

THIS IS A RELEASE. YOU ARE ADVISED TO CONSULT COUNSEL PRIOR TO
SIGNING

SEPARATION AGREEMENT, INDEMNITY AGREEMENT
AND RELEASE OF ALL CLAIMS

This Separation Agreement, Indemnity Agreement and Release of All Claims ("Agreement") is entered into between Jamison Smythe ("Employee") and MERS of Michigan ("Employer") (Employee and Employer collectively referred to as "the Parties"). The terms of the Agreement are as follows:

1. **Scope and Purpose of Agreement:** In order to settle and compromise any and all claims Employee has or may have, now or in the future, against Employer or any of the Released Parties identified in Paragraph 6 below, relating to Employee's employment by Employer, the termination of that employment, any events occurring in the course of that employment, and any events occurring prior to the effective date of this Agreement, the Parties desire to enter into this Agreement. The Parties intend this to be a private agreement negotiated in good faith, and the consideration provided herein is unique to Employee. It is expressly not the intent of the Parties to create a pattern and practice of severance payments or a severance plan that could be used as precedent or apply to other employees of Employer.

2. **Termination of Employment:**

A. Employee acknowledges that his employment with Employer terminated effective July 18, 2012, which is his last day worked. Employee agrees that he will not in the future apply for, seek or accept employment with Employer, Tegrit Financial Group, LLC, or any of Employer's or Tegrit Financial Group, LLC's other parent, subsidiary, or affiliated entities in which either Employer and/or Tegrit Financial Group, LLC has a majority interest; and that if in the future Employee obtains employment in contravention of this Agreement, whether intentionally or unintentionally, this Agreement shall require his immediate discharge and provide an absolute defense to any claim based upon such discharge.

B. Employee acknowledges that Employer has paid to him all wages, remuneration and other compensation due and owing in accordance with the Fair Labor Standards Act and Michigan law, and that he has been provided all benefits for which he was eligible pursuant to statute, regulation and/or Employer's policies and/or practices, specifically including accrued but unused PTO. Employee and Employer acknowledge and agree that, with respect to accrued but unused PTO, Employer will pay out to Employee, through its normal payroll process, his accrued but unused PTO as of July 18, 2012, which amount equals sixteen thousand twenty dollars and forty cents (\$16,020.40), representing 220 hours of accrued but unused PTO, less applicable taxes and other authorized and/or required deductions. Employee acknowledges and expressly affirms that, other than is set forth in this Agreement, he is not, and shall not in the future be, eligible for any additional remuneration by reason of his employment, specifically including any bonus, salary, wages, expense reimbursement, vacation pay, or severance pay; insurance coverage or benefits; participation in any employment benefit plan; or issuance of any past, present or future stock or equity interests.

C. The Parties acknowledge and agree that Employee shall retain the benefits that shall have vested, if any, pursuant to the terms of the MERS Defined Benefit Plan, which vested benefits are limited by and subject to the express terms and conditions of the applicable plan and any amendments thereto. Employee specifically acknowledges and agrees that nothing in this Agreement or in this subparagraph (C) modifies or amends any applicable benefits plan, policy, or program, and that any dispute regarding Employee's benefits under any plan, policy or program that is subject to the Employee Retirement Income Security Act ("ERISA") shall be subject to the claims and appeals provisions of such plan, policy or program, as well as the requirements and procedures of ERISA, rather than any provision of this Agreement.

3. **Consideration:** Employee expressly acknowledges that his entry into this Agreement is in exchange for consideration set forth below, which is in addition to anything of value to which he is already entitled.

A. Starting on Employer's first payroll day after the expiration of the revocation period set forth in Paragraph 15 without Employee revoking this Agreement, Employer shall pay to Employee, through Employer's normal payroll system, salary continuation payments at Employee's regular rate of pay (\$5,825.72, bi-weekly) for a period not to exceed six (6) months, which total amount, after the six-month period, will not exceed the gross sum of seventy-five thousand, seven hundred thirty-four dollars and thirty-six cents (\$75,734.36). Each payment shall have subtracted from it tax withholdings as is required by applicable federal, state and/or local statute or regulation, and any other authorized and/or required deductions. The payments are expressly intended to constitute wage replacement for the six-month period starting on the date of the first payment. Employer shall

issue an IRS Form W-2 to reflect this payment. Employee shall remain solely responsible for Employee's share of any additional tax obligations arising from payment of this sum. Employee agrees to indemnify and hold Employer harmless from any claims by any federal, state or local taxing authority for taxes, penalties, and/or interest not paid by Employee on this sum.

- B. Provided Employee elects to continue insurance coverage and the revocation period set forth in Paragraph 15 has expired without Employee revoking this Agreement, Employer agrees to pay Employee's share of COBRA costs for up to six (6) months (the monetary equivalent of which, if elected, is up to approximately twelve thousand, eight-hundred eighty-five dollars and six cents (\$12,885.06)) or until Employee secures new health care benefits, whether through new employment or otherwise, whichever is earlier, after which date Employee shall be solely responsible for the payment of the cost of coverage for the remainder of the COBRA period, should he desire to do. Employee agrees to notify MERS's human resources department immediately upon securing new health benefits.
- C. While Employee was employed by Employer, Employee participated in Employer's voluntary educational assistance forgiveness program, under which Employer paid 100% of Employee's tuition at the University of Michigan to obtain his Masters in Business Administration (MBA) degree. Because Employee has not remained employed for five years since then, per the express terms of the program, he is otherwise obligated to repay to Employer one year's worth of the tuition paid by Employer on his behalf (equaling twenty-two thousand dollars and zero cents (\$22,000)). Provided the revocation period set forth in Paragraph 15 has expired without Employee revoking this Agreement, Employer agrees to forgive the entire \$22,000 in tuition payments as additional consideration for this Agreement.

4. **Material Representations by Employee:** Employee acknowledges that the following representations are made by him as substantial and material terms of this Agreement, and have been relied upon by Employer in determining whether to enter into this Agreement and to pay the Consideration set forth in Paragraph 3. Employee represents that:

- A. He is not aware of any facts or evidence that would support or justify the filing of any administrative charge, complaint or report regarding Employer with any governmental agency, tribunal, office or other entity; or any suit, proceeding, or arbitration demand based upon any of the matters set forth in Paragraph 6. Employee acknowledges that the representation made herein is a material warranty and is of the essence of this Agreement. Employee further acknowledges and expressly affirms that in the event that any governmental agency or entity pursues any action or proceeding to obtain any relief or recovery

on his behalf, he agrees that he is not entitled to any remedy, relief or damages of any type whatsoever since all his claims are fully satisfied and extinguished by this Agreement.

- B. He has not sustained any injuries, diseases, disabilities, or physical, mental, emotional, psychiatric or psychological conditions of any kind (including, but not limited to, aggravation of any previously existing condition) during or after the time that he worked for Employer, up to the effective date of this Agreement, which could be compensable pursuant to the Michigan Workers' Disability Compensation Act as part of a workers' compensation claim. Employee further acknowledges and agrees that this is a binding factual admission that may bar any claim for workers' compensation benefits for any alleged work-related injury, disease, or disability or post-employment aggravation of the same. Employee understands and agrees that this Agreement may be used by Employer in full defense of any workers' compensation claim filed by him, and that any such claim may be subject to a complete offset by the payments and consideration made under this Agreement.
- C. The Parties understand and agree that Employee is not relinquishing, waiving, or releasing under Section 6 of this Agreement below his right or ability to file with the State of Michigan an application, request, or claim for unemployment insurance benefits and/or for worker's compensation benefits.

5. **Representations Regarding Medicare Secondary Payer Act and Indemnification Agreement:**

- A. Employee specifically represents and warrants that:
- He is not 65 years of age; and
 - He has not sought or been awarded Social Security Disability benefits and is not appealing nor plans to appeal any denial of Social Security Disability benefits; and
 - He has not sought or been awarded disability benefits from the Railroad Retirement Board and is not appealing nor plans to appeal any denial of such benefits; and
 - He is not entitled to Social Security Disability benefits or disability benefits from the Railroad Retirement Board; and
 - He does not have end stage renal disease; and
 - He does not have amyotrophic lateral sclerosis; and
 - He has not received any conditional payments from Medicare; and
 - The payments made to him pursuant to Paragraph 3 of this Agreement do not settle or reimburse him for any medical expenses or services for which he could have sought Medicare benefits; and
 - There are no Medicare liens or claims applicable to any claims or causes of action he has, had, or may have against Employer or any Released Party identified in Paragraph 6(A).

