



## MISMO® COMPLIANCE CERTIFICATION MARK LICENSING AGREEMENT<sup>1</sup>

This is a MISMO Compliance Certification Mark Licensing Agreement (“Agreement”) by and between the Mortgage Industry Standards Maintenance Organization, Inc. (“MISMO”), a not-for-profit corporation with its principal place of business at 1919 M Street, NW, 5<sup>th</sup> floor, Washington DC, 20036, and \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (“Licensee”)

### RECITALS

**WHEREAS**, MISMO has established the MISMO Software Compliance Certification Program to indicate to the Mortgage Industry that products using specific compliance marks are mapped to and supportive of the applicable MISMO Standards published on the MISMO website at [www.mismo.org](http://www.mismo.org);

**WHEREAS**, MISMO owns the MISMO® service mark as well as the Compliance Certification Marks, as defined below;

**WHEREAS**, Licensee wishes to use certain of the Compliance Certification Marks on and in relation to Licensee's products, when such products are certified as meeting the applicable requirements for Software Compliance Certification;

**WHEREAS**, MISMO is willing to permit Licensee to use certain applicable Compliance Certification Marks in connection with its Certified Products, subject to the terms and conditions of this Agreement and the then-current published MISMO Software Compliance Certification Program documentation; and

**NOW, THEREFORE** in consideration of the conditions and covenants set forth hereinafter, receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

### ARTICLE I

#### DEFINITIONS

In this Agreement the following words shall have the stated meanings unless the context otherwise requires. Any capitalized term used that is not defined in this Agreement will have the meaning ascribed to such term in the Program Documentation (as defined below).

**1.1 Compliance Certification Mark(s).** The certification logo, service marks, interface tags and any other designations, whether registered or not, that MISMO grants an Applicant the right to use in association with a Certified Product after such product or component is certified and upon Applicant's agreement to be bound by this MISMO Compliance Certification Mark License Agreement.

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<sup>1</sup> Please note that the contents of this document are currently undergoing final legal review. The document is being shared for preliminary review by pilot participants. The final version of the document is expected to be available shortly.

**1.2 Certified Product.** A product or component that has been reviewed by MISMO, and, in the case of Premiere Level Compliance Certification, an Authorized Assessor, and found to comply with the applicable MISMO Standards and other requirements in the Program Documentation, and for which the Applicant has been notified in writing by MISMO that it may represent, pursuant to the terms of this MISMO Compliance Certification Mark License Agreement, that such product or component has been certified by MISMO.

**1.3 MBA.** The Mortgage Bankers Association, an Illinois nonprofit corporation recognized as a tax-exempt business league within the meaning of Section 501(c)(6) of the Internal Revenue Code of 1986, as amended.

**1.4 MISMO Intellectual Property.** Any rights owned or provided by MISMO in copyrights, patents, Compliance Certification Marks, other MISMO trademarks and service marks (whether registered or not), right of publicity, authors' rights, contract and licensing rights, goodwill therein and all other intellectual property rights as may exist now and/or hereafter come into existence, the general appearance, visual architecture or design thereof, and all renewals and extensions thereof, regardless of whether such rights arise under the laws of the United States or any other state, country or jurisdiction, including but not limited to all Compliance Certification Marks.

**1.5 MISMO.** The organization responsible for developing, maintaining and interpreting the MISMO Standards. MISMO also manages the day-to-day operations of the MISMO Software Compliance Certification Program.

**1.6 Program Documentation.** The MISMO Software Compliance Certification Overview and other supporting documentation for the MISMO Software Compliance Certification Program, as modified by MISMO from time to time in its sole discretion, and set forth at <http://mismo.org> or such additional or replacement locations as provided by MISMO.

**1.7 MISMO Disclaimer.** Information made available to the general public by MISMO that indicates the scope and nature of the MISMO Certification, and disclaims liability for any use of or reliance on a Certified Product's certified status in choosing whether or not to use such Certified Product. The MISMO Disclaimer shall be made available on a MISMO Web Site that can be accessed via [www.mismo.org](http://www.mismo.org) that will be incorporated into each Compliance Certification Mark. Where the Compliance Certification Mark is electronic, the <http://mismo.org> will be a hyperlink to the information and where the Compliance Certification Mark is used in print or other non-electronic form, the information will be available by typing the url into a browser.

**1.8 MISMO Registry.** An online registry that lists Certified Products, Licensee's organization, contact information, and applicable certification information.

**1.9 MISMO Standards.** A definition of what mandatory and optional behavior a product must implement in order to be certified as compliant with the applicable MISMO Standards. The current MISMO Standards are found at [mismo.org](http://mismo.org).

**1.10 Compliance Certification Mark Usage Guidelines.** The set of rules attached as Exhibit B to this Agreement that describe the form and manner in which the Compliance Certification Marks (and other MISMO Service Marks to which Licensee may be granted licensee rights, if any) are to be used by Licensee as amended or revised from time to time by MISMO, pursuant to the terms and conditions of this Agreement.

