



Evelyn Minor-Lawrence
Director

DEPARTMENT OF HUMAN RESOURCES
PUBLIC SERVICES BUILDING
2051 Kaen Road | Oregon City, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Contract between the Clackamas County, Department of Human Resources and Mercer Health & Benefits LLC to provide Benefits Consulting Services.

Purpose/Outcomes	Approval of Contract
Dollar Amount and Fiscal Impact	\$163,300.00
Funding Source	760 0119 431000
Duration	1 year (July 1, 2018 through June 30, 2019)
Previous Board Action	N/A
Strategic Plan Alignment	Benefits and Wellness Strategic Plan: Provide cost-effective, responsive and comprehensive benefit services to County departments, current and retired employees and their family members so they can better serve the residents of Clackamas County. County Strategic Plan Area of Focus: Provide financial stability and leadership.
Contact Person	Kristi Durham, 503-742-5470

BACKGROUND:

Mercer Health & Benefits LLC is a national benefits consultant that consults with Clackamas County to set strategy, shop the marketplace, negotiate with vendors for best value, and participate in key roles such as providing and interpreting data for the Benefits Review Committee (BRC). This is a contract to provide these critical services while a longer-term contract is being procured.

County Counsel has reviewed and approved this contract as to form.

RECOMMENDATION:

Staff respectfully recommends the Board of County Commissioners approve the contract with Mercer Health & Benefits LLC to provide Benefits Consulting Services.

Respectfully submitted,

Evelyn Minor-Lawrence, Director

Placed on the Agenda of _____ by the Procurement Division



**CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT**

This Personal/Professional Services Contract (this "Contract") is entered into between **Mercer Health & Benefits LLC** ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County") on behalf of Human Resources/Benefits and Wellness Division.

ARTICLE I.

1. Effective Date and Duration. This Contract shall be effective as of July 1, 2018 upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **June 30, 2019**. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. Contractor will provide the following personal/professional services: To provide consultation services for Human Resources/Benefits and Wellness Division ("Work"), further described in **Exhibits A and D** ("SOW").

3. Consideration. The County agrees to pay Contractor its professional fee, from available and authorized funds, a sum not to exceed **one hundred sixty-three thousand three hundred dollars (\$163,300.00)**, for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A. County and Contractor acknowledge that Work has been performed prior to execution of this Contract and hereby affirm and ratify that Work, subject to the terms and conditions of this Contract.

If any invoice remains unpaid for longer than ninety (90) days from the date of the invoice, Contractor may either suspend the provision of the Work until payment is received, or terminate this Contract and/or any SOW with immediate effect.

4. Travel and Other Expense. Authorized: X Yes No

If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <http://www.clackamas.us/bids/tenns.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.

5. Contract Documents. This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibits A, B, C, D and E.

6. Contractor Data.

Name: Mercer Health & Benefits LLC

Address: 111 SW Columbia Street, Suite 500, Portland, OR 97201

Contractor Contract Administrator: Keith Storie

Phone No.: 503-273-5920

Email: Keith.Storie@mercerc.com

MWESB Certification: DBE #

MBE #

WBE #

ESB #

Payment information will be reported to the Internal Revenue Service ("IRS") under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to backup withholding.

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ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. Any audit or inspection shall be conducted at the County's expense, made upon reasonable prior written notice, during normal business hours and shall be subject to the execution of a confidentiality agreement reasonably satisfactory to Contractor.
- 2. AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. If applicable, Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
- 5. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
- 6. GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or

suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

- 7. HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- 8. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or directly result from, the negligent conduct of Work, or from any negligent act or omission of Contractor, its subcontractors, agents, or employees in their performance under this Contract. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.
- 9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

- 10. INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof.
- 11. LIMITATION OF LIABILITIES.** Except for liability arising under Section 14 (A), (B), (D) or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. Contract is expressly subject to the debt limitation of

Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore.

