

GENERAL TERMS & CONDITIONS

These GENERAL TERMS & CONDITIONS ("**Terms**,") and together with the Order Form(s) ("**Order(s)**") executed by the parties, the "**Agreement**") set forth the terms and conditions pursuant to which FirstClose, Inc., a Delaware corporation ("**FirstClose**") shall provide the services contemplated by the Order ("**Services**") to the lender or other financial-institution customer listed on an Order ("**Customer**"). Each Order is subject to these Terms & Conditions. Capitalized terms used herein but not defined herein have the meanings ascribed to them in the Order. In consideration of the mutual promises contained herein, the parties agree as follows:

1. DEFINITIONS

- 1.1. "**Customer Data**" means all electronic data or information that Customer or a User submits to the Service, including Borrower Data (defined in Section 3.3).
- 1.2. "**Default Vendors**" are Third-Party Vendors that provide Transactional Settlement Services and have a wholesale or similar arrangement with FirstClose. Default Vendors are FirstClose's preferred providers of Transactional Settlement Services.
- 1.3. "**Service**" means FirstClose's proprietary loan closing software-as-a-service, accessible through the Internet or LOS Interface, that is meant to help Customers obtain Transactional Settlement Services.
- 1.4. "**Third-Party Vendors**" means Default Vendors and User-Defined Vendors.
- 1.5. "**Transactional Settlement Services**" are the loan settlement related products and services listed on **Appendix A** as updated from time to time, and purchased through the Service and provided to Customer by FirstClose (via its Default Vendors) and/or provided directly to Customer by User-Defined Vendors. Transactional Settlement Services may include for example credit reports, flood zone certifications, automated valuation models (AVMs), property condition reports (PCRs), desktop valuations, restricted appraisals reports (RARs), drive-by and full appraisals, appraisal reviews, title searches, property reports, title insurance, document preparation, income verification, closing services, recording services, and other mortgage settlement services utilized to close home equity loans, home equity lines of credit, second mortgages, refinanced loans, and first mortgage loan transactions.
- 1.6. "**User**" means an employee or independent contractor of Customer that Customer authorizes to use the Service on Customer's behalf.
- 1.7. "**User-Defined Vendors**" are Third-Party Vendors that provide Transactional Settlement Services, but that are not Default Vendors. User-Defined Vendors are also sometimes referred to or known as "Click-Fee Vendors" and are typically vendors that are not already integrated into the FirstClose platform, but are added to the platform at the request of the Customer.

