

**NON-DISCLOSURE and CONFIDENTIALITY AGREEMENT**, executed this \_\_\_ day of \_\_\_, 20\_\_ between \_\_\_\_\_ (“Discloser”), having its principal place of business at \_\_\_\_\_, and \_\_\_\_\_ (“Recipient”), residing or having its principal place of business at \_\_\_\_\_.

## **BACKGROUND**

1. By reason of their business relationship, Recipient may have access to information and materials concerning Discloser's business, plans, products and technical data which are confidential and of substantial value.
2. Because the value of Discloser's information will be significantly impaired and Discloser will suffer irreparable injury if such information is disclosed to third parties, Discloser desires to establish Recipient's obligations with respect to such information.

Accordingly, the parties agree:

## **ARTICLE 1: DEFINITIONS**

**1.1 Definitions.** Terms defined in the preamble have their assigned meanings and each of the following terms have the following meaning in this Agreement:

- (a) **“Affiliate”** means any business affiliates of the Recipient or Recipient's organizations including, but not limited to, directors, officers, partners, shareholders, employees, independent contractors, consultants, agents, and any parent, subsidiary, predecessor, successor, or otherwise affiliated company.
- (b) **“Agreement”** means this non-disclosure and confidentiality agreement, as amended from time to time.
- (c) **“Authorized Use”** means any use of Confidential Information which has been authorized and communicated to Recipient in writing, or otherwise directly and objectively manifested to Recipient by Discloser.
- (d) **“Business Day”** means any weekday which is not a U.S. bank holiday.
- (e) **“Confidential Information”** means any technical or non-technical data, information, or Materials including patent, copyright, trade secret, and proprietary information which has been discovered, developed or has otherwise become known to Discloser or Discloser's parent, subsidiary, predecessor, successor, or otherwise affiliated company, that is materially related to Discloser's current, future and proposed products and services and is not generally known to the public. Confidential Information includes without limitation
  - i. information concerning loan modifications and foreclosure

- intervention processes;
  - ii. business and financial models;
  - iii. client lists and client files;
  - iv. inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae;
  - v. research, experimental work, program development, design details and specifications; and
  - vi. financial information, procurement requirements, purchasing, implementation, business forecasts, sales, merchandising, and marketing plans and information.
- (f) **“Materials”** includes without limitation all documents, records, files, lists, designs, memoranda, notebooks, manuals, objects, devices, supplies, recordings, drawings, models, computer programs, prototypes, equipment, inventory and other materials, or copies thereof, in electronic or paper form, that have been created, used or obtained by Discloser, or that have been created, used, or obtained by Recipient or its Affiliates in connection with of their Authorized Use of Confidential Information.
- (g) **“Product”** means all products and services currently offered and performed by Discloser, or in development to be offered and performed by Discloser.
- (h) **“Third Party”** means any person or organization that is not an Affiliate and has not been expressly authorized by Discloser to receive Confidential Information, or, having received authorization, has not yet executed a confidentiality and non-disclosure agreement with Discloser.

## **ARTICLE 2: NON-DISCLOSURE; AUTHORIZED USE;**

### **PERMITTED DISCLOSURES**

**2.1 Non-Disclosure.** Recipient shall not disclose Confidential Information, or the existence of Confidential Information, to any Third Party without Discloser’s express written consent.

**2.2 Authorized Use.** Recipient shall not use Confidential Information for any purpose other than Authorized Use.

**2.3 Restricted Disclosure to Affiliates.**

- (a) Recipient shall not disclose or otherwise disseminate Confidential Information to its Affiliates unless necessary to facilitate Authorized Use, fulfill Recipient’s

obligations to Discloser, or for any other purpose expressly authorized by Discloser in writing.

(b) If disclosure is necessary pursuant to §2.3(a), Recipient shall disclose the least amount of Confidential Information possible to only those Affiliates who need to know such information and who have first objectively manifested consent to be bound by the terms of this Agreement.

(c) If Recipient discloses Confidential Information pursuant to §§2.3(a)(b), Recipient shall take affirmative measures to ensure that all Affiliates having access to such information comply with the terms of this Agreement.

### **ARTICLE 3: PROTECTION of CONFIDENTIAL INFORMATION; NOTIFICATION of DEMAND**

**3.1 Protection of Confidential Information.** Recipient shall exercise reasonable care and use its best affirmative efforts to protect Confidential Information and prevent inadvertent disclosure or dissemination of Confidential Information to Third Parties.

**3.2 Notification of Third Party Demand.** If any Third Party requests, subpoenas, or otherwise attempts to obtain Confidential Information from Recipient, Recipient shall notify Discloser immediately and cooperate fully in any legal action by Discloser seeking protection against disclosure.

**3.3 Notification of Disclosures Required by Law.** If Recipient is legally required, by any court or government authority having jurisdiction over Recipient, to disclose any Confidential Information, Recipient shall, before making such disclosure, provide immediate notice to Discloser sufficient to allow Discloser to apply for a protective order or other restriction regarding such disclosure and shall cooperate fully with Discloser's efforts.

### **ARTICLE 4: NON-COMPETITION; NON-SOLICITATION**

**4.1 Non-Competition.** For a period of 5 years from the date of this Agreement, Recipient shall not utilize knowledge or information acquired as a result of exposure to Confidential Information to develop products or services which counteract, frustrate, or compete with Discloser's Products.