The aggregate liability of Contractor or its affiliates or any officer, director, or employee of Contractor's or Contractor's affiliates ("Contractor Party") to County, its officers, directors or employees and any third party (including any benefit plan, its fiduciaries or any plan sponsor) for any and all Losses arising out of or relating to the provision of any Work at any time by any of the Contractor Parties shall not exceed the greater of one times the compensation for the Work giving rise to such Loss and \$100,000.00. Contractor shall have no liability for the acts or omissions of any third party (other than its subcontractors). Nothing in this Section 11 limiting the liability of a party shall apply to any liability that has been finally determined by a court to have arisen from the fraud on the part of such party. As used herein, "Loss" means damages, claims, liabilities, losses, awards, judgments, penalties, third party claims, interest, costs and expenses, including reasonable attorneys' fees, whether arising under any legal theory including, but not limited to claims sounding in tort (such as for negligence, misrepresentation or otherwise), contract (whether express or implied), by statute, or otherwise, claims seeking any kind of damages and claims seeking to apply any standard of liability such as negligence, statutory violation or otherwise. For the avoidance of doubt, multiple claims arising out of or based upon the same act, error or omission, or series of continuous, interrelated or repeated acts, errors or omissions shall be considered a single Loss. Any provisions herein which would conflict with law are deemed inoperative to that extent.

12. NOTICES. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us, or to Contractor with a copy to: Mercer Health & Benefits LLC, 1166 Avenue of the Americas, New York, NY 10036, Attn: Legal Department, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

13. OWNERSHIP OF WORK PRODUCT. All work product prepared by Contractor specifically and exclusively for County that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. At County's expense, Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

Notwithstanding the foregoing or anything to the contrary set forth herein, Contractor will retain all copyright, patent and other intellectual property rights in the methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience owned or possessed by Contractor before the commencement of, or developed or acquired by Contractor during or after, the performance of the Work, including without limitation, all systems, software, web applications (including without limitation text, software, music, sound,

photographs, graphics, videos or other images, the structure, all technical and graphical materials, and all technical information and the look and feel thereof and any modifications or enhancements), specifications, documentation (including formats of reports, standard materials and derivatives thereof) and other materials created, owned or licensed and used by Contractor or its affiliates or subcontractors in the course of providing the Work (the "Intellectual Property") and the foregoing shall not be deemed Work Product and Contractor shall not be restricted in any way with respect thereto. It is understood and agreed that the Work Product will inherently contain and/or embed Intellectual Property. Contractor hereby grants County a non-exclusive, non-transferable right to use such Intellectual Property solely for purposes of utilizing the Work Product for its internal business purposes and otherwise in accordance with the terms of this Contract and the applicable SOW.

Unless Contractor provides its prior written consent, County will not use, in a manner other than as mutually contemplated when Contractor was first retained by County to perform the applicable Work, or disclose to any third party, other than its attorneys, accountants or financial advisors with a need to know and who are bound by confidentiality obligations at least as restrictive as those contained in this Contract, any Work Product or Intellectual Property or other material supplied by Contractor under this Contract, and County shall be responsible for, and Contractor shall have no liability with respect to, modifications made by any person other than Contractor to the Work Product, Intellectual Property or other Work provided to County by Contractor.

- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a professional manner and in accordance with the prevailing professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

Except as expressly set forth in this Contract, Contractor expressly disclaims any warranty, express or implied, including but not limited to any implied warranty of merchantability and fitness for a particular purpose.

- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, 16, 21, 28, 29, 31, 32 and 33.
- 16. SEVERABILITY.** If any term, word, phrase, clause, sentence or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, such term, word, phrase, clause or sentence shall be modified or deleted in such a manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Contract as modified, enforceable and the validity of the remaining terms and provisions shall not be affected, and the balance being construed as severable and independent.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, except that Contractor may subcontract any Work to its affiliates or assign or transfer any of its interest in this Contract to its affiliates upon written notice to County. In addition to any provisions the County may require, Contractor shall require its permitted subcontractor under this Contract to comply with this Article II, Paragraphs I, 8, 13, 15, and 27 as if the subcontractor were the Contractor and Contractor shall be responsible for its subcontractor's compliance

herewith. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

18. SUCCESSORS IN INTEREST. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and the irrespective authorized successors and assigns.

19. TAX COMPLIANCE CERTIFICATION. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATIONS. This Contract and, except as may be provided otherwise in a SOW, any SOW hereunder may be terminated for the following reasons: (A) This Contract and/or SOW may be terminated at any time by mutual consent of the parties, or by either party for convenience upon ninety (90) days' written notice to the other party; (B) County may terminate this Contract effective upon delivery of written notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, or regulations are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the County is prohibited from paying for such Work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County and/or SOW for default (including breach of Contract or SOW) if (i) Contractor fails to provide services or materials called for by this Contract or SOW within the time specified herein or any extension thereof, and after receipt of notice from the County, fails to correct such failure within thirty (30) business days; or (ii) Contractor fails to perform any of the other provisions of this Contract or SOW or so fails to pursue the Work as to endanger performance of this Contract or SOW in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within thirty (30)

business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice. This Contract may be terminated for the following reasons: by Contractor upon breach by the County which breach is not cured within thirty (30) days after receipt of written notice thereof. Any termination of this Contract shall not relieve County of its obligations to pay for Work rendered and expenses incurred by Contractor or its affiliates up to and including the effective date of such termination.