- B. Employee acknowledges, understands, and agrees that, if Employer determines that Employee is a Medicare-eligible claimant, Employer may also determine to make an appropriate report of payments made to Employee pursuant to this Agreement to the Centers for Medicare & Medicaid Services.
- C. Employee represents and acknowledges that all bills, costs or liens resulting from or arising out of Employee's alleged injuries, claims or lawsuit are Employee's responsibility to pay. Employee agrees to fully satisfy any and all rights to payment or recoupment, claims or liens of any kind that arise from or are related to payments made or services provided to Employee or on Employee's behalf, or Employee's alleged injuries, claims or lawsuit, including without limitation, all Medicare conditional payments, subrogation claims, liens, or other rights to payment, including interest thereon, relating to medical treatment, that have or may be asserted by any health care provider, insurer, governmental entity, employer or other person or entity. Employee agrees that, should any governmental entity seek repayment from Employer or any Released Party as described in Paragraph 6(A), or file a legal action against Employer or any Released Party for the recoupment of any Medicare payments made to Employee or the assessment of any penalties or fines for failure to report information relating to Employee to the Centers for Medicare & Medicaid Services, Employee will indemnify and hold Employer and/or any Released Party harmless against all damages, repayments, fines, other penalties, costs, and fees associated with such request or action, including reasonable attorneys' fees and costs of litigation.

6. **Complete and General Release by Employee:**

- A. As used in this Agreement, the term "Released Parties" means Employer and its past, present or future parent, affiliated, related and/or subsidiary companies, corporations, joint ventures, successors, and partnerships; and these entities' past, present or future directors, shareholders, officers, employees, agents, consultants, insurers, attorneys, partners, accountants and representatives; and any and all benefit plans and health plans maintained or sponsored by Employer or any of its affiliated, successor, related and/or subsidiary companies, and the past, present or future plan sponsors, administrators, fiduciaries, insurers, members of the Benefits Committee(s), accountants, attorneys, agents, and consultants; (hereinafter referred to collectively as the "Released Parties").
- B. For and in consideration of the consideration set forth in Paragraph 3 and the agreements made by Employer herein, the sufficiency of which is hereby acknowledged, Employee, on his own behalf and on behalf of his spouse, heirs, successors, executors, administrators, and assigns, does hereby fully and forever release and discharge the Released Parties from any and all actions, causes of action, liabilities, claims, debts, benefits and other obligations of any description

whatsoever, whether based on local law, state law or federal law, whether known or unknown, including but not limited to:

- claims for breach of contract, tort, discrimination, harassment, fraud, estoppel, retaliation, violation of public policy, defamation; and
- claims under any federal, state or local statute, law, regulation or ordinance, including specifically the federal Age Discrimination in Employment Act (ADEA), the Older Workers Benefit Protection Act, the Employee Retirement Income Security Act, the Family and Medical Leave Act, the Elliott-Larsen Civil Rights Act, the Persons with Disabilities Civil Rights Act, the Whistleblowers' Protection Act, and all other common law and statutes of the State of Michigan, as each such federal, state or local statute, law, regulation, or ordinance may be amended from time to time;

which Employee has or may have against the Released Parties, which arise out of, or result from, or occurred in connection with any thing or matter occurring prior to the effective date of this Agreement, including without limitation Employee's employment by Employer, the termination of that employment, any events occurring prior to and in the course of that employment, and any other events occurring prior to the effective date of this Agreement.

- C. Employee acknowledges and expressly agrees that he is releasing and waiving not only his rights to recover money or other relief in any action against the Released Parties, either directly or indirectly, but also he is releasing and waiving any rights he may have to recover money or other relief in any action that might be brought on his behalf (individually or collectively) by any other person or entity including, but not limited to, representative class or collective action plaintiffs or any federal, state or local governmental agency or department.

