

## MASTER TERMS AND CONDITIONS

### 1. Introduction.

These Master Terms and Conditions (the "Master Terms"), together with each Schedule and applicable Rate Sheet(s) incorporated by reference into the Master Terms, as the same may be amended, constitute the Software Subscription Agreement (the "Agreement") with respect to (a) the subject matter of each such Schedule, or, (b) if no Schedule is incorporated, with respect to each party's rights and obligations hereunder. With respect to a particular Schedule, the Agreement shall be effective as of the date on which the subject Licensed Application is first made available to Licensee; otherwise, the Agreement shall be effective as of the date set forth on the Fannie Mae Software Subscription Form (or, if the Agreement is executed and submitted by interactive, electronic means, then on the date that it is so submitted to Fannie Mae, according to Fannie Mae's systems and records).

### 2. Definitions.

- 2.1 "Approved Lender" shall mean any mortgage lender that is a party to a Fannie Mae Mortgage Selling and Servicing Contract.
- 2.2 "Authentication Credential" shall mean any data (such as a PIN, digital certificate or password) or device (such as a smart card or other security token) that is issued or assigned to an individual or system from time to time which, when presented by that individual or system, is used by Fannie Mae to authenticate the identity and/or authority of that individual or system for purposes of facilitating access to the Licensed Application.
- 2.3 "Authorized User" shall mean any employee or Independent Contractor of, or system used by, Licensee, who or which, to the extent required by Fannie Mae, Licensee has registered through Fannie Mae's user registration process relating to the Licensed Application and has been issued an active Authentication Credential. The term "Authorized User" refers additionally to any system that constitutes a Third-Party Application (as defined below), but only to the extent such system specifically facilitates Licensee's access to and use of the Licensed Application.
- 2.4 "Corporate Administrator" shall mean an individual empowered by Licensee to legally bind Licensee, including a signatory authority designated as such by Licensee or an individual identified by Licensee as its "Corporate Administrator" for Technology Manager.
- 2.5 "Documentation" shall mean the end-user materials, guides, reports, technical specifications and reference materials that Fannie Mae makes generally available or specifically available to Licensee in connection with the Licensed Application in electronic or hard-copy form.
- 2.6 "Fannie Mae Hotline" shall mean the telephone software support hotline Fannie Mae makes available to Licensee to facilitate the reporting and resolution of Incidents.
- 2.7 "Independent Contractor" shall mean any individual who: (a) is an independent contractor, (b) is actively providing services to Licensee and (c) is registered by Licensee through Fannie Mae's user registration process.
- 2.8 "Licensed Application" shall mean the software and/or database application, including its associated internet user interfaces and structures identified in the first paragraph of each Schedule or addendum to a Schedule (as applicable), or identified elsewhere in the Schedule or addendum as the "Licensed Application." The term "Licensed Application" shall also include any modifications, updates, enhancements and releases to such application which are made accessible to Licensee.
- 2.9 "Licensed Materials" shall mean the Licensed Application and the Documentation.
- 2.10 "Licensee" shall mean the party identified as such on the Fannie Mae Software Subscription Form or, in the absence of such a form, then on the order form or other Fannie Mae contract formation tool associated with the relevant Schedule.
- 2.11 "Losses" shall mean any liabilities, claims, actions, suits, proceedings, judgments, losses, damages, costs and expenses. However, the term "Losses" shall not include legal and other expenses incurred in connection with a claim for which one party seeks indemnification from the other pursuant to the Section of these Master Terms captioned "Indemnification Procedures and Subrogation."
- 2.12 "Marks" shall mean a party's registered or unregistered trade names, trademarks, logos and service marks. Without limiting the generality of the foregoing, Licensee acknowledges that Fannie Mae's Marks include "Fannie Mae<sup>®</sup>," "Desktop Underwriter<sup>®</sup>," "Desktop Originator<sup>®</sup>," "Home Counselor Online<sup>™</sup>," "HCO<sup>™</sup>," "DO<sup>®</sup>," "DU<sup>®</sup>," "Servicing Management Default Underwriter<sup>™</sup>," "SMDU<sup>™</sup>," "Uniform Collateral Data Portal<sup>®</sup>," "UCDP<sup>®</sup>" and "EarlyCheck<sup>™</sup>."
- 2.13 "Nonpublic Personal Information" shall mean personally-identifiable information about any individual person that a party

knows or reasonably should know has not been made available to the general public, or that is covered by applicable privacy, security, or security breach notification laws or regulations, including without limitation, the Gramm-Leach-Bliley Act.

- 2.14 "Performance Incident" shall mean (a) any irregularity, error, problem or defect resulting from an incorrect functioning of the Licensed Application if such irregularity, error, problem or defect renders the Licensed Application incapable of meeting the material specifications contained in its Documentation or causes incorrect functions to occur, or (b) an incorrect or incomplete identification, statement or diagram in the Documentation that causes the Documentation to be inaccurate or incomplete in any material respect.
- 2.15 "Proprietary Information" shall mean (a) information relating to technical specifications, product development strategy and activity, pricing and financial information, designs, patents, inventions, improvements, writings and other works of authorship, trade secrets, drawings, models, software (including source code and object code), algorithms, and flow charts and other documentation, (b) all other confidential, proprietary or trade secret information which a reasonable person employed in the mortgage industry would recognize as such, or which is specifically designated as confidential, and (c) any compilation or summary of information or data that is itself Proprietary Information. Notwithstanding the above, "Proprietary Information" does not include Nonpublic Personal Information.
- 2.16 "Rate Sheet" shall mean an itemization of rates, fees and/or charges related to the Licensed Application or consulting services that is made available to Licensee in reference to this Agreement.
- 2.17 "Schedule" shall mean any supplement to the Master Terms that is (a) specific to one or more Licensed Applications or service and (b) incorporated into the Master Terms by its terms or by the terms of an associated order form or other contract formation tool.
- 2.18 "Security Incident" shall mean any instance of unauthorized access to, or use, disclosure, alteration, transfer, or destruction of Nonpublic Personal Information.
- 2.19 "Subscription Fees" shall mean all fees and charges set forth or referenced in (a) Section 7.1, (b) Part II of any Schedule or Addendum, and (c) any Rate Sheet.
- 2.20 "Third-Party Application" shall mean any product, service, system, application and/or internet site integrated to or interfaced with the Licensed Application that is owned or operated by a Third-Party Provider.
- 2.21 "Third-Party Licensor" shall mean any third party that licenses or otherwise conveys to Fannie Mae the right to use, distribute or make available any component of the Licensed Materials or any other data, services, software or other materials.
- 2.22 "Third-Party Provider" shall mean any third party that provides business, technology and/or other products or services within the mortgage industry.

### **3. Grant of Rights and Imposition of Obligations.**

- 3.1 License. Subject to the terms and conditions of the Agreement and compliance therewith by Licensee, during the term of the Agreement, Fannie Mae grants Licensee a non-exclusive, non-transferable license to (a) download (if applicable), access and use the Licensed Application through its Authorized Users only, and (b) use the associated Documentation. Unless otherwise provided in the relevant Schedule, the Licensed Application is licensed to Licensee on a company-wide subscription basis.
- 3.2 Right to Copy Documentation. Licensee may copy the Documentation (other than the documentation of Third-Party Licensors) to the extent necessary to exercise the foregoing license. Licensee shall reproduce and include Fannie Mae's trademark, trade name, copyright and other proprietary rights notices, legends, symbols or labels appearing on or in the Documentation, and all copies shall be subject to all terms, conditions and obligations set forth in or arising under the Agreement.
- 3.3 Restrictions on Use. The foregoing rights to access and use the Licensed Materials and to copy the Documentation shall be subject to the following restrictions, unless otherwise expressly agreed by Fannie Mae in writing:
- (a) Licensee shall not copy or allow copies of the Licensed Materials to be made, except for copies of the Documentation as specifically authorized under the Agreement;
  - (b) Licensee shall only access and use the Licensed Materials for its own internal business purposes. Without derogating from the generality of the foregoing, (i) Licensee shall not access, use or allow others to access or use the Licensed Materials in a multiple-use arrangement or as part of a service bureau, and (ii) Licensee shall only access and use the Licensed Materials in support of its mortgage industry activities;
  - (c) Licensee shall not resell, sublicense, distribute, allow access to or otherwise provide or make available for any purpose any component of the Licensed Materials to any person, firm or entity;
  - (d) Licensee shall not attempt to disassemble, decompile, circumvent any technological measure that effectively

controls access to, or reverse engineer the Licensed Application, or otherwise engage in any conduct designed or intended to interfere with the operation of the Licensed Application, except to the extent that such activity is expressly permitted by applicable law;

- (e) Licensee shall not modify, alter, translate or create derivative works based upon the Licensed Materials;
- (f) Licensee shall only access and use the Licensed Materials in the United States, Guam, the Virgin Islands and Puerto Rico; and
- (g) Licensee shall only access and use the Licensed Materials for their intended use, as described in the Documentation.

