

MUTUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This MUTUAL Confidentiality AND nondisclosure Agreement (the “**Agreement**”) is made and entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”) by and between CCCS of Delaware (“**Clarifi**”), a Pennsylvania non-profit corporation with its principal place of business at: 1635 Market Street, Suite 510, Philadelphia, PA 19103 and\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“**Company**”), with its principal place of business at . Clarifi and Company are referred to herein as a “**Party**” and collectively as the “**Parties**.”

The Parties are discussing a potential business relationship and may disclose confidential information to each other as part of those discussions (the “**Discussions**”). This Agreement governs the rights and obligations of the Parties with respect to confidential information provided by either Party.

1. **Confidential Information.** For purposes of this Agreement, “**Confidential Information**” shall mean any information or material conveyed by one Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”) that is confidential or proprietary to the Disclosing Party and not generally known by non-Party personnel. Confidential Information includes, without limitation, this Agreement, the existence, nature and contents of the Discussions, and any and all confidential information and trade secrets (as that term is defined under applicable law) relating to the operation, techniques, processes, methods, reporting templates or protocols, counseling protocols, means, business strategies, financial affairs, products, systems (computer and otherwise), technologies, sales, research and development, user data, services, vendor information and lists, consumer or customer information and lists (including nonpublic personal information of such consumers or customers), employee information and lists, loan information and lists, or intellectual property of the Disclosing Party including, without limitation, all information encompassed in descriptions, reports, recommendations, analyses, proposals, test data, other data, business plans or other plans, treatments, scripts, budgets, programs, outlines, specifications, ideas, concepts, models, and documents as well as any other confidential or proprietary information relating to the business and/or charitable services of the Disclosing Party; and all other documents and information related to the Disclosing Party’s financial, organizational, commercial, and/or charitable operation. Any materials provided by the Disclosing Party which are clearly designated as “confidential” or “proprietary” (or contain other similar designations) shall be presumed to be Confidential Information, but the absence of any such designation shall not preclude the same from being deemed Confidential Information. Confidential Information includes information in both oral and written form and information contained in any other type of storage medium.
2. **Exceptions.** The following shall not be deemed to constitute Confidential Information and shall not be subject to the restrictions set forth in this Agreement:
	1. information that is known by the Receiving Party on a non-confidential basis prior to its receipt from the Disclosing Party;
	2. information that is now or hereafter becomes generally known in the industry or general public through no act or failure to act by the Receiving Party or its officers, employees, directors, affiliates, contractors, representatives, and agents (“Representatives”); and
	3. information that is otherwise lawfully developed by the Receiving Party, or lawfully acquired from a third party. “Lawfully developed” shall mean information that is independently developed, without a breach of this Agreement, as shown by the books and records of the developer. “Lawfully acquired” shall mean acquired from a third party without restrictions on further disclosure when the third party had the right to provide the information to the Receiving Party.
3. **Mutual Obligations.** Each Receiving Party agrees that it shall:
	1. hold the Confidential Information in strict confidence and protect the Confidential Information with the same degree of care normally used to protect its own similar Confidential Information (but no less than a reasonable degree of care);
	2. not use, or authorize the use of, the Confidential Information for any purpose other than for the Discussions or subsequent performance of a business relationship with the Disclosing Party;
	3. not disclose the Confidential Information to any person other than those of its Representatives who (1) reasonably need to know or review the Confidential Information for purposes approved by this Agreement, (2) are advised of the confidential and proprietary nature of the Confidential Information, and (3) are bound by a legal duty or written confidentiality obligations prohibiting the further use and disclosure of such Confidential Information;
	4. immediately notify the Disclosing Party in writing of any unauthorized use or disclosure of the Confidential Information; such notice shall include a detailed description of the circumstances of the disclosure and the parties involved; Receiving Party agrees that it shall not communicate with any third party, including, but not limited to the media, vendors, and consumers regarding any security breach without the express written consent and approval of the content of the communication by the Disclosing Party;
	5. not copy or reproduce all or any part of the Confidential Information in any medium, except as reasonably necessary in furtherance of purposes approved by this Agreement;
	6. not use the Confidential Information to advance the Receiving Party’s relationship with entities other than the Disclosing Party, or in conversations or discussions with any entity or person besides the Disclosing Party; and
	7. not decompile, disassemble, or reverse engineer all or any part of the Confidential Information.
4. **Permitted Disclosures.** In the event that the Receiving Party or anyone to whom the Receiving Party transmits the Confidential Information is ordered to disclose the Confidential Information by a court or regulatory entity of competent jurisdiction or authority, the Receiving Party shall provide the Disclosing Party with prompt written notice thereof, prior to any disclosure, so that the Disclosing Party may seek a protective order or other appropriate remedy. The Receiving Party shall cooperate with the Disclosing Party in any effort to obtain such remedies, but the Receiving Party shall not be required to undertake litigation or legal proceedings in its name. In the event that the Receiving Party is legally obligated to disclose any Confidential Information, the Receiving Party shall furnish only the portion of the Confidential Information which is legally required and will exercise its best efforts to assure that confidential treatment will be accorded the Confidential Information.
