



## MTRADE SERVICES AGREEMENT

Effective September 1, 2018

THIS SERVICES AGREEMENT along with all price schedules, other schedules and exhibits and rules and regulations (together the "**Agreement**") governs Client's relationship with mTrade and its engagement of and use of mTrade's Services (as described below). mTrade may change this Agreement, its price schedules, or any other schedules, by providing Client with 30 days' advance written notice (which may be provided electronically as provided in section 10 below). If such changes by mTrade are unacceptable to Client in its good faith judgment, Client may terminate this Agreement within 30 days thereafter by providing written notice of its intention to terminate citing with specificity the unacceptable changes.

In addition, mTrade may change any rules and regulations from time to time by providing Client with 30 days' advance written notice (which may be provided electronically—including posting a notice to Client's mTrade account) of any such amendments.

As used in this Agreement, "**Client**" means the person or organization which subscribes to the Services and agrees to be bound by this Agreement and all price schedules, other schedules, exhibits and rules and regulations.

"Client" shall also refer to any user who signs into or uses any mTrade system (whether authorized to use that mTrade system or not or whether on its behalf or under association with or by working under the account of another user). In all cases, such user thereby agrees to be bound by this Agreement as a Client.

"**mTrade**" refers to mTrade, LLC, a Mississippi limited liability company. mTrade and Client may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

### 1. The Services

This Agreement governs Client's relationship with mTrade and its engagement of and use of mTrade's products and services, which are more specifically outlined in Schedule B to this Agreement, as well as any related products and services (collectively, the "**Services**").

This Agreement also applies to all of Client's authorized users (including those users associated by or with Client or under its ostensible authority), as well as any of Client's affiliates, contractors, agents or representatives.

### 2. Right to Use; Proprietary Rights; Confidential Information

- a. Subject to and conditioned on Client's payment of Fees and compliance with all other terms and conditions of this Agreement, mTrade hereby grants to Client a limited term, non-exclusive, non-sublicensable, and non-transferable license to load, execute, and display (collectively, "**use**") the Services during the Term solely as specifically authorized in this Agreement.
- b. This grant of rights does not include use by any of Client's independent contractors or agents unless specifically authorized by mTrade in writing. If mTrade consents to the use of the Services by Client's independent contractors or agents, mTrade may impose an additional charge for doing so.

- c. Client's right to use the Services is subject to the terms and conditions of this Agreement, (which includes all schedules and exhibits related to the Services as may be issued from time to time).
- d. mTrade owns and shall own all rights, title and interest to the Services and any modifications made to them, regardless of whether made by Client or by mTrade. Furthermore, Client acknowledges that FNC, Inc. and/or CoreLogic Solutions, LLC shall retain all rights, title and interest in the Valuation Pre-Check Services to be made available to Client by mTrade through FNC, Inc./CoreLogic Solutions, LLC.

mTrade alone will own all right, title and interest, including all related intellectual property rights, to any suggestions, ideas, feedback, recommendations, or other information provided by Client relating to the Services ("**Submissions**"), and Client agrees to, and hereby does assign such Submissions to mTrade free of charge. mTrade may use such Submissions as it deems appropriate in its sole discretion.

