will be responsible for electronically reporting the loan closing as provided by the Agency.
    - The Lender will utilize an automated method of documentation delivery, as provided by the Agency.
    - Closing documentation must be complete, accurate and true.

#### **D. Servicing Requirements**

1. Responsibilities. Servicing to be performed by the Lender on Agency guaranteed/insured loans must be at least equal in quality to that servicing provided by a prudent institutional lender for its own portfolio of similar loans which are not guaranteed/insured by the Government. The Lender, or its authorized agent, must take prudent steps to collect and apply loan payments, protect and preserve the the loan if repayment cannot be reasonably assured through the use of collections tools or loan adjustments permissible under Agency regulations or guidelines. The Lender shall maintain all records required to document or properly service a loan.
2. Payments. Payments from the borrower shall be processed upon receipt under Agency regulations or guidelines. If payments are collected for hazard insurance, real estate taxes and payment towards an annual fee, the lender must ensure escrows are sufficiently adequate to cover the cost of premiums and fees. A lender who is not able to hold funds in escrow must have a sufficient plan that ensures premiums and fees are paid.
3. Insurance. The Lender is responsible for maintaining hazard insurance if the borrower fails to do so to the extent required by Agency regulation. The Lender shall take all necessary steps, as required by Agency regulation, to maintain the collateral when the borrower fails to do so.
4. Special Requests. The Lender shall consider any requests for loan subordination, release of collateral, or reduction or temporary suspension of loan payments, in accordance with Agency requirements.
5. Delinquent Accounts. The Lender shall make a diligent effort to contact and collect payments from borrowers who fail to make payments as agreed; assure that collateral is maintained and protected; and work with borrowers to arrange a plan to cure the delinquency, if appropriate, as provided for by Agency regulations.
6. Serious Default/Foreclosure. When a mortgage is in serious default, (i.e., over 90 days delinquent), the Lender must take prompt and diligent action. Actions to obtain property title through foreclosure or voluntary conveyance, as well as all incident actions, must be consistent with applicable laws and Agency regulations. The Lender is expected to preserve and protect the property and title in accordance with pertinent laws, and Agency regulations and guidelines.
7. Loan Servicers. The Lender may transfer and/or assign the right to service single family housing guaranteed/insured loans only to servicers meeting applicable participation requirements and performance standards. Such servicers must agree to provide, either directly to the Agency or through the Lender, information necessary for the Lender to comply with the reporting requirements of this Agreement, as well as permit reviews of their operations under Paragraph E of the Part. Servicers may resell the loans only to qualified servicers.
8. Indemnification. The Lender may be required to indemnify the Agency for a loss paid if payment under the guarantee was made within 24 months of loan closing or fraud/misrepresentation was involved in connection with the origination of the loan, regardless of the age of the loan.

#### **E. Agency Reviews of Lender's Operations**

The Agency shall have a right to conduct reviews, including on-site reviews of the Lender's operations and the operations of any agent of the Lender, for the purpose of verifying compliance with this Agreement and Agency regulations and guidelines. These reviews may include, but are not limited to: audits of case files, interviews with owners, managers and staff; audits of collateral; and inspections of the Lender's and/or its agent's underwriting, servicing and/or liquidation guidelines. The Lender and/or its agents shall provide access to all pertinent information to allow the Agency, or any party authorized by the Agency, to conduct such reviews.

#### **F. Conformance to Standards**

1. Standards. The Lender shall conform to all originating, servicing, reporting, and operational standards imposed by the Agency in the execution of its guaranteed/insured loan program. Additionally, the Lender shall comply with all other applicable Federal and State laws, regulations, and guidelines.
2. Determination of Non-Conformance. The Agency shall carefully consider the facts and circumstances available when determining whether or not the Lender has acted in non-conformance with the applicable standards. The Agency's determination may be as a result of, but not limited to, a review of the following:
  - Conformance in meeting financial criteria of the Agency;
  - Adequacy in meeting the standards of the Agency, including origination, servicing, collection of fees and loan payments, and protection of collateral;
  - Adherence to the reporting requirements of the Agency;
  - Evidence that the Lender is operating in a sound and prudent businesslike manner;
  - Performance ratios of the portfolio compared to industry performance ratios for delinquency and default; and
  - Audit findings of on-site reviews conducted by the Agency of the underwriting and/or servicing performed by the Lender or the financial condition and viability of the Lender.
3. Agency Action. If the Lender is found to be in non-conformance with Federal or State law or regulation, Agency guidelines, or terms of this Agreement, the Agency reserves the right to take action in accordance with its laws and regulations.