3.4 Schedule(s). The parties shall enter into a Schedule for each Licensed Application and any Documentation to be licensed hereunder. Each Schedule shall (a) be executed by a Corporate Administrator of Licensee and (b) be effective as of the date on which the subject Licensed Application is first made available to Licensee (or, where multiple Licensed Applications are licensed under a single Schedule, the date on which any of those Licensed Applications are first made available to Licensee), which shall be deemed to constitute Fannie Mae's acceptance of the Schedule. Nothing in this Agreement shall serve to obligate Fannie Mae to accept and enter into any Schedule with Licensee.

3.5 Unauthorized Representations. Without the express prior written consent of Fannie Mae, Licensee agrees not to make any representations, statements or suggestions (a) that purport to be or might reasonably be construed to be made on behalf of Fannie Mae or its Third-Party Licensors, (b) that Fannie Mae endorses Licensee's products or services or (c) regarding the capabilities of the Licensed Application other than those made by Fannie Mae or its Third-Party Licensors in the most recent version of the Documentation.

#### 4. Ownership of Licensed Materials.

4.1 Ownership. Licensee agrees that title and all ownership rights to the Licensed Materials and all copies of the Documentation made by Licensee hereunder, and any and all copyrights, trademarks, trade names, trade secrets or patent rights therein shall reside in Fannie Mae or its Third-Party Licensors, as the case may be. Licensee further acknowledges that (a) the Licensed Materials are protected by copyright and other intellectual property rights under applicable laws and international treaties, and (b) Licensee has no rights in the Licensed Materials, except those expressly granted by the Agreement.

4.2 Protection. Licensee will take all reasonable measures requested by Fannie Mae, and/or as otherwise provided in the Agreement, to protect the Licensed Materials from any access, use, reproduction, publication, disclosure or distribution, except as specifically authorized by the Agreement.

#### 5. Rights and Responsibilities of the Parties.

5.1 Hardware; Software; Alternative Systems. Licensee shall be exclusively responsible for (a) providing all materials, including, without limitation, hardware, software and any Third-Party Application necessary for accessing and using any Licensed Application, and (b) providing alternative systems when the Licensed Application is not available.

5.2 Third-Party Applications and Providers. Licensee acknowledges that it may, directly or indirectly, gain access to findings, data, information, material or functionality through Third-Party Applications, and that the Licensed Application may enable transactions between Licensee and Third-Party Providers. In the event that Licensee gains such access or participates in such transactions, Licensee acknowledges and agrees that (a) such Third-Party Providers are entities that are separate from and independent of Fannie Mae and that Fannie Mae makes no representations or warranties relating to Third-Party Providers, Third-Party Applications, or any other product, service, internet site, or other functionality operated by Third-Party Providers (or any data or information provided by any of them), including, but not limited to representations or warranties as to any Third-Party Provider's compliance with laws and representations or warranties as to site availability, (b) such Third-Party Providers and Fannie Mae are not partners, joint venturers, representatives or agents of each other, (c) neither Fannie Mae nor any such Third-Party Provider has any right, power or authority to enter into any agreement for or on behalf of the other, or to incur any obligation or liability, or to otherwise bind the other, (d) any agreement between Licensee and any Third-Party Provider (to which Fannie Mae is not also a party), including but not limited to any licensing, data or other agreement between the Third-Party Provider and Licensee, shall not be binding upon Fannie Mae, and (e) the applicable or relevant liability limitations, protections and rights afforded to Fannie Mae, and the applicable or relevant restrictions and responsibilities imposed upon Licensee, all under the Agreement, shall be construed to apply to the relevant Third-Party Provider(s) and Licensee, respectively, in relation to Licensee's access to or participation in Third-Party Provider sites, systems or services (including, but not limited to, any Third-Party Application) to the fullest extent practicable under the circumstances, including, but not limited to, the provisions of the Agreement relating to confidentiality, liability limitation, disclaimers, indemnification, publicity, intellectual property protection and ownership and compliance with laws. The inclusion of any link to or integration or interface with any Third-Party Application will not constitute or imply any affiliation with, or sponsorship, endorsement or approval by Fannie Mae of the Third-Party Application or its Third-Party Provider, or any investigation, verification or monitoring by Fannie Mae of any information contained in any Third-Party Application. In no event shall Fannie Mae be responsible for any information contained in such Third-Party Application, including without limitation, its formatting, screening or display of data, or for Licensee's use of or inability to use such Third-Party

Application. Access to any Third-Party Application is at Licensee's risk, and Licensee should understand that linked internet sites (including Third-Party Applications) may have practices, terms and policies, including those pertaining to privacy, that are different from those of Fannie Mae. Fannie Mae is not responsible for such practices, terms and policies, and specifically disclaims any liability for any of them. Fannie Mae and its Third-Party Licensors make no representations or warranties regarding (i) the availability or timing of any availability of any interface between the Licensed Application and any third-party software and/or systems (including the Third-Party Applications), or (ii) the availability of or access to or by any specific provider of third-party software and/or systems (including the Third-Party Applications). Further, Licensee acknowledges and agrees that (A) Fannie Mae and its Third-Party Licensors will in no way be responsible for any Losses that may result from Licensee's use of any Third-Party Application, despite the fact that any such Third-Party Application may interface with the Licensed Application, or that Fannie Mae may have provided installation or integration services with respect to the same, and (B) if and to the extent required by Fannie Mae, Licensee shall maintain a direct, independent contractual relationship with any Third-Party Provider relative to Licensee's access to and/or participation in Third-Party Application(s) provided by such Third-Party Provider.

5.3 Rights in Improvements. Notwithstanding any provision to the contrary in the Agreement, Fannie Mae shall be the sole and exclusive owner of, and Licensee hereby assigns and agrees to assign to Fannie Mae all rights in (a) any changes, modifications, upgrades or enhancements, in design, functionality or otherwise, to the Licensed Materials, Fannie Mae's internet sites and/or any successor products, systems or sites, and (b) any of Licensee's proposed or suggested changes, modifications, upgrades or enhancements, in design, functionality or otherwise, to the Licensed Materials, Fannie Mae's internet sites and/or any successor products, systems or sites, without any recourse or obligation to Licensee. Licensee acknowledges and agrees that Fannie Mae shall be under no obligation to consider or implement any changes, modifications, upgrades or enhancements recommended or requested by Licensee.

5.4 Rights in Data. Notwithstanding the provisions of Section 8, Fannie Mae, its agents and contractors may use, reproduce, distribute and retain all data generated by, submitted to or evaluated utilizing the Licensed Application and all other data residing on Fannie Mae systems for the purposes of:

- (a) system and network maintenance and the diagnosis, investigation and/or correction of actual or suspected Performance and Security Incidents,
- (b) measurement or evaluation of software, service or system usage or the functionality or performance of the Licensed Application, Fannie Mae's systems or internet sites,
- (c) information security,
- (d) recommending, developing or monitoring improvements, upgrades or enhancements to the Licensed Application,
- (e) performing its obligations under the Agreement (including without limitation the preparation of billing statements) and operating the Licensed Application or Fannie Mae's systems or internet sites,
- (f) providing reports and/or data to Licensee, those parties designated by Licensee in writing and Third-Party Providers whom Licensee has authorized to receive the reports and/or data,
- (g) responding to Licensee requests or requests from a party who owns or services the mortgage loan associated with the data,
- (h) analysis, modeling and auditing,
- (i) investigating, protecting against and/or preventing actual or potential fraud,
- (j) providing data and services in compliance with applicable laws, regulations and other legal mandates, and/or
- (k) enforcement of Fannie Mae's rights and remedies under this and other agreements between Fannie Mae and Licensee.

With respect to data associated with mortgage loans securitized by Fannie Mae, or in which Fannie Mae has an ownership right or interest, Fannie Mae may also use, reproduce, distribute and retain such data for all other purposes.

Licensee's privacy statements, policies and practices relating to the Licensed Application shall not conflict with this Section of the Master Terms or any privacy statement included in the Licensed Application. Fannie Mae shall not be responsible for monitoring or reviewing Licensee's privacy statements, or assisting in the development thereof, and shall not be bound thereby.

5.5 Authorized Users and Authentication Credentials. Licensee's access to the Licensed Application may be dependent upon a security access system that requires each Authorized User to use one or more Authentication Credentials. Such security access system may rely on, among other things, the issuance by Fannie Mae (and/or a third party designated by Fannie Mae) of an Authentication Credential to an Authorized User. Licensee represents and warrants that each individual or system accessing the Licensed Application using Authentication Credentials issued to Licensee is employed, retained as an Independent Contractor or used by Licensee. Licensee further represents and warrants that each individual or system registered by Licensee for access to the Licensed Application (a) is accurately identified on the associated registration form submitted to Fannie Mae (and/or a third party designated by Fannie Mae), (b) is in fact authorized by Licensee to access and use the Licensed Application for the purposes for which it is intended, and (c) possesses all licenses, certifications and other authorizations, whether required by applicable law or otherwise, to effect the transactions for which the Authorized User accesses and uses the Licensed Application. Licensee acknowledges and agrees that actions of Authorized Users shall be deemed to be actions of Licensee and Licensee guarantees the full performance by its Authorized Users of all obligations under the Agreement.

- 5.5.1 Management of Authentication Credentials. Licensee agrees to ensure that each Authentication Credential is securely maintained and used only by the Authorized User to whom or which the Authentication Credential has been issued. Licensee further agrees to immediately notify Fannie Mae and take immediate steps to disable a previously issued Authentication Credential if (a) an Authorized User ceases to be an Authorized User for any reason, including as a result of such User no longer being employed, retained or used by Licensee, or (b) in the event of any loss, theft or unauthorized disclosure or use of any Authentication Credential. Authentication Credentials shall not be transferred between or among Authorized Users or other individuals or systems, and Licensee shall implement all necessary and appropriate measures to ensure that (i) such transfers do not occur, and (ii) these and all other requirements of this Section 5.5 (including its subsections) are met, including, without limitation, apprising its employees and Independent Contractors with a need to know of the requirements of this Section. Fannie Mae may make available functionality such that Licensee is able to review the systems access available to each of its Authorized Users. To the extent such functionality is available, Licensee shall periodically review the appropriateness of such access and, where a discrepancy is identified, immediately take all measures necessary to correct the discrepancy, including without limitation providing notice to Fannie Mae. Fannie Mae shall be under no obligation to provide access to the Licensed Application to any Authorized User, and expressly reserves the right at any time and from time to time to change and/or revoke Authentication Credentials. Licensee agrees that it shall periodically revoke and/or reset Authentication Credentials as and to the extent prescribed by Fannie Mae, but in no event less than: (A) every ninety calendar days for individuals, (B) annually for systems and (C) notwithstanding (A), annually for Authentication Credentials issued by a third party.
- 5.5.2 Special Requirements for Authentication Credentials in Use by Licensee Systems. If Licensee implements an Authentication Credential in a Licensee system or Third-Party Application such that any such system is an Authorized User (in either instance, an "Authorized System"), Licensee shall implement the Authorized System such that any individual accessing the Licensed Application via the Authorized System can be accurately identified to Fannie Mae upon its request, and the date, time and nature of such individual's access to the Licensed Application via the Authorized System can likewise be accurately identified to Fannie Mae.
- 5.6 Nonpublic Personal Information; Security Incidents and Procedures. As and to the extent required by law, each party agrees to maintain at all times pertinent to the Agreement reasonable measures to (a) provide for the security and confidentiality of all Nonpublic Personal Information received by it hereunder, (b) protect such Nonpublic Personal Information from unauthorized access or use and threats or hazards to its security, confidentiality or integrity, (c) address any Security Incident with prompt and effective corrective action, including cooperation with the other party in the investigation and remediation of such Security Incidents, as well as prompt disclosure and notification, where legally required, (d) provide for the security, confidentiality and integrity of all computer systems and networks on which such Nonpublic Personal Information is stored or transmitted, (e) provide for the secure and confidential disposal or destruction of such Nonpublic Personal Information in such a manner as to reasonably protect against unauthorized access or use, and (f) instruct its employees, agents, representatives and contractors who may receive such Nonpublic Personal Information about the requirements of this provision of the Agreement, and the processes and procedures necessary to fulfill them. Without limiting the foregoing, Licensee shall implement reasonable procedures to prevent unauthorized persons or systems from gaining access to any Documentation or to the Licensed Application through Licensee's systems or via an Authentication Credential of any of its Authorized Users. Such procedures shall include, but are not limited to, secure transmission of Nonpublic Personal Information and other confidential material, utilizing industry-standard virus checking programs designed to prevent the transmission and receipt of viruses and other destructive code, implementing appropriate disaster recovery and back-up procedures, and implementing appropriate procedures to prevent disclosure of data and other materials to a party other than the intended recipient. Licensee shall comply with all reasonable security policies and procedures established by Fannie Mae and communicated to Licensee with respect to the access and use of any Licensed Materials. Licensee shall not transmit to Fannie Mae's systems any materials that contain bugs, viruses, worms or other functions, routines, devices or instructions which may create any unauthorized access or damage to, or interruption in the functioning of, the Licensed Application or Fannie Mae's systems. Fannie Mae shall have the right to remove any material, the content of which Fannie Mae deems to be in violation of law or any term or condition of the Agreement. Notwithstanding the foregoing, Fannie Mae shall have no obligation to remove, screen, police, edit or monitor any data or other material generated by Licensee or its employees, agents, contractors, representatives, customers or affiliates.
- 5.7 Data Reporting. If the Licensed Application is designed to facilitate the reporting or other provision of data to Fannie Mae, Licensee shall be responsible for (a) the accuracy and completeness of any such data, and (b) assuring that the proper Licensee personnel review and approve any notification, information or request submitted to Fannie Mae (whether by means of the Licensed Application or otherwise) prior to its transmission. Fannie Mae is hereby authorized to conclusively rely on the accuracy and genuineness of any information conveyed to Fannie Mae using such Licensed Application or otherwise, and shall be under no obligation to authenticate the source of, or verify the accuracy of, any such information. Licensee is solely responsible for the back-up and restoration of its data and other materials.
- 5.8 Performance Incident Reporting; Audit Rights. Licensee agrees to provide Fannie Mae with data, documentation or other such evidence of Performance Incident(s) that it experiences during the term of the Agreement promptly upon becoming aware of such Performance Incident(s). Fannie Mae shall have the right, upon reasonable notice to Licensee, to audit Licensee's use of the Licensed Materials (by means of remote access or through entry to Licensee's premises), and Licensee agrees to allow Fannie Mae or its representatives access to such systems (including loan origination and other systems), facilities, books and records as are reasonably required to audit Licensee's compliance with the Agreement.

- 5.9 Compliance With Law. Licensee acknowledges that its activities, whether or not the Licensed Application is utilized in connection with such activities, may subject Licensee to certain federal and state substantive and disclosure laws and regulations including, without limitation, the Real Estate Settlement Procedures Act, the Truth-in-Lending Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act and their implementing regulations and commentary, as applicable. Licensee hereby represents and warrants that it has obtained legal counsel and developed policies, systems and procedures that ensure its full compliance with (a) all federal, state and local laws, rules, and regulations applicable to its activities in connection with which the Licensed Application, and any data generated by, submitted to or evaluated utilizing the Licensed Application, is used, and (b) all applicable laws, rules, regulations and conventions relating to data privacy, data security, international communications, communications decency and the importation and exportation of software and data. Licensee bears sole responsibility for complying with such laws, rules, regulations and conventions. Such compliance obligations shall in no event be considered imposed upon or shared by Fannie Mae or its Third-Party Licensors by virtue of Licensee's use of the Licensed Application.
- 5.10 Indemnification. Notwithstanding the provisions of Section 11 hereof, Licensee shall indemnify and hold harmless Fannie Mae, its Third-Party Licensors and each of the foregoing entities' affiliates, partners, officers, employees, directors, agents, contractors, representatives, successors and assigns, as such, from and against any Losses which arise out of or result from any third-party claim relating to (a) Licensee's use of the Licensed Materials in conjunction with any third-party system, (b) any act or omission of Licensee (including its Authorized Users) in connection with the Agreement or the Licensed Materials (except to the extent that Fannie Mae or its Third-Party Licensors caused such Losses), (c) any software, information or data provided by or on behalf of Licensee, (d) any breach of Sections 3.1, 3.3, 3.5, 5.5, 5.6, 5.9, 5.12, 8 or 9 of the Agreement, and/or (e) any defamatory or illegal, or allegedly defamatory or illegal, material transmitted by Licensee (or any person or entity that gains access to the Licensed Application through Licensee or pursuant to the Agreement).
- 5.11 Authority. If Licensee is a federally insured institution or an affiliate or subsidiary of a federally insured institution, Licensee represents and warrants that the execution of the Agreement has been (i) specifically approved by the Board of Directors of Licensee and such approval is reflected in the minutes of the meetings of such Board of Directors, or (ii) approved by an officer of Licensee who was duly authorized by the Board of Directors to enter into transactions of the type set forth in the Agreement and such authorization is reflected in the minutes of the Board of Directors' meetings. The Agreement constitutes the "written agreement" of Licensee and Licensee shall continuously maintain all components of such "written agreement" as an official record of Licensee or of any successor thereto.
- 5.12 Integration. Licensee may choose to develop, implement, use and/or support one or more interfaces that will transfer data electronically between a mortgage-related system, such as a loan origination or servicing system, and a Licensed Application that is designed to allow integration. Licensee understands and agrees that errors and deficiencies in the performance of the Licensed Application, including without limitation accuracy of results, may result from failure to maintain such an interface in good working order and compatible with the most current version of the Licensed Application and Fannie Mae bears no responsibility for such errors and deficiencies.
- In the event that Licensee develops and/or supports an interface in a production environment, the following terms will apply:
- (a) Licensee agrees to maintain the interface in good working order and, along with the mortgage-related system, at all times compatible with the most current version of the Licensed Application,
  - (b) Licensee grants Fannie Mae a limited, non-exclusive, non-transferable, royalty-free license (i) to access and use the interface and mortgage-related system, solely in executable form, and (ii) to use and reproduce Licensee's supporting documentation for the interface and mortgage-related system for internal purposes and support of Licensee, and
  - (c) Licensee will designate and make available to Fannie Mae qualified personnel to promptly respond to technical questions pertaining to the interface and the mortgage-related system (as integrated with the Licensed Application).
- 5.13 Recordkeeping. Licensee acknowledges and agrees that it may be required to maintain records of certain data pursuant to state and/or federal laws and regulations. Licensee understands and agrees that: (i) it bears sole responsibility for such obligations; (ii) it may need to download Licensed Application data into its own systems storage facilities (which may include a Third-Party Application) or print out hard copies of such data from the Licensed Application in order to generate or obtain information necessary to meet such recordkeeping requirements and (iii) in no event will Fannie Mae be responsible for maintaining any such data for Licensee or for providing Licensee with any such data at any time, either in electronic or hard-copy format.

## 6. Support

- 6.1 Fannie Mae Support. During the hours posted on the applicable Fannie Mae internet site or otherwise provided to Licensee from time to time, Fannie Mae personnel will be available to Licensee via the Fannie Mae Hotline to respond to technical questions regarding the functionality of the Licensed Application, and to help Licensee identify, verify and resolve Performance Incidents occurring on, or with respect to, the Licensed Materials. The foregoing shall constitute the sole and exclusive support services to be provided by Fannie Mae to Licensee under the Agreement. Unless otherwise agreed by Fannie Mae in writing,

Licensee shall only use the most recent version of the Documentation provided (or otherwise made available) by Fannie Mae and will follow Fannie Mae's instructions concerning the return or destruction of any prior versions of the Documentation. This Section shall not be interpreted to require Fannie Mae to (a) develop and release any upgrades or enhancements to the Licensed Materials, or (b) provide Licensee with any upgrade or enhancement that Fannie Mae decides, in its sole discretion, to make available as a separately priced item or only on a limited basis.

- 6.2 Licensee Contacts. With respect to each Schedule, Licensee shall assign one technical contact and one alternate, who shall be responsible for all communications with Fannie Mae's technical support representatives with respect to the subject matter of such Schedule. Such contacts shall have sufficient technical expertise, training and experience for Licensee to perform its obligations hereunder.
- 6.3 Consulting and Other Services. Fannie Mae may, from time to time, provide certain consulting, implementation, training installation, integration and other services to Licensee at the rates set forth in an applicable Rate Sheet. Unless otherwise separately agreed between Licensee and Fannie Mae, any such consulting and other services shall be provided on an "as-is" basis, without warranty of any kind.

## **7. Fees, Taxes and Billing.**

- 7.1 Subscription Fees. Licensee agrees to pay all Subscription Fees. Fannie Mae may increase or decrease such charges from time to time and Licensee agrees to pay any such adjusted charges; provided that the adjustment shall be communicated to Licensee in writing (a) on or before its effective date with respect to fees which constitute pass-through charges from Third-Party Licensors or other vendors, and (b) at least twenty (20) days before its effective date with respect to all other charges. Licensee's continued use of the applicable Licensed Application(s) shall be deemed to be Licensee's acceptance of any such adjustments.
- 7.2 Taxes. In addition to the Subscription Fees, Licensee shall pay or reimburse Fannie Mae on demand for all current and future federal, state and local taxes imposed on the possession or use of the Licensed Materials, any services provided hereunder and any fees payable hereunder, excluding, however, any taxes assessed on Fannie Mae's net income.
- 7.3 Billing. Except as expressly provided in the relevant Schedule(s), Licensee will be billed monthly in arrears for Subscription Fees. Invoices will be submitted in either electronic or hardcopy format, at Fannie Mae's discretion. Payment is due upon receipt of invoice. Accounts not paid within thirty (30) days of the date of the invoice shall be deemed delinquent and in material breach of the Agreement. Delinquent accounts are subject to late charges at a variable annual rate that is three (3) percentage points above the prime rate published in the Wall Street Journal, or at the maximum rate permitted by law, whichever is less, commencing on the due date of the invoice, plus all costs of collection, including, without limitation, reasonable attorneys' fees. Fannie Mae reserves the right to take such actions as are permitted hereunder, including without limitation termination of the Agreement or suspension of Licensee's access to any and all Licensed Materials, if Licensee's account is delinquent or Licensee has otherwise breached its obligations under this Section 7.

## **8. Confidentiality of Proprietary Information.**

- 8.1 Protection. For purposes of this Section, all Proprietary Information disclosed by one party to the other in the course of performing under the Agreement or to which the other gains access in connection with the Agreement shall be deemed to be the property of the disclosing party, or the appropriate Third-Party Licensor (or other third-party owner), as the case may be. The receiving party agrees to (a) receive such Proprietary Information in confidence, (b) use reasonable efforts to maintain the confidentiality of such Proprietary Information and not disclose such Proprietary Information to third parties (except for: (i) the receiving party's representatives, agents and contractors who have a need to know, are under a duty of non-disclosure with respect to such information, and are acting for the sole benefit of the receiving party and (ii) the receiving party's regulator, upon request by such regulator and subject to the receiving party's formal request that such information be treated in confidence), which efforts shall accord such Proprietary Information at least the same level of protection against unauthorized use and disclosure that the receiving party customarily accords to its own information of a similar nature, but in no event less than a commercially reasonable level of protection, (c) use or permit the use of such Proprietary Information solely in accordance with the Agreement, and (d) promptly notify the disclosing party in writing of any actual or suspected loss or unauthorized use, disclosure or access of the disclosing party's Proprietary Information of which it becomes aware. The Agreement (as well as all information regarding the negotiation of the Agreement) shall be deemed to be the Proprietary Information of both parties. Without limiting the generality of the foregoing, Licensee acknowledges and agrees that the Licensed Materials are the Proprietary Information of Fannie Mae and/or its Third-Party Licensors. For purposes of the Agreement, information shall be deemed to be disclosed by a party if such information is disclosed by any of its officers, employees, directors, contractors, agents or representatives. If Licensee is a government agency, Licensee agrees that it shall comply fully with the Trade Secrets Act (18 U.S.C. §1905) or other applicable law with regard to Fannie Mae's Proprietary Information. Each party agrees that it shall abide by and reproduce and include any restrictive legend or proprietary rights notice that appears in or on any Proprietary Information of the other party or any Third-Party Licensor (or other third-party owner) that it is authorized to reproduce. Each party also agrees that it shall not remove, alter, cover or distort any trademark, trade name, copyright or other proprietary rights notices, legends, symbols or labels appearing on or in any Proprietary Information of the other party or any Third-Party Licensor (or other third-party owner).
- 8.2 Exclusions. The restrictions on use and disclosure set forth above shall not apply when, and to the extent that the Proprietary

