

User Agreement for Single Family Housing Guarantee Lender Loan Closing

1.0 Introduction

This agreement (Agreement) between the U.S. Department of Agriculture (USDA) Rural Housing Service, hereafter known as Agency, and _____, hereafter known as Lender and, together with the Agency, the Parties, prescribes the general procedures and policies to be followed when the USDA Lender Interactive Network Connection (LINC) is used by the Lender to enter the Guaranteed Loan System (GLS) for submitting electronic data in lieu of the paper documents normally associated when conducting business with the Agency.

The Lender and the Agency are parties to an Agreement for "Participation in Single Family Housing Guaranteed/Insured Loan Programs of the United States Government" (RD Form 3555-16, formerly RD Form 1980-16 and referred to as the Lender Agreement). The Lender and the Agency 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 the Agency.

The Lender and the Agency intend that such electronic communications and transactions 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

AASM – Application Authorization Security Management

GLS – Guaranteed Loan System

Party/Parties –Lender and the Agency are individually a Party and together Parties to this Agreement.

SYSTEM – AASM, GLS, USDA LINC, Lender Loan Closing Application, and associated electronic applications accessed via USDA LINC.USDA LINC –U.S. Department of Agriculture's Lender Interactive Network Connection website.

USER –Employee/agent of the Lender accessing the system on behalf of the Lender's organization.

3.0 Use of Electronic Transmissions

The Lender and the Agency 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 acknowledges that the Agency is authorized to conclusively rely on, the accuracy, genuineness and good faith of the loan closing transaction received by the Agency from the Lender.

4.0 System Ownership.

4.1 Agency Representation.

The Agency represents that it 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 the Agency.

5.0 Terms and Conditions

(a) Electronic communications between the Agency and the Lender will occur via direct submission to the USDA LINC.

(b) The Lender will designate a Security Administrator (SA) who will be identified in Section 12 "Approval" hereof. The SA will be responsible for assigning roles and maintaining user account information for all USDA LINC users identified by the Lender. The SA will be required to enter all identified users in the AASM system through USDA LINC to allow user to complete electronic transactions. The transactions are based on requirements identified in the Lenders Agreement and 7 CFR 3555.

- (c) All electronic documents transmitted to the Agency will be considered delivered at the time of receipt by the Agency.
- (d) Lender will be able to submit or exchange electronic business documents any time during the normal operating hours of USDA LINC. Normal operating hours of USDA LINC are located at: <https://usdalinc.sc.gov.usda.gov/msgb/LINCMessageBoard.htm>.
- (e) Lender agrees to maintain documentation that substantiates the electronic data transmission for six (6) years. Lender agrees to provide supporting documentation when requested by the Agency 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 the Agency in writing immediately of any change of company name or corporate charter that could necessitate a change in Lender's Tax ID number. Upon receipt of such notification by the Lender, a new Agreement will be prepared and forwarded by the Agency to the Lender for signature.
- (h) The Agency will notify the Lender at least 60 days in advance of any change in the technical provisions of the Agreement, such as the USDA LINC, URL address, or document format or version.
- (i) All notifications required under this Agreement will be submitted in writing to the User contact indicated below in Section 12 "Approval."
- (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 each of the 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 USDA 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 the Agency's desire to operate the System in a manner that satisfies the performance objectives established by the Agency, as previously communicated by the Agency to User. 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.

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.

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 Agency's judgment, standard business cannot be conducted by USDA LINC and/or GLS, the Agency will, at its discretion, return to paper-based transactions, as appropriate, for processing the business documents normally associated when conducting business with the Agency.

8.0 Legal Compliance.

8.1 Rural Development's Representations and Warranties.

- (a) The Agency 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 Agency represents and warrants that it is collecting Limited Use Information solely for regulatory compliance and similar purposes.
- (c) The Agency represents and warrants that
 - i. The Agency has not and will 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 Consumer Credit Protection Act.

8.2 User's Representations and Warranties.

- (a) Lender 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. Lender 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) Lender represents and warrants that User, or another party acting on behalf of Lender, will provide an adverse action notice to each applicant to whom it determines not to extend credit in accordance with the requirements of ECOA. Lender further represents and warrants that Lender will rely upon its own counsel to ensure compliance with ECOA and other applicable laws.
- (c) Lender also represents and warrants that all information that it has provided to the Agency in the course of registering as a 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 the Pay.gov interface provided by the Agency 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 the Agency for payment made may take up to 48 hours. A request for Loan Note Guarantee cannot be granted until the Agency receives payment and supportive loan closing documentation. Lenders should plan accordingly.

10.0 Assignment.

Lender may not assign any of its rights or obligations under this Agreement in any manner whatsoever without the Agency's prior written consent.

