

**MERCY COLLEGE**

**CONFIDENTIAL INFORMATION AND NON-SOLICITATION AGREEMENT  
FOR SENIOR MANAGEMENT AND OTHER DESIGNATED EMPLOYEES**

In consideration of employment with Mercy College this Confidential Information and Non-Solicitation Agreement (the “Agreement”) is made between Mercy College (“Mercy”), and \_\_\_\_\_, (“Employee”), the terms and conditions of which are set forth below:

1. **Confidential Information**

(a) Employee agrees that during the course of their employment with Mercy, Employee has or will come into contact with, have access to and necessarily will learn and use various forms of Confidential Information which are the property of Mercy. This information relates both to Mercy College, its donors, its students, vendors, and its employees. Such Confidential Information includes, but are not limited to: (i) financial and business information, such as information with respect to Mercy’s budgets, financial statements, enrollment projections, endowment, alumni information, donor information, including names and addresses, and leads and referrals to prospective donors; (ii) personnel information regarding Mercy College employees, such as the identity and number of Mercy College’s employees, their salaries, bonuses, benefits, skills, qualifications, and abilities, and (iii) personal information relating to Mercy College students or prospective students, including but not limited to names and addresses, personal and family financial information, student employment and grades. Employee acknowledges and agrees that Confidential Information are not generally known or available to the general public. Confidential Information can be in any form: oral, written or machine readable, including electronic files.

(b) Employee acknowledges and agrees that Mercy College is engaged in the highly competitive educational field and that its competitive position depends upon its ability to maintain the confidentiality of the Confidential Information which were developed, compiled and acquired by Mercy at its great effort and expense. Employee further acknowledges and agrees that any disclosure, divulging, revelation or use of any of the Confidential Information, other than in connection with Mercy’s business or as specifically authorized by Mercy, will be highly detrimental to Mercy, and that serious loss of business and damage may result therefrom, including legal liability for failure to protect Confidential student information.

(c) Accordingly, Employee agrees, except as specifically required in the performance of Employee’s duties on behalf of Mercy or with prior written authorization of the President of Mercy, Employee will not, while associated with Mercy and for so long thereafter as the pertinent information or documentation remains confidential, directly or indirectly use, disclose or disseminate to any other person, organization or entity or otherwise use any Confidential Information.

(d) Employee further agrees to deliver to Mercy, immediately upon separation of employment or at any time Mercy so requests, (i) any and all documents, files, notes, emails, text messages, Skype messages, rolodexes or contact lists, memoranda, designs, manuals, databases, computer files and/or other computer programs reflecting any Confidential Information

whatsoever or otherwise relating to Mercy's business; (ii) lists of Mercy's donors or leads or referrals to prospective donors, in whatever form they may be maintained; and (iii) any computer equipment, home office equipment, telephone, automobile, or other business equipment belonging to Mercy which Employee may then possess or have under his or her control, except where otherwise authorized in writing by the President.

(e) Employee agrees that Mercy may from time to time adopt rules and regulations regarding the manner in which trade secret and confidential information is treated. In such event, Employee will comply with all such rules and regulations. Employee further agrees to take all reasonable steps to prevent any such documents, materials and information (including the ideas and concepts contained therein) from being used by or disclosed to any person, firm, or entity who is not authorized to use or receive same.

2. **Non-Solicitation Agreement**

(a) Employee acknowledges and agrees that during the course and solely as a result of employment with Mercy, Employee has and will come into contact with and acquire confidential information regarding some, most or all of Mercy's employees, their knowledge, skills, abilities, salaries, stipends, bonuses, benefits and other matters with respect to such employees not generally known to the public. In addition, Employee may also come into contact with donors, benefactors, partners, customers or clients (including but not limited to students) of Mercy College.

(b) Employee acknowledges and agrees that any solicitation, luring away or hiring of employees of Mercy, or of donors, benefactors, partners, customers or clients, will be highly detrimental to the business of Mercy College and will cause Mercy serious loss of business and a great and irreparable harm. Accordingly, both during assignment with Mercy and for a period of one (1) year thereafter, Employee shall not, either on Employee's own account or on behalf of any person, corporation, or other entity, solicit the hiring of any employee of Mercy or any donors, benefactors, partners, customers or clients with whom Employee came into contact or about whom Employee obtained Confidential Information, or cause or endeavor to cause any such employee of Mercy to leave employment with Mercy, cease attending Mercy, or cease providing charitable donations to Mercy College.

3. **Conflict Of Interest**

Employee may not use his or her knowledge of Confidential Information or Mercy's assets for personal gain, except as specifically provided in this Agreement. A direct or indirect financial interest, including joint ventures in or with a supplier, vendor, donor or prospective donor without disclosure in accordance with College policies is strictly prohibited and could be cause for discipline, up to and including dismissal from the College. In addition, Employee is expected to abide by the *Mercy College Conflict-of-Interest Policy for Trustees, Officers, Senior Managers, Key Persons and Special Designees*.

4. **Intellectual Property**

(a) Employee covenants and agrees that all product designs, improvements, specifications, formulae, estimates, processes, software or computer programs, modifications of software or computer programs, data processing systems, analyses, techniques, trade secrets,

creations, ideas, work product or contributions thereto, and any other intellectual property, regardless of whether patented, registered or otherwise protected or protectable, and regardless of whether containing or constituting Confidential Information as defined in Section 1 hereof (referred to collectively as “Intellectual Property”), that were conceived, developed or made by Employee during the period of Employee’s assignment with Mercy (the “Proprietary Interests”), shall belong to and be the property of Mercy. Some examples of intellectual property include, but are not limited to: admissions plans and recruitment lists, enrollment forecasts, budget models, advancement plans, academic and curricular plans, etc.

