

This Middle-Income Downpayment Assistance Program (“MDPA”) Portal User Agreement (“Portal User Agreement” or “Agreement”) governs the use of the Federal Home Loan Bank of San Francisco (“Bank”) MDPA information sharing portal (“Portal”). By agreeing to this Agreement through submission of a Workspace Set-up Request form, the applicable Member agrees that it will be a “Portal User” for purposes of this Portal User Agreement and that all access to or other use of the Portal by the Portal User and its employees, directors, agents, and other representatives, including the Authorized Representative (as defined below), is subject to this Agreement.

## **1. Access and Use of the Portal.**

- 1.1. General.** Subject to the terms and conditions of this Agreement, the Bank hereby grants to the Portal User, a limited, non-exclusive and non-transferable right and license without right of sublicense, to provide the Portal User’s Authorized Representative access to the Portal until completion of a Project’s compliance period or unless earlier revoked by the Bank. Each Project and each Authorized Representative will be identified in the MDPA Secure Portal Workspace Set-up Request form.
- 1.2. Confidential Use.** The Portal User will ensure that any Authorized Representative accessing the Portal be bound by a confidentiality and non-disclosure agreement with obligations that are no less stringent than those contained herein and agrees to use the Portal consistent with the Portal User Access Terms and Conditions (“Access Terms”), which are attached as Attachment 1. The Portal User will be responsible for all access to and usage of the Portal by or through its employees, directors, agents, or other representatives, including the Authorized Representative, or those that gain access through the acts or omissions of its employees, directors, agents, or other representatives, including the Authorized Representative.
- 1.3. Restrictions.** The Portal User will not and will not permit, either directly or indirectly, any person or entity:
  - 1.3.1. Other than its Authorized Representatives, to access, view or use the Portal or any data or other information placed on the Portal (“Data”).
  - 1.3.2. To use the Portal in violation of applicable law;
  - 1.3.3. To place or maintain on the Portal any of the following types of information:
    - Social security numbers,
    - Bank, credit card, debit card, or other financial account number of any individual,
    - Credit reports or credit histories relating to any individual,
    - Medical information, and
    - Any other information specific to an individual that does not need to be shared among the Bank and Member in connection with the Project.
  - 1.3.4. To reproduce, copy, translate, modify, adapt, decompile, disassemble, create Derivative Works or reverse engineer the object code version of or otherwise attempt to secure the source code of all or any part of the Portal. “Derivative Work” means any derivative work of, translation, modification, adaption, enhancement, upgrade, addition, development or improvement to an underlying intellectual property asset; or
  - 1.3.5. To obfuscate, remove or alter any of the logos, trademarks, internet links, patent or copyright notices, confidentiality or proprietary legends or other notices or markings that are on or in the Portal.
- 1.4. All Other Rights Reserved.** Subject to the express license granted in Section 1.1, all other rights, title and interest in and to the Portal will be held by and reserved to the Bank or its licensors.

**1.5. Modifications.** The Bank reserves the right at any time, and from time to time to modify or discontinue, temporarily or permanently, the Portal (or any part thereof) with or without notice and will not be liable for any such action. Notwithstanding anything to the contrary herein, each Portal User may, solely for itself, add or remove Authorized Representative by providing written notice to the Bank, which shall be effective upon receipt and acknowledgment by the Bank without any further action by any party.