## ARTICLE II

### COMPLIANCE CERTIFICATION MARK LICENSE

**2.1 Purpose.** This Agreement shall govern the use by Licensee of specified MISMO Intellectual Property. Licensee acknowledges and agrees that continued (a) compliance with the terms of this Agreement, (b) truth of the warranties made in this Agreement, and (c) compliance with the covenants set forth in this Agreement are explicit conditions to the license granted hereunder.

**2.2 License.** When a product or component is certified pursuant to the Program Documentation, and only if such product or component remains a Certified Product and this Agreement has not been terminated, Licensee is granted a non-exclusive, non-assignable, non-transferable license, without right to sublicense, for use in the United States (including territories) and Canada only, to represent the specified product as a Certified Product and to use the Compliance Certification Mark(s) specified in Exhibit A-1 hereto on, or in relation to, such Certified Product in the manner set forth in this Agreement. For each subsequent Certified Product, MISMO will provide Licensee with an additional Exhibit A-X, where "X" is the next sequential number (e.g., A-2, A-3, etc.). The license to use the applicable Compliance Certification Mark(s) is only valid after the applicable Exhibit A-X has been issued by MISMO while this Agreement is in force and effect, and such is automatically revoked with the expiration or termination of either the applicable Exhibit A-X (which expires upon termination of the Certification), or this Agreement. A product or component shall be represented by Licensee as a Certified Product only with respect to the specific MISMO Standards set forth in the applicable Exhibit A-X. The Licensee acknowledges that title and full ownership rights to the Compliance Certification Marks are and remain the sole property of MISMO. By affixing the Compliance Certification Mark to its products, Licensee expressly warrants that the provisions of this Agreement, including the Compliance Certification Mark Usage Guidelines, have been complied with without deviation. Except as specifically set forth in this Agreement, Licensee shall not permit any third party to use or copy MISMO's Intellectual Property.

**2.3 No Contest of Ownership.** Licensee acknowledges that the MISMO Compliance Certification Marks as well as all other MISMO marks (whether registered or unregistered) are the exclusive and sole property of MISMO. Licensee agrees that: (a) it will not contest the ownership or validity of the MISMO Compliance Certification Marks or any other MISMO marks without a good faith basis for doing so; (b) any and all rights that might be acquired by its use of the MISMO Compliance Certification Marks shall inure to the sole benefit of MISMO; and (c) it will not use or register in any country the MISMO Compliance Certification Marks or any other MISMO marks, trade names, or other designations resembling or confusingly similar to the MISMO Compliance Certification Marks or other MISMO marks. Nothing contained in this Agreement shall entitle Licensee to use or register the Compliance Certification Marks as part of any corporate, business, or trading name of the Licensee, or to use the Compliance Certification Marks outside of the United States (including territories) and Canada.

**2.4 License Restrictions.** Unless otherwise expressly authorized in writing by MISMO, Licensee shall not use the Compliance Certification Marks other than in accordance with the terms and conditions of this Agreement (including its Exhibits).

**2.5 Conduct of Licensee.** Licensee hereby acknowledges that its provision of Certified Product(s) in conjunction with the Compliance Certification Marks reflects on the good will and reputation of MISMO and the MBA. Therefore, Licensee agrees to act: (a) in a professional manner and to use commercially reasonable industry practices; and (b) in accordance with the terms and conditions of this Agreement as amended from time to time as well as applicable law and regulations. In addition, Licensee agrees that its Certified Products will be free of serious defects in manufacture and generally suitable for their intended purposes.

**2.6 Licensee Assistance.** Licensee shall, on request, give MISMO or its authorized representative any information as to its use of the Certified Marks which MISMO may reasonably request and will render any (non-monetary) assistance reasonably required by MISMO in maintaining the application, registrations, and/or common law rights in the Compliance Certification Marks. In addition, Licensee will immediately notify MISMO in writing if Licensee becomes aware of any unauthorized use, or proposed unauthorized use, by any individual or entity of any MISMO Intellectual Property, including the Compliance Certification Marks.

### ARTICLE III

#### USE OF COMPLIANCE CERTIFICATION MARKS

**3.1 Use of Compliance Certification Mark.** When MISMO authorizes Licensee to use a Compliance Certification Mark, such mark shall only be used in relation to the Certified Product(s) for which such use is authorized by MISMO under an Exhibit A-X, and with the appropriate tags, if specified in the Exhibit. In addition, Licensee may not tamper with, or in any way modify, the reference to the MISMO Disclaimer in the Compliance Certification Mark except that, when the Compliance Certification Mark is displayed electronically, Licensee will insure that the reference to the location of the MISMO Disclaimer URL operates as a hyperlink to the sited webpage.