- e. This grant of access to the Services is subject to the restriction that neither Client nor anyone acting on its behalf or its ostensible authority may copy, decompile, disassemble, decrypt or otherwise reverse engineer (or allow or suffer others to copy or decompile, disassemble, decrypt or otherwise reverse engineer) the Services or any related data, software, devices or interfaces (except that Client may maintain for a limited time electronic copies of its Services data and any installed software in authorized and approved use).
- f. Neither Client nor anyone acting on its behalf may make derivative works from either the Services or any other mTrade services or systems. Likewise, Client may not modify the Services or any other mTrade services or systems or use them in any way not expressly authorized by this Agreement.
- g. Client may not utilize the Services, or any data contained therein or any software, device or interface or any part thereof associated with the Services to provide any time sharing, service bureau or similar services, or otherwise make the Services available to any third person or entity, or in any way provide any competing services.
- h. "**Confidential Information**" means all of mTrade's or Client's confidential and proprietary information in whatever form or format including, but not limited to: either Party's forms, processes, software (in various stages of development), systems, pricing (including but not limited to the pricing in this Agreement), technology, trade secrets, know-how and show-how; customer, vendor, or agent identities and lists; loan applicant and borrower information, loan files and documents, any "nonpublic personal information" as the term is defined under Gramm-Leach-Bliley Act (PL 106-102); any identifying information in any "covered account" as that term is defined in the jointly issued Identify Theft Red Flags Rule (72 Fed Reg 63718, Nov 9, 2007); business or financial information and plans; research and development plans or projects; the identity of any existing or potential co- or joint-venturer; any information that is marked or identified, orally or in writing, by either Client or by mTrade, as confidential or proprietary; and any information that mTrade or Client should recognize as confidential or proprietary from the circumstances surrounding its disclosure.

All information, images or data contained within Client's Services account(s) is Confidential Information and belongs to Client, not mTrade. mTrade will not extract or retrieve any information, image or data from Client's Services account(s) without its permission. However, mTrade may capture certain data from time to time about Client's Services transactions, including but not limited to, performance data, observations about product and service type and characteristics, pricing, data elements and characteristics, loan characteristics and details, and other or related data. This data may be used internally by mTrade, for example, to assure the quality and performance of the Services and within one or more products or services, provided however that

1. no individual data about any individual Services user shall be revealed to any others and will only be reported in aggregated or disguised form, unless Client specifically authorizes otherwise; and
  2. no information amounting to nonpublic personal information (as defined under Gramm-Leach-Bliley Act, PL 106-102, and its related regulations) shall be revealed within any such product or service.
- i. The Services and mTrade's other processes and services are also Confidential Information.
  - j. Both Client and mTrade agree to maintain the confidentiality of, and prevent the disclosure of, the Confidential Information they receive, exercising at least such protection and preservation of the Confidential Information from disclosure, unauthorized use or misuse as each Party uses to protect its own proprietary and confidential information and materials of like importance, but in no event less care than a reasonably prudent business person would take in a like or similar situation.

To the extent that the Confidential Information includes any "nonpublic personal information" as that term is defined under the Gramm-Leach-Bliley Act (PL 106-102) and related regulations (including but not limited to the Interagency Guidelines regarding the Safeguarding of Customer Information) or any identifying information in any "covered account" under the Red Flags Rule, then Client and mTrade agree to comply with the provisions incorporated in the Gramm-Leach-Bliley Act and related regulations with respect to that Confidential Information (as may be extended by the Red Flags Rule). Compliance shall include the development, implementation and maintenance of an Information Security Program as described in the Interagency Guidelines.

- k. Right to audit. Client shall have the limited right, at its sole expense, during regular business hours and upon reasonable notice, to audit mTrade on a periodic basis to ensure compliance with this Agreement, including but not limited to the Gramm-Leach-Bliley Act and related regulations (and mTrade's Information Security Program). Portions of its auditing activities may be governed by mTrade's Information Security Program. Any information observed or obtained during the course of such assessments or audits (along with any reports, analysis or summaries arising from the audit or assessment) shall be considered Confidential Information under this Agreement.

To the extent that any audit or assessment involves any equipment or facilities that are shared with mTrade's other clients, no such audit, required disclosure or assessment shall include any activity that might compromise the confidentiality of any third-party information, including especially but not limited to, information belonging to other mTrade clients.

### 3. Client Preferences

The Services are standard with portions that Client can configure. mTrade may, in its sole discretion, change the Services from time to time, although mTrade will attempt to provide Client with reasonable notice before any material changes go into effect. If such changes by mTrade are unacceptable to Client in its good faith judgment, Client may terminate this Agreement within 30 days thereafter by providing written notice of the unacceptable changes with specificity.