Information (a) is or becomes generally available to the public through no fault of the receiving party (or anyone acting on its behalf); (b) was previously rightfully known to the receiving party free of any obligation to keep it confidential; (c) is subsequently disclosed to the receiving party by a third party who may rightfully transfer and disclose such information without restriction and free of any obligation to keep it confidential; (d) is independently developed by the receiving party or a third party without reference to the disclosing party's Proprietary Information, (e) is used or disclosed as expressly permitted in writing by the disclosing party or (f) is required to be disclosed by the receiving party as a matter of law, provided that the receiving party uses all reasonable efforts to provide the disclosing party with at least ten (10) days' prior notice of such disclosure and the receiving party discloses only that portion of the Proprietary Information that is legally required to be furnished pursuant to the opinion of legal counsel of the receiving party. Notwithstanding the foregoing, neither party shall disclose, or permit the disclosure of, the Agreement without the prior written consent of the other party, except (i) as provided in Section 8.2(e) above, (ii) to the extent necessary to permit the exercise of its rights or the performance of its obligations under the Agreement, or (iii) to seek advice from its attorneys, accountants or other professional advisors.

## **9. Publicity Marks.**

- 9.1 Approval Procedure. Each party will submit to the other party for its prior approval, which approval may be withheld at such party's sole discretion, that portion of any press release, internet posting, marketing, advertising, promotional or similar materials referencing the other party and/or its Marks in connection with the Agreement (the "Marketing Materials"). Once approved, such Marketing Materials may be used until such approval is withdrawn pursuant to this Section. Notwithstanding the foregoing, the parties agree that statements of fact made in routine correspondence with specific customers shall not constitute "Marketing Materials." The rights granted in this Section may be withdrawn at any time by the granting party upon reasonable prior written notice.
- 9.2 Ownership of Marks. Each party acknowledges and agrees that (a) the other party's Marks are and shall remain the sole property of the other party, (b) nothing in the Agreement shall confer in a party any right of ownership or license rights in the other party's Marks, and (c) neither party shall register the other party's Marks in any jurisdiction. In addition, Licensee acknowledges and agrees that (i) the Marks of Third-Party Licensors are and shall remain the sole property of such Third-Party Licensors, (ii) nothing in the Agreement shall confer in Licensee any right of ownership or license rights in the Marks of Third-Party Licensors, and (iii) Licensee shall not register the Marks of Third-Party Licensors. Without limiting the generality of the foregoing, Licensee agrees not to use or adopt any trade name, trademark, logo or service mark which is so similar to Fannie Mae's Marks or the Marks of Third-Party Licensors as to be likely to cause deception or confusion, or which is graphically or phonetically similar to any of Fannie Mae's Marks or the Marks of Third-Party Licensors.
- 9.3 Legend Requirement. Unless otherwise agreed in writing, when using the other party's Marks pursuant to the Agreement, a party shall take all reasonable measures required to protect the other party's rights in such Marks, including, but not limited to, the inclusion of a prominent legend identifying such Marks as the property of the other party.

## **10. Warranty.**

- 10.1 Warranty and Limitation. Fannie Mae's sole warranty to Licensee is that the Licensed Application owned by Fannie Mae shall perform substantially in accordance with the current version of the Documentation for a period of sixty (60) days from the date the Licensed Application was first made available to Licensee (the "Warranty Period"). In the event such Licensed Application does not so perform during the Warranty Period, Licensee shall, prior to the expiration of the Warranty Period, notify Fannie Mae of the instance(s) of nonperformance in writing. Subject to the foregoing, Fannie Mae will (at its option) either resolve the instance(s) of nonperformance of such Licensed Application or terminate the applicable Schedule(s) and provide Licensee a refund of any Subscription Fees actually paid by Licensee for such Licensed Application for the month prior to its written notification to Fannie Mae. If requested by Fannie Mae, Licensee will return any components of the related Licensed Materials and any copies thereof in Licensee's possession.
- 10.2 Disclaimer and Limitation on Remedy. Notwithstanding anything herein to the contrary, Fannie Mae and its Third-Party Licensors specifically do not warrant that (a) any Licensed Application or any components thereof will perform without interruption or error or in compliance with laws, or that all Performance Incidents will be corrected, (b) any Licensed Materials (including the data and other information contained therein) will meet Licensee's requirements, (c) any Licensed Application will operate in the configuration which Licensee may select for use, or (d) data or other information generated by or contained in the Licensed Application will be accurate or complete. Neither Fannie Mae nor its Third-Party Licensors shall be responsible for the accurate or complete transmission of data or other materials. The warranty set forth in this Section shall not apply to any irregularities, errors, problems or defects arising from (i) modification of the Licensed Application by any party other than Fannie Mae or from accident, neglect, abuse, misuse or misapplication, (ii) failure of Licensee to provide a suitable installation and operating environment, including but not limited to, failure to use supplies, materials, software and hardware platforms that meet the specifications set forth in the Documentation, (iii) Licensee's incorporation, attachment or engagement of any attachment, feature, program or device to the Licensed Application, if the Licensed Application would have conformed to the warranty set forth in this Section but for such incorporation, attachment or engagement, (iv) use of the Licensed Application outside the scope of its intended purpose, as described in the Documentation, or (v) Licensee's failure to incorporate any update previously released by Fannie Mae that corrects such item. Fannie Mae reserves the right to (A) modify any Licensed Materials or substitute any materials contained therein so long as the new materials do not materially affect the functionality of the Licensed Application, and (B) discontinue the licensing and/or support of any Licensed Materials. **THE WARRANTY SET FORTH IN THIS SECTION 10 IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY FANNIE MAE IN CONNECTION WITH THE**



LICENSED MATERIALS, ANY COMPONENT THEREOF, ANY RELATED SERVICES OR OTHERWISE UNDER THE AGREEMENT, AND THE REMEDIES SET FORTH IN THIS SECTION 10 SHALL BE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO LICENSEE FOR ANY BREACH OF WARRANTY. FANNIE MAE AND ITS THIRD-PARTY LICENSORS HEREBY EXPRESSLY DISCLAIM ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, AND ANY WARRANTIES OF NON-INFRINGEMENT. BETA, PILOT, AND/OR MARKET TEST VERSIONS OF THE LICENSED MATERIALS ARE PROVIDED "AS IS."