(b) Employee further covenants and agrees that Employee will: (i) promptly disclose such Intellectual Property to Mercy; (ii) assign to Mercy, without additional compensation, the entire rights to Intellectual Property for the United States and all foreign countries; (iii) execute assignments and all other papers and do all acts necessary to carry out the above, including enabling Mercy to file and prosecute applications for, acquire, ascertain and enforce in all countries, letters patent, trademark registrations and/or copyrights covering or otherwise relating to Intellectual Property and to enable Mercy to protect its proprietary interests therein; and (iv) give testimony, at Mercy’s expense, in any action or proceeding to enforce rights in the Intellectual Property.

5. **Equitable Relief**

Employee acknowledges and agrees that compliance with the covenants set forth in this Agreement is necessary to protect the business and goodwill of Mercy and that any breach of Sections 1 through 4 of this Agreement or any subparagraph thereof will result in irreparable and continuing harm to Mercy, for which money damages may not provide adequate relief. Accordingly, in the event of any breach or anticipatory breach of paragraphs 1 through 4 by Employee, Mercy and Employee agree that Mercy shall be entitled to the following particular forms of relief as a result of such breach, in addition to any remedies otherwise available to it at law or equity: (a) injunctions, both preliminary and permanent, enjoining or restraining such breach or anticipatory breach, and Employee hereby consents to the issuance thereof forthwith and without bond by any court of competent jurisdiction; and (b) recovery of all reasonable sums and costs, including attorneys’ fees, incurred by Mercy to enforce the provisions of paragraphs 1 through 4.

6. **Employability**

(a) Employee affirms Employee is not presently subject to a restrictive covenant or other prior agreement which would prohibit or restrict employment with Mercy.

(b) If Employee learns or becomes aware or is advised that they are subject to an actual or alleged restrictive covenant or other prior agreement which may prohibit or restrict assignment with Mercy, Employee shall immediately notify Mercy of the same.

(c) Employee agrees that they shall not disclose to Mercy, use for Mercy’s benefit, or induce Mercy to use any confidential information he may possess belonging to any former employer or other third party.

7. **Governing Law and Choice of Forum**

This Agreement shall be governed and conformed in accordance with the laws of the State of New York without regard to its conflict of laws provisions. The parties being desirous of having any disputes resolved in a forum having a substantial body of law and experience with the matters contained herein, the parties agree that any action or proceeding with respect to this Agreement shall be brought exclusively in the New York State Supreme Court, Westchester County, or in the United States District Court for the Southern District of New York, and the parties agree to the jurisdiction thereof. The parties hereby irrevocably waive any objection they may now or hereafter have to the laying of venue of any such action in the said court(s), and further irrevocably waive any claim they may now or hereafter have that any such action brought in said court(s) has been brought in an inconvenient forum. Employee recognizes that, should any dispute or controversy arising from or relating to this agreement or to Employee's assignment with Mercy be submitted for adjudication to any court, arbitration panel or other third party, the preservation of the secrecy of Confidential Information may be jeopardized. Consequently, Employee agrees that all issues of fact shall be severed for trial without a jury.

8. **Construction**

The headings of the paragraphs of this Agreement are inserted for convenience only and do not constitute part of and shall not be used to interpret this Agreement. The language in all parts of this Agreement shall be in all cases construed according to its fair meaning and not strictly for or against Mercy or Employee because it was drafted by that party or that party's legal representative.

9. **Severability**

The parties have attempted to limit Employee's post-assignment activities only to the extent necessary to protect Mercy's Confidential Information and customer relationships. If any term or provision of this Agreement or any portion thereof is declared illegal or unenforceable by any court of competent jurisdiction, such provision or portion thereof shall be deemed modified so as to render it enforceable, and to the extent such provision or portion thereof cannot be rendered enforceable, this Agreement shall be considered divisible as to such provision which shall become null and void, leaving the remainder of this Agreement in full force and effect.

10. **Non-Waiver**

The failure of either Mercy or Employee, whether purposeful or otherwise, to exercise in any instance any right, power, or privilege under this Agreement or under law shall not constitute a waiver of any other right, power, or privilege, nor of the same right, power, or privilege in any other instance. Any waiver by Mercy or by Employee must be in writing and signed by either Employee, if Employee is seeking to waive any of his rights under this Agreement, or by the President of Mercy, if Mercy is seeking to waive any of its rights under this Agreement.

11. **Modification**

No modification of this Agreement shall be valid unless made in a writing signed by both parties hereto, wherein specific reference is made to this Agreement.

12. **Binding Effect**

This Agreement shall be binding upon Employee, Employee's heirs, executors and administrators and Mercy, and its successors and assigns. This Agreement inures to the benefit of any successors or assigns of Mercy, and Employee's obligations apply equally to Mercy and its successors or assigns. This Agreement may not be assigned by Employee.

13. **Entire Agreement**

This Agreement sets forth the entire agreement between the parties hereto with respect to the subject matter hereof, and fully supersedes any prior agreements or understandings between the parties. Employee acknowledges that he has not relied on any representations, promises, or agreements of any kind made to Employee in connection with his decision to sign this Agreement, except for those set forth in this Agreement.

The parties hereto have knowingly and voluntarily caused this Agreement to be executed as of the date set forth below.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Employee]

**MERCY COLLEGE**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
[Name]  
[Title]