**3.2 Advertising.** Upon issuance and execution of an Exhibit A-X for a specified product or component, and only while it and this Agreement remain in effect, Compliance Certification Marks may appear in Licensee's advertising and promotional material or other literature, regardless of medium, only in reference to Certified Product set forth in the applicable Exhibit A. References to MISMO certification shall not be misleading as to the scope, extent or intent/meaning of the certification. Licensee shall not make any public representations that the Compliance Certification Mark(s) and Exhibit A-X imply anything other than that MISMO has certified the products/components to the MISMO Standards and other program requirements, and Licensee shall not imply that MISMO has endorsed Licensee's product or component in any way beyond compliance with the MISMO Standards. Licensee shall not alter the appearance of any Compliance Certification Mark nor use it in combination with other designs to create a new logo or Compliance Certification Mark. Licensee agrees to amend or discontinue the use of all advertising, promotional material or other literature considered inappropriate by MISMO, regardless of the medium, at Licensee's own expense upon the written request of MISMO or upon termination pursuant to Article X hereof and Licensee will instruct its own personnel, internet service provider, or other third party supporting the Licensee's web-site to take such action as necessary to comply with MISMO's written instructions, to ensure that all web pages containing such misleading advertising do not continue to be displayed and accessible. MISMO reserves the right to seek legal recourse and any remedy it believes appropriate upon a refusal to amend or discontinue the use of all such advertising, promotional material or other literature.

**3.3 Registry Listing.** MISMO shall have the right to list in its MISMO Registry such information about Licensee and the Certified Product(s) as is consistent with the MISMO Program Documentation (e.g., organization, product, date and duration of certification).

**3.4 Misuse of Compliance Certification Mark.** Licensee understands and agrees that monetary damages would not be a sufficient remedy and that MISMO will be entitled to injunctive relief in addition to all other remedies available at law or equity relating to use of the Compliance Certification Mark (and any licensed tags) by the Licensee in the following circumstances:

(a) after expiration or termination of this Agreement by either party where renewal has not been initiated at the time of, or within ten business days after, such expiration or termination;

(b) after expiration or termination of the applicable Exhibit A where renewal has not been contemplated at the time of such expiration or termination;

(c) with respect to non-certified products/services or products/services that are no longer in compliance with the MISMO Standards where the non compliance is not cured within thirty days of notification;

(d) in any form other than the form that was approved by MISMO where the incorrect form is not cured within thirty days of notification (or such shorter period as is prescribed by MISMO based on the severity of the misuse);

(e) without reference to the MISMO Disclaimer (including as a hyperlink when in electronic format) where the reference is not cured within thirty days of notification;

(f) upon receipt of notice of misleading advertising as described in Section 3.2, where the misleading advertising is not cured within thirty days of notification (or such shorter period as is prescribed by MISMO based on the severity of the misuse).

The provisions of this Section 3.4 shall survive the termination or expiration of this Agreement. Licensee shall pay MISMO's reasonable legal fees and costs incurred in MISMO's successful enforcement of this Section.

**3.5 Finality.** The determinations by MISMO as to inappropriate use of a Compliance Certification Mark by Licensee, or termination of this Agreement are final, in its sole discretion and binding on the Licensee.

## ARTICLE IV

### COMPLIANCE WITH MISMO STANDARDS

**4.1 Compliance.** Each Certified Product shall comply with all of the applicable MISMO Standards at all times and Licensee shall at all times comply with the MISMO Program Documentation, including without limitation, continued compliance with self-assertions (Standard Level) or continued use without modification of the processes validated by Authorized Assessors (Premiere Level). Licensee is responsible for its products and services and for ensuring such full compliance.

**4.2 Annual Renewal/Re-Certification.** Certified Products are subject to annual re-certification at Licensee's expense. If compliance is not reconfirmed by the MISMO Certification renewal date, Licensee will be subject to corrective action, including without limitation (a) suspension or cancellation of the applicable Exhibit A-X, (b) termination of the right to represent the product or component as a Certified Product, and (c) termination of the right to use a MISMO Compliance Certification Mark in connection with such product or component.

**4.3 Revised MISMO Standards and Recertification.** MISMO may from time to time establish new or revised MISMO Standard applicable to a Certified Product, which will be published on the MISMO website.

**4.4 Modifications.** Licensee shall inform MISMO of any intended modification to the product or component, or any relevant Licensee systems or procedures, which affect the conformity of the product or component with the MISMO Standards or Program Documentation. Based on such information, MISMO will notify Licensee whether or not it will be permitted to apply the Compliance Certification Mark to any product or component incorporating such modifications without recertification. In the event that a Certified Product ceases to qualify as a Certified Product, the Licensee shall at its expense immediately cease to make any use of the Compliance Certification Marks whatsoever on or in relation to that product or component. In addition, Licensee shall also immediately cause the Compliance Certification Marks to be removed from all units of

that product and from all sales literature and other materials and, where necessary to achieve this, shall use its best efforts to recall such products, sales literature, and materials.

