

User Agreement

THIS AGREEMENT CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY CLAUSES. CAREFULLY READ ALL TERMS AND CONDITIONS OF THIS LICENSE AND USER AGREEMENT PRIOR TO INSTALLING THE SOFTWARE OR UTILIZING ANY OF THE SOFTWARE PRODUCTS OR SERVICES DESCRIBED HEREIN. BY CLICKING THE "I ACCEPT" BUTTON BELOW AND/OR USING ANY OF THE SOFTWARE PRODUCTS OR SERVICES DESCRIBED HEREIN, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT; THAT YOU HAVE THE FULL POWER AND LEGAL RIGHT, AND HAVE BEEN DULY AUTHORIZED, TO ENTER INTO THIS AGREEMENT AND TO ENGAGE IN THE TRANSACTIONS CONTEMPLATED HEREIN; AND THAT YOU UNDERSTAND AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

DEFINITIONS. As used in this Agreement, the following terms have the following meanings.

- A. **"MBS"** means Mortgage Banking Systems, Inc., a Virginia corporation doing business as "ProClose®" and "MBS", having its principal place of business at 1360 Beverly Road, Suite 200, McLean, VA 22101. "MBS" and "ProClose®" may be used interchangeably or in combination, to mean the same thing.
- B. **"Software Products"** means the Software, the Software Documentation, the Web Service and any corresponding support products, including, but not limited to White Papers, Help files, Resource materials and output documents.
- C. **"Licensee" or "USER"** means the person who clicks the "I Accept" button below, or if the individual who clicks the "I Accept" button below is an employee acting on behalf of or retained by another person or entity, the person or entity which employs or on whose behalf the individual who clicks the "I Accept" button below is acting or retained and for whose benefit the Software is installed or any of the Software Products or Services are utilized. "Licensee" also means any person or entity that uses the Software Products or Services.
- D. **"Software"** means the machine-readable object code version of MBS ProClose® Platinum and related Mortgage Loan document preparation computer program(s), including ProClose® Courier, ProMerge, whether embedded on CD-ROM or other media, accessed from the ProClose® website, or otherwise, and all authorized corrections, bug fixes, enhancements, updates, revisions or other modifications, including, without limitation, custom modifications and replacements thereto, which MBS, in its sole discretion, makes available from time to time.
- E. **"Software Documentation"** means any user manuals, help files, tutorials, demonstrations, reports or any materials made available from time to time for the Software, whether written or in electronic format, and all authorized corrections, updates, revisions and other modifications, and any replacements thereto, which MBS, in its sole discretion, makes available from time to time.
- F. **"Web Service"** means the ProClose® Platinum on line, internet-based Mortgage Loan documentation preparation system. "Web Service" may be used interchangeably with "on line" or "web based" or Internet based".
- G. **"Uniform Instruments"** means the multi-state and/or state-specific security instruments, promissory notes, riders, addenda, disclosures and special purpose documents and other documents developed by Fannie Mae, Freddie Mac, the Department of Veterans Affairs

("VA"), the Department of Housing and Urban Development ("HUD" or "FHA") or other government sponsored enterprise "GSE" for use in the origination, sale and/or servicing of Mortgage Loans sold, transferred or assigned to, and/or owned, guaranteed, insured, and/or securitized by, Fannie Mae, Freddie Mac, VA, FHA and/or a GSE, as the case may be, regardless of whether or not any Mortgage loans are so sold, transferred, assigned, owned, guaranteed, insured or securitized.

ARTICLE I

GRANT OF LICENSE AND OWNERSHIP

1.1 Grant of License. Subject to the terms of this Agreement, MBS hereby grants USER a nonexclusive, non-transferable license to install and use the Software in machine-readable object code form only, for use by the Licensee. Licensee may additionally copy the Software only as reasonably needed for backup and/or archival purposes, provided that Licensee reproduces on each copy all copyright and other proprietary rights or notices set forth on or in the original Software. MBS will provide Licensee a license code key that enables the Software to be used by the authorized users. MBS shall have the right to monitor usage of the Software under this License to verify Licensee's compliance with the below restrictions. USER agrees to keep the Software free and clear of all claims, liens and encumbrances.