2. SERVICE AND SUPPORT

- 2.1. **Provision of Service; Users.** During the Term and subject to the terms and conditions set forth herein (including payment of all amounts due and any restrictions or parameters), FirstClose (a) will provide Customer with access to its Service and make the Service available to Customer's administrative Users who have authority to manage and administer Customer's account ("**Admins**") and other Users ("**Basic Users**" and together with Admins, "**Users**"), in accordance with the parameters set forth in the Order and (b) grants Customer a limited, non-exclusive, non-transferable, non-sublicensable, right to access and use the Service. Users will be required to abide by the terms of this Agreement. Any breach by a User will be deemed to be a breach by Customer. Customer shall be solely responsible for managing and administering User accounts, including issuing user names and passwords, provided that FirstClose may terminate or suspend any User's access to the Service for any breach without notice. Customer shall be solely responsible for the security and confidentiality of Customer's account information, including user names and passwords, and will ensure that no third party uses Customer's account. Customer shall promptly notify FirstClose in the event that Customer becomes aware of any unauthorized access to the Service or any violation of the terms of this Agreement by Customer or any User.
- 2.2. **Use of Service; Hosting and Maintenance.** Customer shall use the Service for its intended purpose and Customer's internal business use. Customer acknowledges that FirstClose may host the Service using its own infrastructure or it may engage a third party to host on its behalf. Updates may be provided at FirstClose's discretion at no additional charge, and FirstClose may, in its sole discretion, make any changes that it deems necessary or useful to maintain or enhance the quality or delivery of the Service or to comply with applicable law. FirstClose will notify Customer at least six months prior to making any change that will materially degrade the functionality of the Service used by Customer. As Customer's sole and exclusive remedy in the event of any such change, Customer may terminate this Agreement without penalty upon 30 days written notice. Scheduled system maintenance shall take place during a normal maintenance window, as reasonably determined by FirstClose. During such time, the Service may be unavailable. Emergency maintenance may be required at other times in the event of system failure.
- 2.3. **Support.** During the Term, FirstClose will provide Customer with a reasonable amount of telephone and email support regarding the Service. FirstClose will provide Customer with the training and implementation services specified in the applicable Order. Training and support may be provided via phone, email or in-app chat.
- 2.4. **Other FirstClose Services.** If FirstClose agrees to provide Customer with professional services, the parties will enter into a separate statement of work.
- 2.5. **Transactional Settlement Services.**
 - 2.5.1. Customer may select Transactional Settlement Services through the Service and the FirstClose website. Default Vendors are listed on **Appendix A** or clearly identified on our website and User-Defined Vendors may be offered via the Service at Customer's request on a click-fee basis. For example, Customer may currently choose to order flood certification, credit checks or title services from one of several Default Vendors.
 - 2.5.2. When FirstClose is providing the Transactional Settlement Services (either itself or through a subcontract relationship with a Default Vendor), supplemental terms will apply with respect to the provision thereof, and shall form a part of this Agreement between Customer and FirstClose. FirstClose will present supplemental terms and conditions for review and acceptance at the time that Customer undertakes to procure such Transactional Settlement Services within the Service, and any such supplemental terms (each, "**Supplemental Terms**") shall become a part of this Agreement. In the event of any conflict between the terms hereof and any Supplemental Terms, the Supplemental Terms shall govern with respect to the matters contemplated thereby.
 - 2.5.3. When Customer elects a User-Defined Vendor to provide Transactional Settlement Services to Customer, the User-Defined Vendor's separate terms and conditions ("**UDV Terms**") will apply thereto, and the agreement for the provision of such Transactional Settlement Services shall be solely between Customer and the User-Defined Vendor. Once added to the FirstClose platform, User-Defined Vendors receive an indication via email that an order has been placed by Customer. The User-Defined Vendor subsequently fulfills the order by uploading a pdf copy of the report and data associated with the report into the backend of the Service via unique login credentials. A pdf copy of the report and the data associated with the report (if entered by the User-Defined Vendor) are subsequently displayed to the user within the Service and/or sent via xml to the

lender's loan origination system. FirstClose is not responsible for any acts or omissions of any User-Defined Vendor (including those accessed through the Service or the FirstClose website), and Customer uses Transactional Settlement Services provided by User-Defined Vendors at its own risk. Customer acknowledges and agrees to fully comply with applicable UDV Terms. Customer agrees that it will not circumvent or attempt to circumvent the Service or any transactional fees that may be owed to FirstClose in connection any such action. IN ADDITION TO ANY DISCLAIMERS SET FORTH IN THE UDV TERMS, TO THE FULLEST EXTENT PERMITTED UNDER LAW AND THE APPLICABLE UDV TERMS, THE DISCLAIMERS SET FORTH AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN SHALL APPLY TO FIRSTCLOSE WITH RESPECT TO ALL TRANSACTIONAL SETTLEMENT SERVICES PROVIDED BY UDER-DEFINED VENDORS.

- 2.5.4. Notwithstanding Section 7 (Confidentiality), Customer agrees that FirstClose may disclose Customer Data to Default Vendors and User-Defined Vendors in order for the Service to pass through Customer requests for Transaction Settlement Services. Where FirstClose passes Confidential Information to a Default Vendor, it shall have a commercially reasonable agreement containing confidentiality terms with such Default Vendor.

3. CUSTOMER ACKNOWLEDGEMENTS AND RESPONSIBILITIES

3.1. **Customer Responsibilities.** Customer shall provide FirstClose with all information, materials and assistance as reasonably required for FirstClose to provide the Service and any Transactional Settlement Services for Customer and its Users pursuant to this Agreement. Customer shall: (i) cause Users to comply with this Agreement; (ii) cooperate with FirstClose so that FirstClose can provide the Service and any Transactional Settlement Services, including using reasonable efforts to make people and information available; (iii) be responsible for the Customer Data, except for FirstClose's obligations described in Section 7 (Confidentiality) and Section 8 (Borrower Data); and (iv) use reasonable efforts to prevent unauthorized access or use of the Service. Customer shall not exploit the Service in any unauthorized way whatsoever, including but not limited to, by trespass or burdening network capacity or by breach or attempted breach the security of the Service or any network, data, servers, computers or hardware used in connection with the Service. Customer will be solely responsible for the following: (i) providing all hardware, software, networking and communications capabilities required for use of the Service; (ii) at all times using the Service and any Transactional Settlement Services in accordance with the applicable documentation and any other written instructions provided to Customer by FirstClose; (iii) using the Service and any Transactional Settlement Services in a manner that does not infringe the intellectual property, privacy or other rights of third parties, and (iv) ensuring that Customer and its Users do not upload or transmit viruses or malicious code via the Service.