7. **No Admission of Liability:** Employee hereby acknowledges that neither this Agreement nor any statement contained herein shall be deemed to constitute an admission of liability or wrongdoing on the part of any of the Released Parties.

8. **Return of Property:** Employee agrees that, at or before the time he executes this Agreement, he has returned or will return to Employer, and shall not take, retain, or copy in any form, whether documentary or electronic, any and all information or materials, including but not limited to records, work papers, financial information, lists, prices, plans, notes, files, documents, designs, technology, programs and software; and that he has returned or will return as of the date of this Agreement all tangible property, including but not limited to keys, credit cards, files,

books, phones, publications, equipment, computers and computer equipment that he has or had in his possession, custody or control.

9. **Confidentiality of Agreement:** Employee agrees that he will not disclose the terms or existence of this Agreement to any persons other than his spouse, tax preparer, attorney and financial advisor, and that he will instruct them that they are not to disclose the terms or the existence of this Agreement. Employee acknowledges that the confidentiality of the existence and terms of this Agreement are of the essence and that he will take no voluntary action or inaction which discloses or will reasonably lead to the disclosure of the existence or terms of this Agreement. If Employee is served with legal process which, to his knowledge, requires the disclosure of this Agreement or any of its terms, Employee shall notify Employer in writing, in care of Employer's General Counsel, at least ten business days prior to the planned date of disclosure so that Employer may intervene or otherwise protect its interests if it so desires.

10. **Confidentiality of Employer's Proprietary Information:** Employee acknowledges that as an employee of Employer he has had access to and has been provided knowledge regarding Employer's Proprietary Information, specifically defined to mean any and all information that was developed, created, or discovered by or on behalf of Employer, or which became known by, or was or is conveyed to Employer, which has commercial value in Employer's business, including, without limitation, information about blueprints, software programs and subroutines, trade secrets, designs, technology, know-how, processes, data, ideas, techniques, inventions (whether patentable or copyrightable or not), works of authorship, formulas, business and product development plans, customer lists, work papers, financial information, prices, terms of compensation and performance levels of Employer's employees and consultants, customers and other information concerning Employer's actual or anticipated business, research or

development, or which is received in confidence by or for Employer from any other person or entity. Employee agrees that he will not use or disclose Employer's Proprietary Information to any person or entity without the prior written consent of the CEO on behalf of Employer as to each specific use or disclosure.

11. **Agreement Regarding Employee Communications with Third Parties:** Employee agrees that he will not make oral or written statements regarding Employer or any of the Released Parties that reflect negatively upon them or detract from their reputation and integrity.

12. **Remedies:** Employee acknowledges that a violation of the terms Paragraphs 9, 10, or 11 may give rise to irreparable injury to Employer inadequately compensable in damages, and accordingly, agrees that Employer may seek injunctive relief against such breach or threatened breach, in addition to any other legal remedies which may be available, including recovery of monetary damages. In any action successfully brought by Employer to enforce the rights of Employer under this Paragraph, Employer shall also be entitled to recover reasonable attorneys' fees and costs of the action.

13. **Employment References:** Employee agrees that he will expressly inform all prospective employers and other persons who wish to confirm his employment that they must contact only, Human Resources. Employer agrees that it will respond to any requests for information regarding Employee by disclosing only that he held the position of Senior Investment Officer & Portfolio Manager and he was employed August 26, 1996 until July 18, 2012.

14. **Twenty-One Day Consideration Period:** Employee agrees that he had an ample and reasonable period of time of up to twenty-one (21) days (until August 8, 2012) to review and consider this Agreement, and that any changes to this Agreement which are the result of

negotiations between the Parties shall not entitle Employee to any additional review time or waiting period.

15. **Seven Day Revocation Period:** The Parties agree that for a period of seven days following the execution of this Agreement by Employee, Employee may revoke this Agreement by means of a writing delivered to Mary Riley, Human Resources Director at:

MERS of Michigan
1134 Municipal Way
Lansing, MI 48917

within such period, and the Agreement shall not become effective or enforceable until the revocation period has expired without Employee having revoked it. To be effective, any such revocation must be in writing and postmarked within the seven-day period. Mailing by certified mail return receipt requested is recommended to show proof of mailing. Employee understands that by signing this Agreement and by not revoking the Agreement during the seven-day revocation period, Employee will be bound by this Agreement.