21. REMEDIES. (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. All Work will be provided on an "AS IS" basis without any warranties of any nature whatsoever and Contractor shall have no liability from the use of any such unfinished Work.

22. NO THIRD PARTY BENEFICIARIES. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

23. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence in the performance this Contract.

24. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

25. FORCE MAJEURE. Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. The party affected by a force majeure shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

26. WAIVER. The failure of a party to enforce any provision of this Contract shall not constitute a waiver by such party of that or any other provision.

27. COMPLIANCE. Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:

(A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.

(B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.

(C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

(D) The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

28. CONFIDENTIALITY. Each party acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the other party desires or is required to maintain as confidential ("Disclosing Party"). Any and all information of any form obtained by a party or its employees or agents in the performance of this Contract ("Receiving Party"), 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, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(1)), shall be deemed to be confidential information of the Disclosing Party ("Confidential Information"). Any reports or other documents or items containing Confidential Information which result from the use of the Confidential Information to provide the Work by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Receiving Party agrees to hold Confidential Information in confidence, using at least the same degree of care that Receiving Party uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever except in the performance of this Contract or as otherwise directed/permitted by the Disclosing Party, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. This restriction does not apply to information which (i) the Receiving Party must by law or legal process disclose, (ii) is either already in the public domain or enters the public domain through no fault of the Receiving Party, (iii) 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 (iv) is

independently developed by the Receiving Party without reference to any Confidential Information of the Disclosing Party.

Notwithstanding the foregoing, and solely to the extent authorized under applicable law, County agrees that Contractor will be entitled to disclose information, including Confidential Information, relating to the Work or County to regulators having jurisdiction over Contractor's business,. County also agrees that, notwithstanding any other provision in this Contract, and solely to the extent authorized under applicable law, Contractor may include the identities of those persons who are identified by County as contact persons for County and information about the terms of this Contract, the Work and the Compensation in Contractor's internal client management, financial and conflict checking databases.

County agrees that during and after the term of the Contract, Contractor may use any information it collects and uses in connection with the Work, together with information from its other clients, for data analytics purposes, including to create insights, reports and other analytics to improve the quality of and market Contractor's advice, products and services. The output of such analytics will not identify particular clients or individuals.

Receiving Party agrees that upon termination or expiration of this Contract or the Disclosing Party's request, Receiving Party will turn over to the Disclosing Party all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Receiving Party acknowledges that breach of this Contract, including disclosure of any Confidential Information, at law or in good conscience or equity, ought to remain confidential, may give rise to irreparable injury to the Disclosing Party that may not adequately be compensated in damages. Accordingly, the Disclosing Party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Receiving Party acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the Disclosing Party and are reasonable in scope and content.

Receiving Party agrees to comply with all reasonable requests by the Disclosing Party to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements from each of Receiving Party's agents or subcontractors who are performing services and have access to Confidential Information.

Notwithstanding anything to the contrary in this Contract, but subject to the confidentiality terms and conditions hereof, Contractor may (i) retain copies of Confidential Information that is required to be retained 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 upon County's request. Contractor may retain County's information in paper or imaged format and Contractor may destroy paper copies if Contractor retains digital images thereof.

29. PERSONAL INFORMATION. Each party agrees that it and its affiliates have complied and will continue to comply with their respective obligations arising from data protection and privacy laws in force from time to time to the extent applicable to this Contract and the services (including any obligation of County to obtain any required consent(s) in respect of the transfer of Personal Information by County or any third party to Contractor, the creation or collection of additional Personal Information by Contractor, and the use, disclosure and transfer by Contractor of Personal Information as necessary to perform the services hereunder or as expressly permitted

under Section 28). The parties acknowledge that any use or processing by Contractor of Personal Information supplied by or on behalf of County in connection with the Work shall be done solely on behalf of County. Contractor shall deal with such Personal Information in accordance with such reasonable instructions as County may from time to time provide or as reasonably necessary for the purpose of providing the Work and shall not deal with such Personal Information in a manner inconsistent with the terms of this Contract. Contractor also confirms that it has taken appropriate technical and organizational measures against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, Personal Information in accordance with applicable law.