5. **Return of Materials.** Upon the written request of Disclosing Party, Receiving Party shall, at Disclosing Party’s discretion, immediately return or destroy any Confidential Information provided to Receiving Party or its Representatives by the Disclosing Party or its Representatives in conjunction with the Discussions. Upon request of Disclosing Party, Receiving Party and its Representatives shall provide written confirmation that such Confidential Information and copies thereof have been destroyed or erased. Archival copies of such Confidential Information may, subject to Receiving Party’s ongoing compliance with the confidentiality obligations and use restrictions set forth herein, be retained by Receiving Party’s legal, compliance and information technology departments for the purposes of complying with law, regulation or internal compliance policies or for dispute resolution purposes.
6. **No Grant of Rights.** Except for the limited right to use Confidential Information as described in Section 3 of this Agreement, no license, intellectual property right or other ownership or use right is conveyed by this Agreement.
7. **Injunctive Relief.** Each of the Parties hereto understands and agrees that money damages would not be a sufficient remedy for any breach or threatened breach of this Agreement by the other Party and that the non-breaching Party shall be entitled to seek specific performance and injunctive relief as remedies for any such breach or threatened breach without proof of actual damages. Such remedies shall not be exclusive remedies, however, but shall be in addition to all other remedies available to the non-breaching Party at law or in equity.
8. **No Obligation to Negotiate or Enter into a Definitive Agreement.** The Parties understand and agree that, other than this Agreement, no agreement with respect to the Discussions shall be deemed to exist unless and until a mutually acceptable and final definitive written agreement has been executed by the Parties. Each Party reserves the right, at any time and without any liability, to (a) reject any proposals from the other Party, (b) terminate negotiations with the other Party regarding the Discussions, or (c) enter into a transaction similar to the Discussions with a third party without notice to the other Party; provided that no such event will relieve the other Party hereto from its obligations as set forth hereunder.
9. **Term; Survival.** The confidentiality obligations and use restrictions set forth in this Agreement shall survive until, and shall have no force or effect following, the expiration of three (3) years from the last disclosure of Confidential Information under this Agreement, except with respect to the following: (i) nonpublic personal information of any current or former Disclosing Party employee, consumer, or customer, which shall remain subject to this Agreement indefinitely; or (ii) any Confidential Information which constitutes a “trade secret,” which shall remain subject to this Agreement for as long as the Confidential Information constitutes a “trade secret” under applicable law. No expiration or termination of this Agreement will affect provisions of this Agreement which are intended, by their terms or by necessary implication, to survive such expiration or termination of this Agreement.
10. **Compliance with Laws.** Both Parties and their respective Representatives shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances governing or relating to their performance under this Agreement (collectively, “Laws”) including, without limitation, Laws governing or relating to privacy rights including, without limitation, the Gramm-Leach-Bliley Act (the “**GLBA**”). The Parties shall implement such physical and other security measures as shall be necessary to: (a) ensure the security and confidentiality of the “nonpublic personal information” of the “customers” and “consumers” (as those terms are defined in GLBA and all of which is considered Confidential Information hereunder) of a Disclosing Party which each Receiving Party holds, (b) protect against any threats or hazards to the security and integrity of such nonpublic personal information, and (c) protect against any unauthorized access to or use of such nonpublic personal information. Receiving Party will not use the Confidential Information for investment purposes. Breach of this Section is a material breach of this Agreement.
11. **Notices.** All notices required under this Agreement must be in writing and shall be considered given if (i) delivered personally; (ii) by overnight courier; (iii) transmitted by facsimile; (iv) mail by registered or certified mail, postage pre-paid, return receipt requested to the persons at the addresses set forth above (or such other address for a Party as shall be specified by like notice) or (v) electronic mail if directed to an internet location to which a Party has consented. Notice given personally or by overnight courier service, or transmitted by facsimile shall be deemed delivered when received by the addressee. Notice given by mail shall be deemed delivered on the third (3rd) business day following the date on which it is mailed.
12. **General.** This Agreement constitutes the complete agreement regarding the subject matter hereof and may not be amended or modified, or its requirements waived, except by a writing signed by both Parties. No failure or delay in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any other right or power hereunder. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect. Neither Party may assign or otherwise transfer any of its rights or obligations under this Agreement to any third party without the prior written consent of the other Party. This Agreement shall be governed by and construed in accordance with the laws of the State of **Pennsylvania**. The Parties irrevocably consent to the personal jurisdiction of the federal and state courts of **Pennsylvania** and agree that venue of any action related to this Agreement shall be in the federal or state courts of such State. This Agreement may be executed in multiple counterparts, including "portable document format" ("pdf"), all of which taken together shall constitute one single Agreement between the Parties.

The Parties have duly executed and delivered this Mutual Confidentiality and Nondisclosure Agreement as of the Effective Date set forth above.

**Clarifi \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

By: By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Signature) (Signature)

By: By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Printed Name) (Printed Name)

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

Date: Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_