

## MercerVIP Terms of Use – Vendor

### GENERAL INFORMATION

#### IMPORTANT - PLEASE READ CAREFULLY BEFORE CLICKING “ACCEPT” AND REGISTERING FOR THE MERCERVIP PLATFORM

BY CLICKING THE “ACCEPT” BUTTON BELOW, VENDOR (A) REPRESENTS AND WARRANTS THAT VENDOR HAS THE RIGHT, POWER AND AUTHORITY TO ACCEPT THESE TERMS OF USE ON BEHALF OF ITSELF AND ITS AUTHORIZED USERS; AND (B) AGREES THAT VENDOR IS LEGALLY BOUND BY ITS TERMS. IF VENDOR DOES NOT AGREE OR HAVE SUFFICIENT AUTHORITY TO AGREE TO THESE TERMS OF USE, VENDOR SHOULD NOT CLICK “ACCEPT” AND MAY NOT PROCEED TO REGISTER AS A VENDOR ON THE MERCERVIP PLATFORM. CLICKING “ACCEPT” CONSTITUTES YOUR SIGNATURE TO BE BOUND BY THESE TERMS OF USE.

ONCE VENDOR’S DULY AUTHORIZED AGENT ACCEPTS THESE TERMS OF USE, VENDOR AND ALL OF ITS AUTHORIZED USERS WILL BE BOUND BY THEM, AND SUBSEQUENT AUTHORIZED USERS, UPON LOGGING INTO MERCERVIP, WILL RECEIVE A MESSAGE STATING THAT THEIR COMPANY HAS ACCEPTED THE TERMS OF USE.

#### 1. Introduction

Welcome to the Mercer Vendor Intelligence Portal (“**MercerVIP**”), a proprietary vendor solutions platform, owned and operated by Mercer Health & Benefits, LLC (“Mercer”, “we”, “our” or “us”), that houses applicable health and benefits solutions available in the marketplace for Mercer consultants to search, view, and request proposals for clients in connection with providing Mercer Services.

These **MercerVIP Terms of Use** (the “**Terms of Use**”) apply to Vendor’s use of MercerVIP made available by Mercer at the “Site”, or the “Platform”, including to any updates, new releases and other distributed modifications of the Platform and as any versions thereof. The Platform is designed to allow Vendors to provide Mercer with information about its products, services and solutions in an organized and searchable database that finds and compares applicable health and benefits solutions available in the marketplace for Mercer consultants to search, view, and request proposals for clients in connection with providing Mercer Services. **These Terms of Use apply to Vendors only.**

Use of and/or registration for MercerVIP is free; there is no charge for a Vendor to use the Platform. However, Vendors have the option of purchasing additional services from Mercer at an additional cost (See below **Optional and Additional Services and MercerVIP Premium Services**).

## 2. **DEFINITIONS**

**“Affiliate”** means an entity, controlling, controlled by or under common control with another entity.

**“End User”** means a Mercer consultant or employee who accesses and uses MercerVIP for the purposes of identifying or evaluating potential Vendors in connection with Mercer Services.

**“Mercer”** means Mercer Health & Benefits LLC and its Affiliates.

**“Mercer Client”** means a prospective or existing client contracted with Mercer for Mercer Services.

**“Mercer Content”** means the information, documents, and other material made available by Mercer on MercerVIP.

**“Mercer Services”** means any and all consulting services that Mercer provides or makes available to Mercer Clients.

**“MercerVIP Premium Services”** means additional, optional services offered by Mercer to Vendors, under a separate agreement and, at additional cost, including, but not limited to, analytical and/or informational data available on MercerVIP and additional marketing opportunities.

**“Statement of Work”** or **“SOW”** means a mutually executed document containing the description of services that is agreed between the two parties executing the SOW.

**“Subcontractor”** means a third-party service provider (or “Subcontractor”) engaged by Mercer to assist in the delivery of the MercerVIP platform.

**“Vendor Content”** means information, documents, and other Vendor-specific material made available on MercerVIP by or on behalf of a Vendor.

**“Vendor”** means a company, including the Vendor Authorized Users, that offers health and benefits products and/or services to employers.

**“Vendor Authorized Users”** means any employee or other personnel of Vendor authorized by Vendor to create and/or manage such Vendor’s Account (as defined herein) and Vendor Content on MercerVIP, on behalf of and/or at the direction of Vendor.

**“Vendor Services”** means products, solutions, or services offered by Vendor.

“**Vendor Services Agreement**” means an agreement for Vendor Services entered into between a Mercer Client and Vendor.

### **3. VENDOR ACKNOWLEDGEMENT**

**Vendor acknowledges that by registering for, accessing or otherwise using MercerVIP, Vendor is entering into a legally binding contract with Mercer pursuant to these Terms of Use.** Vendor should not proceed if Vendor does not agree or does not have sufficient authority to agree to, and be bound by, these Terms of Use. By proceeding, Vendor represents and warrants that Vendor has all necessary rights, power and authority to accept and be bound by these Terms of Use.

### **4. MERCER INTELLECTUAL PROPERTY RIGHTS AND LICENSE**

The Mercer name and brand, the names and brands of any of our products and services, the Mercer logo, and other trademarks, service marks, logos, domain names and other indicators of source or origin of Mercer or its Affiliates (the "Mercer Trademarks") used and displayed on or in connection with the Platform are registered and unregistered trademarks of Mercer or an Affiliate of Mercer. Nothing on or in connection with the Platform shall be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Trademark displayed on or in connection with the Platform, without our express prior written permission, which we may provide in our sole discretion. Mercer prohibits the use of the Mercer name and any of the Mercer Trademarks as part of a link to or from any site unless approved in advance by Mercer in writing. Vendor may not use any metatags or any other hidden text utilizing any Mercer Trademarks without Mercer's express prior written consent.

The MercerVIP Platform, any proprietary interfaces, as well as the Mercer Content embedded in MercerVIP and all modifications and enhancements, the Mercer Services, and all intellectual property rights, including all U.S. and international copyright, trademark, patent and trade secret rights, therein, are proprietary and shall be owned exclusively by Mercer and/or its Affiliates or Subcontractors. Mercer and its Affiliates and Subcontractors reserve all of their intellectual property rights in MercerVIP. Vendor's use of MercerVIP does not give ownership to Vendor in MercerVIP or Mercer Content, or any other content or information made available through MercerVIP. Any and all trademarks and/or logos used in connection with MercerVIP are the trademarks of their respective owners. Except for the express, limited use right granted to Vendor in these Terms of Use, nothing contained in these Terms of Use, nor our permitted access to or use of the Platform or the Services, including any Mercer Content, shall be deemed to grant to Vendor, by implication, estoppel or otherwise, any license (express or implied) or any other grant of right, title or interest in or to any of the foregoing or any other intellectual property right of Mercer or any third party. These Terms of Use do not constitute a sale of the Platform or any part of it. Vendor agrees not to take any action inconsistent with this paragraph.

Subject to these Terms of Use, Mercer grants Vendor a perpetual, worldwide (to the extent permitted), non-exclusive, non-transferable, revocable and royalty-free license to use MercerVIP for the purposes of creating a Vendor profile with Vendor Content to publicize Vendor products and/or services to End Users. Except to the extent otherwise expressly permitted under copyright law, Vendor will not copy, reproduce, modify, use, distribute, display, create derivative works of or otherwise exploit MercerVIP or the Mercer Content without the express written consent of Mercer or the applicable copyright and/or trademark owner.

## **5. VENDOR REGISTRATION AND ACCOUNT; SECURITY OBLIGATIONS**

In order to use the Platform, Vendor is required to register and create a MercerVIP account, which contains the Vendor's profile and information regarding its products, services and solutions ("Vendor Account"). Vendor is required to keep its Vendor Account up to date, manage all permission levels of Vendor Authorized Users, provide accurate, complete and current registration information, and to update the information (including email address) of each Vendor Authorized User as necessary to maintain its Account. Vendor can invite their employees and staff to become Vendor Authorized Users with access to the Vendor Account, with unique log-in credentials (utilizing the Vendor Authorized User's business email address as a username), where Vendor Authorized Users will choose their password on MercerVIP. Vendor Authorized Users shall keep such log-in credentials confidential and not share with any third party its log-in credentials or password for MercerVIP. Vendor is solely responsible for any misuse of Vendor Authorized Users' log-in email, password and other access credentials. Vendor shall notify Mercer immediately if Vendor suspects any such misuse or learns that a breach of the MercerVIP Vendor Account for one or more Vendor Authorized Users has occurred. Vendor shall ensure that each of the Vendor Authorized Users is aware of, and complies with, the obligations and restrictions imposed on Vendor under these Terms of Use. Vendor shall be liable for the acts and omissions of all Vendor Authorized Users and shall be responsible for removing Vendor Authorized Users from MercerVIP that are no longer employed by Vendor. Mercer bears no responsibility for unauthorized access to a Vendor Account as a result of Vendor's failure to follow appropriate security precautions and will have no liability for any losses caused by any unauthorized use of Vendor Accounts.

Vendor acknowledges and agrees that Vendor has no ownership rights in the Vendor Accounts. In the event that Vendor or a Vendor Authorized User cancels a Vendor Account or Mercer terminates or suspends any Vendor Account, any such Vendor Account information may be deleted from our systems without notice, except as required by applicable law, our record-keeping requirements and as contemplated by these Terms of Use (including our continued use of such account information in anonymized or aggregate form as contemplated by these Terms of Use and the Privacy Notice).

## **6. VENDOR CONTENT**

- a. **Intellectual Property Rights and License Grant.** Vendor retains all ownership and intellectual property rights, including all U.S. and international copyright and trademark rights to the Vendor Content it makes available on MercerVIP when it creates a Vendor profile. Vendor grants to Mercer and its Affiliates and Subcontractors a perpetual, worldwide, non-exclusive, sub-licensable, irrevocable and royalty-free and fully-paid license to use the Vendor Content and your name for the purposes of operating MercerVIP and for providing Mercer Services. Vendor may only post content to MercerVIP that Vendor owns, licenses or has permission to post. By submitting, displaying, providing or otherwise making available any Vendor Content on or through the Platform, Vendor expressly grants, and represents and warrants that it has all rights necessary to grant to Mercer the license granted above in this section with respect to Vendor Content. Mercer reserves the right, but not the obligation, to review, and to remove at any time, any Vendor Content, for any or no reason. Mercer shall not be liable for any deleted, lost or unauthorized modification of Vendor Content or any other content on the Platform.

If you provide feedback, ideas, or suggestions regarding the Platform, ("Feedback"), you acknowledge that such Feedback is not confidential, and you authorize Mercer to use such Feedback without restriction and without payment to you.

Vendor grants Mercer and its Affiliates, Subcontractors and End Users the right to access Vendor Content posted in MercerVIP for the purpose of evaluating Vendor and Vendor Content in connection with MercerVIP. Mercer will take all reasonable care to ensure that End Users with access to MercerVIP are bona fide personnel of Mercer, including temporary employees, independent contractors, and interns of Mercer who act on behalf of and/or at the direction of Mercer, whose purposeful use of MercerVIP is to identify and evaluate Vendor and Vendor Content in connection with providing Mercer Services.

Vendor may at any time end its license and rights described above by deleting its profile and all Vendor Content from MercerVIP, except that any such deletion shall not apply to or limit the use of Vendor Content previously shared with End Users who may have copied it, stored it or disclosed it to others.

- b. **Accuracy of Vendor Content.** Vendor agrees that it shall only provide true, accurate, current and complete Vendor Content on MercerVIP, including without limitation, with respect to Vendor's operations and services, Vendor sales and marketing information, and Vendor contact details. Vendor shall ensure that all Vendor Content posted to MercerVIP is complete and accurate and kept up to date (no less frequently than annually).

- c. Vendor acknowledges and agrees that Vendor is solely responsible for complying with any federal, state or local laws applicable to Vendor's use of the Platform made available under these Terms of Use. Vendor recognizes that Mercer's provision of the Platform under these Terms of Use does not relieve Vendor of responsibility and liability for those matters over which Vendor has control or those matters arising out of Vendor's misuse of the Platform.

## **7. DATA USE; SECURITY AND CONFIDENTIALITY**

- a. Vendor agrees that Mercer may access, store, or use any information, including, without limitation, Vendor Content, that Vendor makes available on MercerVIP. Vendor agrees that it shall be responsible for obtaining all necessary consent prior to sharing or posting non-Vendor owned data on MercerVIP.
- b. Vendor grants Mercer a non-exclusive, non-transferable license for the term hereof to access, download, and print Vendor Content on MercerVIP on any single computer, solely for Mercer's internal business use, including evaluating a Vendor. Mercer may not otherwise reproduce, modify, distribute, transmit, post or disclose the Vendor Content contained on MercerVIP without the Vendor's prior written consent.
- c. Except as otherwise provided in these Vendor Terms of Use, Mercer shall not disclose "Vendor Confidential Information." "Vendor Confidential Information" is information disclosed from Vendor to Mercer in MercerVIP, 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. These confidentiality obligations imposed on Mercer will survive the expiration or termination of these Terms of Use for the duration that Mercer retains any Vendor Confidential Information, in accordance with Mercer's record retention policies and procedures. Notwithstanding the foregoing, Mercer may disclose Vendor Confidential Information to its employees, Affiliates or Subcontractors and their respective employees, and to Mercer Clients who have a reasonable need to know (including for the purposes of evaluating a Vendor and their products and services), and who are bound by similar confidentiality terms. Mercer may also disclose Vendor Confidential Information to the extent Vendor has provided consent. Mercer agrees to take all necessary steps to ensure its compliance with these confidentiality terms. These confidentiality obligations shall not apply to information which (i) Mercer must by law or legal process disclose, (ii) is either already in the public domain or enters the public domain through no fault of Mercer, (iii) is available to Mercer from a third party who, to Mercer's knowledge, is not under any non-disclosure obligation to Vendor, or (iv) is independently developed by Mercer without reference to any Vendor Confidential Information.