1.2 Restrictions. LICENSEE AGREES THAT IT SHALL NOT, IN WHOLE OR IN PART, AT ANY TIME DURING THE TERM OF OR AFTER ANY EXPIRATION OR TERMINATION OF THIS AGREEMENT: (a) SELL, ASSIGN, SUBLICENSE, LEASE, RENT, TIMESHARE, GRANT A SECURITY INTEREST IN, DISTRIBUTE OR OTHERWISE TRANSFER THE SOFTWARE; (b) COPY OR REPRODUCE THE SOFTWARE EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT; (c) POST, DISCLOSE OR HOST THE SOFTWARE FOR THE PURPOSES OF PROVIDING ACCESS OR DISTRIBUTING THE SOFTWARE TO ANY OTHER INDIVIDUAL OR ENTITY WITHOUT THE PRIOR WRITTEN CONSENT OF MBS; (d) MODIFY, TRANSLATE, ADAPT, REVERSE ENGINEER, DECOMPILE, DISASSEMBLE OR OTHERWISE ATTEMPT TO DISCOVER ANY SOURCE CODE FOR, OR CREATE DERIVATIVE WORKS BASED ON THE SOFTWARE OR MERGE THE SOFTWARE INTO ANY OTHER SOFTWARE; (e) ATTEMPT TO MODIFY OR TAMPER WITH THE NORMAL FUNCTION OF A LICENSE MANAGER OR SIMILAR FUNCTION IN THE SOFTWARE THAT REGULATES USAGE OF THE SOFTWARE; OR (f) ALLOW ANY THIRD PARTY TO DO ANY OF THE ACTS DESCRIBED IN SECTIONS 1.2(a) THROUGH 1.2(e) ABOVE.

1.3 Ownership and Proprietary Rights. The Software, its structure, organization and code, and all documentation relating to the Software, are the confidential and proprietary property of MBS and/or its licensors, and all right, title and interest in and to such property and any and all copies of the Software (in any form in whole or in part) shall remain with MBS and/or its licensors, both during the term and after any expiration or termination of this Agreement. Licensee acknowledges that MBS and/or its licensors have patent, copyright, trademark, trade secret and other intellectual property rights in the Software under United States and other foreign patent, copyright, trademark, trade secret and other intellectual property laws and international treaties, and that all such rights remain the exclusive property of MBS and/or its licensors at all times. Licensees shall not alter or remove any copyright or other proprietary notices on the Software or

any other materials provided pursuant to this Agreement. Accordingly, USER shall have no ownership rights in said Software. The Software licensed by MBS is site specific and accordingly, USER shall not relocate the Software to any other location that is not designated in this Agreement without the written permission of MBS. If USER should modify or change the Software, any modification or change becomes the sole and exclusive property of MBS. Upon termination of this Agreement, USER, at its own expense, shall immediately deliver to MBS the Software, including all accompanying manuals and forms, and USER agrees not to retain any copies thereof.

ARTICLE II

SOFTWARE & SUPPORT

2.1 Support. MBS will provide technical support and maintenance from time to time for the Software to registered USERS in accordance with its standard technical support policies. MBS shall maintain and make available to USER Software updates and corrections of programming errors, if any, as MBS may deem appropriate. Additionally, MBS shall maintain and update preprogrammed closing forms, as it deems appropriate and as may be required by regulatory changes.