**4.5 Regulators and State Examiners.** Licensee shall cooperate with MISMO during the course of any regulatory audit of MISMO by a federal, state or local regulator or examiner, and in particular shall send, or cause to be sent, to MISMO at its Washington, D.C. office by overnight mail, any of the files that it maintains with respect to the MISMO Standards (excluding any information related to Licensee's customers unless ordered to do so by a court or governmental agency of competent authority, in which case MISMO will give Licensee prompt, reasonable notice of such order) within five (5) business days of receipt of written notice from MISMO, and Licensee shall provide reasonable access by MISMO or such federal, state or local regulator or examiners to officers or other knowledgeable personnel of Licensee in connection with such audit.

## ARTICLE V

### CONFIDENTIALITY

MISMO shall not disclose confidential and proprietary information received from Licensee without the Licensee's authorization. Where information, including proprietary information, relating to Licensee or any Licensee product or component is requested by a regulatory authority or pursuant to a court order, subpoena or similar process, MISMO will comply with such a request and will make reasonable efforts to advise Licensee in advance of its intention to do so.

## ARTICLE VI

### REPRESENTATIONS AND COVENANTS

**6.1 Representations and Warranties of Licensee.** Licensee represents and warrants as of the date hereof as follows.

(a) Organization and Good Standing. Licensee is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation. Licensee is duly qualified or licensed and in good standing as a foreign corporation and authorized to do business, in each jurisdiction in which the ownership or leasing of its properties or the character of its operations makes such qualification, licensing or authorization necessary, except where the failure to obtain such qualification, license, authorization or good standing would not individually or in the aggregate reasonably be expected to have a material adverse effect upon the assets, liabilities, financial condition, earnings or operations of the Licensee or any transaction contemplated by this Agreement (any such material adverse effect, whether individually or in the aggregate, a "**Material Adverse Effect**"). Licensee has all requisite corporate power and authority to own its assets and to carry on its business as presently proposed to be conducted except where a lack of such corporate power or authority could not reasonably be expected to have a Material Adverse Effect.

(b) Authorizations. Licensee has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement. The execution and delivery by the Licensee of this Agreement and the consummation of the transactions contemplated thereby have been duly and validly authorized by Licensee.

(c) Conflicting Agreements and Other Matters. Licensee is not a party to any contract or agreement or subject to any charter or other corporate restriction, compliance with which could reasonably be expected to have a Material Adverse Effect. Neither the execution and delivery of this Agreement nor fulfillment of nor compliance with the terms and provisions hereof will violate any provision of any law having applicability to the Licensee or any of its properties, except such violations as could not reasonably be expected to have a Material Adverse Effect. In addition, the

Licensee is not aware of any facts or circumstances that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(d) Due Execution, etc. This Agreement constitutes, and when executed and delivered by a representative of Licensee will constitute a legal, valid and binding obligation of the Licensee, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and to general principles of equity.

(e) Information Provided. Neither this Agreement nor any other written document delivered to MISMO in connection with an application for MISMO Certification contain any untrue statement of a material fact or omit any material fact necessary to make the statements herein or therein, as the case may be, in light of the circumstances under which it was made, not misleading, and all material relevant information regarding Licensee is provided.

**6.2 Covenants of the Licensee.** The Licensee covenants as of the date hereof as follows:

(a) Insurance. The Licensee and its subsidiaries will carry and maintain commercial general liability and errors and omissions insurance. Errors and omissions insurance shall include computer business risks liability coverage (including, but not limited to, coverage for unauthorized access and the disclosure of confidential or private information), in an amount that is commercially reasonable based on Licensee's business operations. In the event Licensee fails to carry such insurance, or such insurance coverage lapses while this Agreement is in effect, Licensee shall indemnify and hold harmless MBA, its agents and employees, from and against any such damages, claims, and expenses arising out of or resulting from use of the Compliance Certification Marks by Licensee.

(b) Representations. All representations made hereunder shall remain accurate for the term of this Agreement.

(c) MISMO Standards, MISMO Disclaimer, and MISMO Program Documentation. Licensee shall remain versed in the most current version of the MISMO Standards, the MISMO Disclaimer, and Program Documentation.

## ARTICLE VII

### NOTIFICATION AND CORRECTIVE ACTION

**7.1 Corrective Action.** Upon notice that a Certified Product no longer meets the applicable MISMO Standard or other program requirements, and where corrective action is possible, Licensee agrees to cooperate with MISMO and to undertake corrective actions as required by MISMO, at the Licensee's expense, to ensure that all products bearing the Compliance Certification Mark are or are brought into compliance with the applicable Program Documentation requirements. If such corrective action is not taken within thirty days or no such action is applicable, MISMO reserves the right to take whatever legal recourse is needed to address the removal of the Compliance Certification Mark from the product or component (with termination of the applicable Exhibit A-X), advise appropriate parties and/or terminate this Agreement in its entirety.

**7.2 Decisions Final.** Corrective action required under this Section 7 is without appeal and the Licensee agrees to abide by MISMO's decision, provided that to the extent possible, MISMO will provide reasonable cooperation to Licensee to assist Licensee in undertaking or completing such corrective action.