16. **Knowing and Voluntary Execution:** Employee warrants and represents that the terms of this Agreement have been completely read and fully understood and voluntarily executed by him.

17. **Advice to Consult with Counsel:** Employee warrants and represents that he is hereby advised in writing to consult with an attorney of his selection prior to signing this Agreement.

18. **Parties Responsible for Their Own Attorney Fees:** The Parties agree that they shall bear their own attorneys' fees and costs, if any, incurred in creating and executing this Agreement.

19. **No Other Persons Eligible to Participate; Indemnity Agreement:** Employee shall not assign his rights or interests under this Agreement. Employee further warrants and represents

that he is the only person who is or may be entitled to receive or share in any benefits or compensation on account of or arising out of his employment by Employer, the separation of that employment, any actions taken in the course of that employment, and any events related to Employee's employment or occurring prior to the execution of this Agreement. Employee shall defend, indemnify and hold harmless Employer and/or the Released Parties from and against any claim, including the payment of reasonable attorneys' fees and costs incurred by Employer or the Released Parties based on or in connection with or arising out of any claim or threatened claim made by any other person, including his spouse, or any assignment or transfer made, purported or claimed of any matter released under Paragraph 6.

20. **Release Extends to Unknown Claims and Losses:** Employee expressly understands and agrees that in the event any injury, loss, or damage has been sustained by Employee which is not now known or suspected, or in the event that the losses or damage now known or suspected have present or future consequences not now known or suspected, this Agreement shall nevertheless constitute a full and final release and that this Agreement shall apply to all such unknown or unsuspected injuries, losses, damages, or consequences.

21. **Merger and Integration Clause:** Employee acknowledges and agrees that this Agreement sets forth the entire understanding of the Parties with respect to the subject matter set forth, and supersedes all prior understandings and agreements, whether written or oral, in respect thereof. No covenants, agreements, representations or warranties of any kind whatsoever, whether express or implied in law or fact, have been made by the Parties, except as specifically set forth in this Agreement. No modification or amendment of this Agreement shall be of any force and effect unless in writing and executed by Employee on behalf of himself, and Mary Riley, Human Resources Director of Employer.

22. **Michigan Law:** Except as set forth in Paragraph 2(C), this Agreement shall be interpreted pursuant to the decisional and statutory law of the State of Michigan, without regard to such State's conflict of laws rules.
23. **Severability of Invalid Provisions:** Should any provision of this Agreement be declared or be determined by any arbitrator or court of competent jurisdiction to be illegal, invalid, or unenforceable, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal, invalid, or unenforceable part, term, or provision shall be deemed not to be a part of this Agreement.
24. **Execution in Counterparts, Photocopies:** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Accurate and true photocopies may be used in lieu of the originals for any purpose.
25. **Agreement Prepared by Both Parties:** Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.
26. **Employee Competency:** Employee represents and acknowledges that he is unaware of any physical or mental limitation which affects his ability to work or to enter into this Agreement.

SIGNATURES ON FOLLOWING PAGE

THIS IS A RELEASE

READ BEFORE SIGNING

I, Jamison Smythe, understand that Paragraph 14 of this Agreement provides me with the time period that the Age Discrimination in Employment Act (ADEA) and Older Workers Benefit Protection Act require that I be provided to consider whether I want to sign this Agreement. I hereby acknowledge that I have been provided the full amount of time required by law to consider this Agreement, and knowingly and voluntarily choose to sign this Agreement at this time without any inducement or coercion by the Released Parties. I further acknowledge that the seven-day revocation period in Paragraph 15 has not been shortened or waived, and that the seven-day period will commence as of the date of my signing this Agreement.

DATED: AUGUST 7, 2012

Jamison Smythe
Jamison Smythe

DATED: 8/15, 2012

Debra Peake
MERS of Michigan

By Debra Peake
Its Interim CEO

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