Contractor shall report, either orally or in writing, to the County within a reasonable time upon learning of Security Incidents, as required by applicable law or regulation. As used herein, "Security Incident" shall mean the actual unauthorized access to, acquisition, or use of unencrypted Personal Information (or encrypted Personal Information where unauthorized decryption has or is likely to occur) that has the potential to cause identity theft or financial harm to the County's employees or participants. Notification shall be provided in the manner, and contain the information, as required by applicable law including, but not limited to, such information as may be necessary for the County to comply with its reporting and notification requirements to the designated County account contact(s). Contractor agrees to keep County informed of progress and actions taken to resolve the Security Incident.

In the event of a Security Incident, Contractor shall: (a) reasonably cooperate with County in connection with the investigation of such Security Incident and not make any public announcements relating to such Security Incident without County's prior written approval unless required by applicable law; (b) take any necessary and appropriate corrective action as required under the circumstances and where reasonable, shall consult with County prior to taking such action; and (c) at the reasonable expense of Contractor, provide notice to all persons whose Personal Information has been affected by a Security Incident that is caused by Contractor in accordance with applicable law.

In the event of a Security Incident, Contractor will be responsible for two years of credit monitoring and identity restoration services to affected individuals if required by applicable law. In case of a Security Incident caused by Contractor, Contractor will investigate such incident and take reasonable actions to prevent further disclosure of Personal Information to unauthorized third parties, and at the reasonable expense of Contractor, provide notice to all persons whose Personal Information has been affected by a Security Incident in accordance with applicable law. Contractor's obligations under this Section shall survive the expiration or termination of the Contract.

30. CRIMINAL BACKGROUND CHECK REQUIREMENTS. To the extent permitted by applicable law, subject to employee consent (which Contractor shall take commercially reasonable efforts to obtain), Contractor shall use reasonable efforts to have criminal background checks performed on all employees that perform services under this Contract who will require access to the County facilities on an unescorted basis for a period of more than three (3) consecutive business days or who will require access to the County computer networks, operating systems, electronic storage media, application programs, databases or interface systems and devices contained on such.

31. Dispute Resolution.

- (A) Before commencing any action or proceeding with respect to any dispute between the Parties arising out of or relating to any Work, the Parties shall first attempt to settle the dispute through consultation and negotiation in good faith and in a spirit of mutual cooperation. If the dispute is not resolved within five (5) business days, either Party may elect to escalate the resolution of such dispute by submitting the dispute in writing to senior executives from each Party who will promptly meet and confer in an effort to resolve the dispute. Each Party will identify such senior executive by notice to the other Party, and each Party may change its senior executive at any time thereafter by notice. In the event the senior executives are unable to resolve any dispute within thirty (30) days after submission to them, either Party may then refer such dispute to mediation by a mutually acceptable mediator to be chosen by both Parties within forty-five (45) days after written notice by either Party demanding mediation. Neither Party may unreasonably withhold, delay or condition consent to the selection of a mediator. All communications and discussions in furtherance of this paragraph shall be treated as confidential settlement negotiations that are not subject to disclosure to any third party. The costs of the mediator shall be shared equally, but each Party shall pay its own attorney's fees.
- (B) Any dispute that is not resolved within six (6) months of the date of the initial demand for mediation by one of the Parties may then be submitted to a court of competent jurisdiction in accordance with the provisions of Section 6. Nothing in this Section 30 will prevent either Party from resorting to judicial proceedings at any time if interim relief from a court is necessary to prevent serious and irreparable injury or damage to that Party or to others.

32. WAIVER OF JURY TRIAL. EACH PARTY, ON BEHALF OF ITSELF AND ITS AFFILIATES, TO THE FULLEST EXTENT PERMITTED BYLAW, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY SERVICES PROVIDED BY CONTRACTOR OR ITS AFFILIATES. THE WAIYER APPLIES TO ANY ACTION OR LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

33. No Publicity. County agrees not to refer to Contractor or attribute any information to Contractor in the press (including for the purpose of advertising or promotion, or for the purpose of informing or influencing any other party, including the investment community), without Contractor's prior written consent. Contractor agrees not to refer to County in the press or for promotional purposes without County's prior written consent; provided, that Contractor may include County's name in its representative client listing.

