

CONFIDENTIALITY AGREEMENT (“Agreement”)

To facilitate discussions involving a possible transaction (the “Transaction”) between [insert name of entity] [and its subsidiaries] (the “Company”) and Berkley Accident and Health, LLC (the “Recipient”), Recipient has requested information concerning the Company. As a condition to Recipient being furnished such information, Recipient agrees that any information concerning the Company which is confidential, proprietary or otherwise not generally available to the public that is furnished to Recipient by or on behalf of the Company in connection with the Transaction (collectively, the “Confidential Material”) will be kept confidential by Recipient; provided, however, Recipient may disclose such information to its directors, officers, employees, agents, or advisors (collectively, “Representatives”) who, in Recipient’s sole opinion, need to know such information for the purpose of assisting Recipient in evaluating the Transaction. Recipient shall inform its Representatives of the confidential nature of such information and shall direct its Representatives to treat such information confidentially.

The term “Confidential Material” does not include information which (i) is already in Recipient’s or its Representative’s possession, (ii) is or becomes available to the public other than as a result of disclosure by Recipient or its Representatives in violation of this Agreement, (iii) becomes available to Recipient or its Representatives from a source other than the Company, provided that such source is not known by Recipient to be bound by a confidentiality agreement with the Company with respect to such information, or (iv) is independently developed by Recipient or its Representatives without use of the Confidential Material.

If Recipient or any of its Representatives are requested or required (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or other process) to disclose any of the Confidential Material, Recipient shall, to the extent permitted by law and regulation, provide the Company with notice of such request or requirement as soon as is practicable so that the Company at its own expense may seek a protective order or other appropriate remedy, and/or waive compliance with the terms of this Agreement. If such protective order or other remedy is not obtained, or if the Company waives compliance with the provisions hereof, Recipient or its Representatives agree to disclose only that portion of the Confidential Material which Recipient is advised by counsel is legally required and Recipient shall reasonably cooperate with the Company, at the Company’s expense, in the Company’s efforts to obtain an order or other assurance that confidential treatment will be accorded such Confidential Material.

In addition, without the prior written consent of the other party, each of Recipient and the Company agrees that it will not, and will direct its respective Representatives not to, disclose to any person (i) the fact that discussions or negotiations are taking place concerning a Transaction between Recipient and the Company, (ii) that Recipient has requested or received any Confidential Material, or (iii) any of the terms, conditions or other facts with respect to any such Transaction, including the status thereof. If the Company so requests in writing, Recipient shall either, at Recipient’s option, take commercially reasonable steps to (i) promptly destroy all written Confidential Material in its possession or (ii) promptly deliver to the Company all written Confidential Material in its possession. Notwithstanding the foregoing Recipient may retain in its confidential legal files a single copy of the Confidential Material.

The Company and Recipient agree that unless and until a definitive agreement between the Company and Recipient with respect to a Transaction has been executed and delivered, neither the Company, Recipient nor any of their respective stockholders, affiliates or Representatives has any legal obligation of any kind whatsoever with respect to such Transaction by virtue of this Agreement or any other written or oral expression with respect to such Transaction except, in the case of this Agreement, for the matters specifically agreed to herein.

Notwithstanding anything in this Agreement to the contrary, this Agreement shall not be construed to limit the Recipient or its affiliates right to compete with the Company in the ordinary course of its business or to independently develop or acquire products or services of the same type as may be included with the Confidential Material or to enter into any business transaction with any other entity which owns or has rights to any such similar products or services, as long as such rights are exercised without the use of the Confidential Material.

It is further understood and agreed that no failure or delay by either party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such terms to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement contains the entire and only agreement between the Company and Recipient concerning the subject matter hereof, and any prior statements or representations (whether oral or written) concerning the subject matter hereof shall have no force and effect. This Agreement may not be assigned without the written consent of the other party.

The Company and Recipient acknowledge and agree that irreparable harm may occur in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached and that such harm may not be compensable solely in monetary damages. In the event of a breach of this Agreement by Recipient or its Representatives, the Company shall be entitled to seek an injunction restraining Recipient and/or its Representatives from further breaching this Agreement. Nothing herein shall be construed as prohibiting the Company from pursuing any other remedies available to the Company for such breach, including specific enforcement and the recovery of damages.

No modification of this Agreement or waiver of its terms will be binding upon either party unless approved in writing by each party. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any conflicts of laws provision or rule that would cause the application of the laws of any other jurisdiction.

This Agreement shall remain in effect for a period of one year from the date hereof. This Agreement may be executed in several counterparts, all of which together shall constitute one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the ____ day of _____, 20xx.

[insert name of entity]

By: _____
Name:
Title:

Berkley Accident and Health, LLC

By: _____
Name:
Title: