

MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement is made as of the __ day of _____, 20__ by and between _____ ("Company") and Mercer Health and Benefits LLC ("Mercer"). Company and Mercer hereby agree as follows:

1. In connection with certain discussions between Company and Mercer concerning a possible proposed transaction between Company and Mercer (the "Discussions"), each of the parties (the "Disclosing Party") is likely to disclose information to the other party from time to time in the course of the provision of the Discussions, which is marked or designated as confidential or proprietary at or prior to disclosure or which would appear to a reasonably prudent person to be confidential and/or proprietary in nature ("Confidential Information"). The party receiving the Confidential Information (the "Receiving Party") shall:
 - a. restrict disclosure of the Confidential Information solely to employees, attorneys, accountants or financial advisors of the Receiving Party (the "Recipients") with a need to know unless the Disclosing Party provides its written consent;
 - b. advise the Recipients of the obligation for protecting the Confidential Information hereunder;
 - c. use, and require the Recipients to use, the same degree of care with the Confidential Information, as is used with the Receiving Party's proprietary or confidential information of similar nature as the Confidential Information, in no event less than reasonable care;
 - d. not reverse engineer, disassemble, decompile or copy any of the Confidential Information except as permitted hereunder; and
 - e. not use for its own use or benefit or for the benefit of another, any and all of the Confidential Information furnished hereunder or hereafter by the Disclosing Party or, developed by the Disclosing Party during the term of this Agreement, except to the extent necessary for (i) negotiations and consultations with its Recipients or the Disclosing Party with respect to the Discussions, (ii) preparing or responding to bids, estimates and proposals with respect to the Discussions or (iii) any purpose the Disclosing Party may hereunder authorize in writing.
2. Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidential nature of any Confidential Information that:
 - a. was previously known to the Receiving Party; or
 - b. is disclosed to third parties by the Disclosing Party without restriction; or

- c. is either already in the public domain or enters the public domain through no fault of the Receiving Party; or
 - d. was or is independently developed by the Receiving Party without reference to Confidential Information of the Disclosing Party; or
 - e. is available to the Receiving Party from a third party who, to the Receiving Party's knowledge, is not under any non-disclosure obligation to the Disclosing Party; or
 - f. is by agreement of the Disclosing Party released for disclosure by a third party.
3. In the event the Receiving Party is required by law, including, without limitation, pursuant to the terms of a subpoena or other similar legal process or in connection with a litigation, arbitration or other proceeding, the Receiving Party, unless prohibited by law, shall give prompt notice to the Disclosing Party so that the Disclosing Party may seek to challenge any such required disclosures.
4. At the request of the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party, all of the Confidential Information (and all copies or duplicates of the same) furnished to it. Notwithstanding anything to the contrary in the foregoing, the Receiving Party, subject to the terms and conditions of this Agreement, may (i) retain copies of Confidential Information that it is required to retain by law or regulation, (ii) retain copies of its work product that contain Confidential Information for archival purposes or to defend its work product and (iii) in accordance with legal, disaster recovery and records retention requirements, store such copies and derivative works in an archival format (e.g. tape backups), which may not be returned or destroyed at the request of the Disclosing Party.
5. Nothing contained in this Agreement shall be deemed to grant the Receiving Party a license under any of the Disclosing Party's rights or under any of the Disclosing Party's Confidential Information except as may be specifically required for the purpose of the Discussions and only for such purpose.
6. This Agreement shall benefit and be binding upon the parties hereto and their respective successors and assigns. This Agreement is the complete, entire and fully integrated agreement between the parties. This Agreement supersedes, revokes, cancels, extinguishes and replaces all prior or contemporaneous understandings, agreements, undertakings, negotiations and discussions, whether oral or written, between the parties.
7. This Agreement shall become effective from the date hereof and shall continue for two (2) years unless terminated earlier in writing by either party. All obligations to protect the confidentiality of the Confidential Information shall survive for a period of five years from the date of disclosure of the Confidential Information.

8. This Agreement shall be construed in accordance with the laws of the State of New York without reference to choice of law principles.
9. This Agreement may be executed in counterparts, each of which shall be an original and all of which together shall be deemed one and the same document.
10. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto through their authorized officers have executed this Agreement as of the day and year first written above.

Mercer Health and Benefits LLC

By: _____
Name: _____
Title: _____

[COMPANY NAME]

By: _____
Name: _____
Title: _____