2.2 USER OBLIGATION. USER is obligated to review Software Products and determine that the Software Products are appropriate for your use in each Mortgage Loan transaction; Prior to usage, USER must adequately and appropriately review, test and confirm that the hardware, software, networks, web access and other items required to meet MBS' published minimum system requirements for the Software Products, and after installation and/or initial use, test and confirm that the Software Products are properly functioning and meet the needs of the Lender. User must review each Mortgage Loan transaction to confirm that the Software Products are in good working order, performing properly in all material respects, including, by way of example, but not limited to, confirming the accuracy of all Loan-Specific Information, that the correct Uniform Instruments, Federally mandated, State mandated and Non-Uniform documents are being selected and completed in accordance with the applicable law, USER specifications and the specifications of any Mortgage Professional to whom you may broker, sell, assign and otherwise transfer a given Mortgage Loan, and are delivered to the appropriate person(s) at the appropriate time(s), it being understood and agreed that USER is solely responsible for determining the selection, use, accuracy and suitability of such Uniform Instruments, Federally-mandated documents, State-mandated documents and Non-Uniform instruments for your purposes; If, at any time, USER becomes aware of any defect in any of the Software Products of any kind, to stop using the defective Software Product immediately and give immediate notice of the defect to MBS; to comply with all applicable federal, state and local laws, rules and regulations or ordinances, including without limitation: TILA and Regulation Z promulgated thereunder; ECOA and Regulation B promulgated thereunder; the Home Mortgage Disclosure Act and Federal Reserve Regulation C promulgated thereunder; HPA; the Fair Housing Act and the National Flood Insurance Act of 1968; the Flood Disaster Protection Act of 1973; RESPA and Regulation X promulgated thereunder; and laws, rules, regulations or ordinances governing licensing or registration, the authorized or unauthorized practice of law, privacy, usury, interest rates, variable rates, Mortgage Loan origination, Mortgage Loan brokering, Mortgage Loan processing, Mortgage Loan closings, Mortgage Loan servicing, Mortgage Loan sales or transfers,

prepayment charges, late charges, mortgage insurance, predatory lending, covered high rate, high cost, or high fee Mortgage Loans, unfair business practices, unconscionability, demand features, amortization or negative amortization provisions, foreclosure provisions, arbitration provisions, or sue on sale clauses; to read all emails sent to you by MBS, update the Software Products and monitor MBS' website on an ongoing basis; not to use the Software Products in any way that would infringe any third party intellectual property right or breach the terms of any agreement between USER and any third party; and grant access to passwords, security devices, or access control devices, if any, necessary to access the Software Products and/or the Services only to personnel authorized by USER, and to instruct authorized personnel to keep secret and secure these passwords, security devices or access control devices, if any.

ARTICLE III

FORCE MAJEURE

3.1 Force Majeure. Should any event or condition which wholly or partially delays or prevents such party from performing any of its obligations hereunder and is beyond the reasonable control of, and occurs without the fault or negligence of, the party affected thereby including, without limitation, acts of God, acts of the public enemy, insurrections, riots, attacks by computer hackers, the temporary shutting down of networks due to government control, labor disputes, labor or material shortages, fires, explosions, floods, breakdowns of or damages to plants, equipment or facilities, in whole or in part, then such obligations shall be suspended to the extent necessary by such Force Majeure during its continuance or orders or acts of any court or government authority having jurisdiction or any military authority. Should it continue beyond a reasonable period, then the Agreement shall be terminated upon ten (10) days prior written notice by the party unable to perform to the other party.

ARTICLE IV

TERMINATION/CANCELLATION

4.1 Term. MBS endeavors to make a reciprocal agreement to serve the needs of the Client in a two-way partnership for the very best results, thus requiring an on-going commitment for a minimum of one year. The initial term of this Agreement shall be Twelve (12) full months. At the end of the term, this Agreement will automatically renewed on a month to month basis at the full retail price for a single transaction or renew for another 12 months to maintain commitment pricing, a volume discount. All contract renewals have an automatic unit price adjustment of 1.5%.

