

## **USER AGREEMENT (For Tax Credit Property Owners)**

This User Agreement (the "*Agreement*") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between New Jersey Housing and Mortgage Finance Agency, located at 637 South Clinton Avenue, Trenton, NJ 08650 ("HMFA"), and \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ ("User/Owner") for project known as \_\_\_\_\_, Property # \_\_\_\_\_, LITC# \_\_\_\_\_

### **1. Scope of Agreement**

(a) This Agreement sets forth User's rights and obligations in connection with its use of and access to HMFA's electronic MITAS Internet Low Income Housing Tax Credit system (hereinafter the "System"). User acknowledges that it has reviewed, before executing this Agreement, HMFA's Procedures Manual which describes and governs System operating procedures. HMFA reserves the right, on reasonable notice to User and without User's consent, to modify such Procedures Manual. Such notice and modifications will be provided pursuant to the procedures set forth in this Agreement, on the System or by other electronic means, in HMFA's sole discretion.

(b) User's use of the System is subject to, and must be consistent with, the terms and conditions of the Deed of Easement and Restrictive Covenant for Extended Low Income Occupancy by and between Owner and HMFA, together with any amendments thereto (the "Covenant") or other applicable agreements in effect with HMFA, which govern the existing relationship between HMFA and User for monitoring tax credit compliance. All transactions performed on the System will be conducted in a manner consistent with such existing Covenant(s). In the event of a conflict between this agreement and the Covenant with HMFA, the latter shall control.

### **2. Access**

(a) HMFA hereby grants User the right to access the System solely for the following purposes: 1) processing tenant transaction data (i.e. Building Status Report); 2) tax credit compliance reporting; and 3) form printing (collectively, "Permitted Uses") and otherwise in accordance with the processes set forth in the Procedures Manual. For the purposes of this Agreement, the term "Information" shall mean any data entered by User, its officers, employees and/or agents, into the System (including user names and passwords), and all information viewable on the System by User, its officers, employees and/or agents.

(b) User acknowledges and agrees that the System and the Information are the valuable intellectual property of HMFA and others, and that other than the access granted hereunder, User obtains no rights in or to the System or the Information. HMFA owns all right, title and interest in the data posted to the System by User. User acknowledges and agrees that HMFA owns all right, title and interest, including all intellectual property rights, in the aggregate data posted to the System.

(c) User shall not use any of the trademarks, trade names or service marks used by or in connection with the System in any manner without the prior written consent of HMFA.

### **3. Confidentiality**

(a) Access to the System, and the Information contained therein, is being provided to User solely and exclusively for its own internal use subject to the terms hereof. User agrees that it will not, and will not permit, any person under its control to recirculate, republish or otherwise provide Information or access to the System to any third party, including but not limited to, through written, oral or electronic

means, without the prior written consent of HMFA. User further agrees to protect and safeguard the proprietary and intellectual property rights of HMFA and others having rights in the System and the Information by using the same degree of care that User uses to protect its own confidential and intellectual property, but in any event no less than a reasonable degree of care. User shall not alter, enhance or make derivative works of the System, and shall not reverse engineer or decompile the System except to the extent explicitly permitted by law. Notwithstanding the foregoing, User may share Information with any individual tenant whose information is being processed through the System to the extent that such information directly pertains to said tenant's housing eligibility.

(b) Each party acknowledges that it or its employees may in the course of performing its responsibilities hereunder acquire information which is proprietary to or confidential to the other party to whom such other party has a duty of confidentiality. Any and all non-public information of any form obtained by such party in the performance of this Agreement shall hold such information in strict confidence and not disclose such information to third parties or use such information for any purpose whatsoever other than as contemplated by this Agreement. However, User acknowledges that any and/or all information provided by it to HMFA in connection with this Agreement may be made available to the general public to the extent permitted or required by state or federal law.

