



**TEXAS WINDSTORM
INSURANCE ASSOCIATION**



Voluntary Market Depopulation Program

**Non-Disclosure and
Terms of Use Agreement**



Non-Disclosure and Terms of Use Agreement

This **Non-Disclosure and Terms of Use Agreement** (hereinafter Agreement) is made this ____ day of _____, 201__, between:

- (1) _____ (hereinafter Recipient) with offices located at _____, and
- (2) Texas Windstorm Insurance Association (hereinafter TWIA) with offices located at 5700 S. MoPac Expressway, Building A, Austin, Texas 78749.

RECITALS:

1. Section 2210.701, Texas Insurance Code, requires TWIA to administer, subject to commissioner approval, a depopulation program that encourages the transfer of TWIA policies to insurers through the voluntary market or assumption reinsurance.
2. TWIA is the owner of proprietary/confidential information and other information related to the property and casualty insurance business (hereinafter Confidential Information) that will be used by Recipient to determine whether to participate in the depopulation program.
3. Such Confidential Information is not public knowledge but it is proprietary and/or confidential and is being disclosed to Recipient only under the terms and conditions of this agreement.
4. The parties to this Agreement consider the disclosure of Confidential Information to Recipient to be desirable for the purpose of Recipient's underwriting analysis and business planning related to insuring policyholders currently insured by TWIA.
5. This Agreement is being entered into by and between the parties to protect the confidentiality and non-disclosure of Confidential Information by Recipient and to establish the terms and conditions that govern Recipient's participation in the depopulation program.

IN CONSIDERATION OF THE PROMISES HEREINAFTER CONTAINED IT IS HEREBY AGREED AS FOLLOWS:



1. **Public Information Act.** The parties hereby acknowledge and agree that TWIA is subject to Chapter 601, Texas Insurance Code (Privacy) and 28 Texas Administrative Code, Chapter 22, Subchapter A, and must comply with the provisions of Texas law and corresponding rules.
2. **Definition of Confidential Information.** In this Agreement the term “Confidential Information” shall mean any information in any form emanating, directly or indirectly, from a party to this Agreement obtained in connection with the Voluntary Market Depopulation Program.
3. **Limitations on Confidentiality.** It is understood that the term “Confidential Information” does not include information which:
 - (i) is publicly known at the time of its disclosure;
 - (ii) after disclosure to Recipient, has become publicly known other than through breach of this Agreement;
 - (iii) Recipient can show was known to it, other than under a subsisting obligation of confidentiality or restricted use, prior to the disclosure by TWIA;
 - (iv) is required to be disclosed by Recipient by order of the Court. If permitted by law, Recipient will notify TWIA of such order so that TWIA may, at its discretion and expense, attempt to limit or eliminate such disclosure;
 - (v) Recipient can show was made available to it by a third party who had a right to do so and has not imposed on Recipient any subsisting obligation of confidentiality or restricted use in respect thereof.
4. **Terms of Use of Confidential Information.**
 - (i) Recipient agrees to use the Confidential Information exclusively for the purpose of evaluating whether to offer to insure policyholders currently insured by TWIA in compliance with Section 2210.704(b), Texas Insurance Code and 28 TAC §5.4305(e). Any other use of Confidential Information is prohibited.
 - (ii) Recipient agrees to hold in confidence any and all Confidential Information disclosed and further agrees not to at any time or in any manner, either directly or indirectly, divulge, disclose or communicate to any person, firm, corporation or any entity in any manner whatsoever Confidential Information or to use such Confidential Information in any manner whatsoever from the date of the Agreement except to perform analysis and planning related to insuring policyholders currently insured with TWIA.
 - (iii) Recipient may disclose the Confidential Information to any of its own employees with a need to know to effectuate the purposes of this Agreement, provided that such employees have been specifically informed of the confidentiality of the Confidential Information and



are bound by the terms of this Agreement or have obligations to Recipient of sufficient scope to protect the Confidential Information.

- (iv) If Recipient elects to solicit TWIA's policyholders identified from the Confidential Information, Recipient will do so through the existing agent of record under the prevailing terms, conditions and commissions of Recipient at that time, either through appointment of the agent of record or through the use of a limited servicing agreement or other similar agreement between Recipient and the agent of record.

5. Terms of Participation.

- (i) Recipient agrees not to directly contact or solicit any policyholders identified from the Confidential Information.
- (ii) Recipient agrees to provide to TWIA, for each policyholder identified to receive an offer, the policyholder's name, policy number, premium, and renewal date.
- (iii) Recipient agrees to provide to TWIA the reference number of the approved insurance forms and rates and any notices that Recipient will use in connection with the depopulation program.
- (iv) Recipient will notify the agent of record of any offers of coverage no less than 60 days prior to the expiration of the current policy, subject to subsection (vii) of this section.
- (v) Recipient agrees to make all applicable policy forms and rates available for inspection to any agent notified prior to or at the time an offer of coverage is made.
- (vi) Recipient agrees that the notice to the agent will include the number of policies identified by Recipient to receive an offer; the commission that will be paid to the agent; instructions on how the agent can obtain an appointment or limited service agreement with Recipient; an affirmative statement that the policy will be offered under the agent's prevailing terms, conditions, and commissions; and Recipient's contact information.
- (vii) Recipient agrees not to contact the agent of record regarding any offers until: (1) Recipient has received TDI approval of the insurance forms, rates and any notices that Recipient will use in connection with the depopulation program; and (2) TWIA has demonstrated to TDI that the proposed offers, if accepted, will not impair TWIA's public security obligations.
- (viii) Recipient authorizes TWIA to publicly disclose that it has entered into this agreement and has been granted access to the Confidential Information.
- (ix) Recipient agrees to provide TWIA no less frequently than monthly a list of the policies on which offers of coverage were accepted.



6. **Revocation of Access to the Confidential Information.** TWIA may revoke access to the Confidential Information at any time and without prior notice if TWIA finds that the Recipient has not complied with the Terms of Use as described herein. Revocation of a Recipient's access does not release Recipient from otherwise complying with this Agreement.

7. **Ownership of the Confidential Information.** All Confidential Information is and remains the property of TWIA. Recipient agrees to return such Confidential Information within ten (10) days after TWIA makes a written request for part or all of its return, provided that Recipient may retain such copy or copies of Confidential Information as required by law or regulation, which copy or copies will be maintained in accordance with this Agreement. Neither the execution of this Agreement nor the furnishing of any Confidential Information hereunder shall be construed as granting either expressly or by implication, estoppel or otherwise any license or other right or title to any invention, patent, trademark or trade name or other technology or intellectual property rights of any type now or hereafter owned by or controlled by TWIA.

8. **Return of Documents.** Any documents, printed or written material, designs, drawings, models, samples, computer software or other tangible items supplied by TWIA to Recipient shall be returned promptly at the request of TWIA together with any copies thereof.

9. **Software.** Recipient agrees that it will not develop software from the Confidential Information supplied by TWIA hereunder; nor market or otherwise use the Confidential Information other than consistently with the purposes of this Agreement. This restriction shall not prohibit Recipient from independently developing any software provided it does not use any Confidential Information belonging to TWIA.

10. **Governing Laws.** This Agreement shall be subject to the laws of the State of Texas and all disputes arising in connection herewith shall be submitted to the non-exclusive jurisdiction and venue of the courts located in Austin, Texas. Any litigation involving this Agreement must be brought in a District Court of Travis County, Texas, or in the United States District Court for the Western District of Texas, Austin Division.

11. **Indemnification.** Except for claims arising out of the gross negligence or willful misconduct of TWIA, Recipient agrees to indemnify and hold TWIA and the directors, officers, employees, agents, consultants, advisors or other representative including legal counsel, accountants and financial advisors of TWIA harmless from any damages, loss, cost, or liability (including reasonable legal fees and the reasonable cost of enforcing this indemnity) incurred by TWIA and arising out of or resulting



from any unauthorized use or disclosure by Recipient or Recipient's Representatives of the Confidential Information or other violation of this Agreement or any applicable state or federal laws.