## ARTICLE VIII

## LIMITATION OF LIABILITY AND INDEMNITY

**8.1 Limitation of Liability.** LICENSEE ACKNOWLEDGES THAT EVERY BUSINESS DECISION TO SOME DEGREE REPRESENTS AN ASSUMPTION OF RISK AND THAT MISMO AND ITS AFFILIATES, IN FURNISHING MISMO SERVICES HEREUNDER, DO NOT ASSUME LICENSEE'S RISK. LICENSEE AGREES NOT TO HOLD MISMO OR ANY AFFILIATE LIABLE FOR ANY LOSS OR INJURY ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY MISMO OR SUCH AFFILIATE'S ACTS OR OMISSIONS, WHETHER NEGLIGENT OR OTHERWISE, IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING, OR DELIVERING THE MISMO SERVICES OR ANY COMPLIANCE CERTIFICATION MARK. NEITHER MISMO NOR ANY OF ITS AFFILIATES SHALL BE LIABLE FOR ANY LOSS, INJURY, CLAIM, LIABILITY, OR DAMAGE OF ANY KIND RESULTING IN ANY WAY FROM (A) ANY PRODUCTS PROVIDED BY LICENSEE, OR (B) INACCURACIES OR ERRORS IN, OR OMISSIONS PROVIDED TO MISMO BY LICENSEE OR ANY THIRD PARTY. MISMO MAKES NO REPRESENTATION THAT COMPLIANCE WITH THE MISMO STANDARDS INDICATES THAT THE LICENSEE'S CERTIFIED PRODUCT WILL OPERATE FREE FROM DEFECT WITHOUT ERROR OR ACCORDING TO ITS APPLICABLE DESIGN STANDARDS OR THAT LICENSEE'S CERTIFIED PRODUCT AND THE SYSTEMS OF THIRD PARTIES WILL BE INTEROPERABLE. LICENSEE AGREES AND ACKNOWLEDGES THAT RELIANCE ON A MISMO COMPLIANCE CERTIFICATION MARK OR OTHER MATERIALS, INFORMATION, OR DATA OTHERWISE PROVIDED BY MISMO OR ANY MISMO AFFILIATE IS AT THE RISK OF THE PARTY SO RELYING, AND IN NO WAY WILL MISMO OR ANY MISMO AFFILIATE BE LIABLE FOR ANY PARTY'S DECISION TO ENTER INTO OR REFRAIN FROM ENTERING INTO ANY TRANSACTION FOR ANY REASON.

**8.2 Indemnity.** Licensee agrees to hold MISMO and its affiliates harmless, and to defend and indemnify MISMO, its affiliates, and their respective members, directors, officers, agents, contractors and employees against any injury, loss, liability, damages, costs and/or expenses arising out of any misuse by the Licensee of the Compliance Certification Mark; any violation by the Licensee of the terms and conditions of this Agreement; any damage or injury to MISMO, any MISMO affiliate or MISMO property caused by the Licensee's or its personnel's act, omission or negligence; or the use by any party of any product or component provided by Licensee, even if such product or component is Certified or properly bears the Compliance Certification Mark, except to the extent that such injury, loss, liability, damages, costs and/or expenses are caused by the negligence or intentionally wrongful actions of MISMO or a MISMO affiliate. This Section shall survive termination of this Agreement.

**8.3 Consequential Damages.** In no event and under no theory of liability other than a claim arising from the breach of rights in any Compliance Certification Mark, trade dress, trade secret, patent or copyrighted material shall any party be liable to the other party, its affiliates or subsidiaries or their respective employees, directors, customers or officers for indirect, incidental, special, punitive or consequential damages arising out of or in connection with any breach of this Agreement or performance of the obligations hereunder, whether or not such party has been advised of the possibility of such damages.

## ARTICLE IX

### ADMINISTRATION

**9.1 Changes of Record.** Licensee shall immediately notify MISMO when any change is made in the name, address, or ownership of Licensee. Licensee shall provide proof of the change in the form required by MISMO.

**9.2 License Fees.** Consideration for the license(s) granted pursuant to this Agreement is included in the applicable MISMO fee paid upon approval and renewal of Certification.



**9.3 Fee Changes.** MISMO reserves the right to change its fees for the MISMO Services at any time and such changes will be applicable to Licensee at the time of Certification renewal.

## ARTICLE X

### TERMINATION

**10.1 Termination of One or More Exhibit A-X's.** MISMO reserves the right to terminate one or more of Licensee's Exhibit A-X's immediately upon written notice if Licensee fails to comply with any of the terms and conditions of this Agreement or any MISMO Standard or the Program Documentation, including the non-payment of outstanding accounts by the Licensee. Whether to terminate certain Exhibit A-X's or the entire Agreement (pursuant to Section 10.3 below) shall be determined by MISMO in its sole discretion.