- d. Mercer may use Vendor Content and any other data provided by Vendor on MercerVIP for purposes of (i) improving and running MercerVIP; (ii) providing Mercer Services, including but not limited to marketing, promoting, and offering Vendor Services to Mercer Clients as Mercer deems appropriate in its reasonable discretion; (iii) correspondence with Vendor in respect of MercerVIP; (iv) marketing, promoting, and offering Mercer services to Vendors, including via email; and (v) in accordance with the Mercer Privacy Policy found here: [Mercer Privacy Policy](#). For additional details on how Mercer may use and process Vendor Content and other data, please refer to the Mercer Privacy Policy. Vendor agrees that Vendor Content including, without limitation, Vendor contact details on profile pages, may be shared with Mercer Affiliates and Subcontractors.
- e. Ownership of the Vendor Content remains with Vendor. Vendor acknowledges and agrees that it may only access its own Vendor Content and Vendor Account, and will not have any access to the Vendor Content or Vendor Accounts of other Vendors.
- f. Vendor reserves the right to accept or refuse to provide the Vendor Services to any Mercer Client in its sole discretion.
- g. Vendor shall implement and maintain technical, physical and administrative safeguards for information it processes consistent with the requirements of the applicable law.

#### **8. PROHIBITED USE AND CONDUCT BY VENDOR**

Vendor represents and warrants that during its participation on and use of MercerVIP, it will not engage in any illegal or prohibited conduct, including, but not limited to, the following:

- a. using MercerVIP for any purpose that is unlawful under any applicable law;
- b. posting material which would be anti-competitive or may constitute price fixing or other similar activity under any applicable law;
- c. posting reviews which are incorrect or untruthful (including both false positive and false negative feedback);
- d. posting material that infringes on the intellectual property rights, privacy rights, publicity rights, trade secret rights, or any other rights of Mercer or any third party;
- e. posting material that is unlawful, obscene, defamatory, threatening, harassing, abusive, slanderous, hateful, or embarrassing to any other person as determined by Mercer in its sole discretion;
- f. generating automated, fraudulent or otherwise invalid impressions, inquiries, conversions, clicks or other actions;
- g. impersonating another person;
- h. distributing viruses or other harmful computer code;

- i. accessing MercerVIP from a country where it is unlawful for Mercer to provide MercerVIP;
- j. accessing, downloading or otherwise taking Mercer Content or any content from MercerVIP for the purposes of monetization or seeking to create a competing product;
- k. collecting personal information of other users from MercerVIP without their consent for the purpose of transmitting unsolicited commercial mass mailings or “spamming”;
- l. copying, distributing, or disclosing any part of the Platform in any medium, including, without limitation, by any automated or non-automated “scraping”;
- m. decompiling, disassembling, reverse engineering or otherwise attempting to obtain or perceive the source code from which the software component of the Platform is compiled or interpreted;
- n. modifying or creating any derivative work from any component of the Platform
- o. using any automated system to access the Platform
- p. transmitting spam or other unsolicited messages through the Platform
- q. attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from servers running the Platform or otherwise damage or interfere with or disrupt the integrity or performance of the Platform;
- r. taking any action that imposes or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure;
- s. attempting to upload invalid data, viruses, works or other software agents through the Platform;
- t. using the Platform for any commercial solicitation purposes;
- u. interfering with the proper working of the Services;
- v. accessing any content on the Platform through any technology or means other than those provided or authorized by the Platform;
- w. bypassing the measure we may use to prevent or restrict access to the Services, including, without limitation, features that prevent or restrict use or copying of content or enforce limitations on use of the Platform or the content therein
- x. engaging in any conduct that restricts or inhibits any other person or entity from using MercerVIP, or which, in the sole discretion of Mercer, exposes Mercer or any of its customers or suppliers to any liability of any type; and
- y. using MercerVIP for any purpose inconsistent with these Terms of Use.