### 4. Client's Accounts and Identification of Users

As part of the Services, mTrade will create one or more accounts for Client. The account(s) will detail all of Client's activities, including its transactions for billing purposes and identify all of its authorized users.

- a. Client will be responsible for identifying its authorized users and issuing credentials to them. Client's users will be given access to the Services through the issuance of usernames and

passwords (or similar means of authorized access) associated with Client. mTrade may apply additional measures as appropriate to assure the proper authentication of Client's users. Any authorized user is obligated to maintain the confidential and proprietary nature of the Services along with any data and mTrade process or service associated with it.

- b. Client is responsible for maintaining the confidentiality of all of the information regarding its account(s), including, for example, account number, user names, passwords, access tokens or other means of granting authorized access, as well as those of any other person or user associated by or with Client (or under Client's ostensible authority).
- c. Client understands that it is responsible for any charges, liabilities or claims arising from the use of its account(s), user name, passwords, access tokens, or other means by which it has granted authorized access or those other user names, passwords, access tokens or other means authorized by or associated with Client. mTrade will treat all uses of such as authorized until mTrade receives written notification from Client (pursuant to the notice provisions contained in Section 10(i) hereof) that unauthorized activity is occurring on Client's account(s). The notification will be effective when received by mTrade, if on a normal business day, otherwise effective on the first business day that occurs thereafter.
- d. mTrade may take action, however, in its sole discretion, upon notice that Client (including, for example, any of its employees, contractors or invitees) or any of those who provide services to Client have gained unauthorized or unlawful access to, or made any unauthorized or unlawful use of the Services or any other medium or process within mTrade's control, to deny access to the Services or any other medium or process to any such person or entity, or seek other remedies, especially to the extent that any such access or use may reflect badly on the reputation or credibility of mTrade, of any of mTrade's clients, of the Services, or any other related medium or process.
- e. Data Breaches or other Unauthorized Activity.
  - 1. Client will notify mTrade immediately with regard to any known or suspected unauthorized uses or users of its account(s), or any known or suspected breach of security, including loss, theft or unauthorized disclosure of its or any other user name, password, access tokens or other means by which it has granted authorized access.
  - 2. mTrade will promptly notify Client in the event of any suspected or actual security breach or unauthorized access to its Services account(s).
  - 3. In the event of a suspected or actual security breach or of other unauthorized activity, once Client or mTrade has been notified by the other under this section, both Client and mTrade agree to reasonably cooperate with each other to minimize any potential harm from the suspected or actual breach and to investigate to ascertain the nature and extent of any suspected or actual breach. To the extent that any additional measures are appropriate under the various data breach or other regulatory requirements, the Parties agree to reasonably cooperate with each other to comply with those requirements.
- f. Third-Party Services. The Services may enable access to third-party services and websites (collectively and individually, "**Third-Party Services**"). Client agrees that use of the Third-Party Services is at Client's sole risk. mTrade is not responsible for examining or evaluating the content or accuracy of any Third-Party Services and shall not be liable for any Third-Party Services.

## 5. System Requirements

Client is required to provide the necessary hardware, software and telecommunication systems and processes to allow Client to connect to and take advantage of the Services and to maintain the

security and integrity of its activity using the Services. Client will need various common computer hardware, software, network and Internet components available to Client and its users to use the Services (mTrade can advise Client on what it may need).

In addition, in certain instances Client's and mTrade's mutual clients may require the use of certain security measures, including for example multi-factor authentication. The employment of these additional security measures may entail the use of additional hardware, software, or processes. These may involve additional costs that Client will need to cover.

Client will need to obtain and pay for any telecommunication services and interchange fees and costs Client may require. Examples of the likely telecommunication services or interchange services include, by way of example,

1. Broadband and networking services within Client's facilities and to its users
2. Telecommunication connections between Client and any and all hosting facilities
3. Any interchange fees or connection fees imposed by third parties (such as third party service providers) for connections to or interchanges with those services, especially related to interchanges of information.