**1.6. Portal Access by Authorized Representatives.**

- 1.6.1 Use of the Portal is limited to only employees authorized by the Portal User to access the Portal, with respect to a specific Project, who have a need to know or access information regarding that Project (each, an “Authorized Representative”); provided, however that the Portal User will be responsible for all access and use of the Portal by any party that gains access through it or its employees, directors, agents, or other representatives (directly or indirectly and knowingly or unknowingly).
- 1.6.2 The Portal User hereby agrees to the Access Terms attached hereto as Attachment 1 and incorporated by this reference, will inform its Authorized Representatives of the Access Terms, and will be responsible for its Authorized Representatives’ compliance with and violation of the Access Terms.
- 1.6.3 To provide an Authorized Representative with access to the Portal for a specific Project, in accordance with the Bank’s current security process, the Portal User will provide the Bank with: (a) the Authorized Representative’s email address at the Portal User that includes the Portal User’s uniform resource locator (URL) (“Authorized Email Address”); and (b) the Project name or other identifier.
- 1.6.4 Immediately upon the termination of a formerly Authorized Representative’s employment at the Portal User or removal from the Project, the Portal User shall take all actions necessary to terminate such formerly Authorized Representative’s access to the Portal and the Portal User will notify the Bank of the termination or removal by sending an email to outreach@fhlbsf.com that includes the Authorized Email Address of the former Authorized Representative. Following receipt of the email, the Bank will terminate the access of the Authorized Email Address to the Portal. Thereafter, the Portal User may provide the Bank with new information for the new Authorized Representative consistent with Section 1.6.3. Unless otherwise permitted by the Bank (in its sole discretion) in writing, in no event may there be more than two Authorized Representatives for each Portal User at any one time.

**2. Confidential Information.**

**2.1. General.** “Confidential Information” means any information placed on the Portal, whether the Member’s or the Bank’s, except for any information that is: (a) publicly available or later becomes available other than through a breach of this Agreement; (b) known to the Receiving Party or its employees, directors, officers, agents, or other representatives prior to such disclosure or is independently developed by the Receiving Party or its employees, directors, officers, agents, or other representatives subsequent to such disclosure without access to or reliance on the Confidential Information; or (c) subsequently lawfully obtained by the Receiving Party or its employees, directors, officers, agents, or other representatives from a third party without obligations of confidentiality. The party that has received Confidential Information (“Receiving Party”) will exercise the same degree of care and protection with respect to the Confidential Information of the party that has disclosed Confidential Information to the Receiving Party (“Disclosing Party”) that it exercises with respect to its own Confidential Information and in no case will the Receiving Party use less than reasonable care that is appropriate to the type of information and complies with applicable law. This care may include the encryption or other protection of certain types of confidential information. The Receiving Party will not use Confidential Information for any purpose other than in connection with the Project and will not directly or indirectly disclose, copy, distribute, republish or allow any third party to have access to any Confidential Information of the Disclosing Party. Notwithstanding the above the Receiving Party may disclose Confidential Information to regulators, auditors, employees, directors, officers, agents, and

other representatives who have a need to know and if so required by law (including court order or subpoena), provided that such disclosure is made in accordance with the terms of Section 2.3. The provisions of this Section regarding Confidential Information and non-disclosure of Confidential Information will apply for the term of this Agreement and will survive the expiration or termination of this Agreement for any reason.

- 2.2. Return of Confidential Information.** Unless otherwise authorized or required for record retention purposes, upon the earlier of termination of this Agreement, the Access Agreement or request of the Disclosing Party, with respect to the Disclosing Party's Confidential Information the Receiving Party will promptly either: (a) return such Confidential Information and provide certification to the Disclosing Party that all such Confidential Information has been returned; or (b) destroy such Confidential Information and, if requested, provide certification to the Disclosing Party that all such Confidential Information has been destroyed.
- 2.3. Notification Obligation.** If the Receiving Party becomes aware of any unauthorized use or disclosure of the Confidential Information of the Disclosing Party, the Receiving Party will promptly and fully notify the Disclosing Party of all facts known to it concerning such unauthorized use or disclosure. In addition, if the Receiving Party or any of its employees, directors, officers, agents, or other representatives are requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information of the Disclosing Party, the Receiving Party will not disclose the Confidential Information without providing the Disclosing Party at least sufficient prior written notice of any such request or requirement so that the Disclosing Party may have time to seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. Notwithstanding the foregoing, the Receiving Party will exercise its best efforts to preserve the confidentiality of the Confidential Information including, without limitation, by cooperating with the Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