3.2. **Compliance with Applicable Law.** Customer and each User uses the Service and any Transactional Settlement Services at its own initiative and is responsible for compliance with any applicable laws, including without limitation any federal, state or local employment, privacy, data protection and/or tax laws. FirstClose may also impose limits on the use or access to the Service and any Transactional Settlement Services as required by law.

3.3. **Customer Data.** Customer and its Users are solely responsible for the Customer Data submitted to the Service by Users. Customer represents, warrants and agrees that (a) it has received proper consent and permission of any borrowers, consumers or other third party to submit data, including personally identifiable information, of such third party ("**Borrower Data**") to the Service and to Default Vendors as contemplated by Section 2.5 (Transactional Settlement Services), (b) it will comply with Title V of the Gramm-Leach-Bliley Act and all rules and regulations promulgated thereunder ("**GLBA**") with respect to the Borrower Data and (c) that the Borrower Data is accurate, true and correct.

3.4. **Restrictions.** Customer may not rent, lease, lend, sell, redistribute, reproduce, make available or sublicense the Service, or use any component of the Service as a service bureau. Customer may not copy, decompile, reverse-engineer, disassemble, attempt to derive the source code, underlying structure, ideas or algorithms of, or modify, create derivative works of the Service, or any part thereof. If for some reason these restrictions are prohibited by applicable law or by an agreement FirstClose has with one of its licensors, then the activities are permitted only to the extent necessary to comply with such law or license(s).

4. INTELLECTUAL PROPERTY.

4.1. **Reservation of Rights.** All intellectual property rights in and to the Service remain the sole property of FirstClose and/or its licensors. If Customer or any of its Users submits to FirstClose comments, suggestions, or other feedback regarding the Service ("**Feedback**"), Customer agrees that FirstClose will be free to use such Feedback for any purpose without accounting or obligation.

4.2. **Rights in Data.** As between FirstClose and Customer, Customer shall own all right, title, and interest in and to any Customer Data. Customer grants and agrees to grant to FirstClose a non-exclusive, transferable, sublicensable, royalty free license to use such Customer Data and provide it to Default Vendors and User-Defined Vendors in order for them to provide the Transactional Settlement Services to Customer and to provide the Service and use internally to monitor and improve the Service. It is Customer's sole responsibility to back-up Customer Data and Customer agrees and acknowledges that it may not have access to the Customer Data.

5. PAYMENT TERMS.

5.1. **Fees.** Applicable fees and pricing for the Service ("**Subscription Fees**"), any training or implementation services ("**Additional Fees**") and transactional fees for Transactional Settlement Services and related reports ("**Transaction Fees**") ordered by Customer from time to time are set forth on the Order. Subscription renewal pricing is specified in Section 11.2. Subscription Fees, Additional Fees and Transaction Fees are collectively referred to as "**Fees**."

5.2. **Payment Terms.** Unless otherwise specified on an Order, Customer hereby agrees to pay FirstClose the first monthly installment of Subscription Fees and all Additional Fees on or prior to the Order date. Subscription Fees are payable monthly (1/12th of the annual Subscription Fees each month) on the 1st of the month, using the credit card or other electronic payment method on file with Customer's account ("**Customer Payment Method**"). If Customer pays via one of FirstClose's third-party payment vendors (e.g. Stripe or PayPal), Customer agrees to abide by such vendor's then-current terms of use. Transaction fees may either be invoiced monthly and payable within 30 days of the applicable invoice date or at the time Customer requests the applicable service using the Customer Payment Method. Except to the extent otherwise provided in the Order, all Fees are non-refundable and are payable in U.S. dollars. If Customer has a good faith dispute on an amount reflected in any invoice, it shall provide written notice of such dispute and a reasonable description of such dispute to FirstClose within 90 days of the applicable invoice. Customer shall pay all undisputed amounts when due. Any amounts not disputed in good faith that remain unpaid past their due date shall accrue interest at a rate of the lesser of one and one-half (1.5%) percent per month or the highest rate allowed by law. FirstClose may also (at its discretion, without notice and in addition to other remedies it may have) suspend any services and Customer's and its Users' access to the Service if any undisputed amounts remain unpaid for more than 15 days past its due date.