**10.2 Procedure on Termination of an Exhibit A-X.** Upon the termination of an Exhibit A-X (including in the case of Certification expiration without renewal), the license granted by MISMO regarding usage of the Compliance Certification Mark(s) by Licensee in connection with the listed Certified Product shall no longer apply. MISMO shall have the right to remove the Certified Product from the MISMO Registry published on the MISMO website or in any other format. Licensee agrees to immediately cease using and displaying the Compliance Certification Mark. Following termination of an Exhibit A-X, upon MISMO's request, the Licensee shall permit MISMO to conduct inspection(s) as required, at MISMO's expense, for as long as necessary in MISMO's judgment to verify that the Licensee has discontinued applying the Compliance Certification Mark to the applicable product or component and marketing or promotional material in any medium, whether printed, electronic or otherwise. The requirement for such inspections shall survive the termination or expiration of this Agreement. No refunds of fees paid will be provided by MISMO to Licensee in the case of any such termination.

#### **10.3 Termination of Agreement.**

(a) This Agreement may be terminated without cause by either party upon thirty (30) days written notice at any time when no Exhibit A-1 remains in effect.

(b) This Agreement will automatically expire six months after expiration of the last Exhibit A-1, where no new Exhibit A-1 goes into effect during such six month period.

(c) MISMO can discontinue the MISMO Certification Services at any time in its sole discretion. In such an instance, all license agreements (including this Agreement) will automatically terminate as of the next renewal date.

(d) MISMO reserves the right to terminate this Agreement immediately upon written notice if Licensee fails to comply with any of the terms and conditions of this Agreement or any MISMO Standard or the Program Documentation, including the non-payment of outstanding accounts by the Licensee. For the avoidance of doubt, persistent breach by Licensee of the Compliance Certification Mark Usage Guidelines shall constitute Licensee's failure to comply with this Agreement.

(e) MISMO may terminate this Agreement with written notice to Licensee if MISMO determines in its sole discretion that Licensee's use of the Compliance Certification Marks may reasonably lead to legal liability on the part of MISMO.

**10.4 Bankruptcy or Reorganization of the Licensee.** This Agreement shall be automatically terminated and all related Exhibit A-1's shall be automatically revoked if Licensee files a receiving order for the benefit of creditors, a petition in bankruptcy, files for reorganization under bankruptcy or similar laws, or is adjudged a bankrupt. Licensee agrees to notify MISMO promptly upon the occurrence of any of these events.

**10.5 Procedure on Termination of Agreement.** Upon the termination of this Agreement (including expiration), all MISMO certifications are automatically revoked and the license(s) granted by MISMO regarding usage of the Compliance Certification Mark(s) by Licensee shall no longer apply. MISMO shall have the right to remove the Licensee's name and list of Certified Products from the MISMO Registry published on the MISMO website or in any other format. The Licensee agrees to immediately cease using and displaying Compliance Certification Marks, and MISMO Intellectual Property. Termination of this Agreement by whatever means shall not affect any liability of the parties existing as of the date of such termination, including but not limited to an obligation to indemnify a party hereunder for claims arising from events occurring prior to such termination. Following termination of this Agreement, upon MISMO's request, the Licensee shall permit MISMO to conduct inspection(s) as required, at MISMO's expense, for as long as necessary in MISMO's judgment to verify that the Licensee has discontinued applying the Compliance Certification Mark(s) to its products and marketing or promotional material in any medium, whether printed, electronic or otherwise. The requirement for such inspections shall survive the termination or expiration of this Agreement. No full or partial refunds of fees paid will be provided by MISMO to Licensee in the case of any termination permitted by this Agreement. All provisions of this Agreement which, in order to give effect to their meaning need to survive its termination, shall remain in full force and effect thereafter.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

**11.1 Third Party.** MISMO, in performing its function in accordance with its objects and purposes, does not assume or undertake to discharge any responsibility of the Licensee to any other party or for compliance with applicable laws. Nothing in this Agreement shall be considered to create a partnership, joint venture or similar relationship between the parties. In the performance of all work, Licensee is an independent contractor, with the sole right to supervise, manage, control and direct the performance of the details of all products supplied by Licensee.

**11.2 Communications.** Any notice, communication or demand given or made in reference to this Agreement shall be in writing and delivered by hand, mail (certified, return receipt requested), or express mail service to the other party at its address as set out in the current MISMO Certification Registry, in the case of Licensee, or the MISMO website, in the case of MISMO. Communication shall be deemed to have been received on the fifth (5) business day following mailing of such communication; on the second (2) business day following express mailing of such communication; and when sent, in the case of hand delivery.

**11.3 Non-Assignability.** This Agreement, including the license to use the Compliance Certification Mark(s), shall not be assigned by the Licensee without the written consent of MISMO. Any assignment prohibited hereunder shall be null and void.

**11.4 Applicable Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the District of Columbia, regardless of the place of execution and without regard to conflict of law provisions. Courts located in the Eastern District of Virginia shall have exclusive jurisdiction to hear any matter or dispute arising from this Agreement.

**11.5 Third Party Beneficiary.** MISMO affiliates, including MBA, and their members are specifically made third party beneficiaries of the indemnities and limitations of liability applicable to them hereunder.