#### **4.2 Non-Solicitation.**

(a) **Employees.** For a period of 5 years from the date of this Agreement Recipient shall not, directly or indirectly,

- (i) solicit for employment, or
- (ii) recommend to any other party that such party solicit for employment,

any persons currently employed by, or under contract (whether as a consultant, employee, or otherwise) to, Discloser.

**(b) Clients.** For a period of \_\_\_ year(s) from the date of this Agreement Recipient shall not, directly or indirectly,

- (i)** solicit, or
- (ii)** recommend to any other party that such party solicit,

any of Discloser's current or proposed clients.

## **ARTICLE 5: REPRESENTATIONS; WARRANTIES**

**5.1 Discloser's Representations and Warranties.** Discloser represents and warrants as follows:

- (a) Organization.** Discloser is a limited liability company duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation.
- (b) Power and Authority.** Discloser has all requisite power and authority to carry on its business as now being conducted and to enter into this Agreement.
- (c) Ownership of Confidential Information.** Discloser has lawfully obtained the Confidential Information and is its sole owner.
- (d) Reliance on Recipient's Statements.** In signing this Agreement Discloser relies in good faith on Recipient's statements that Recipient is not bound by any other agreements or fiduciary duties which would make entering into this Agreement unlawful or unethical.

**5.2 Recipient's Representations and Warranties.** Recipient represents and warrants as follows:

- (a) Power and Authority.** Recipient has all requisite power and authority to carry on its business as now being conducted and to enter into this Agreement.
- (b) Prior Agreements.** There are no duties, restrictions, agreements, or understandings, oral or written, to which the Recipient is a party, or by which the Recipient is bound, that prevent or make unlawful or unethical the Recipient's execution and performance of this Agreement.

## **ARTICLE 6: TERM; TERMINATION of OBLIGATIONS**

**6.1 Term.** This Agreement shall govern all relevant interactions between Recipient and Discloser from the date of this Agreement until Recipient receives written notice from Discloser that subsequent interactions shall not be so governed.

**6.1 Qualifying Grounds for Termination of Confidentiality.** Recipient's covenants under this Agreement with respect to any piece of Confidential Information shall terminate when Recipient provides written documentation that the specific piece of Confidential Information

- (a) was in the public domain at the time it was communicated to Recipient by Discloser;
- (b) entered the public domain through no act or omission of Recipient subsequent to the time it was communicated to Recipient by Discloser;
- (c) was already in Recipient's possession free of any obligation of confidence at the time it was communicated to Recipient by Discloser;
- (d) was rightfully received by Recipient from a Third Party not owing a duty of confidentiality to the Discloser;
- (e) was independently developed by Affiliates of Recipient without reference to Confidential Information; or
- (f) was intentionally communicated by Discloser to a Third Party free of any obligation of confidence.

**6.2 Non-Qualifying Grounds.** If Confidential Information is disclosed under the circumstances described in §3.3, such information shall continue to constitute Confidential Information with respect to this Agreement, and Recipient shall continue to perform its obligations with respect to that information.

## **ARTICLE 7: OTHER BUSINESS PROVISIONS**

**7.1 Notice.** All notices required to be given by Recipient under this Agreement must be in writing and will be deemed to be duly given when

- (a) personally delivered,
- (b) delivered by a nationally recognized overnight delivery service, or
- (c) when mailed by United States Certified or registered mail, return receipt requested, postage prepaid, and
- (d) addressed to such address as Discloser has furnished to Recipient in writing

**7.2 Ownership.** Discloser is the sole owner of Confidential Information, and this Agreement shall not be construed as creating, conveying, transferring, granting or conferring upon the Recipient any rights, license, or authority with respect to Confidential Information, except the limited right to Authorized Use.

**7.3 Return of Materials.** By 5pm MST on the tenth Business Day from receipt of a request from Discloser, Recipient shall return or destroy all requested Materials and Confidential

Information within its own, or its Affiliates,' possession, and if destroyed, shall provide sufficient evidence of its destruction.

**7.4 Remedies.** Recipient acknowledges that unauthorized disclosure of Confidential Information will incur irreparable harm and damages to Discloser; accordingly, if Recipient breaches any of its obligations hereunder, Discloser shall be entitled to seek equitable relief to protect its interests, including but not limited to injunctive relief, as well as money damages.

**ARTICLE 8: GENERAL PROVISIONS**

**8.1 Governing Law.** The laws of Utah govern all matters relating to this Agreement, including torts.

**8.2 Amendments.** This Agreement may only be amended by the parties' written agreement.

**8.3 Waiver.** The waiver by either party of the other party's breach of any provision of this Agreement will not operate as the waiving party's waiver of any subsequent breach.

**8.4 Merger.** This Agreement is the final, complete, and exclusive statement of the parties' agreement on the matters contained in this Agreement, and supersedes all previous negotiations and agreements.

**8.5 Severability or Limitation.** If any provision of this Agreement is illegal or unenforceable, that provision is severed from this Agreement and the other provisions remain in force; in the event any covenant made in this Agreement shall be more restrictive than permitted by applicable law, that covenant shall be limited to the extent which is so permitted .

IN WITNESS OF THEIR AGREEMENT, the parties have signed and delivered it on the date set forth in the preamble.

DISCLOSER :

RECIPIENT:

By

By

\_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Mortgage Loan Center LLC/  
US Credit Advisory Group/  
True Asset Recovery  
6995 Union Park Center #100  
Cottonwood Heights, UT  
84047

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