## **9. OPTIONAL AND ADDITIONAL SERVICES**

Mercer may from time to time, offer optional or additional functionality, content or other services as part of the Platform, which may have additional or different terms and conditions that apply to such functionality, content or other services (such additional or different terms and conditions are collectively referred to herein as the “Additional Terms”). Such Additional Terms are hereby deemed incorporated by reference into these Terms of Use and will govern with respect to the specific feature, functionality or other service to which such Additional Terms



apply to the extent of any conflict between these Terms of Use and such Additional Terms.

#### **10. MERCERVIP PREMIUM SERVICES**

MercerVIP Premium Services are optional services made available to Vendor Participants by entering into a separate contract with Mercer. When a Vendor, within its sole discretion, elects to receive MercerVIP Premium Services, Vendor shall enter into a written contract with Mercer, which will be the governing terms regarding the MercerVIP Premium Services. Vendor shall have the opportunity to review contracting terms and conditions prior to making payment and committing to the purchase of MercerVIP Premium Services. To subscribe to MercerVIP Premium Services, see email [mercervip@mercer.com](mailto:mercervip@mercer.com). The purchase of MercerVIP Premium Services does not afford Vendor any preferential status or rights whatsoever.

#### **11. MERCER CONFIDENTIALITY**

Any and all confidential, proprietary or non-public information of Mercer of which Vendor gains access to or knowledge of in connection with these Terms of Use or Vendor's participation on MercerVIP whether or not marked or designated as confidential but which would appear to a reasonably prudent person to be confidential, proprietary or non-public in nature, will be deemed confidential and/or proprietary information of Mercer ("Mercer Confidential Information"). Neither Vendor nor any of Vendor Authorized Users or other officers, employees, advisors, agents or representatives shall disclose or make use of any Mercer Confidential Information without the prior written consent of Mercer, except that the foregoing obligation shall not apply to any Mercer Confidential Information that Vendor is required to disclose by law.

#### **12. LIMITATIONS AND RESPONSIBILITY**

- a. **Role of Mercer.** Vendor acknowledges that MercerVIP is provided for informational purposes to connect Vendor with End Users in connection with the performance of Mercer Services. Mercer acts as a consultant on behalf of Mercer Clients. The scope of Mercer Services will be subject to the separate written agreement between Mercer and Mercer Clients. Mercer does not provide any services to Vendor in connection with Vendor's use of MercerVIP. Neither Mercer nor the Platform provide professional advice of any kind to Vendor. Reliance on any information provided on the Platform is solely at your own risk.
- b. **Availability of Platform.** Vendor acknowledges and agrees that MercerVIP may be unavailable from time to time and may be subject to downtime due to scheduled or emergency maintenance. Vendor acknowledges that Vendor may receive no advance notification with respect to such downtime. Circumstances beyond Mercer's control, such as 'acts of God', interruption of internet or telecommunications services, failure of Mercer Subcontractors or other power failures may interrupt the Platform or cause the Platform to be

unavailable. In such cases, Mercer will use commercially reasonable efforts to restore the Platform. Vendor acknowledges and agrees that Mercer may add to, remove or otherwise modify the Platform, in whole or in part, up to and including completely withdrawing the Platform, or any part thereof, or limiting the volume or availability (geographically, temporally or otherwise) of the Platform, either generally or specifically for any Vendor, at any time with or without notice.

- c. **Hyperlinks or connection to other services or third party sites.** While using MercerVIP, Vendor may encounter hyperlinks to other websites or internet resources. Such hyperlinks are accessed at Vendor's own risk, and the content, accuracy, opinions expressed, or other links provided by these resources are not investigated, verified, monitored, endorsed or controlled by Mercer. The policies, terms and conditions governing such other products or services, which may be services owned or operated by third parties or by Mercer or its Affiliates and Subcontractors, may and likely will be different from these Terms of Use. Upon entering a third-party website, including that of a Mercer Subcontractor, you may be asked to accept the terms of use and/or privacy policies of such third parties. Those third parties' other policies, terms, and conditions will govern the use of information you provide to them (or if other Mercer sites, apps or services, then our terms and conditions with respect to those sites, apps and services). We encourage Vendor to be aware when you leave the Platform and to read the policies, terms and conditions of these other services. Mercer makes no representations or warranties or other assurances or commitments whatsoever about any third parties' sites, apps and other services that Vendor may access through the Platform. The access to other sites, apps and other services, through the Platform does not imply that Mercer is affiliated with or otherwise endorses any third parties, that it is legally authorized to use any trademark, trade name, logo, or copyright symbol displayed in or accessible through the links, or that any linked site is authorized to use any trademark, trade name, logo, or copyright symbol of Mercer. Mercer shall have no responsibility or liability for Vendor's access to or linking to a third-party site, app or other service. Any access provided through the Platform to other sites, apps or other services of Mercer (including its Affiliates) shall be governed solely by our terms and conditions for such other sites, apps and other services.
- d. **RFP Services.** In order for Vendors to access a client-specific Request for Proposal ("RFP") through MercerVIP, Vendor Authorized Users will be connected via a Single Sign On (SSO) to the Proposal Technologies Network, Inc. system. Each Vendor Authorized User will have the ability to access the RFP in that system. By creating an Account through MercerVIP, Vendor is automatically creating an account in the Proposal Technologies Network, Inc. system to allow them to access and respond to RFPs received through MercerVIP.