#### **4. Security**

(a) User will be permitted access to the System in accordance with protocol set forth in the Procedures Manual. User will allow access to the System only by persons duly and validly authorized by User to use the System as permitted hereunder. User assumes full responsibility for any transactions or other use of the System by User's personnel and agents, whether or not such parties are authorized by User to use the System, and to ensure that its personnel and agents abide by and comply with all applicable provisions of the federal and state housing laws. User acknowledges and agrees that a breach by any of User's personnel or agents of any provision of this Agreement shall constitute a breach by User. Accordingly, User must familiarize all of its authorized personnel with User's obligations hereunder.

(b) User shall implement security procedures to prevent unauthorized use or misuse of the System that are consistent with User's standard security procedures. This shall include, at a minimum, taking all reasonable steps, and establishing and maintaining all reasonable procedures, to ensure that the System is accessible only by authorized persons, and that System transactions are not altered, lost or destroyed.

(c) User shall immediately cease use of the System if it is notified to do so by HMFA, or otherwise becomes aware of, or suspects, a technical failure or security breach of the System. User shall immediately provide written notification to HMFA of such failure or breach of security in accordance with any notice provisions set forth in the Procedures Manual.

(d) At the request of HMFA, or upon termination of an officer, employee or agent of the User, User shall promptly terminate such individual's access to the System.

#### **5. User Obligations; Representations**

(a) User will complete and keep current User activation forms or similar materials provided by HMFA to User to permit User to access the System.

(b) User shall, at its own cost and expense, provide all equipment, operating platforms, and software (other than any software provided by HMFA) to use the System. Any minimum standards and requirements for such equipment, operating platforms, and software are set forth in the Procedures

Manual, as may be amended from time to time. User shall also provide, at its own cost and expense, all connections from its own computer systems to the System.

(c) User acknowledges the information entered into the System was legally obtained and is accurate to the best of their knowledge.

(d) User shall be responsible for maintaining any records required by law of transactions sent and received by it on the System. User will not use, or allow the use of, the System in contravention of any federal, state or other applicable laws, or rules or regulations of housing laws or other relevant regulatory organizations, including, without limitation, any laws or regulations governing the HMFA and the Internal Revenue Service.

(e) User will be required to provide certain Information to HMFA via the System in connection with the reporting requirements under the Low Income Housing Tax Credit Program. While HMFA intends the System be available for the purposes of the Permitted Uses, HMFA makes no representation as to the availability of the System to any User at any particular time. HMFA reserves the right at any time, in its sole discretion and without prior notice to User: (i) to discontinue transmitting all or any part of the Information; (ii) to refuse to process any or all actions on the System; and (iii) to temporarily or permanently suspend User's use of the System, provided that, in each case, HMFA will give advance notice to User when reasonably practicable.

(f) User shall supply HMFA with all information requested by it concerning User's use of and access to the System which is reasonably deemed by HMFA to be necessary in connection with HMFA's regulatory and/or statutory obligations. User understands that HMFA may report such information or any other information in its possession to such regulatory authorities as it determines in its sole discretion to be necessary.

(g) Failure of the User to comply with any of the aforementioned obligations and representations shall result in automatic termination of this Agreement by HMFA. HMFA reserves the right to pursue any and all remedies available based on the User's failure to comply with the terms of this Agreement.

## **6. Term and Termination; Survival**

(a) HMFA may terminate this Agreement at its sole discretion, upon not less than thirty days' notice to User.

(b) Notwithstanding the termination of this Agreement for any reason, the confidentiality provisions set forth in Section 3 hereof shall remain in full force and effect.

## **7. Warranties; Limitation on Liability**

(a) Each party hereto represents and warrants to the other that (i) it has the power and authority to execute, deliver and perform this Agreement, and (ii) upon due execution and delivery, this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, and (iii) its execution, delivery and performance of this Agreement, and its entering into transactions through the System, will not violate any law, ordinance, charter, bylaw or rule applicable to it, or any agreement by which it is bound or by which any of its assets are affected.