34. Instructions; Provision of Information and Assistance: County will provide all necessary and requested information, direction and cooperation to enable Contractor to provide the Work, and any direction (whether verbal or written) shall be effective if contained expressly in the applicable SOW or if received (whether verbally or in writing) from a person known to Contractor or reasonably believed by Contractor to be authorized to act on County's behalf. County agrees that Contractor shall use all information and data supplied by or on behalf of County without having independently verified the accuracy or completeness of it. If any documentation or information supplied to Contractor at any time is incomplete, inaccurate or not up-to-date, or its provision is unreasonably delayed, or if adequate access to employees of County and other individuals (including third parties such as County's other advisers) is not provided, then Contractor will not be responsible for any delays or liability arising therefrom; and, if additional work is needed and appropriate but County does not approve such work, Contractor shall have no liability for the

Work to the extent any Loss arises from or is related to the failure to perform such additional work..

Contractor is not engaged in the practice of law, and the Work provided hereunder is not intended as a substitute for legal advice. Accordingly, Contractor recommends that County secure the advice of competent legal counsel with respect to any legal matters related to the Work.

35. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Mercer Health & Benefits LLC

Clackamas County:

Authorized Signature Date

Chair

Name / Title (Printed)

Recording Secretary

Oregon Business Registry #

Date

Entity Type / State of Formation

Approved as to Form:

County Counsel

Date

EXHIBIT A
PERSONAL/PROFESSIONAL SERVICES CONTRACT

SCOPE OF WORK

Contractor shall provide consultation services for conducting strategic planning sessions, strategize healthcare trends, changes and benchmark health plan costs and employee contributions to industry size, and region on annual basis as further described in **Exhibit D**, hereby attached and incorporated by reference.

The County Contract administrator for this Contract is: Kristi Durham

CONSIDERATION

a. Consideration Rates- As further described in Exhibit D, hereby attached and incorporated by reference.

b. Payment by County of Contractor's professional fees for Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed a monthly sum not to exceed **thirteen thousand six hundred eight dollars and thirty-three cents (\$13,608.33)** with a total maximum sum not to exceed **one hundred sixty-three thousand three hundred dollars (\$163,300.00)**. Invoices shall be submitted to: Kristi Durham, 2051 Kaen Road, Oregon City, OR 97045, or via email at KDurham@clackamas.us.

c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Payments shall be made to Contractor following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount, if specified. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.

d. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed.

ADDITIONAL TERMS AND CONDITIONS

Additional terms and conditions applicable to the Work are as further described in Exhibit D, hereby attached and incorporated by reference.

EXHIBIT B
INSURANCE

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

1. Required by County of Contractor with one or more workers, as defined by ORS 656.027. Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126. Contractor shall require its subcontractors, if any, providing services under this Contract to maintain appropriate insurance coverage.

2. X Required by County Not required by County

Professional Liability insurance with a limit of \$2,000,000 for each claim and aggregate. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The Contractor shall endeavor to maintain such coverage for a period of at least two years after the contract is completed or exercise an extended reporting period of at least one year after cancellation of said policy.

3. X Required by County Not required by County

General Liability insurance with a combined single limit, or the equivalent, of \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract subject to the policy's terms, conditions and exclusions.

4. X Required by County Not required by County

Automobile Liability insurance with a combined single limit, or the equivalent, of \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

5. Certificates of Insurance. Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement including the County, its officers, elected officials, and employees as additional insureds with respect to County's vicarious liability arising from Contractor's provision of the Work under this Contract. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

6. Notice of cancellation or non-renewal. Contractor shall endeavor to provide at least thirty (30) days written notice to the County prior to cancellation or non-renewal at the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

EXHIBIT C
CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the County to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an "independently established business."

To qualify under the law, an "independently established business" must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- ___ A. Maintains a business location that is: (a) Separate from the business or work of the County; or (b) that is in a portion of their own residence that is used primarily for business.
- B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- ___ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- ___ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- ___ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature _____ Date _____

EXHIBIT D
Contractor Agreement

Scope of Work for Clackamas County ("Client", "you" or "your") Health and Welfare Plans Consulting Services

The objective of this Scope of Work ("SOW") is to confirm the scope of work Mercer Health & Benefits LLC ("Mercer", "our" or "we") will provide and the compensation for this engagement. All capitalized terms not defined in this SOW shall have the meanings ascribed to them in the Contract.

Service Details

I. Description of Mercer responsibilities: See attached Description of Work.

Additional projects requested by you that individually are not expected to exceed \$10,000 will be billed (i) at time and expense (based on our hourly billing rate in effect at the time the work is performed), (ii) on a fixed fee basis or (iii) as otherwise mutually agreed in writing and will in each case, be subject to the terms of this Contract.