5.3. **Taxes.** The Fees set forth on the Order do not include local, state or federal sales, use, value-added, transactional excise or personal property or other similar taxes or duties, and any such taxes shall be assumed and paid by the Customer except those taxes based on the net income of FirstClose. FirstClose shall have no liability for any taxes owed by Customer or its Users as a result of their use of the Service.

6. WARRANTIES AND DISCLAIMER.

6.1. **Mutual Warranties.** Each party represents that it is a corporation that is duly organized, validly existing, and in good standing in the jurisdiction in which it is incorporated, and that it has the requisite corporate power and authority to execute and deliver this Agreement and to carry out the transactions contemplated by this Agreement. Each party represents and warrants that it has no outstanding agreement or obligation that is in conflict with any of the provisions of this Agreement, or that would preclude it from complying with the provisions hereof.

6.2. **Service Level Warranty.** FirstClose will use commercially reasonable efforts to provide the Service with at least 98% uptime, excluding downtime caused by Customer, a third party or a force majeure event and downtime for maintenance.

6.3. **Disclaimer.** THE FOREGOING CONSTITUTES FIRSTCLOSE'S ONLY WARRANTIES CONCERNING THIS AGREEMENT AND THE SERVICE AND ANY TRANSACTIONAL SETTLEMENT SERVICES, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, MERCHANTABILITY, INFORMATIONAL CONTENT, SYSTEMS INTEGRATION, NON-INFRINGEMENT, INTERFERENCE WITH ENJOYMENT OR OTHERWISE. CUSTOMER SHALL NOT AND HAS NO AUTHORITY TO MAKE ANY WARRANTY ON BEHALF OF FIRSTCLOSE TO ANY USER CONCERNING THE SERVICE AND ANY TRANSACTIONAL SETTLEMENT SERVICES.

7. CONFIDENTIALITY.

7.1. **Definition.** "Confidential Information" means any proprietary information, borrower information, product plans, inventions, technical data, trade secrets, know-how, or other business information, in each case disclosed by a disclosing party hereunder. Except as otherwise provided for herein, FirstClose's Confidential Information includes, without limitation, the Service, any FirstClose software comprising the same (if applicable), and the terms and conditions of this Agreement. Customer's Confidential Information includes, without limitation, the Customer Data and Borrower Data.

7.2. **Exclusions.** Notwithstanding Subsection 7.1, nothing received by a receiving party shall be construed as Confidential Information which: (a) is now available or becomes available to the public without breach of this Agreement; (b) is lawfully obtained from a third party without a duty of confidentiality; (c) is known to the receiving party prior to such disclosure; or (d) is, at any time, developed by the receiving party independent of any such disclosure(s).

7.3. **Non-Use and Non-Disclosure.** The receiving party shall not disclose the disclosing party's Confidential Information to any third party (other than as set forth herein) and may only use the disclosing party's Confidential Information for the intended business purpose related to this Agreement and for the benefit of the disclosing party. Both parties shall protect Confidential Information from disclosure or misuse by using the same degree of care as for their own confidential information of like importance, but shall at least use reasonable care. It is understood that said Confidential Information shall remain the sole property of the disclosing party unless otherwise expressly set forth herein.

7.4. **Disclosure Required by Law.** Notwithstanding Subsection 7.3 above, a receiving party may disclose the other party's Confidential Information if the information is required by law to be disclosed in response to a valid order of a court of competent jurisdiction or authorized government agency, provided that the receiving party must give the disclosing party prompt written notice and obtain or allow for a reasonable effort by the disclosing party to obtain a protective order prior to disclosure.

8. **BORROWER DATA.** FirstClose will maintain the privacy of personal financial information contained within the Borrower Data in accordance with federal and state laws, rules and regulations, including GLBA. FirstClose will take and maintain commercially reasonable and appropriate measures designed to secure Customer Data against accidental or unlawful loss, access or disclosure. Subject to Section 2.5 (Transactional Settlement Services), FirstClose will not disclose any Borrower Data to any third party. Upon request, FirstClose will return to Customer or destroy any Borrower Data submitted by Customer upon termination or expiration of this Agreement, except for copies reasonably necessary for tax, audit or legal requirements.