(b) THE SYSTEM IS PROVIDED "AS IS," AND HMFA MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION OR AS TO RESULTS TO BE ATTAINED BY USER FROM THE USE OF THE SYSTEM. EXCEPT

AS EXPRESSLY STATED IN THIS AGREEMENT, HMFA DISCLAIMS ALL WARRANTIES, CONDITIONS, GUARANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTIES, CONDITIONS, GUARANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, IN LAW OR IN FACT, ORAL OR IN WRITING. NEITHER HMFA NOR ANY THIRD PARTY PROVIDERS WILL HAVE ANY RESPONSIBILITY TO MAINTAIN THE SYSTEM OR TO SUPPLY ANY CORRECTIONS, UPDATES OR RELEASES IN CONNECTION THEREWITH. USER IS SOLELY RESPONSIBLE FOR CONFIRMING THE ACCURACY AND ADEQUACY OF INFORMATION SUPPLIED BY IT AND THE RESULTS THEREOF. NEITHER HMFA NOR ANY THIRD PARTY PROVIDER UNDER CONTRACT WITH HMFA SHALL BE RESPONSIBLE TO USER FOR ANY INJURIES HOWSOEVER CAUSED BY THE USE OF THE SYSTEM OR BY ANY ERRORS, DELAYS OR INTERRUPTIONS IN THE TRANSMISSION OR CONFIRMATION OF TRANSACTIONS OR INFORMATION, OR FROM THE FAILURE OF HMFA OR ANY THIRD PARTY PROVIDER TO PROCESS OR CONFIRM ANY TRANSACTION INITIATED BY USER. COMPLIANCE WITH THE REQUIREMENTS OF THE INTERNAL REVENUE CODE IS THE SOLE RESPONSIBILITY OF THE OWNER OF ANY BUILDING FOR WHICH THE CREDIT HAS BEEN ALLOCATED. USE OF THIS SYSTEM DOES NOT ENSURE COMPLIANCE WITH THE INTERNAL REVENUE CODE, TREASURY REGULATIONS OR ANY OTHER LAWS OR REGULATIONS GOVERNING THE LOW-INCOME HOUSING TAX CREDIT PROGRAM.

(c) User acknowledges and agrees that:

(i) HMFA supplies the System to User solely to enable User to engage in Permitted Uses;

(ii) HMFA will use reasonable efforts to inform User of any difficulties experienced by HMFA or third parties with respect to use of the System. HMFA shall not have any duty or obligation to verify, correct, complete or update any information displayed on the System;

(iii) User shall indemnify, protect and hold harmless HMFA, and its respective partners, officers, affiliates, employees and agents from and against any and all losses, liabilities, suits, actions, proceedings, claims, damages or costs (including attorneys' fees) resulting from or arising out of the User Owner's breach of this Agreement or any cancellation of, or changes to, transactions initiated by User.

(d) This Agreement shall be subject to all of the Provisions of the New Jersey Tort Claims Act, N.J. S.A. 59:1-1 et.seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et.seq.

## **8. General**

(a) This Agreement and its enforcement shall be governed by the laws of the State of New Jersey, without giving effect to the conflict of law principles thereof.

(b) This Agreement may not be assigned by User without the express written permission of HMFA, which permission will not be unreasonably withheld.

(c) Any notices required to be given pursuant to this Agreement shall be provided to the following:

To HMFA:

New Jersey Housing and Mortgage Finance Agency  
637 South Clinton Avenue  
Trenton, NJ 08650-2085  
Attention: Tax Credit Services

To Property Owner:

(d) This Agreement contains the entire and only agreement between the parties, and supersedes all preexisting oral or written agreements between them regarding the subject matter hereof. This Agreement may not be amended, modified or superseded, unless expressly agreed in writing by both parties.

(e) If any provision or term of this Agreement, not being of a fundamental nature, is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of the Agreement will not be affected, and such provision or term shall be construed to effectuate its purposes to the fullest extent enforceable under applicable law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first written above.

**New Jersey Housing and Mortgage Finance Agency**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Property Owner**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_