Upon receipt of an RFP for a client, the Vendor will accept the Terms of Use and Privacy Policy for Proposal Technologies Network, Inc. at the same time you accept the intent to bid. The Vendor Authorized User who accepts the intent to bid, the Terms of Use and the Privacy Policy should have the proper authority to bind Vendor to these terms and conditions.

- e. **Vendor Services Agreements; Sales Support.** If the Vendor is selected for services by a Mercer Client, Vendor is solely responsible for executing a Vendor Services Agreement with such client, and for providing the selected services to the Mercer Client. These Terms of Use do not obligate Mercer to provide services to the Mercer Client on behalf of Vendor. Vendor will provide sales support as requested by Mercer for Mercer Clients that are considering engaging or enrolling in a Vendor program or solution. Any costs associated with said support shall be borne by the Vendor. Vendor will assign a primary contact(s) to Mercer for purposes of providing sales support.
- f. **Locations.** The Platform (including any Mercer Content) is currently controlled, operated, and administered by or on behalf of Mercer from locations within and outside the United States of America, and they may continue to be controlled, operated or administered by Mercer's Affiliates, Subcontractors, or other contractors of the foregoing, around the world. Vendor hereby consents to such activities around the world. Mercer makes no representations that the Platform is appropriate or available for use in all locations. Those who access or use the Platform from other jurisdictions are entirely responsible for compliance with all applicable United States and local laws and regulations, including, but not limited to export and import regulations. Unless otherwise explicitly stated, all materials found on or through the Platform are solely directed to Vendors located in the United States.

### **13. DISCLAIMERS**

- a. MERCERVIP IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED OR STATUTORY, INCLUDING AS TO THE OPERATION OF THE SERVICES; THE ACCURACY, RELIABILITY, COMPLETENESS, OR TIMELINESS OF THE CONTENT PROVIDED ON OR THROUGH THE PLATFORM OR OTHERWISE. MERCER EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY INCLUDING THAT: (I) MERCERVIP WILL BE SECURE, AVAILABLE OR OPERATE IN AN UNINTERRUPTED OR ERROR-FREE MANNER OR (II) ERRORS OR DEFECTS WILL BE CORRECTED OR (III) MERCERVIP WILL BE FREE FROM INTERFERENCE WITH OR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS. VENDOR ACKNOWLEDGES THAT WHILE MERCER SEEKS TO PROVIDE THE PLATFORM IN A QUALITY MANNER, WE CANNOT GUARANTEE THAT THE PLATFORM WILL BE FREE FROM INACCURACIES OR ERRORS, OR

COMPLETE IN ALL RESPECTS AND THAT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MERCER PROVIDES THE PLATFORM AT VENDOR'S SOLE RISK.

WITH RESPECT TO ANY THIRD-PARTY CONTENT, INCLUDING INFORMATION, DOCUMENTS OR OTHER MATERIALS MADE AVAILABLE ON MERCERVIP, VENDOR ACKNOWLEDGES AND AGREES THAT MERCER DOES NOT REPRESENT OR WARRANT THE ACCURACY, ADEQUACY OR COMPLETENESS OF SUCH CONTENT AND EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN SUCH THIRD-PARTY CONTENT. MERCER ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY DAMAGES TO VENDOR, VENDOR'S COMPUTERS, OR OTHER PROPERTY DUE TO VENDOR'S ACCESS TO, USE OF, OR DOWNLOADING OF SUCH THIRD-PARTY CONTENT. VENDOR IS RESPONSIBLE FOR TAKING ALL REASONABLE PRECAUTIONS NECESSARY TO ENSURE THE SECURITY AND INTEGRITY OF VENDOR'S COMPUTER AND SYSTEMS WHEN VENDOR ACCESSES MERCERVIP AND/OR DOWNLOADS OR COPIES ITEMS FROM MERCERVIP.

#### **14. INDEMNIFICATION**

Vendor shall indemnify Mercer from and against any losses, damages, liability, costs and expenses (including reasonable attorneys' fees) incurred by Mercer arising out of or in connection with Vendor's use of MercerVIP and/or Vendor's breach of these Terms of Use.

#### **15. LIMITATION OF LIABILITY**

- a. IN NO EVENT SHALL EITHER MERCER, ITS AFFILIATES OR SUBCONTRACTORS, OR VENDOR, BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR FOR ANY LOST PROFITS, OR HARM TO REPUTATION OR LOSS OF GOODWILL, ARISING OUT OF OR RELATING TO MERCERVIP OR THESE TERMS OF USE.
- b. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF MERCER AND ITS AFFILIATES OR SUBCONTRACTORS (WHETHER BASED ON ANY ACTION OR CLAIM IN CONTRACT, TORT, OR OTHERWISE), TO VENDOR OR ITS AFFILIATES, ARISING OUT OF OR IN ANY WAY RELATING TO MERCERVIP OR THESE TERMS OF USE, EXCEED THE GREATER OF (A) THE AMOUNT PAID OR PAYABLE BY VENDOR TO MERCER FOR MERCERVIP PREMIUM SERVICES IN THE YEAR PRECEDING THE OCCURRENCE GIVING RISE TO THE CLAIM UNDER THESE TERMS OF USE, IF APPLICABLE OR (B) \$1,000 (ONE THOUSAND U.S. DOLLARS).
- c. NEITHER MERCER NOR ITS AFFILIATES OR SUBCONTRACTORS,

SHALL BE LIABLE FOR ANY DAMAGES, LOSSES, OR EXPENSES, WHETHER DIRECT, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL, BASED ON ANY THEORY OF LIABILITY, ARISING OUT OF OR IN CONNECTION WITH (I) VENDOR'S USE OF MERCERVIP OR ANY THIRD-PARTY CONTENT ON A LINKED WEB SITE; (II) VENDOR'S INABILITY TO USE MERCERVIP; OR (III) ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, OR LINE OR SYSTEM FAILURE, EVEN IF VENDOR TELLS MERCER OR ITS REPRESENTATIVES OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, OR EXPENSES ARISING.

- d. THIS LIMITATION OF LIABILITY PROVISION SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.
- e. THE INFORMATION AND DATA OBTAINED THROUGH USE OF THE PLATFORM ARE FOR GENERAL INFORMATION PURPOSES ONLY AND ARE NOT INTENDED AS, NOR IMPLIED TO BE, A SUBSTITUTE FOR PROFESSIONAL ADVICE.
- f. VENDOR ACKNOWLEDGES THAT NO DEFENSE OR INDEMNITY OF ANY KIND IS PROVIDED HEREUNDER BY MERCER (OR ANY OF ITS AFFILIATES OR SUBCONTRACTORS THAT MAY BE INVOLVED WITH THE PLATFORM) WITH RESPECT TO ANY CLAIM, DEMAND, CAUSE OF ACTION, COST, LOSS, DAMAGE, EXPENSE OR LIABILITY ARISING FROM OR BASED ON VENDOR'S OR ANY THIRD PARTY'S USE OF OR INABILITY TO USE THE PLATFORM (INCLUDING ANY OUTPUT OR OTHER CONTENT OBTAINED ON OR THROUGH THE PLATFORM).
- g. THESE TERMS OF USE SET FORTH THE ENTIRE OBLIGATION AND LIABILITY OF MERCER (AND ANY OF ITS AFFILIATES OR SUBCONTRACTORS THAT MAY BE INVOLVED WITH THE PLATFORM), AS WELL AS VENDOR'S EXCLUSIVE REMEDY WITH RESPECT TO THE PLATFORM AND VENDOR'S USE THEREOF.

## **16. TERMINATION AND SUSPENSION**

- a. Mercer reserves the right, in its sole discretion, without penalty, at any time, with or without notice, to:
  - i. deny Vendor access to MercerVIP (or any part thereof) if Mercer believes Vendor is in breach of the Terms of Use;
  - ii. modify or discontinue, temporarily or permanently, MercerVIP (or any part thereof). Vendor agrees that Mercer shall not be liable to Vendor or to any third party for any such modification, suspension or discontinuance of MercerVIP;
  - iii. cancel Vendor's registration and/or withdraw Vendor's right to use MercerVIP. Vendor agrees that Mercer shall not be liable to Vendor or