9. LIMITATION OF LIABILITY; REMEDIES.

9.1. **NO LIABILITY FOR USER-DEFINED VENDORS.** Except as set forth in Section 9.2, FIRSTCLOSE SHALL HAVE NO LIABILITY OR OBLIGATION WITH RESPECT TO TRANSACTIONAL SETTLEMENT SERVICES PROVIDED BY USER-DEFINED VENDORS OR THE ACTIONS OR OMISSIONS OF USER-DEFINED VENDORS. CUSTOMER'S SOLE REMEDIES WITH RESPECT THERETO SHALL BE BETWEEN CUSTOMER AND THE APPLICABLE USER-DEFINED VENDOR.

9.2. **REMEDIES FOR TRANSACTIONAL SETTLEMENT SERVICES.** To the extent there is an error or defect in any report, product or service provided through the Transactional Settlement Service provided by FirstClose or a Default Vendor, Customer may seek a refund of the fees paid by Customer for the applicable report, product or service. Unless Customer purchases insurance (E&O) coverage offered by FirstClose for such report, product or service, SUCH REFUND WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND FIRSTCLOSE'S ENTIRE LIABILITY FOR SUCH ERROR OR DEFECT. IF CUSTOMER PURCHASES INSURANCE (E&O) COVERAGE, THEN CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES WILL BE AS SET FORTH IN THE APPLICABLE E&O ATTACHMENT TO APPENDIX A.

9.3. **DISCLAIMER OF DAMAGES.** EXCEPT FOR INFRINGEMENT OF FIRSTCLOSE INTELLECTUAL PROPERTY RIGHTS AND A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, LOSSES OR EXPENSES (INCLUDING BUT NOT LIMITED TO BUSINESS INTERRUPTION, LOST BUSINESS, LOST PROFITS, OR LOST SAVINGS) ARISING OUT OF OR RELATED TO THIS AGREEMENT EVEN IF IT HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE.

9.4. **MAXIMUM LIABILITY.** EXCEPT FOR GROSS NEGLIGENCE AND WILLFUL MISCONDUCT, THE AGGREGATE LIABILITY OF FIRSTCLOSE FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT, STATUTE OR OTHERWISE) IS LIMITED TO DIRECT DAMAGES UP TO THE AMOUNT PAID UNDER THIS AGREEMENT DURING THE 12 MONTHS BEFORE THE CAUSE OF ACTION AROSE.

9.5. **Allocation of Risk.** The allocations of liability in this Section represent the agreed and bargained-for understanding of the parties and voluntary allocation between them of the risk associated with Customer's use of the Service and, but for this provision, FirstClose would not have made the Service available to Customer hereunder. FirstClose's compensation reflects such allocations, and the limitations and exclusions will apply notwithstanding the failure of essential purpose of any limited remedy contained herein.

10. INDEMNIFICATION.

10.1. **By FirstClose.** FirstClose shall defend Customer from and against any claim, demand, or action in any form brought by a third party against Customer, and indemnify and hold Customer harmless from any damages, liabilities, losses, costs, and expenses, including reasonable attorneys' and experts' fees, in each case to the extent arising from or related to any allegation that the Service, as provided to Customer and used within the scope of this Agreement, infringes any U.S. patent, copyright, or trade secret. Notwithstanding the foregoing, FirstClose will have no liability for any infringement claim of any kind if the claim results from: (a) modifications made other than by FirstClose; (b) unauthorized or unlicensed use; (c) any Third-Party Product; (d) the combination, operation or use of any component of the Service with equipment, devices or software not supplied by FirstClose, to the extent such

a claim would have been avoided if the Service was not used in such combination; (e) use of information, materials, reports, Customer Data or marks provided to FirstClose; or (f) or compliance by FirstClose with designs, plans or specifications furnished by or on behalf of Customer.

10.2. By Customer. Customer shall defend FirstClose from and against any claim, demand, or action in any form and indemnify and hold FirstClose harmless from any damages, liabilities, losses, costs, and expenses, including reasonable attorneys' and experts' fees in each case arising from or related to: (a) unauthorized or illegal use of the Service or any Transactional Settlement Service by Customer or any User or (b) any Customer Data or Borrower Data.