II. Description of Client's responsibilities:

You agree to furnish to Mercer's representatives all information they may request as it pertains to your insurance contracts, rates, rating schedules, surveys, reserves, retentions and all other financial data they may request for their study of your present and future requirements in connection with the insurance program to which this SOW applies.

You understand that the failure to provide, or cause to provide, complete, accurate, up-to-date, and timely documentation and information to us, an insurer, or other service provider, whether intentional or by error, could result in impairment or voiding of coverage or service. You agree to review all policies endorsements and program agreements delivered to you by us and will advise us of anything which you believe is not in accordance with the negotiated coverage and terms within thirty (30) days following receipt.

3. The Work under this SOW shall be provided from July 1, 2018 through June 30, 2019 ("Initial Term").

4. Compensation/fees: We will be compensated for the Work described herein in consideration of your payment of our professional fees of \$163,300.

Mercer will make a good-faith effort to identify for Clackamas County any services that are considered out-of-scope prior to starting this Work. Mercer will bill for these services at our current billing rates unless otherwise agreed upon by project.

We will bill you monthly in the amount of \$13,608.33, with such invoices due within thirty (30) days of your receipt of an undisputed invoice. If any invoice remains unpaid for longer than ninety (90) days from the date of the invoice, we may either suspend the provision of the services until payment is received or terminate this SOW with immediate effect.

In the event Client terminates this SOW/Contract prior to the expiration of the Initial Term or Renewal Term, any unpaid compensation with respect to such Term (or the current year in the event

of a multiple year term) shall be accelerated and shall be due and payable to Mercer within 30 days of the effective date of termination.

In addition, we will receive the following compensation remitted by a third party (i.e., carrier) for Work performed under this SOW and set forth on our annual Transparency Form.

Line(s) of Coverage/Work	Policy Period	Amount/Rate of Compensation
Voluntary Unum Long Term Care	January through December	15% of premium
Optmn Stop Loss	January through December	1% of premium

In addition to other compensation listed, we also bill for necessary travel and other expenses related to the services requested.

In the event Client terminates this SOW /Contract prior to the expiration of the Initial Term, the parties agree that Mercer will not have received full compensation for Work performed and that further compensation is due Mercer. For purposes of determining compensation owed to Mercer, the parties further agree that Mercer will be deemed to have earned, for the performance of its annual Work, 100% of its annual compensation.

Client shall pay any outstanding compensation due Mercer in the event the Client is unable to cause its carrier or replacement broker to pay Mercer a portion of future commissions to fully compensate Mercer for Work performed based on the schedule above. In such event Mercer will calculate the outstanding compensation based on commissions paid to Mercer for the final full month that Mercer served as broker of record.

5. Subcontractors

We may need to utilize various subcontractors (Subcontractors) in the course of our provision of the Work to assist us in such tasks as printing and mailing, development of interactive tools, graphic design, etc. You consent to our use of the Subcontractors and further acknowledge and agree that we may provide such Subcontractors with your Confidential Information, including Work, on a confidential and a need to know basis for the purposes contemplated by this SOW.

6. Use of Name and Logo

The parties agree and acknowledge that Mercer may need to use your name, logo, tradename and/or mark in connection with the performance of the Work. You consent to such use, and grant to Mercer and its agents, vendors and subcontractors of a non-exclusive, royalty-free, limited license to use your name, logo and any tradename or mark only in connection performance of the Work. The parties further agree that such use will be subject to your instruction, direction or prior written approval as to style, form, context and general content. You will not unreasonably delay or withhold your approval.

7. Additional Disclosures

a. We are not responsible for the adequacy or effectiveness of any insurance program or policy implemented by another broker, or any acts or omissions occurring prior to our engagement. We do not act on behalf of any insurer or other service provider, are not bound to utilize any particular insurer or service provider, and do not have the authority to make binding commitments on behalf of any insurer or service provider. In addition, we do not guarantee or make any representation or warranty that coverage or service can be placed on terms acceptable to you. We are not responsible for the solvency or ability to pay claims of any insurance carrier or for the solvency or ability of any service provider to provide service. Insurance carriers or service

providers with which your other risk or insurance coverage or other business is placed will be deemed acceptable to you, in the absence of contrary instructions from you.