**11.6 Application of Agreement.** This Agreement applies to all products for which MISMO Certification is applied for or granted. When the right of Licensee to represent one or more of its products or services as Certified is cancelled, this Agreement remains in effect for all other

Certified Products which are not affected by such cancellation, delisting or suspension, subject to the terms of Section 10 above.

**11.8 Waiver.** Neither party's failure to enforce strict performance of any provision of this Agreement will constitute a waiver of a right to subsequently enforce such a provision. No modification, extension or waiver of this Agreement shall be valid unless made in writing and signed by an authorized representative of the party to be charged. No written waiver shall constitute, or be construed as, a waiver of any other obligation or condition of this Agreement.

**11.9 Severability.** If any provision of this Agreement (or any portion thereof) shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder hereof, shall not in any way to be affected or impaired thereby.

**11.10 Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**11.11 Headings.** The headings in this Agreement are intended for convenience of reference and shall not affect its interpretation.

**11.12 Entire Agreement.** Each party acknowledges that it has not been induced to enter into this Agreement by any representation or warranty not set forth in this Agreement. This Agreement, including the Program Documentation, all exhibits, schedules, amendments and supplements hereto contains the entire agreement of the parties with respect to its subject matter and supersedes all existing agreements and all other oral, written or other communications between them concerning its subject matter. The parties acknowledge and agree that MISMO, and not MBA, is solely responsible for the debts and obligations of MISMO hereunder.

**11.13 Recitals.** The recitals set forth above are incorporated by reference into this Agreement.

MISMO AND LICENSEE HAVE ENTERED INTO THIS AGREEMENT AS OF THE DATE LAST SIGNED BELOW.

MISMO

<company>

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

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

Title:

Title:

Date:

Date:

**Compliance Certification Mark and Tags for Use with Specified Certified Product**

**Certified Product:** \_\_\_\_\_

**Date of Certification:** \_\_\_\_\_

**Level:** \_\_\_\_\_

**Domain:** \_\_\_\_\_

**MISMO Standards Version:** \_\_\_\_\_

**Expiration Date of Compliance Certification Mark License for Use of  
Certification Mark and Tags with above Certified  
Product:**

One calendar year from the above Date of Certification

## Compliance Certification Mark Usage Guidelines

### 1. Using Service Marks

**1.1 Introduction.** Service Marks are valuable assets for any organization because they:

- Identify and distinguish a product or component
- Serve as an assurance of consistency of the quality of a product
- Assist in advertising and promoting a service or product

Unlike rights derived from patents and copyrights, which provide protection for only a limited number of years, Compliance Certification Mark rights can last forever. Compliance Certification Mark rights can also be lost forever. The exclusive right granted in a Compliance Certification Mark can be lost as a result of careless or improper use, usually when a mark is consistently used as a generic or descriptive word for a product. All of the following were once valuable Service Marks: aspirin, escalator, cellophane, zipper, shredded wheat, corn flakes, and kerosene. All became common or generic words because they were not used carefully and correctly.

These Guidelines describe the rules for the use of the Compliance Certification Marks set out in Exhibit A.

**1.2 Legal Status.** These Guidelines form Exhibit B of the MISMO Compliance Certification Mark Licensing Agreement. They are an integral part of the Agreement and should be read in conjunction with it. The Agreement defines the conditions and technical criteria that must be fulfilled before Licensee may make use of the Compliance Certification Marks. These Guidelines define the permitted visual presentation, form, and manner in which the Service Marks can be used by a Licensee who complies with those conditions and technical criteria. Licensee shall comply with all the provisions herein. Failure to comply with the mandatory provisions of these Guidelines constitutes a breach of the Compliance Certification Mark Licensing Agreement. The Compliance Certification Marks are to be used solely on or in relation to the applicable Certified Products. **THESE GUIDELINES, BY THEMSELVES, DO NOT OPERATE TO GRANT PERMISSION FROM MISMO TO USE ANY OF ITS SERVICE MARKS.** When permission for use of a specified MISMO Compliance Certification Mark is granted, it is only for use of the listed MISMO Compliance Certification Mark only and does not extend to any other MISMO Service Marks.

### 2. Compliance Certification Mark Rules for Proper Usage

**2.1 Use in Text and Descriptive Materials.** Licensees are encouraged to refer to its certified products intellectual materials in a manner equivalent to one of the following examples, and also to apply the additional rules set forth at the end of this paragraph.

- "My product is certified by MISMO, with the Level 1 MISMO Certification for the v2.6 Appraisal Domain through January 2015"
- "My product is MISMO Certified for MI v3.3."
- "My product has earned MISMO Certification for Delivery v3.x."

**A Compliance Certification Mark whenever and wherever it appears in print or online media must be distinguished from the surrounding text.** This applies to all forms of media, including advertising copy, product packaging, brochures, manuals, internal memoranda, editorial, articles, correspondence, overhead projector slides, presentations, web sites and e-mails.

The graphic design rules of the Compliance Certification Mark must be strictly adhered to. The Compliance Certification Mark must always be used with white space around it and must never be superimposed on or used in association with other graphics or Compliance Certification Marks.