Client shall solely be responsible for the quality and performance of all required telecommunication services with respect to the Services. mTrade shall not be responsible for any claim, injury or liability which may arise from the obtaining, maintaining or use of any telecommunication or interchange services.

## 6. Pricing and Payment

Client agrees to pay all fees or charges (collectively, the "Fees") to its account(s) in accordance with the then current pricing schedule in effect at the time the transaction or activity occurs. Current pricing is provided in Schedule A to this Agreement, which is incorporated herein by reference.

- a. Payment. The primary payment method for payment is by automated clearing house (ACH) transaction. By special agreement (which may include an additional charge), payments may be also be made by credit card, debit card, or other payment method acceptable to mTrade.

mTrade will bill Client on a monthly basis the total amount of all fees due and Client agrees to pay all invoices within 30 days of the date of invoice. Client also agrees that if any sum is unpaid 45 days past the invoice date, Client will pay mTrade 1% interest per month on the unpaid amounts until the invoice is paid in full.

mTrade will charge Client \$35.00 or the highest amount allowed by law, whichever is less, for each check or other instrument (including credit card chargebacks and ACH) tendered by Client and returned unpaid by a financial institution for any reason. In the event Client fails to make timely payment of its obligations under this Agreement, Client agrees to reimburse mTrade the fees of any collection agency, which may be based on a percentage of the debt, and all costs and expenses, including reasonable attorneys' fees and court costs, mTrade incurs in such collection efforts.

- b. Billing Issues. Client must inform mTrade in writing of any billing problems or discrepancies within 45 days of the date of the specific transaction. Client may provide that notice by email to mTrade's Accounting Department at [accounting@mtrade.com](mailto:accounting@mtrade.com). If Client does not bring a billing issue to mTrade's attention within 45 days of the date of the specific transaction, Client shall be deemed to have waived its rights to dispute such problems or discrepancies. If payment of undisputed fees for any transaction is not received within 90 days of the date of the transaction, mTrade may, at its option, interrupt or terminate Client's access to and use of the Services without liability therefor.

- c. **Taxes.** All Fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible for all sales, use and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Client hereunder, other than any taxes imposed on mTrade's income.

7. **Warranties and Limitations of Liability**

CLIENT EXPRESSLY AGREE THAT THE USE OF THE SERVICES AND MTRADE'S OTHER PROCESSES, SYSTEMS, SOFTWARE, OR ANY OTHER MEDIUM OR PROCESS WITHIN MTRADE'S CONTROL, AND THE INTERNET, IS AT ITS SOLE RISK. THE SERVICES AND MTRADE'S OTHER PROCESSES, SYSTEMS, SOFTWARE, OR ANY OTHER MEDIUM OR PROCESS WITHIN MTRADE'S CONTROL, THIRD-PARTY VIRUS OR OTHER MALWARE PROTECTION TECHNOLOGY AND THE INTERNET ARE PROVIDED "AS IS" AND "AS AVAILABLE" FOR USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, UNLESS SUCH WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION, AND THEN ONLY TO THE EXTENT OF THAT EXCLUSION.

MTRADE SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE SERVICES AND MTRADE'S OTHER PROCESSES, SYSTEMS, SOFTWARE, OR ANY OTHER MEDIUM OR PROCESS WITHIN MTRADE'S CONTROL, OR THE INTERNET WILL BE ERROR FREE OR WILL OPERATE WITHOUT INTERRUPTION.