4.2 Termination for Failure to Pay. Failure of USER to make any payment when due which is not cured in the five (5) days after receiving written notice shall be grounds for immediate termination by MBS. Failure of MBS to initiate termination after USER is delinquent with payment shall not constitute a waiver of USER's obligations under this Agreement; ; nor shall it constitute a waiver of MBS' right to initiate termination after USER is delinquent with payment at a later time.

4.3 Cancellation for Cause. If USER commits a breach of this Agreement, MBS may cancel the

Agreement by sending a Cancellation Notice describing the noncompliance to the USER.

4.4 Effect of Cancellation/Actions Upon Cancellation. Upon termination or cancellation of this Agreement: (i) all rights of USER hereunder will terminate, all license rights shall also cease and the Products and Documentation and all copies thereof shall be returned to MBS or destroyed, as directed by MBS; (ii) all amounts due to MBS hereunder will become immediately due and payable; and (iii) the following sections will survive termination of this Agreement: Articles 2, 5, 7, and 8.

ARTICLE V

CONFIDENTIALITY

5.1 Confidentiality. Under the terms of this Agreement, the parties may have access to information that is confidential. All non-public material and information supplied by one party to the other, including but not limited to, information concerning either party's current or forecasted operations, marketing plans, financial status or objectives, are confidential and proprietary ("Confidential Information"). The parties agree to maintain the confidentiality of the Confidential Information and to protect the trade secret of any portion of the other party's Confidential Information by preventing any unauthorized copying, use, distribution, installation or transfer of possession of such information. Each party agrees to maintain at least the same procedures regarding the other party's Confidential Information that it maintains with respect to its own Confidential Information.

USER Information: Any and all information or data, provided by, through or on behalf of USER or any of its affiliates to MBS, about or relating to any customer, prospective or former customer of USER or any of its affiliates or any consumer of USER or any of its affiliates, including but not limited to, any and all nonpublic personal information of USER or any of its affiliates or their consumers/customers (as defined by Title V of the Gramm-Leach-Bliley Act and its implementing regulations) made available to MBS.

MBS Information: Any and all confidential business, technical or data processing information, trade secret or other proprietary information. Also, the Software in any form, including all source and object code and documentation related to the Software and the terms and pricing under this Agreement. Confidential Information also includes information relating to MBS' business or financial affairs, such as financial results, business methods, pricing, competitor information and all other information designated as confidential.

5.2 Public Information. Public information shall not be deemed Confidential Information. With the exception of the Software and Documentation, a party's Confidential Information shall not include any information which becomes part of the public domain through no act or omission of the other party; is lawfully acquired by the other party from a third party without breach of confidentiality; is independently developed by the other party without breach of this Agreement; or is already known to the other party without obligation of confidentiality and other than by disclosure from the disclosing party.

5.3 Use and Term. Confidential Information shall be used by each party solely in the

performance of its obligations pursuant to this Agreement and shall not otherwise be used, disclosed or made available to anyone other than an employee of the receiving party with a need to know, except as may be otherwise agreed upon in writing by the disclosing party. The confidentiality clause shall survive the termination or expiration of this Agreement.

5.4 Compliance. The provisions of Article V shall not prohibit either party's compliance with a validly issued subpoena, order of a court of competent jurisdiction, or request for information from a governmental agency, seeking disclosure of the other's Confidential Information, provided the party receiving such subpoena, court order, or request has given prompt notice thereof to the other party and has taken all reasonable steps to protect the confidentiality of the other party's Confidential Information.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

6.1 Performance. Subject to the terms of this paragraph, MBS warrants that the Software will prepare closing documents. MBS warrants that the Software documents accurately replicate industry standard forms, the specific content and format of which are mandated and published by Fannie Mae, Freddie Mac and/or The Department of Housing and Urban Development (HUD). MBS does not warrant the accuracy or reliability of the calculations performed. MBS outsources the calculations to MathCorp, Inc. and is not in any way partnered or in business with MathCorp. The relationship of the parties is that of independent contractors.