#### **G. Disclosure and Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions**

This disclosure and certification is required by the regulations at 2 CFR Parts 180 and 417. Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

1. The prospective primary participant (the Lender) certifies to the best of its knowledge and belief, that it and its principals:
  - a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by a Federal department or agency;
  - b. have not within a 3 year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph(1)(b) of this certification; and
  - d. have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause of default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant may attach an explanation to this proposal which the Agency will consider in determining whether to enter the transaction.
3. The prospective primary participant (the Lender) will comply with subpart C of 2 CFR part 180 as a condition of participation in the transaction, and will communicate this requirement to comply with subpart C of 2 CFR part 180 to persons at the next lower tier with whom the primary tier participant may enter into covered transactions.

### **PART II - DURATION AND MODIFICATION**

#### **A. Duration, Termination and Extension of Agreement**

1. Termination by the Agency. This Agreement shall be valid unless terminated by the Agency, in accordance with Agency requirements.
2. Termination by the Lender. This Agreement may be terminated by the Lender at any time, in accordance with program requirements.
  - The Lender shall remain obligated to service and liquidate the guaranteed/insured loans remaining in the portfolio. Unless and until the Agency or the Lender transfers the guaranteed/insured loans to a servicer acceptable to the Agency, all requirements concerning loan management of the Lender and rights of the Agency under this Agreement shall remain in full force and effect.
  - The Lender shall notify the Agency of its intent to terminate the Agreement in accordance with Agency regulations.
3. Effect of Termination on Responsibilities and Liabilities. Responsibilities or liabilities of the Lender that existed before the termination of the Agreement will continue to exist after termination, unless the Agency expressly releases the Lender from any of its responsibilities or liabilities in writing. This is true whether the Agreement was terminated by the Lender or by the Agency.



**B. Entire Agreement**

This Agreement, Parts I through III inclusive, and any regulations or guidelines incorporated by reference, shall constitute the entire Agreement. There are no other agreements, written or oral, regarding the terms contained in this Agreement which are or shall be binding on the parties.

**PART III - ENDORSEMENT**

The undersigned Lender and Agency do hereby agree to the participation requirements and other provisions of this Agreement.

**Lender**

**Agency**

NAME: Tidemark FCU

BY: 

TITLE: CEO

DATE: 2-05-2018

# **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.**

*[Lender/Broker/Correspondent, aka User, must complete all blank spaces below and must sign below for this Agreement to be effective.]*

**Taxing Identification Number (TIN):**

**Complete legal name of Business [aka: User]**

**Street address of User**

(Street, City, State, Zip Code)

Tidemark Federal Credit Union

1941 Bridgeville Hwy, PO Box 1800

Seaford, DE 19973

**Type of User:**    **Approved Lender** ☒

**Broker/Correspondent** ☐ (check one)

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

**Name**

**Address**

**Approved Lender's Signature**

**Approved Lender's Name**

**Approved Lender's Title**

**Tax ID:**

**Name of person executing Agreement for User** Pam Fleurette

**Title of person executing Agreement for User** CEO

**Date of Execution** 2-08-2018

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

**Name of SA #1** Vince Setnar

**E-mail of SA #1** vsetnar@tidemarkfcu.org

**Phone Number SA #1** (302) 629-0100 x 111

**Fax Number of SA #1** (302) 629-2583

**eAuth ID of SA #1 \***

**Name of SA #2** Pam Fleurette

**E-mail of SA #2** pfleurette@tidemarkfcu.org

**Phone Number of SA #2** (302) 629-0100 x 102

**Fax Number of SA #2** (302) 629-2583

**eAuth ID of SA #2 \***

\*Level 1 eAuth IDs and passwords are created online, and activated via email at <http://www.eauth.egov.usda.gov/>. Your GUS activation cannot occur without a valid activated eAuth ID for Lender Security Administrator(s).

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

**"USER" [aka Lender, Broker/Correspondent]**

**By**

Signature

**Title** CEO

By executing this form, I confirm I am a duly authorized officer of the company and represent and warrant the information in this form is complete and accurate.

**"Rural Development"**

**By Signature Authority of the Deputy Administrator,  
Single Family Housing**

**Mailing Address**

**for User Agreement  
to Rural Development:**

**Standard/Priority/Overnight**

USDA, Rural Development  
Chief, Guaranteed Loan Branch  
Telephone: (314) 457-4192 or Toll-free (877) 636-3789  
4300 Goodfellow Blvd., Bldg. 104, South End  
2<sup>nd</sup> Floor, Post H 37  
St. Louis, MO 63120

## **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.