10.3. Rights Upon Infringement. If Customer's use of the Service is, or in FirstClose's opinion is likely to be, enjoined due to the type of infringement specified in Subsection 10.1 above, FirstClose may, at its sole option and expense: (a) procure for Customer the right to continue using the same under the terms of this Agreement; (b) replace or modify the same so that it is non-infringing; or (c) if options (a) and (b) above cannot be accomplished despite FirstClose's commercially reasonable efforts, then FirstClose may terminate Customer's rights and FirstClose's obligations hereunder with respect to the applicable Platform Element(s) and refund a prorated portion of any pre-paid Fees paid therefor, based upon Customer's use to date.

10.4. Conditions Precedent. The indemnifying party will have no obligation under this Section as to any claim, suit, or proceeding unless: (a) the indemnified party promptly notifies the indemnifying party in writing of such claim, suit, or proceeding; (b) the indemnifying party has sole control of its defense and settlement; and (c) the indemnified party, upon request of the indemnifying party, cooperates in all reasonable respects, at the indemnifying party's cost and expense, with the indemnifying party and such attorneys in the investigation, trial and defense of such lawsuit or action and any appeal arising therefrom; provided, however, that the indemnifying party keeps the indemnified party informed of and consults with the indemnified party in connection with the progress of such litigation or settlement; and (c) the indemnified party may choose to participate in the defense or settlement of the claim at its own expense.

10.5. Sole Remedy. The provisions of this Section sets forth FirstClose's sole and exclusive obligations, and Customer's sole and exclusive remedies, with respect to infringement of any proprietary or intellectual property rights of any kind.

11. TERM AND TERMINATION.

11.1. Term. This Agreement will commence on the Effective Date and unless terminated as set forth herein, will continue for so long as a subscription for the Service or an Order is still in effect hereunder.

11.2. Subscription Renewals and Renewal Pricing. Unless one party notifies the other of its intention not to renew not less than sixty (60) days prior to the applicable anniversary of the Effective Date, the Service subscription shall automatically renew for successive periods of one (1) year following the Initial Term specified on the applicable Order. Subscription Fees and Transaction Fees will increase 5% per year (or, if greater, to FirstClose's then current pricing) for each Renewal Term. The Initial Term and any Renewal Term shall be the "**Term**" of the applicable Subscription.

11.3. Termination. In the event that a party is in material breach of the terms of this Agreement and such party does not cure such breach within thirty (30) days following notice thereof, then the other party may immediately suspend performance (including delivery and/or access to the Service or delivery of reports, in the case of FirstClose) or terminate the applicable Order and/or this Agreement by sending written notice to the breaching party.

11.4. Effect of Expiration or Termination. Sections 3.3, 3.4, 4, 5 (with respect to amounts accrued or payable prior to termination), 6.3, 7, 9, 10, 11.4 and 12.2-12.14 shall survive any expiration or termination of this Agreement. All other rights and obligations shall cease and be of no further force or effect.

12. GENERAL.

12.1. Publicity. At a mutually agreed upon time, the parties may agree to issue a joint press release to announce their relationship, provided that neither party may issue such press releases relating to this Agreement without the prior written approval of the other. During the Term, either party may include the name and logo of the other party in lists of customers or vendors (including lists published on such party's website or in marketing materials), in accordance with the other party's standard trademark usage guidelines (if any).

12.2. Entire Agreement. This Agreement, including the Order(s) and any schedules and/or attachments referenced herein or issued hereunder constitute the entire agreement of the parties with respect to the subject matter contemplated herein, and supersede any prior representations, agreements, negotiations, or understandings between them, whether written or oral, with respect to the subject matter hereof, provided that with respect to Confidential Information disclosed thereunder this Agreement shall not affect any surviving provision of any NDA or other agreement by and between the parties. No waiver, alteration, or modification of any of the provisions of the Agreement shall be binding unless in writing and signed by duly authorized representatives of the parties hereto, or unless and except to the extent Vendor or User accepts a subsequent click-to-accept agreement delivered by FirstClose via the Service.

12.3. Governing Law and Jurisdiction. The Agreement will be governed by and construed in accordance with the laws of the State of Texas applicable to agreements entered into, and to be performed entirely, within Texas between Texas residents. The parties expressly agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods (1980) to this Agreement and the performance of the parties contemplated herein, to the extent that such convention might otherwise be applicable.