6.2 Disclaimer of Warranty. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL PRODUCTS PROVIDED BY MBS, AND ANY UPDATES THEREOF, ARE PROVIDED TO USER AS IS, AND MBS MAKES NO WARRANTY, EXPRESS, IMPLIED, BY DESCRIPTION, BY SAMPLE, OR OTHERWISE, AND, IN PARTICULAR, WITHOUT LIMITATION, MAKES NO IMPLIED WARRANTIES OF LEGAL ENFORCEABILITY, MERCHANTABILITY OR FITNESS OF PURPOSE. USER IS SOLELY RESPONSIBLE FOR THE ACCURACY OF THE LOAN DATA ENTERED IN THE SOFTWARE, THE ADEQUACY OF THE LANGUAGE USED IN THE DOCUMENTS, AND HAS INDEPENDENTLY CONCLUDED THAT THE SOFTWARE MEETS ALL OF USER'S REQUIREMENTS FOR CLOSING MORTGAGE LOANS. USER ACKNOWLEDGES THAT MBS IS NOT QUALIFIED TO PRACTICE LAW IN ANY JURISDICTION, AND ACCORDINGLY, MBS MAKES NO WARRANTY AS TO THE LEGALITY OR SUITABILITY OF THE SPECIFIC LANGUAGE CONTAINED IN THE CLOSING DOCUMENTS IT SUPPLIES WITH THE SOFTWARE.

6.3 Limitation of Liability. IN NO EVENT SHALL MBS OR ITS LICENSORS BE LIABLE TO LICENSEE OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, LOSS OF BUSINESS, REVENUE, USE, DATA OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES ARISING OUT OF OR RESULTING FROM LICENSEE'S POSSESSION OR USE OF THE SOFTWARE, EVEN IF MBS HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES. IN NO EVENT SHALL MBS OR ITS LICENSORS BE LIABLE FOR ANY DAMAGES

IN EXCESS OF THE AGGREGATE AMOUNT MBS HAS RECEIVED UNDER THIS AGREEMENT, EVEN IF MBS HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. THIS LIMITATION OF LIABILITY WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE AND INDEPENDENT OF ANY FAILURE OF ESSENTIAL PURPOSE OF THE LIMITED WARRANTY AND REMEDIES PROVIDED HEREUNDER.

6.4 U.S. Government Restricted Rights. The Software is provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the U.S. Government and parties acting on its behalf is subject to the restrictions set forth in subparagraph (C)(1) and (2) of the Commercial Computer Software – Restricted Rights at 48 CFR 52.227-19, as applicable.

6.5 Copyright, Patents and Marks. All trademarks, service marks, patents, copyrights, trade secrets and other proprietary rights in or related to the Software products are and will remain the exclusive property of MBS or its licensors, whether or not specifically recognized or perfected under international, federal, state or local applicable law.

6.6 Export Restrictions. Licensee agrees not to export (including transferring electronically over any network, including the Internet) or re-export the Software, any part thereof, or any process or service that is the direct product of the Software, to any country, person, or entity in violation of U.S. and other applicable export laws, including without limitation the Export Administration Regulations administered by the U.S. Department of Commerce and the International Traffic in Arms Regulations administered by the U.S. Department of State.

6.7 USER's Corporate Existence and Authority. USER represents and warrants that it is duly organized, validly existing, and in good standing under the laws of the state of its incorporation. USER warrants it has all necessary corporate power and authority to enter into this Agreement and to perform all of the obligations to be performed by it under the Agreement.

6.8 No Existing Claims. USER represents and warrants that there is no claim, litigation, proceeding, arbitration, investigation or material controversy pending, against or affecting the USER which will have a material adverse effect on the ability of USER to consummate the transactions contemplated hereby and, to the best of USER's knowledge, no such claim, litigation, proceeding, arbitration, investigation or material controversy has been threatened or contemplated.