**11. Limitation of Liability.**

- 11.1 EXCEPT WITH RESPECT TO ANY BREACH OF SECTION 3 OR SECTION 8 OR ANY CLAIM UNDER SECTIONS 5.10 OR 12 HEREOF, IN NO EVENT SHALL EITHER PARTY, OR ANY THIRD-PARTY LICENSOR, OR THEIR RESPECTIVE AFFILIATES, PARTNERS, OFFICERS, EMPLOYEES, DIRECTORS, AGENTS, CONTRACTORS, REPRESENTATIVES, SUCCESSORS OR ASSIGNS, AS SUCH, BE LIABLE TO THE OTHER PARTY OR ANYONE CLAIMING UNDER OR THROUGH THE OTHER PARTY FOR ANY PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES UNDER OR IN CONNECTION WITH THE AGREEMENT, THE LICENSED MATERIALS OR ANY RELATED SOFTWARE, SERVICES OR INFORMATION, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, INTEREST, REVENUE, DATA OR USE, OR INTERRUPTION OF BUSINESS, INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, WHETHER BASED UPON CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, DUTY TO WARN AND STRICT LIABILITY), WARRANTY OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN ADDITION, FANNIE MAE AND ITS THIRD-PARTY LICENSORS, AND THEIR RESPECTIVE AFFILIATES, PARTNERS, OFFICERS, EMPLOYEES, DIRECTORS, AGENTS, CONTRACTORS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS, AS SUCH, SHALL HAVE NO LIABILITY FOR LOSSES RESULTING FROM UNAUTHORIZED ACCESS TO OR USE OF (a) THE LICENSED MATERIALS OR ANY COMPONENT THEREOF, (b) FANNIE MAE PROPRIETARY INFORMATION OR (c) NONPUBLIC PERSONAL INFORMATION BY LICENSEE OR THOSE GAINING ACCESS TO THE LICENSED MATERIALS, FANNIE MAE PROPRIETARY INFORMATION OR NONPUBLIC PERSONAL INFORMATION AS A RESULT OF LICENSEE'S ACTS OR OMISSIONS.
- 11.2 INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THE AGREEMENT, AND EXCEPT WITH RESPECT TO ANY BREACH OF SECTIONS 3, 7 OR 8 OR ANY CLAIM UNDER SECTIONS 5.10 OR 12 HEREOF, IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY OR ITS THIRD-PARTY LICENSORS (OR THEIR RESPECTIVE AFFILIATES, PARTNERS, OFFICERS, EMPLOYEES, DIRECTORS, AGENTS, CONTRACTORS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS, AS SUCH), TO THE OTHER PARTY OR ANY THIRD PARTY CLAIMING UNDER OR THROUGH THE OTHER PARTY FOR ANY AND ALL LOSSES, INCLUDING, WITHOUT LIMITATION, CAUSES OF ACTION AND CLAIMS BASED UPON BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, DUTY TO WARN AND STRICT LIABILITY), BREACH OF WARRANTY, OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, UNDER OR IN CONNECTION WITH THE AGREEMENT, THE LICENSED MATERIALS, ANY COMPONENT THEREOF OR ANY RELATED SOFTWARE, SERVICES, OR INFORMATION, EXCEED THE GREATER OF \$25,000 OR THE TOTAL SUBSCRIPTION FEES RECEIVED BY FANNIE MAE FROM LICENSEE UNDER THE RELEVANT SCHEDULE DURING THE CONSECUTIVE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OF THE FIRST SUCH EVENT GIVING RISE TO SUCH LIABILITY.
- 11.3 FANNIE MAE AND LICENSEE EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS AND EXCLUSIONS CONTAINED HEREIN (a) REPRESENT THE PARTIES' AGREEMENT AS TO THE ALLOCATION OF RISK BETWEEN THE PARTIES (INCLUDING, WITHOUT LIMITATION, THE POSSIBILITY THAT A REMEDY MAY FAIL OF ITS ESSENTIAL PURPOSE AND CAUSE CONSEQUENTIAL LOSS) AND THAT THE AMOUNTS PAYABLE TO FANNIE MAE PURSUANT TO THE AGREEMENT REFLECT SUCH ALLOCATION OF RISK, WITHOUT WHICH NEITHER PARTY WOULD HAVE BEEN WILLING TO ENTER INTO THE AGREEMENT, AND (b) FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

**12. Intellectual Property Indemnity.**

- 12.1 Notwithstanding the provisions of Section 11 hereof, Fannie Mae shall indemnify and hold harmless Licensee and its affiliates, partners, officers, employees, directors, agents, contractors, representatives, successors and assigns, as such, from and against any Losses which arise out of or result from any third-party claim that Fannie Mae does not have sufficient right, title or interest in the Licensed Materials to enter into the Agreement or that the Licensed Materials owned by Fannie Mae infringe a United States (a) patent in existence on the date of access, (b) copyright, (c) trademark, (d) trade secret, or (e) other United States intellectual property right of any third party.
- 12.2 In the event that any such claim is made, or in Fannie Mae's opinion is likely to be made, Fannie Mae reserves the right, in its sole discretion, as applicable, (a) to procure for Licensee the right to continue to access and use the Licensed Application and/or the Documentation, (b) to replace the Licensed Application and/or the Documentation to avoid infringement, (c) to modify the Licensed Application and/or the Documentation to avoid infringement, or (d) to terminate the relevant license(s) and Schedule(s)

without further cost, charge, liability or penalty to Fannie Mae relating to such termination.

- 12.3 Fannie Mae and its Third-Party Licensors shall have no obligation to the extent that any claim of infringement is based upon Licensee's (a) access or use of the Licensed Application or the Documentation in violation of the Agreement, (b) integration, modification or marking of the Licensed Application or the Documentation, or any portion thereof, where, in the absence of such integration, modification or marking, the Licensed Application or Documentation would not be infringing (unless such integration, modification or marking has been specifically authorized in writing by Fannie Mae), (c) use of the Licensed Application or the Documentation in combination with other software, documentation, hardware or data, if use without such software, documentation, hardware or data would not be infringing, (d) use of a superseded version of the Licensed Application or the Documentation if infringement could have been avoided by the use of the current version provided by Fannie Mae, (e) use of the Licensed Application or the Documentation in practicing any infringing process, (f) use of the Licensed Application in a manner for which it was not designed, (g) activities after Fannie Mae has notified Licensee that Fannie Mae believes such activities may result in such infringement, (h) designs, specifications or instructions, or (i) use of any marks, including without limitation Fannie Mae's Marks, in violation of Section 9.1.
- 12.4 THE PROVISIONS SET FORTH IN THIS SECTION 12 SHALL BE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES AND FANNIE MAE'S SOLE LIABILITIES AND OBLIGATIONS FOR ANY CLAIMS BROUGHT AGAINST LICENSEE BASED UPON INTELLECTUAL PROPERTY INFRINGEMENT, WHETHER UPON THE THEORY OF WARRANTY, INDEMNITY OR OTHERWISE.

### 13. Indemnification Procedures and Subrogation.

- 13.1 Procedures. Promptly after receipt by any person or entity entitled to indemnification under the Agreement (the "Indemnified Party") of notice of a claim, or of the commencement (or threatened commencement) of any civil, criminal, administrative or investigative action or proceeding involving a claim, in respect of which the Indemnified Party will seek indemnification pursuant to the Agreement, the Indemnified Party shall promptly notify the party that is obligated to provide such indemnification (the "Indemnifying Party") of such claim in writing. No failure to so notify the Indemnifying Party shall relieve the Indemnifying Party of its obligations under the Agreement except to the extent that it can demonstrate damages or prejudice attributable to such failure. Except as provided in Section 13.2, the Indemnifying Party shall be entitled to have sole control over the response to, defense and settlement of such claim, provided that, within fifteen (15) days after receipt of such written notice, the Indemnifying Party notifies the Indemnified Party of its election to so assume full control. In the event the Indemnifying Party does elect to so assume control, (a) the Indemnified Party shall be entitled to participate in the response to such claim and to employ counsel at its own expense to assist in the handling of such claim, (b) the Indemnifying Party shall obtain the prior written approval of the Indemnified Party (which approval shall not be unreasonably withheld or delayed) before entering into any settlement of such claim or ceasing to defend against such claim if such settlement or cessation would cause injunctive relief to be imposed against the Indemnified Party, and (c) the Indemnifying Party shall promptly reimburse the Indemnified Party for any legal expenses reasonably incurred by the Indemnified Party in connection with the defense of such claim prior to the Indemnified Party's receipt of the Indemnifying Party's notice of its election to assume full control over the response to such claim. After notice by the Indemnifying Party to the Indemnified Party of its election to assume full control, the Indemnifying Party shall not be liable to the Indemnified Party for any further legal expenses incurred by such Indemnified Party in connection with the defense of that claim. If the Indemnifying Party does not assume sole control over the response to such claim as provided in this Section, the Indemnifying Party may participate in such response and the Indemnified Party shall have the right to respond to and defend the claim in such manner as it may deem appropriate, at the reasonable cost and expense of the Indemnifying Party, who shall be bound by any settlement. The Indemnifying Party shall promptly reimburse the Indemnified Party for such costs and expenses.
- 13.2 Exclusion. Notwithstanding anything set forth in Section 13.1 to the contrary, in the event an Indemnified Party reasonably believes and so notifies the Indemnifying Party in writing that the applicable claim, even if fully indemnified for, is reasonably likely to have a material adverse effect on the Indemnified Party, then the Indemnifying Party shall not have the right to control the response to, defense and settlement of such claim, but shall have the right to employ separate counsel at its own expense to assist in the handling of such claim by the Indemnified Party. In such an event, (a) the Indemnified Party and its counsel shall consult, wherever reasonably practicable, with the Indemnifying Party and its counsel with respect to the status of the claim and any related litigation or proceedings, and (b) the Indemnified Party shall bear the expense of its counsel.
- 13.3 Settlement. Where an Indemnifying Party has been given notice of a claim and assumed its responsibility to defend with respect thereto, the Indemnifying Party shall not be required to indemnify an Indemnified Party for any amount paid or payable by such Indemnified Party in the settlement of any claim which was agreed to without the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.
- 13.4 Subrogation. In the event that an Indemnifying Party shall be obligated to indemnify an Indemnified Party pursuant to the Agreement, the Indemnifying Party shall, upon payment of such indemnity in full, be subrogated to all rights of the Indemnified Party with respect to the claims and defenses to which such indemnification relates.