- b. Mercer and its Affiliates serve a wide array of clients, including clients who compete with or whose interests may be adverse to one another. In addition, Mercer interacts with insurance carriers and other service providers through numerous business and contractual relationships, including serving as a broker for its clients and receiving commissions from carriers, providing consulting or administration services to carriers, and auditing carriers' claims data. Mercer is committed to serving each of its clients in an objective manner and maintaining the confidentiality of each of its client's information. Notwithstanding anything to the contrary in the engagement letter, when providing Work to Client pursuant to this SOW, Mercer may use its Affiliates, from time to time, to assist in the performance of such Work.
- c. You expressly acknowledge that, with respect to the provision of the Work, we are not nor are any of our Affiliates or subcontractors, an "administrator" within the meaning under applicable law, including the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), nor, with respect to the provision of the Work, are we or any of our Affiliates or subcontractors a "fiduciary" within the meaning under applicable law or ERISA, unless provided otherwise herein or required by applicable law.
- d. Title V of the Gramm-Leach-Bliley Act and related state laws and regulations establish limitations on the use and distribution of non-public information collected by financial institutions from their customers and consumers. Our insurance-related work qualifies us as a financial institution under this Act. Our Privacy Policy Notice and additional information regarding other compliance policies at Mercer, including our conflicts of interest policy is available at the following web address <http://www.v.mercer.com/insights/point/2014/transparency.html>. At this web address you will also find information regarding Marsh & McLennan Companies, Inc. and its subsidiaries' equity interests in certain insurers and contractual arrangements with certain insurers and wholesale brokers.
- e. Mercer is unable to provide insurance broking, risk consulting, claims or other services or provide any benefit to the extent that the provision of such services or benefit would violate applicable law or expose Mercer or its Affiliates to any sanction, prohibition or restriction under UN Security Council Resolutions or under other trade or economic sanctions, laws or regulations.

DESCRIPTION OF WORK

Client Strategy Development

- Conduct strategic planning sessions to receive agreed upon performance metrics of Client's current employee benefit coverages and establish future objectives and strategies to manage Client's employee benefit coverages to which this agreement applies.
 - Planning session - 1-3 per year
 - Pre-renewal meeting - 1 per year
 - Renewal meeting- 1-3 per year
 - Benefit Review Committee meetings - up to 12 per year
- Meet with the Client's key designated representatives as needed to discuss strategy, healthcare trends and changes, and open items.
- Benchmark health plan costs and employee contributions to industry, size and regional standards on an annual basis.

Renewal

Develop a mutually agreeable renewal action plan and timeline that meets the Client's stated objectives.

- With respect to the Client's annual renewal process, we will conduct a benefits program review of the benefits coverages for which Mercer is named Broker of Record to include negotiations, on Clients' behalf, with current vendors/carriers, as per Clients' request.
- At client's request, conduct review of vendor-produced communication and open enrollment pieces for plan rate and accuracy.

Negotiation/Placement

- Identify and negotiate on the Client's behalf with insurers and other benefit program providers and keep the Client informed of significant developments as we understand them to be. We shall be authorized for purposes of this Agreement to represent and assist the Client in all discussions and transactions with all insurers/providers, provided that we shall not place any insurance or vendor programs on behalf of the Client unless so authorized by the Client.
- Assist with documentation and other steps to obtain commitments for and implement insurance policies and other services selected by the Client regarding its employee benefits program upon the Client's instructions, it being understood that we will not independently verify or authenticate information not originating from us necessary to prepare proposals or underwriting submissions and other documents relied upon by insurers/providers, and the Client shall be solely responsible for the accuracy and completeness of such information and other documents furnished to us and/or insurers/providers and shall sign any application for coverage. The Client understands that the failure to provide all necessary information to an insurer, employee benefit provider or third party vendor whether intentional or by error, could result in the impairment or voiding of coverage or service.
- Provide Client access to insurers with whom Mercer is appointed and other service providers as agreed with the Client and use our commercially reasonable efforts to place insurance policies and other services selected by the Client regarding its employee benefit program on behalf of the Client, if so instructed by the Client.
- Review policies and contracts for accuracy and conformity to specifications provided by Client and the related negotiated coverages.

Ongoing Analysis/Projections

- Analyze factors driving Client's plan costs if experience data is available. In connection with such analysis, we will receive carrier/vendor utilization reports to determine possible causes of identified cost increases. Assist Client in managing these risks and costs.
- Establish claims reports for identified coverages medical, dental, vision, life and disability detailing paid claims (and reimbursements if applicable), premium/funding and enrollment summaries. We will review these reports with Client on a quarterly basis and will identify and discuss trends and potential problems.
- Provide agreed upon cost projections on a quarterly basis to determine gross cost scenarios that meet Client objectives.
- If applicable, review funding methodology on an annual basis to determine if benefits funding structure meets Client objectives.