IN NO EVENT SHALL MTRADE'S LIABILITY TO CLIENT ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE (AND ITS EXCLUSIVE REMEDY WITH RESPECT TO ANY DISPUTE WITH MTRADE WITH RESPECT TO THIS AGREEMENT) EXCEED MORE THAN THE TOTAL AMOUNT PAID BY CLIENT TO MTRADE WITHIN THE MOST RECENT 3 CALENDAR MONTH PERIOD (COUNTING BACKWARDS FROM THE TIME OF THE FILING OF ANY COMPLAINT). IN NO CASE SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, OR DAMAGES OR CLAIMS FOR LOSS OF USE, LOST PROFITS OR LOSS OF DATA OR INFORMATION OF ANY KIND, ARISING OUT OF OR IN CONNECTION WITH CLIENT'S USE OF ANY MTRADE SERVICE OR ANY OTHER MEDIUM OR PROCESS WITHIN MTRADE'S CONTROL OR THE INTERNET OR FOR ANY OTHER CLAIM RELATED IN ANY WAY TO THIS AGREEMENT OR THE SERVICES CONTEMPLATED HEREIN – WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. TO THE EXTENT THAT A STATE OR JURISDICTION DOES NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, AS TO THAT STATE OR JURISDICTION LIABILITY SHALL BE LIMITED TO THE FULL EXTENT PERMITTED BY LAW. THE LIMITATIONS CONTAINED IN THIS AGREEMENT APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

IN PROVIDING ITS SERVICES TO CLIENT, MTRADE IS ACTING ONLY TO EXECUTE REQUESTS THAT CLIENT MAY HAVE FOR INFORMATION AND FOR OTHER PRODUCTS AND SERVICES. MTRADE IS NOT OBLIGATED TO NOR DOES IT ATTEMPT TO INDEPENDENTLY VERIFY THE APPROPRIATENESS, COMPLETENESS, ACCURACY OR AUTHENTICITY OF ANY INFORMATION THAT MAY BE TRANSMITTED TO CLIENT THROUGH ANY OF ITS SERVICES (INCLUDING THAT WHICH IS OBTAINED FROM GOVERNMENTAL AND OTHER THIRD-PARTY SITES), AND THAT THE INFORMATION REPORTED TO AND BY MTRADE MAY BE SUBJECT TO COMPUTATIONAL, TRANSCRIPTION, AND TRANSMISSION ERRORS. MTRADE DOES NOT ACCEPT ANY RESPONSIBILITY FOR ANY CONCLUSION REGARDING ANY TRANSACTION OR FOR ANY DECISION THAT MAY ARISE FROM THE USE OF THE SERVICES OR MTRADE'S OTHER PROCESSES, SYSTEMS, SOFTWARE, OR ANY OTHER MEDIUM OR PROCESS WITHIN MTRADE'S CONTROL. EVERY USER OR INTENDED USER IS SOLELY RESPONSIBLE FOR THE ACCURACY OR APPROPRIATENESS OF ANY CONCLUSION REACHED, RESULTS OBTAINED AND FOR ANY ACTION THAT MAY BE TAKEN AS A RESULT. ALL OPEN SOURCE COMPONENTS AND OTHER THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN CLIENT AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH OPEN SOURCE COMPONENTS AND THIRD-PARTY MATERIALS.

## 8. Term and Termination

The initial term of this Agreement shall commence as of the Effective Date and shall continue in full force and effect for a period of 3 years from the Effective Date, unless properly terminated by the Parties. It shall automatically renew for successive 1 year periods thereafter unless either Party gives the other 90 days' advance written notice of its intent to terminate. Regardless of any term in effect, either party may terminate this Agreement for convenience by giving the other party 60 days' advance written notice of its intent to terminate.

Either Party may terminate this Agreement upon written notice in the event that the other Party is in violation of the provisions regarding Section 2, License to Use; Proprietary Rights; Confidential Information, or Section 4, Client's Accounts and Identification of Users in this Agreement.