### **3. Ownership and Other Intellectual Property Rights.**

- 3.1. The Portal.** The Portal is owned by the Bank and/or its Licensors.
- 3.2. Trademarks.** The distinctive house rooftop logo appearing throughout the Portal, including on materials that can be downloaded from the Portal, and the words "FHLBank San Francisco" are trademarks and trade names of the Bank ("Trademarks") and are owned by the Bank.
- 3.3. Data.** Except for data and information on this Portal that (1) is created by the Portal User, (2) is in the public domain or (3) for which written permission has been given, no Portal User may copy, modify, publish, transmit, distribute, perform, display, or sell any such Data; provided, however that an Authorized Representative of a Portal User may make copies of the Data solely as required for use in connection with the Project, provided that no derivative works of the Data will be made.
- 3.4. Retained Ownership.** The Portal, Trademarks and Data provided by the Bank are and will remain the exclusive property of the Bank or its licensors, whether or not specifically recognized or perfected under local applicable law. The Portal User will not take any action that jeopardizes or could jeopardize the Bank or its licensors rights in or to the Portal, Trademarks, or Data.

### **4. Accuracy of Information; Disclaimer.**

- 4.1. No False Information.** The Portal User will not knowingly submit any false information to the Portal, will not provide any false information in connection with the use of the Portal and will promptly update or correct any information provided if the information becomes outdated, in error or misleading.
- 4.2. Assumption of Risk.** Member uses the Portal at its own risk and assume the entire cost of all repairs, or correction arising therefrom, as well as costs of all software, hardware and materials necessary to access the Portal.
- 4.3. Accuracy of Information.** The Bank takes no responsibility for the accuracy of information placed on the Portal and does not warrant or otherwise guarantee that information placed on the Portal is

accurate, complete, or current. Access to the Portal is made available solely as a convenience to Members.

**4.4. Not Responsible for Security.** The Bank is not responsible for the security of any information transmitted via the internet related to the Portal. Member, as applicable, assume all risk involved in transmitting information or files to or from the Portal.

**4.5. DISCLAIMER.** THE PORTAL, INCLUDING ALL CONTENT, SOFTWARE, AND INFORMATION ON THE PORTAL ARE PROVIDED “AS IS” AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. To the fullest extent permitted by law, the Bank disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose and title. The Bank does not warrant that use of or access to the Portal will be uninterrupted or error-free, that defects will be corrected, or that the Portal or the servers hosting the Portal are free of viruses or other harmful components.

**5. Indemnity.** The Portal User agrees to defend, hold harmless and indemnify the Bank, and its directors, officers, employees, agents, and other representatives from and against any third party claim arising from or in any way related to its or its employees, directors, officers, agents, or other representatives (including its Authorized Representative’s) use of the Portal or violation of this Agreement, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and attorneys’ fees, of every kind and nature.

## **6. Limitation on Liability.**

**6.1. General.** In no event will the Bank or its employees, directors, officers, agents, or other representatives be liable to the Portal User or any third person for any direct, indirect, consequential, exemplary, incidental, special or punitive damages, including also lost profits arising from any use of or access to the Portal or inability to use the Portal and regardless of the form of the action including breach of contract or tort (including negligence) even if the Bank been advised of the possibility of such damages. Notwithstanding anything to the contrary contained herein, the Bank’s liability to the Portal User for any cause whatsoever related to or arising from the Portal, and regardless of the form of the action including breach of contract or tort (including negligence), even if the Bank been advised of the possibility of such damages will at all times be limited in the aggregate to \$100.00.

**6.2. No Reliance.** This limitation on damages includes but is not limited to damages that result from reliance on any information obtained from the Portal, or from mistakes, omissions, interruptions, deletion of files or email, errors, defects, viruses, delays in operation or transmission, or any failure of performance (whether or not resulting from acts of God), communications failure, theft, destruction, or unauthorized access to the Bank’s records, programs, or services. This paragraph applies to all content and services and software available through the Portal. Because some states do not allow the exclusion or limitation of liability for consequential or incidental damages, in such states (if their law is deemed to apply) liability is limited to the fullest extent permitted by law.