### 14. Term and Termination.

- 14.1 Term. The Agreement will remain in full force and effect until terminated as provided herein.
- 14.2 Termination for Cause. Either party may terminate the Master Terms and/or any Schedule(s) upon thirty (30) days' prior written

notice describing a material breach by the other party of any term or condition of the Master Terms or a Schedule, which breach has not been cured by the breaching party during such thirty (30) day notice period. Fannie Mae may terminate the Master Terms and/or any Schedule(s) or suspend Licensee's access to any Licensed Application, effective immediately, upon notice to Licensee in the event (a) of any material breach by Licensee of the provisions of Section 3.3, Sections 5.5 through 5.9 or Section 8, (b) Licensee attempts to cause or causes a Licensed Application or any related system to malfunction or suffer damage, or fails to take steps reasonably requested by Fannie Mae to correct a malfunction or damage, (c) Licensee becomes insolvent or enters into bankruptcy, suspension of payments, moratorium, reorganization, or any other proceeding that relates to insolvency or protection of creditor's rights (d) Licensee is a party to a Mortgage Selling and Servicing Contract with Fannie Mae that is suspended or terminated or (e) Fannie Mae no longer has sufficient rights in a Third-Party Application necessary to the functioning or operation of the Licensed Application.

- 14.3 Termination for Convenience. Either party may terminate the Master Terms and/or any Schedule(s) without cause upon ninety (90) days' prior written notice to the other.
- 14.4 Termination of Master Terms. All Schedules will terminate automatically without notice upon termination of the Master Terms.
- 14.5 Survival. Neither party shall have any continuing obligations to the other upon the effective date of termination except that (a) Licensee shall pay Fannie Mae all Subscription Fees accrued and owing prior to the date of termination and any late charges relating thereto, and (b) any provisions of the Agreement that contemplate their continuing effectiveness, including, without limitation, Sections 3.5, 4, 5.2 through 5.7, 5.9, 5.10, 5.13, 7.2, 7.3, 8, 9, 10.2, 11, 12, 13, 14.5, 14.6 and 15, shall survive any termination of the Master Terms and/or a Schedule.
- 14.6 Certain Licensee Termination Obligations. Upon termination of the Master Terms or any individual Schedule, Licensee shall be obligated to (a) return or destroy all copies of Proprietary Information received in connection with the relevant Schedule(s), (b) immediately cease accessing and using the applicable Licensed Materials, and (c) destroy all copies of the associated Documentation delivered (or made available) by Licensee that are the subject thereof. Upon request from Fannie Mae, Licensee shall provide Fannie Mae with prompt written certification of its compliance with the foregoing, executed by a duly authorized officer of Licensee.

## 15. General Provisions.

- 15.1 Assignment. The Agreement may not be assigned by Licensee to any other person(s), firm(s), corporation(s) or other entities (by operation of law or otherwise) without the prior express written consent of Fannie Mae, and any attempt to assign without such consent shall be void and shall be deemed to be a material breach of the Agreement.
- 15.2 Default. A breach of any provision of the Agreement shall be deemed to also be a breach of any Mortgage Selling and Servicing Contract between Licensee and Fannie Mae.
- 15.3 Notices. Unless otherwise specified in the Agreement, all notices, requests, demands, and other communications (other than routine operational or billing communications) required or permitted hereunder shall be in writing (with electronic mail or Fannie Mae postings to Fannie Mae internet sites deemed to be a "writing" for this purpose) and shall be deemed to have been received by a party (a) when actually received in the case of hand delivery against a signed receipt, (b) two (2) business days after being given to a reputable overnight courier with a reliable system for tracking delivery, (c) when sent by confirmed facsimile, (d) upon receipt, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, (e) one (1) business day after transmission by electronic mail, or (f) upon posting by Fannie Mae to an applicable Fannie Mae internet site. Any notice directed to Fannie Mae shall be addressed to "Fannie Mae Legal Department, Attn: Official Contract Notice, 3900 Wisconsin Avenue, NW, Washington, DC 20016-2892" and/or an e-mail address or facsimile number confirmed in writing by Fannie Mae as valid for receipt of notices hereunder. Except as provided in (f) above, any notice directed to Licensee shall be addressed to a Corporate Administrator at an address, electronic mail address and/or facsimile number provided to Fannie Mae by Licensee or other valid address, electronic mail address and/or facsimile number for such individual. A party may from time to time change an address, electronic mail address, or facsimile number for notification purposes by giving the other party prior written notice of the new address, electronic mail address or facsimile number. Any Licensee that is a party to a Fannie Mae Mortgage Selling and Servicing Contract shall also be deemed to have notice of any matter published in Fannie Mae's Selling and Servicing Guides and any bulletin, lender letter, announcement or other communication issued thereunder.
- 15.4 Governing Law; Severability. The Agreement shall be governed by and construed solely and exclusively in accordance with the laws of the District of Columbia, without reference to or application of its conflicts of law principles. In the event that any provision of the Agreement conflicts with the law under which the Agreement is to be construed, or if any such provision is held invalid, void or unenforceable by a court with jurisdiction over the parties to the Agreement, such provision shall be deemed to be restated to reflect as nearly as possible the original intention of the parties in accordance with applicable law, and the remainder of the Agreement shall remain in full force and effect.
- 15.5 Force Majeure. Neither party shall be responsible for delays or failure of performance (other than the payment of money) 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, epidemics, failure of vendors to perform, governmental regulations, power failures, earthquakes, or other disasters.