Vendor Management

- Act as a liaison between the Client and insurers/ providers for the lines of coverage and services that we have placed or obtained on behalf of Client or for which Mercer is named as the broker of record.
- Follow up with insurance carriers/providers for timely issuance of policies and contracts.
- Follow up with insurance carriers/providers with respect to the payment or return premiums.
- Assist the Client in connection with issues relating to interpretation of insurance policies/contracts placed by us.
- Review information/coverage summaries for all new coverages and updates on changes to existing coverages.
- Assist Client in the implementation of the benefit program by dealing with vendor/carriers and performing contract and SPD review for purposes of determining conformity to agreed upon plan provisions and costs.

Stop Loss Services

By retaining Mercer, Client hereby authorizes Mercer to perform the following services on Client's behalf with respect to its Stop Loss insurance coverage placement:

- Meet with Client to develop a stop loss placement strategy that meets Client's stated objectives.
- Request and negotiate the terms and conditions of the stop loss insurance renewal from the current insurer and present the insurer's proposed renewal package to Client.
- Conduct a stop loss marketing as agreed based on a list of stop loss carriers selected by Client and its desired terms of coverage.
- If necessary, facilitate communication between Clients' medical and prescription drug vendors and stop loss insurer to establish reporting responsibilities and timing of data required for the purpose of securing stop loss coverage.
- Follow up with insurance carrier for timely issuance of policies and contracts.
- Review policies and contracts for accuracy and conformity to specifications provided by Client in the placement strategy meeting.
- We will assist Client with access to the stop loss insurance marketplace and use our commercially reasonable efforts to place stop loss policies selected by Client on its behalf, if so instructed.
- If requested, we shall transmit information and data supplied by Client or on its behalf without independently verifying the accuracy, completeness or timeliness of the data to the stop loss insurer.

Important Limitations on Mercer's Marketing of Client's Stop Loss Policy

We do not make any representations about an insurer's or MGU's payment or claims denial practices. We do not warrant in any way that all claims submitted to the stop loss carrier will be approved and

ultimately reimbursed. Also, the terms and conditions of covered claims for the stop loss insurance policy may not fully correlate with the benefits covered under Client's benefits program.

With respect to Client's Stop Loss insurance coverage placement. Client is responsible for the following:

- Client will name Mercer as the broker-of-record for your stop loss coverage.
- Client will provide all data/information as required by the stop loss insurer in a timely manner. Client is responsible for the accuracy and completeness of such data and information.
- Client is responsible for timely submission of claims requests and confirmation that appropriate reimbursements have been issued by the stop loss insurer.
- Client is responsible for disclosing all potentially high exposure claims as defined by the stop loss insurer.
- Client is responsible for reviewing and executing a confirmation of coverage letter before binding of coverage.

Other Services

Provide the following health and welfare plan legislative and regulatory compliance support as mutually agreed:

- Updates on pertinent federal benefits legislation and their potential impact to employers' health and welfare benefit plans
- Consultative and strategic guidance related to compliance with [RS. DOL and HHS regulations as mutually agreed from time-to-time
- Assist Client in responding to inquiries related to federal laws and regulations including ERISA, COBRA, HIPAA and the Affordable Care Act (ACA).
- Assist in reviewing and drafting of health and welfare plan SPDs, SMMs, and mutually agreed plan documents for medical, dental, vision, life and disability.
- Access to Mercer seminars, roundtables, executive forums and webcasts.
- Access to Mercer Select Intelligence site, research capabilities, self-help tools, and forms

While our team of ERISA attorneys are available to review documents and advise on issues, since we are not a law firm, we cannot practice law or render legal opinions

2018/2019 Out-of-Scope Health and Benefit Services

Fees for the services listed below will be determined and approved separately from this SOW.

All out of scope projects must be agreed to in advance by Mercer and Client prior to implementation. Fees for these services will be proposed and agreed upon by Client prior to commencing any work on Client's behalf. Out of scope services include but are not limited to:

Development and production of communication materials

Claim pharmacy or eligibility audits

Collective bargaining assistance. Includes attendance at bargaining sessions, education of bargaining units or teams, analysis and materials

Competitive bidding and placement of vendors

Custom benchmarking

Consulting regarding development and/or compliance of wellness programs

Mental Health Parity compliance evaluation