In addition to other relief, either Client or mTrade may terminate this Agreement if the other Party breaches any material provision in this Agreement and fails within 30 days after receipt of written notice of default to correct such default or to commence corrective action reasonably acceptable to the aggrieved Party and proceed diligently to completion.

mTrade may terminate this Agreement on written notice if Client: (i) is dissolved or liquidated or takes any action for such purpose or to that effect; (ii) becomes insolvent or is generally unable to pay its debts as they become due; (iii) becomes the subject of any voluntary or involuntary bankruptcy proceeding under any domestic or foreign bankruptcy or insolvency law; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

Termination shall have no effect on either Party's rights or obligations regarding Confidential Information, Proprietary Rights or Injunctive Relief, which rights or obligations shall survive the termination of this Agreement.

## 9. Service Standards

- a. System Availability. The Services will be available 98% of the time 24 hours per day, 7 days per week and 365 days per year except for planned maintenance periods and predetermined maintenance periods.
- b. Maintenance and Support. mTrade will provide Client with telephone support on every legal banking day in the United States Monday through Friday from 8:00 a.m. CT to 5:00 p.m. CT. mTrade does not provide support on legal holidays, and days that the Federal Reserve is closed (Saturdays, Sundays, or other holidays). Support is available either by telephone at 844-684-3571 or by email at mthelp@mtrade.com.

## 10. Miscellaneous Terms and Conditions

- a. Force Majeure. Neither Client nor mTrade shall be liable to the other Party for failure or delay in the performance of any of the obligations under this Agreement for the time and to the extent such failure or delay is caused by reason of acts of God or other cause beyond either Client's or mTrade's reasonable control, including any act of government, riot, terrorism, war, interruption of transportation, strike or other labor trouble, shortage of labor, fire, storm, flood, earthquake or similar event or occurrence.
- b. Non-Assignable. With the exception of an assignment to its parent companies, affiliates and subsidiaries, Client shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without mTrade's prior written consent, which consent may be withheld within mTrade's sole and absolute discretion. No assignment, delegation, or transfer will relieve Client of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in

violation of this Section 10(b) is void. This Agreement is binding on and inures to the benefit of the Parties hereto and their respective successors and permitted assigns.

- c. **Relationship of The Parties.** Nothing in this Agreement shall be deemed or construed as creating a joint venture or partnership between Client and mTrade. Neither Party is by virtue of this Agreement authorized as an agent or legal representative of the other Party. Client is not granted any right or authority to either assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of mTrade or to bind mTrade in any manner.
- d. **Severability and Choice of Law.** This Agreement is not intended to confer and does not confer any rights or remedies upon any person other than the Parties. If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the Parties, and the remaining portions of this Agreement shall remain in full force and effect.

This Agreement and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out, of or relate to this Agreement, or the negotiation, execution or performance of this Agreement shall be construed and enforced in accordance with the internal laws of the State of Mississippi (excluding Mississippi's conflict of laws rules) applicable to contracts wholly executed and wholly to be performed therein – including its statutes of limitations.

- e. **Remedies.** No remedy available to mTrade under this Agreement or relating to it shall 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 or by statute or otherwise. No waiver of any provision of this Agreement or any rights or obligations of either Party hereunder shall be effective, except by a written instrument signed by the Party waiving compliance, and any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing.
- f. **Arbitration and Provisional Relief.**

1. **Arbitration**

The Parties agree to submit any and all claims, demands, disputes, controversies or causes of action to binding arbitration administered by the American Arbitration Association in accordance with its commercial rules then in effect, except as otherwise stated herein, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be governed by the Federal Arbitration Act and, to the extent state law applies, by the laws of the State of Mississippi. Any such claims, demands, disputes, controversies or causes of action shall be arbitrated on an individual basis and shall not be consolidated in any arbitration with any claims, demands, disputes, controversies or causes of action of any other party. The arbitration shall be conducted in Lafayette County, State of Mississippi before a single arbitrator chosen by the parties. If the Parties cannot agree on an arbitrator within 5 days of exchanging names of arbitrators, then an arbitrator will be appointed according to the rules of the American Arbitration Association. The expense of the arbitration shall be borne by the Parties in accordance with the award of the arbitrator. The decision of the arbitrator shall be in writing setting forth the findings of facts and law and reasons supporting the decision. Any decision must be supported by the governing law.