6.9 Indemnification. USER agrees to hold MBS harmless and indemnify MBS from any direct damages or consequential damages, including cost of litigation, resulting from the use of the Software. MBS' liability hereunder for damages, regardless of the form of action, and regardless of whether the action is brought by USER or a third party, shall not exceed the amount paid by USER to MBS under this Agreement. MBS is not liable for any lost profits. This limitation of liability is intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective.

ARTICLE VII

MISCELLANEOUS PROVISIONS

7.1 Waiver/Licensee Rights. No waiver of any provision of this Agreement or any rights or obligations of either party hereunder shall be effective, except pursuant to a written instrument signed by the party or parties waiving compliance, and any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing. No remedy made available to MBS by any of the provisions of this Agreement is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

7.2 Entire Agreement/Jurisdiction. This Agreement constitutes the entire agreement between MBS and USER with respect to the Web Service transactions contemplated herein, and supersedes any and all prior or contemporaneous oral or written communications relating to the Web Service subject matter hereof. This Agreement, and all of its terms and conditions, shall be governed by the laws of the Commonwealth of Virginia, and the parties mutually consent to and agree, that the sole and exclusive jurisdiction and venue for any dispute, shall be in any state or federal court located in the County of Fairfax, Commonwealth of Virginia.

7.3 Arbitration Clause. Any controversy or claim arising from or relating to this contract or the breach thereof shall be settled by arbitration in Washington, DC, administered by the American Arbitration Association under its Arbitration Rules for the Real Estate Industry and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

7.4 Assignment. Each party hereto shall have the right and power to assign any of its obligations or duties of performance hereunder upon the written consent of the other party, which consent shall not be unreasonably withheld. No such assignment shall relieve the assignor of primary responsibility for and liability with respect to the performance of its obligations hereunder.

7.5 Severability of Provisions. Whenever possible each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is determined by a court of applicable jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be modified or deleted in such a manner as to make the modified Agreement valid, legal and enforceable, and the remainder of the Agreement shall not be affected thereby.

7.6 Notices. All notices or other communications provided for or permitted hereunder shall be made in writing and deemed to have been duly given when delivered by hand-delivery, air courier, U.S. Mail with receipt requested, or sent by facsimile to the following address:

If to MBS:

Mortgage Banking Systems, Inc.
Attn: Compliance Department
1360 Beverly Road, Suite 200
McLean, VA 22101
Tel: (703) 761-3148

Fax: (703) 761-4375

Notice not given in writing shall be effective only if acknowledged in writing by a duly authorized representative of the party to whom it was given.

7.7 Modifications. Waivers, alterations, modifications or amendments of a provision of this Agreement shall not be binding unless such waiver, alteration, modification or amendment is in writing and signed by the party to be bound.

ARTICLE VIII

FEES AND PAYMENT

8.1 PAYMENT. USER agrees to pay MBS for any and all transaction fees, additional product usage, and services that USER selects or are incurred by usage, or as offered and selected on line at the time of registration. USER agrees to supply a method of securitization for payment in the form of a Visa or Master Charge Credit Card, or Bank Routing and Account number of the institution of their choice. While these are not offered as preferred methods of payment, USER authorizes MBS to charge (or debit) the account provided in the event of payment default. All invoices are net 30. MBS exercises its right to “take” payment one calendar month plus one day after the invoice date. USER will receive or *have access to* detailed transaction reports and will receive or *have access to* a monthly invoice statements as when they become available. Methods of payment include Corporate check, web bill pay and EFT. Any fees associated with other methods of payment will be invoiced to and paid by the USER.

8.2 PAYMENT PLANS. Regular and Commitment pricing. The standard rate for doc prep is \$35 per transaction. MBS offers varying discounts for lenders willing to commit to a monthly volume for the duration of the contract. In exchange for lower unit pricing, the lender guarantees minimum payment for a fixed volume, even if actual volume falls below that commitment. Lender agrees to pay for all loans over that volume commitment at the negotiated unit price. Any fees incurred through the use of MBS’ add-on products and portals will be invoiced as separate from “doc prep” and are not subject to volume commitments. These add-on product and portal fees are billed on a usage basis and summarized on the monthly invoice.