12.4. Arbitration. Any dispute, controversy or claim arising out of this Agreement will be settled by binding arbitration pursuant to the Commercial Rules (or Consumer Rules, to the extent applicable) of the American Arbitration Association ("**Rules**") then in effect. Notwithstanding those Rules, the following provisions will apply to such arbitration: (a) Texas law shall apply, (b) the arbitration will be conducted by a single arbitrator; however, at the request of either party, a panel of three arbitrators will conduct the arbitration, with one arbitrator chosen by each of the parties and the third appointed by the other two arbitrators, (c) the fees of the arbitrator(s) shall be equally borne (50/50) by the parties, and (d) the proceedings shall be in the English language and shall take place in Austin, Texas or another location reasonably convenient to both parties. The arbitrator(s) shall reach a binding decision regarding the issues presented as it deems fair, reasonable and appropriate, and such decision shall have the full force and effect of a binding judgment, which may be entered in any court having proper jurisdiction. Notwithstanding this provision, each party may seek injunctive relief in any court of competent jurisdiction. The parties agree to resolve any dispute in arbitration on an individual basis only, and not on a class or collective basis. The arbitrator shall have no authority to consider or resolve any claim or issue any relief on any basis other than an individual basis. If at any point this provision is determined to be unenforceable, the parties agree that this provision shall not be severable, unless it is determined that the arbitration may still proceed on an individual basis only.

12.5. Relationship of Parties. The parties are independent contractors and the Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. FirstClose reserves the right to utilize subcontractors.

12.6. Attorneys' Fees. In any court action at law or equity which is brought by one of the parties to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, in addition to any other relief to which that party may be entitled.

12.7. **Equitable Relief.** The parties agree that a material breach of the confidentiality provisions of this Agreement or restrictions set forth herein would cause irreparable injury to FirstClose for which monetary damages alone would not be an adequate remedy, and therefore FirstClose shall be entitled to equitable relief in addition to any other remedies it may have hereunder or at law, without the requirement of posting bond or proving actual damages.

12.8. **Force Majeure.** FirstClose shall not be deemed to have breached any provision of the Agreement or be liable in any way for any delay, failure in performance, loss, damage or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, terrorism, energy crises, fires, transportation contingencies, interruption or failures of communication systems or Internet equipment or service, other catastrophes, equipment failure, acts or omissions of Default Vendors, User-Defined Vendors or any other occurrences which are beyond FirstClose's control.

12.9. **Government Use.** The use, duplication, reproduction, release, modification, disclosure, or transfer ("use") of the Service, no matter how received by the United States Government, is restricted in accordance with the terms and conditions contained herein. All other use is prohibited. Further, the Service was developed at FirstClose's private expense and is commercial in nature. By using or receiving the Service, any Government user agrees to the terms and conditions contained in this Agreement including the terms and conditions contained in this paragraph.

12.10. **Assignment.** Neither party may assign this Agreement, in whole or in part, without the other party's prior written consent, provided that no consent is required in connection with a merger, reorganization, consolidation, amalgamation, sale of assets or similar transaction. Any purported assignment in violation of this Section shall be null and void. The Agreement shall be binding on all permitted successors and assigns.

12.11. **Severability.** The invalidity or unenforceability of any provision hereof, or any terms thereof, shall not affect the validity of the Agreement as a whole, which will at all times remain in full force and effect.

12.12. **Waiver.** The failure of either party to enforce at any time the provisions of the Agreement, or the failure to require at any time performance by the other party of any of the provisions of the Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of either party to enforce each and every such provision thereafter. The express waiver by either party of any provision, condition or requirement of the Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

12.13. **Order of Preference.** If there is a conflict between the terms and conditions of this Agreement and any Appendices and Attachments thereto incorporated by reference, they shall have the following precedence: the Attachments to Appendix A (as to the corresponding Transactional Settlement Services), followed by these General Terms, and then Appendix A.

12.14. **Notices.** All notices required or permitted under the Agreement will be in writing and delivered by confirmed facsimile transmission, by courier or overnight delivery service, or by certified mail, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth in this Section or in the Order or to such other address as may be specified by either party to the other in accordance with this Section. Notices to FirstClose should be sent to FirstClose, Inc., 10800 Pecan Park Blvd, Suite 310, Austin, TX 78750 Attn: Tedd Smith.