12. **Damages.** Notwithstanding anything else in this agreement or otherwise, neither party will be liable to the other with respect to any subject matter of this agreement under any contract, negligence, strict liability or other legal or equitable theory for any special, indirect, consequential, incidental or exemplary damages, including without limitation damages for loss of business, profits, business interruptions or loss of information even if a party has been advised of the possibility of such damages. This section does not limit a party's liability for bodily injury of a person, death or physical damage to property.
13. **Term.** This Agreement shall commence on the date shown on the first page of this Agreement and terminate 12 months thereafter. Recipient may renew this Agreement for additional one year terms by providing to TWIA, within 20 days of the date of termination, a written request to renew. Either party may terminate this agreement by 30 days advance written notice. The obligations of the parties under this Agreement with respect to Confidential Information it has received shall continue for a period of five (5) years after any termination of this Agreement.
14. **Injunctive Relief.** The parties agree that unauthorized disclosure of Confidential Information would cause irreparable harm to the individual or entity that owns the Confidential Information and TWIA may seek injunctive relief to stop any such disclosure.
15. **Third Party Disclosure Requests.** Recipient agrees that in the event a third party requests disclosure of any Confidential Information either under the Public Information Act or separate legal action, Recipient will pay for its own legal costs associated with the request should Recipient or TWIA seek to prevent the disclosure to a third party. The parties agree that if Recipient is served, requested or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, or otherwise) or is required by a regulatory body to make any disclosure, Recipient will provide to TWIA prompt or if required by the circumstances, immediate--prior written notice of such request to enable TWIA to seek an appropriate protective order or other appropriate remedy. In no event shall Recipient's notice to TWIA exceed 3 business days of the receipt of such request. Recipient shall thereafter be entitled to comply with such subpoena or other process to the extent permitted by law. However, notwithstanding any other terms or provisions of this Agreement, nothing herein requires Recipient



to breach any law, statute, regulation, legal process or order of any court of competent jurisdiction or regulatory authority.

16. **Notice.** Notices regarding this Agreement shall be sent to:

For TWIA: Texas Windstorm Insurance Association
Attn: John Polak, General Manager
5700 S. MoPac Expressway, Building A
Austin TX 78749

For Recipient: _____

17. **No Warranties.** All Confidential Information is provided “as is.” TWIA makes no warranties, express, implied or otherwise regarding its accuracy, completeness or performance.

18. **Miscellaneous Provisions.**

(i) **Assignability.**

This Agreement is nonassignable.

(ii) **Severability.**

In the event that any one or more of the provisions of this Agreement or any word, phrase, clause, sentence, or other portion thereof shall be deemed to be illegal or unenforceable for any reason, such provision or portion thereof shall be modified or deleted in such manner so as to make this Agreement as modified legal and enforceable to the fullest extent permitted under applicable law.

(iii) **Entire Agreement.**

This Agreement constitutes the entire agreement between the parties hereto with regard to the subject matter hereof and supersedes all other agreements relating to the subject



matter hereof. There are no agreements, understandings, specific restrictions, warranties or representations relating to said subject matter between the parties other than those set forth herein or herein provided.

(iv) **Counterparts.**

This Agreement may be executed in two or more counterparts, each of which will take effect as an original, and all of which shall evidence one and the same Agreement.

(v) **Amendment and Modification.**

This Agreement may only be amended or modified by the mutual written agreement of the parties.

(vi) **Public Information.**

Notwithstanding any provision herein to the contrary, the parties hereby acknowledge and agree that TWIA is subject to the Texas Public Information Act, Tex. Government Code §552.001 et seq. ("Public Information Act") and Attorney General Opinions issued under that statute and must comply with the provisions of Texas law including the Public Information Act. Within three (3) days of receipt Recipient will refer to TWIA any third party requests, received directly by Recipient for information to which Recipient has been granted access pursuant to the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized corporate officers as of the day and year first above written.

SIGNED for and on behalf of Recipient

SIGNED for and on behalf of TWIA

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____