**7. Termination.** The Bank may terminate access to or use of the Portal at any time. In the event the Portal User desires to terminate access to or use of the Portal, the Portal User may cease using the Portal immediately and provide prompt written notice to the Bank of its desire to cease use and take all actions necessary to ensure that no employees, directors, agents, or other representatives, including the Authorized Representative has access to or continues to access the Portal. Any rights or obligations that by their nature will survive any termination of this Portal User Agreement, will so survive. Termination of access to the Portal will not otherwise affect the Agreement.

**8. Other Agreements.** The terms and conditions related to the Bank’s products and services are governed by various agreements between the Bank and its members, as well as Bank policies and applicable laws and regulations (“Member Agreements”). In the event of express inconsistencies between this Agreement and the Member Agreements, the Member Agreements will be determinative.

**9. No Third Party Beneficiaries.** Except as otherwise expressly provided in this Agreement, there will be no third party beneficiaries to this Agreement.

**10. Subsidy Approvals.** By agreeing to this Agreement through submission of a Secure Portal Workspace Set-up Request, the applicable Member agrees that the Bank has ultimate discretion and authority as to the approval and rejection of all MDPA subsidies.

## Attachment 1

### Federal Home Loan Bank of San Francisco MDPA Portal User Access Terms and Conditions

Welcome to the portal owned or controlled by the Federal Home Loan Bank of San Francisco (the “Bank”) and its contents (collectively, the “Portal”), which is governed by these MDPA User Access Terms (“Access Terms”), and provided in connection with an MDPA project (“Project”) involving the Bank and a Bank member (“Member”) to facilitate secure and confidential information sharing among authorized representatives of the Bank and Member solely with regards to the Project.

You (“You” and “Your”) understand and agree that your access to and use of the Portal is subject to the following conditions:

1. You are currently the authorized representative of the Member for the Project.
2. All of the information on and available through the Portal (“Information”) is confidential, and is subject to the MDPA Portal User Agreement entered into between the Bank and the Member that employs you. You will maintain the Information in strict confidence and will not disclose any of the Information to others. You will promptly report to your employer and Bank any disclosure of Information to others.
3. You will only place information on the Portal specific to the Project and that must be shared with the Bank and the relevant Member.
4. You will never place or maintain any information on the Portal that is not required.
5. All information you place or maintain on the Portal will be accurate and complete.
6. You will never place or maintain any of the following types of information on the Portal:
  - Social security numbers
  - Any bank, credit card, debit card, or other financial account number of any individual
  - Credit reports or credit histories relating to any individual,
  - Medical information, and
  - Any other information specific to an individual that does not need to be shared among the Bank and Member in connection with the Project.
7. You will not attempt to circumvent any of the security features of the Portal, and will not, knowingly or unknowingly, enable or allow others to access the Portal using Your authorization to the Portal. You will promptly report to your employer and the Bank any access to the Portal using Your authorization to the Portal by anyone other than You.
8. You will comply with all policies and information security requirements for the Portal communicated to You or Your employer by the Bank.
9. You will not attempt to download, scan, copy, print or otherwise capture any of the Information contained on the Portal, except that You may view or download Information solely as required by You on behalf of the Member in relation to the Project. In the event of any download of Information, You shall keep such downloaded Information in strict confidence and destroy all such Information and any items that include such Information as soon as possible.
10. Your access to the Portal is provided solely as a convenience. The Bank can terminate such access at any time in its sole and absolute discretion.
11. The Information on the Portal has been prepared solely to assist Member in undertaking its duties and obligations with regards to the Project.
12. By making the Information available through the Portal, the Bank does not represent that the Information is accurate or complete whether originated by the Bank or Member.

These Access Terms are governed by the laws of the State of California without regard to its conflicts of law provisions that would apply the substantive law of another jurisdiction. You agree to reimburse the Bank for all expenses incurred by the Bank to enforce these Access Terms with regard to You or to remedy Your violation of these Terms. You will promptly report to your employer and the Bank any violation of these Access Terms.

By entering the Portal, you agree you are 18 years of age or older, had an opportunity to review and print these Access Terms and agree to these Access Terms. If you do not agree to these Access Terms, do not enter or use the Portal.