2. **Interim Relief**

Notwithstanding any other provision of this Agreement, either Party may, without inconsistency with this arbitration provision, seek interim provisional, injunctive or other

equitable relief until the arbitration award is rendered or the controversy is otherwise resolved.

Client acknowledges and agrees that a breach or threatened breach by Client of any of its obligations under Section 2, License to Use; Proprietary Rights; Confidential Information or Section 4, Client's Accounts and Identification of Users may cause mTrade irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, mTrade will be entitled to equitable relief, including in a restraining order, an injunction, specific performance, and any other relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

- g. Integration and Amendments. This Agreement constitutes the entire understanding and agreement between Client and mTrade with respect to the transactions contemplated herein and supersedes any and all prior or contemporaneous oral or written communications with respect to the subject matter hereof, all of which are merged into this Agreement. No modification or amendment of this Agreement shall be effective unless it is in writing and signed by a duly authorized representative of each Party.
- h. Post termination. Except as otherwise provided in this Agreement, the respective obligations of the Parties shall cease on the date of termination or expiration of this Agreement. Notwithstanding the termination or expiration of this Agreement, the representations and warranties of the Parties and obligations regarding confidentiality shall survive the termination of this Agreement. Upon the termination or expiration of this Agreement, each Party shall return any confidential and proprietary information or other property of the other Party to such Party. However, mTrade is not obligated to provide any information stored within the Services to Client except by a separate engagement with mTrade for its transition services as outlined in the Services Transition Plan Schedule. Not all information stored within the Services is capable of being returned or returned in a manner that would be readable by Client once separated from the Services.
- i. Notices to Parties. mTrade's primary means of communication with its users is through electronic means. As a result, Client is obligated to maintain an active, valid e-mail address on file with mTrade at all times that mTrade may use to provide Client notice ("email address of record"). Any notices required under this Agreement shall be in writing and sent to Client through one of the following electronic delivery means.

#### Electronic Delivery Means

In the event that mTrade needs to communicate with Client in writing regarding this Agreement or any changes to it, or needs to provide information to Client, any communications or other information may be sent to Client electronically, at mTrade's option, either:

- a. to its email address of record;
- b. by posting the information on one or more Services websites and sending Client a notice to its email address of record telling Client that the information has been posted and providing instructions on how to view it; or
- c. to the extent permitted by law, by posting the information to one or more Services websites.

Notices to mTrade should be sent to **generalcounsel@mtrade.com**

Alternatively, mTrade may deliver notice to Client at its address of record at mTrade or to mTrade at its address shown below (or other address as the Parties may designate to the other

in writing from time to time). Such notices shall be deemed effectively given: (a) upon personal delivery to the Party to be notified, (b) three days after having been sent by regular mail, postage prepaid, or (c) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt.

mTrade  
Attention: General Counsel  
9 Industrial Park Drive, Suite 114  
Oxford, MS 38655

- j. **Security breaches.** In the event of a security or data breach involving the Services, Client will be notified via the contact information Client has provided to mTrade. mTrade should be notified of suspected security breaches or unauthorized activity or use at **Infosec@mTrade.com**.
- k. **Interpretation.** For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole (except where the context requires otherwise); (d) words denoting the singular have a comparable meaning when used in the plural, and vice versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, and attachments mean the sections of, and exhibits, schedules, and attachments to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.
- l. **Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

This Agreement includes the following documents, all of which are incorporated by reference

- mTrade Services Agreement
- Schedule A: Pricing Schedule
- Schedule B: Services Description Schedule
- Schedule C: Insurance Schedule
- Schedule D: Service Level Standards Schedule
- Schedule E: Transition Plan Schedule