- 15.6 Headings. The titles and headings of the various sections and paragraphs in the Agreement are intended solely for convenience of reference and are not intended to explain, modify or place any construction or limitation upon any of the provisions of the Agreement.
- 15.7 Issued Bulletins; Amendments. Fannie Mae may issue hard-copy bulletins or electronic bulletins (via electronic mail or posted to an applicable Fannie Mae internet site), from time to time and in accordance with Section 15.3, amending the Agreement on a prospective basis, effective on the date specified by Fannie Mae in the bulletin. Each bulletin shall be issued at least twenty (20) days before its effective date, except for bulletins relating to software and other materials provided by Third-Party Licensors which may be issued at any time prior to their effective date. Licensee shall have the right to reject any bulletin by providing written notice to Fannie Mae within fifteen (15) days after receipt of such bulletin. In the event that Licensee rejects any bulletin, Fannie Mae shall be entitled to terminate the Agreement or any affected Schedule, effective either (a) as of the effective date of such bulletin, (b) upon receipt by Licensee of Fannie Mae's termination notice, or (c) upon the termination date set forth in Fannie Mae's termination notice, whichever is later. Unless Licensee provides such rejection notice within the aforementioned fifteen (15) day period, Licensee shall be deemed to have accepted such amendments and such amendments shall form part of the Agreement as of the effective date of such bulletin. Licensee's continued use of any affected Licensed Application shall be an acknowledgment of such acceptance. Otherwise, the terms of the Agreement may be amended solely by a writing expressly purporting to create an amendment or supplement to the Agreement and executed by a duly authorized representative of each party to be bound thereby. The Agreement may not be amended by any purchase order or other written instrument submitted by Licensee, whether or not formally rejected by Fannie Mae.
- 15.8 Entire Agreement; Priority. Except as expressly provided in the Agreement, no representations or statements of any kind made by either party that are not expressly stated in the Agreement shall be binding on such party regarding the subject matter hereof. The parties agree that the Agreement shall constitute the complete and exclusive statement of the agreement between them regarding the subject matter of each Schedule (or, if no Schedule has been entered into, regarding the subject matter of the Master Terms), and supersedes all prior or contemporaneous communications, proposals or agreements, oral or written, relating to the subject matter of the Agreement. In the event of a conflict, terms and/or conditions contained in the relevant Schedule shall take precedence over terms and/or conditions contained in the Master Terms, but only with respect to the subject matter of such Schedule. Without limiting the generality of the foregoing, Licensee acknowledges and agrees that the Agreement supersedes and replaces any currently outstanding agreement(s) between Licensee and Fannie Mae that incorporate(s) Fannie Mae's "MORNETPlus Terms and Conditions," "MORNETPlus Software License and Subscription Agreement Terms and Conditions," "MortgageLinks Terms and Conditions," "MortgageLinks Software License and Subscription Agreement Terms and Conditions," or "Licensed Software Terms and Conditions." Without further action on the part of either party, any (a) schedules entered into pursuant to such agreement(s) shall be deemed to be Schedules incorporated into the Master Terms and (b) references in any Schedules, Rate Sheets and associated forms to "Licensed Software" shall be deemed to be references to "Licensed Application." In the event of a conflict between a term and/or condition of any Schedule described in the preceding Section 15.8(a) and the Master Terms, the term and/or condition contained in the Master Terms shall take precedence over the term and/or condition of such Schedule, but only with respect to the subject matter of such Schedule.
- In addition, without limiting the generality of the foregoing, Licensee acknowledges and agrees that Fannie Mae may, from time to time, provide Licensee with marketing materials and other information (including, but not limited to, press releases, internet postings, responses to written and telephonic inquiries, fact sheets, periodic reports, product support information and other customer communications materials) relating to the Licensed Materials and other products or services and that such materials or other information will not be deemed to (a) include any representation or warranty by Fannie Mae or its Third-Party Licensors unless such materials or information expressly provide that a particular statement is a representation or a warranty for purposes hereof, (b) form part of the Agreement unless such materials or information (or the Agreement) expressly provide otherwise, or (c) constitute an inducement for Licensee to enter into or extend the Agreement, in whole or in part.
- 15.9 Jurisdiction; Waiver of Jury Trial. Any and all disputes between the parties that cannot be settled by mutual agreement shall be resolved solely and exclusively in the courts located within the District of Columbia, and Licensee hereby consents to the jurisdiction of such courts and irrevocably waives any objections thereto, including without limitation, on the basis of improper venue or *forum non conveniens*. Each of the parties hereto irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to the Agreement.
- 15.10 Third-Party Beneficiaries. The parties acknowledge and agree that applicable Third-Party Licensors are intended beneficiaries of the Agreement and shall be entitled to rely upon and directly enforce the terms and conditions hereof. Except as provided in the foregoing sentence, nothing in the Agreement is intended to, or shall, create any third-party beneficiaries, whether intended or incidental, and neither party shall make any representations to the contrary.
- 15.11 Restricted Rights. If Licensee is any unit or agency of the U.S. Government, then the following provision applies:
- U.S. GOVERNMENT RIGHTS
- Use, duplication, or disclosure by the U.S. Government is subject to restrictions set forth in the Agreement and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (2007), DFARS 252.227-7013(c)(1)(ii) (OCT 1988), FAR 12.212(a) (2005), FAR 52.227-19, or FAR 52.227-14 (ALT III), as applicable. Fannie Mae, 3900 Wisconsin Ave., N.W., Washington, D.C. 20016.
- 15.12 Foreign Users. The Licensed Materials shall not be used by any national (citizen or lawful permanent resident) of "Country

Group E," as that term is defined by the Export Administration Regulations, 15 C.F.R. 730 et. seq., nor shall Licensee take any steps to facilitate such use. Licensee hereby represents and warrants that it is not a national (citizen or lawful permanent resident) of "Country Group E."

- 15.13 Facsimile and E-Mail Transmissions. The parties acknowledge and agree that copies of executed documents received via facsimile and/or e-mail transmission shall be deemed to be originals for all purposes, and the parties intend and agree to be legally bound by such and other electronic transmissions (including those involving electronic signatures) between them.
- 15.14 No Implied Waiver. No term, provision or clause of the Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and executed by a duly authorized representative of the party to be bound thereby. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach.
- 15.15 Independent Parties. The parties are independent contractors. Nothing in the Agreement shall be construed to make the parties partners, joint venturers, representatives or agents of each other, nor shall either party so represent to any third person. No employer-employee relationship is intended to be created by the Agreement.

**UNIFORM COLLATERAL DATA PORTAL**  
Schedule

Terms and Conditions

Part I

LICENSED APPLICATION/ADDITIONAL TERMS

1. Licensed Application. Fannie Mae's application known as the Uniform Collateral Data Portal or UCDP (the "Licensed Application"), is licensed pursuant to this Schedule and the Master Terms and Conditions between Fannie Mae and Licensee (the "Master Terms") into which this Schedule is incorporated. As of the effective date of this Schedule, the Licensed Application will include certain functionality and features relating to the delivery of appraisal data and the identification of certain appraisal issues.
2. UCDP. The Licensed Application is a joint GSE portal for the electronic collection of appraisal data. If applicable, Licensee may be authorized by a lender to use the Licensed Application on behalf of such lender. When submitting appraisal data to the Licensed Application, Licensee may designate the appraisal data for delivery to one or more GSEs. Licensee's disclosure of a UCDP Doc File ID to a third party, including a lender, shall be deemed to be Licensee's consent to the third party's access to that collection of data assigned to such UCDP Doc File ID (for which Fannie Mae shall have no liability), and authorization to Fannie Mae to provide the third party with such access and data.
3. Restrictions on Use. Without limiting the terms of the Section of the Master Terms entitled "Restrictions on Use," Licensee's right to access and use the Licensed Application and to use the associated Documentation shall be restricted to: (i) the management of collateral risk and (ii) protection against or prevention of actual or potential fraud, unauthorized transactions, claims, or other liability. In no event shall Licensee use the Licensed Application for credit evaluation or to make a credit decision.
4. Acknowledgments. Licensee acknowledges the following:
  - (i) Licensee is responsible for the assessment and accuracy of appraisals in accordance with the Guide. The Licensed Application does not "approve" or "deny" appraisals, nor does the absence or presence of flags or messages generated by the Licensed Application indicate an appraisal is acceptable or unacceptable.
  - (ii) Output generated by the Licensed Application, in whole or in part, has not been prepared by a licensed or certified appraiser and does not constitute an appraisal or valuation of the subject property.
5. Rights in Data. Without limiting the terms of the Section of the Master Terms entitled "Rights in Data," Fannie Mae, its agents and contractors may use, reproduce, distribute and retain all data that is submitted to the Licensed Application and designated in the Licensed Application for delivery to Fannie Mae for modeling and analytics, and to provide data and services in compliance with all laws and regulations and for all purposes related to the Licensed Application, the appraisal, the loan or any securities. With respect to data associated with mortgage loans securitized by Fannie Mae, or in which Fannie Mae has an ownership right or interest, Fannie Mae may also use, reproduce, distribute and retain such data for all other purposes.

6. Indemnification. Subsection (d) of the Section of the Master Terms entitled “Indemnification” shall be expanded to also provide indemnification in the event of any breach of Section 3 of Part I of this Schedule.
7. Survival. In addition to the provisions referred to in the Section of the Agreement entitled “Survival,” Sections 4 through 6 of Part I of this Schedule shall survive any termination of this Schedule or the Agreement.

## Part II

### PRICING

There are no charges in addition to those imposed pursuant to the Section entitled “Fees, Taxes and Billing,” of the Master Terms.