

## **TERMS AND CONDITIONS**

These Terms and Conditions are a legal agreement, between you and GROW South Dakota that govern your access to and use of the Services. Please review these Terms and Conditions before you decide whether to accept them and continue with the use of the Services. These Terms and Conditions apply to all visitors, users, and others who access or use the Service.

By accessing or using the Service you agree to be bound by these Terms and Conditions. If you disagree with any part of the terms, then you may not access or use the Services offered and provided by GROW South Dakota on and through this website.

### **Definitions.**

“Services” shall mean any service provided by GROW South Dakota, which service is facilitated in any way by, or related in any way to this website, including but not limited to housing counseling, home buyer education, housing lending, business lending, apartment management, weatherization, home improvement, emergency services, furnace repair replacement and information collection and storage, electronic communication, and application for any GROW South Dakota program.

“We” and “we” shall mean GROW South Dakota

### **Survival of Terms.**

All provisions of the Terms and Conditions which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

### **Intellectual Property.**

You acknowledge that GROW South Dakota retains all rights, title, and interest in and to all copyrights, trademarks, trade secrets, patents, and any other proprietary rights in the Services, the software and application programming interfaces comprising the Services, and all content therein. GROW South Dakota, its logos, and the content of this website are the sole property of GROW South Dakota. The Services may also contain third-party trademarks, service marks, graphics, and logos licensed to GROW South Dakota by their rightful owners and are protected by law. You agree not to promote any unauthorized copying, use, or distribution of the Services. Except as provided herein, GROW South Dakota does not grant any express or implied right to you under any licensed copyrights, trademarks, trade secrets, patents, or other proprietary rights.

### **Privacy.**

You understand and agree that personal information provided to GROW South Dakota in connection with the Services is subject to the GROW South Dakota Privacy Policy, which is

available on this website. By agreeing to these Terms and Conditions you hereby agree to the GROW South Dakota Privacy Policy, which may be updated from time to time.

### **Termination of Service.**

We may, in our sole and absolute discretion without liability to you or any third party, terminate your use of one or more Services for any reason, including without limitation, inactivity or violation of these Terms of Service or other policies we may establish from time to time. Upon termination, we have the right to prohibit your access to the Services, including without limitation by deactivating your username and password, and to refuse future access to the Services by you.

### **Governing Law.**

These Terms and Conditions shall be governed by the laws of South Dakota, and each party agrees to submit to personal and exclusive jurisdiction of the courts located in South Dakota.

### **Changes to Terms and Conditions and Notice thereof.**

GROW South Dakota has the right, in its sole discretion, to change, modify, or amend any portion of these Terms and Conditions at any time by posting notification here or otherwise communicating the notification to you. The changes will become effective, and shall be deemed accepted by you, after the initial posting and shall apply on a going-forward basis with respect to transactions initiated after the posting date. In the event that you do not agree with any such modification or amendment of these Terms and Conditions, your sole remedy is to terminate your use of the Services.

### **Links to Third Party Sites.**

The GROW South Dakota website may contain links to other web sites (“Linked Sites”). The Linked Sites are not under the control of GROW South Dakota and GROW South Dakota is not responsible for webcasting or any other form of transmission received from any Linked Site. GROW South Dakota is not responsible for the content of any Linked Site. Inclusion of any Linked Site on the GROW South Dakota web site does not constitute or imply any endorsement by GROW South Dakota of the site or any association or affiliation with its owner(s) or operator(s).

### **USA Patriot Act Notice.**

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each individual or business that opens an account or requests credit.

### **Indemnification.**

You agree to indemnify, defend and hold harmless GROW South Dakota, and its subsidiaries and other affiliates, and its and their directors, officers, owners, agents, co-branders or other partners,

employees, information providers, licensors, licensees, consultants, contractors and other applicable third parties (including NeighborWorks America) (collectively “Indemnified Parties”) from and against any and all claims, demands, causes of action, debt or liability, including reasonable attorneys’ fees, including without limitation, attorneys’ fees and costs incurred by the Indemnified Parties arising out of, related to, or which may arise from:

- (a) Your use of the Services;
- (b) Any breach or non-compliance by you of any term of these Terms and Conditions;
- (c) Any dispute or litigation caused by your actions or omissions; or
- (d) Your negligence or violation or alleged violation of any applicable law or rights of a third party.

### **Username and Password.**

You are responsible for:

- 1) Maintaining the confidentiality of your username and password,
- 2) Any and all transactions by persons that you give access to or that otherwise use such username or password, and
- 3) Any and all consequences of use or misuse of you username and password. You agree to notify us immediately of any unauthorized use of your username or password or any other breach of security regarding the Services of which you have knowledge.

### **Disclaimer.**

THE SERVICES, INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS, AND INFORMATION MADE AVAILABLE ON, PROVIDED IN CONNECTION WITH OR ACCESSIBLE THROUGH THE SERVICES, ARE PROVIDED “AS IS.” TO THE FULLEST EXTENT PERMISSIBLE BY LAW, GROW SOUTH DAKOTA, AND ITS SUBSIDIARIES AND OTHER AFFILIATES, AND THEIR AGENTS, CO-BRANDERS OR OTHER PARTNERS, INCLUDING NEIGHBORWORKS AMERICA, (COLLECTIVELY THE “NWO” PARTIES) MAKE NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER FOR THE SERVICES OR THE CONTENT, MATERIALS, INFORMATION AND FUNCTIONS MADE ACCESSIBLE BY THE SOFTWARE USED ON OR ACCESSED THROUGH THE SERVICES, OR FOR ANY BREACH OF SECURITY ASSOCIATED WITH THE TRANSMISSION OF SENSITIVE INFORMATION THROUGH THE SERVICES. EACH OF THE NWO PARTIES DISCLAIMS WITHOUT LIMITATION, ANY WARRANTY OF ANY KIND WITH RESPECT TO THE SERVICES, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. THE NWO PARTIES DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. THE NWO PARTIES SHALL NOT BE RESPONSIBLE FOR ANY SERVICE INTERRUPTIONS, INCLUDING, BUT NOT LIMITED TO, SYSTEM FAILURES OR OTHER INTERRUPTIONS THAT MAY AFFECT THE

RECEIPT, PROCESSING, ACCEPTANCE, COMPLETION OR SETTLEMENT OF ANY TRANSACTION OR THE SERVICES.

**Limitation of Liability.**

IN NO EVENT SHALL ANY NWO PARTY BE RESPONSIBLE OR LIABLE TO YOU OR ANY THIRD PARTY UNDER ANY CIRCUMSTANCE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY, DAMAGES OR LOSSES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES WHICH MAY BE INCURRED IN CONNECTION WITH ANY NWO PARTY OR THE SERVICES, OR ANY GOODS, SERVICES, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, EVEN IF THE NWO PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. IN NO EVENT SHALL THE NWO PARTIES' TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATING TO THESE TERMS AND CONDITIONS EXCEED THE NET FEES GROW South Dakota HAS ACTUALLY RECEIVED AND RETAINED FROM YOU DURING THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM.

Each party acknowledges that the other party has entered into these Terms and Conditions relying on the limitations of liability stated herein and that those limitations are an essential basis of the bargain between the parties. In addition to and without limiting any of the forgoing, no NWO party shall have any liability for any failure or delay resulting from any condition beyond the reasonable control of such party, including but not limited to governmental action or acts of terrorism, earthquake, fire, flood, tornado, or other acts of God, labor conditions, power failures and internet disturbances.