8.3 REFUNDS AND RETURNS. Loans that do not go to closing are not refundable. USER agrees to pay for all imported loans thereby passing through the ProClose® calculation engine or print engine, regardless of their ultimate closing status. MBS will only invoice one time per unique loan ID. No alterations to the invoice should ever be made or assumed. All sales of pre-paid blocks of loans for ProClose® Platinum are final and non-refundable regardless of whether they are all used before the expiration date. If you believe there is a technical problem with your invoice, please contact our office immediately at the address below:

Mortgage Banking Systems
1360 Beverly Road
Suite 200
McLean, VA 22101
billing@ProClose.com

8.4 Ancillary Fees - Other Vendor charges. USER agrees to pay any and all charges for any vendor who invoices MBS for a product used on behalf of the USER. USER will only incur third party charges if they were incurred directly as a result of USER usage in connection with ProClose® and full payment of regular invoice is not met. This applies to any "click fee" assigned by your LOS or any other third party vendor for charges imposed for data passage.

8.5 ProClose® Courier. (\$5) MBS offers secure delivery of PDF documents through a SAS-70® Type II, secure, hosted server, providing 128-bit data encryption and lender controlled password protection. The cost is \$5.00 per delivery. USER may elect to print doc sets in addition to electronic distribution. There is no additional charge for printing as many times as needed. USER may print blank documents in ProClose with no additional charge. ProClose® will provide support at no additional charge to Lender's Settlement Agent if support is needed to download or print such packages.

8.6 ProMerge®. (\$1) For the use of ProMerge, an automated MERS registration and reporting portal, MBS charges a fee of \$1.00 per loan. Estimated time saved with bulk registration of 50 loans equals 8-person hours. **8.7 ComplianceEase®.** For the use of ComplianceEase services, a third party testing platform with free integration provided by ProClose®, USER shall have the right to test a loan five (5) times at no charge. Additional tests on the same loan will incur additional fees (**\$10 for up to 5 tests**). This test is optional and may be used at the discretion of the Lender for all, or any selected loans. ProClose® will provide client support and training at no additional charge. ProClose will maintain the requirements for Compliance Ease regulated tests by maintaining our User portal at our own expense.

8.8 Reports: FREE USER may use the reports already built into ProClose® as often as needed with no additional charges. User has the freedom to purchase their own software to create additional reports which can be placed into ProClose® at no additional cost.

8.9 Custom reports. USER may request the creation of additional custom reports at the development cost of \$150 an hour, with a 2-hour minimum charge to include testing. For complicated report requests, estimates of project scope will be provided in advance.

8.10 Taxes. USER shall pay any and all applicable taxes, including without limitation, if applicable, sales, use, property, value added or other taxes based on licenses granted or services provided, excluding taxes on MBS' net income.

8.11 Past Due Amounts. Time is of the essence with regards to payments. Without limiting any of MBS' rights or remedies, late charges at the rate of two percent (2%) per month or the maximum rate permitted by applicable law, whichever is lower, shall accrue on any due and payable amounts that are not paid within 30 days of receiving an invoice from MBS. Failure of MBS to enforce this late penalty provision shall not constitute a waiver in regards to future late payments. If any suit is brought to enforce the collection of fees pursuant to this Agreement, USER agrees to pay reasonable attorneys' fees (of not less than twelve percent (12%) of such amounts outstanding), and all court costs with interest on the unpaid fees at the maximum legal interest rate. If USER fails to pay fees as specified in this Agreement, MBS may, at its option,

disable the USER's access to the Software. Disabling of the USER or termination of this Agreement does not relieve USER of the obligation to pay all fees due MBS. USER is responsible for paying any and all state and local taxes as applicable.