**The first or most significant occurrence of the Compliance Certification Mark must have the required attribution as a footnote.** The attribution should use the ® symbol for a registered Compliance Certification Mark and the ™ symbol for an unregistered Compliance Certification Mark. A correct attribution is “The MISMO logo is a registered Compliance Certification Mark and the MISMO mark is a trademark of the Mortgage Industry Standards Maintenance Organization, Inc.” The following *additional* attribution is required when reference is made to a Certified Product or a Compliance Certification Mark is used on and in relation to Certified Products. “[insert names of products or services] are MISMO Certified Products and meet the compliance requirements for [insert the process area type and version], as further described on mismo.org.”

The following is an example of how the MISMO Certified Credit Reporting Mark would be used with the appropriate attribution:



At bottom of page or on inside cover page: “The MISMO logo is a registered trademark and the MISMO mark is a trademark of the Mortgage Industry Standards Maintenance Organization, Inc. ABC Company’s Appraisal Software is a MISMO Certified Product and meets the compliance requirements for Appraisal v3.x certification as further described in the MISMO Standards and Program Materials on mismo.org.”

### 3. Use of the Compliance Certification Mark

#### 3.1 The Compliance Certification Mark

The following is a sample MISMO Compliance Certification Mark with tags for the Premiere Level, MISMO Standard Version 3.2, and Servicing Data Set components.



**3.2 Use of a Compliance Certification Mark in Advertisements.** All use of a Compliance Certification Mark in advertisements, display boards, promotional material, and product catalogs must be in relation to Certified Products. If an advertisement, document, or other material refers both to Certified Products and to non-Certified Products, the Compliance Certification Mark must not be used in such a way as to suggest that all the products being advertised are Certified Products.

**3.3 Use of the Compliance Certification Mark on Software Products.** Licensee is permitted to use the Compliance Certification Mark with Certified Products that consist of software, as follows:

- On the packaging of the software and its media
- In manuals for the software
- On visual displays

**3.4 Combination of Service Marks in Product Names.** The Compliance Certification Marks may be used in conjunction with a product name only with the prior written permission of MISMO. Such permission may be withheld in the sole discretion of MISMO. Comprehensive examples of proposed usage and any graphic representation must be submitted with the request to MISMO.

**3.5 Colors for Service Marks.** The color references refer to the International Pantone Matching System (PMS) and process breakdowns for printed materials and the HEX colors for online media. Whenever the colors are used in the Compliance Certification Marks, they must be accurately matched to the standard. Colors must never be applied to the Compliance Certification Marks as a screen or a tint. Color reproduction is preferred and should be applied where practical. The specified PMS color must be used in Mark reproductions as far as the printing or rendering process allows.

When working in color, the Mark must use the following values:

PMS (for print): 2728 Process breakdowns/CMYK 100/69/0/0

Hex (for online): 003399

Note: if two color, the Mark color should be the darker of the two colors.

When working in black and white, the Mark must appear in black (not reversed out of black)

**3.6 Publishing on the Internet.** When published on the Internet, the Compliance Certification Mark must be either: (a) protected from being downloaded through the use of scripting or coding, or (b) protected from being downloaded by dividing the mark into sections that can only be individually downloaded and cannot be pieced together in a practicable manner.

When using the manner described in (b) above, the mark must be divided into a minimum of four (4) sections of either varying width or height. However, when published on the Internet by Licensee, these sections must fit together to form a seamless image to the viewer.

**3.7 Hyperlink.** When the Compliance Certification Mark is presented as a logical or virtual representation, a link to the MISMO website must be provided. Interested parties should be redirected to [mxc.mismo.org](http://mxc.mismo.org).

**3.8 Sizing and Positioning.** General conditions for print: The Compliance Certification Mark may be sized proportionally and must maintain a minimum height of  $\frac{3}{4}$ ".

General conditions for online media: The Compliance Certification Mark may not be changed in size to avoid file degradation (pixilation).

The Compliance Certification Marks should stand alone and must always be surrounded by a

generous amount of space. They must not be enclosed within a contrived shape or used as part of another symbol or name (except as prescribed in Paragraph 3.4 above). Surrounding text and elements must clear the Mark by at least 18pts (0.25")

The Mark must not be juxtaposed to or with other symbols or text in such a way as to show a connection with them.

For purposes of protecting the Compliance Certification Marks and their registration, the MXC Administrator reserves the right to request from Licensee a copy of the final published form of materials on which the Compliance Certification Marks are used.

To change a logo beyond the provided dimensions, or for additional information, contact MISMO by phone or electronic mail at MISMO@mismo.org.

**4. Artwork.** Exhibit A contains the artwork for the MISMO Compliance Certification Marks for your reference only. Electronic files are provided for your use in print and online media. Refer to Section 3 for further explanation of use.

**Note: The use of the MISMO Compliance Certification Mark is strictly controlled and it may only be used on and in connection with the Certified Product(s) in Exhibit A under the terms and conditions of the MISMO Compliance Certification Mark Licensing Agreement.**