- to any third party for any such cancellation or withdrawal of MercerVIP;  
and/or
- iv. remove any content (including Vendor Content) which infringes the intellectual property rights of a third party. Vendors must notify Mercer promptly by email at [mercervip@mercer.com](mailto:mercervip@mercer.com) of any content, which Vendor suspects infringes on the intellectual property rights of a third party.
- b. Vendor may cancel its Vendor Account at any time, with 60 days written notice, by contacting Mercer at [mercervip@mercer.com](mailto:mercervip@mercer.com). Cancellation by Vendor of its Vendor Account will not automatically cancel any other optional or additional services the Vendor has purchased from Mercer, including any MercerVIP Premium Services.
- c. In the event the Platform is discontinued or Vendor cancels its Vendor Account, Vendor agrees to continue to provide Vendor Services to those Mercer Clients who have existing Vendor Services Agreements in place pursuant to the terms of such Vendor Services Agreements. No Vendor Services Agreement that is in effect between Vendor and the Mercer Client shall be terminated or otherwise affected by the termination of this Platform or the Vendor cancellation of its Vendor Account for any reason.

#### **17. Export/Import Restrictions and Tariffs**

The Platform may not be available through Mercer to any Restricted Entity. Vendor shall not provide access to the Platform to anyone for use in any country or used in any manner prohibited by the United States or European Union trade sanctions or export control laws, including the Export Administration Act or laws administered by the U.S. Department of the Treasury's Office of Foreign Assets Control. Furthermore, Vendor will comply with any trade sanctions and export and import control laws of the countries and jurisdictions where Vendor accesses and uses the Platform or receives copies of any technical information or other materials. Vendor agrees to indemnify, defend Mercer and hold Mercer harmless from any fines or other penalties arising from a violation of this section. For the purpose of this section, "Restricted Entity" shall mean any individual, organization or other entity owned or controlled by, or acting as an agent for, any person or entity who is the subject of an asset freeze or otherwise designated under United Nations Security Council Resolutions, or the trade sanctions laws of the U.S. or the EU, or other governments of jurisdictions in which Vendor is based or operated and from which the Platform may be accessed.

Vendor represents and warrants that it is not on the U.S. Treasury Department's list of Specially Designated Nationals or any other applicable trade sanctioning regulations. Any use of the Platform by a Vendor that is not eligible under and according to these Terms of Use, is prohibited and is at the own risk of such Vendor.

## **18. MISCELLANEOUS**

- a. **Independent Contractor Status.** Nothing contained herein shall be deemed or construed as creating a relationship of employer and employee, principal and agent, or joint venture between Vendor and Mercer. No provision contained in these Terms of Use, nor any acts of Mercer or Vendor, shall be deemed to change the independent contractor relationship of Mercer and Vendor.
- b. **Compliance with Laws.** Vendor and Mercer shall comply with all applicable federal, state and local laws and regulations in connection with the use of MercerVIP, including but not limited to privacy laws and those requiring registration, licensing and disclosure.
- c. **Governing Law, Jurisdiction and Dispute Resolution.** The Terms of Use shall be governed by and construed in accordance with the laws of the State of New York. Each party submits to the exclusive jurisdiction of the courts located in the State of New York. Each party, on behalf of itself and its Affiliates, to the fullest extent permitted by law, 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 these Terms of Use or the services. The foregoing waiver applies to any action or legal proceeding, whether sounding in contract, tort or otherwise. Each party, on behalf of itself and its affiliates, also agrees not to include any employee, officer or director of the other party or its affiliates as a party in any such action or proceeding. If any dispute between the parties arises out of any matter governed by the Terms of Use, each party will first attempt in good faith to reach a settlement through negotiation by its appointed representative.
- d. **Notices** Vendor agrees that Mercer may provide notices and messages to Vendor either (i) within the MercerVIP platform; or (ii) sent to the contact information provided by Vendor to Mercer (e.g., email, mobile number, physical address). Vendor shall keep its contact information current.
- e. **Severability** It is the intent of the parties that the provisions of the Terms of Use shall be enforced to the fullest extent permitted by applicable law. To the extent the Terms of Use set forth herein or any word, phrase, clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified or deleted in such manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making these Terms of Use, as modified, enforceable, and the balance of these Terms of Use shall not be affected thereby, the balance being construed as severable and independent.

- f. **Non-exclusivity.** Vendor acknowledges and agrees that acceptance of these Terms of Use does not confer an exclusive arrangement with Mercer; that Mercer will offer other Vendor Services on MercerVIP; and that Mercer, may within its absolute discretion, enter into other agreements and arrangements with other vendors and third parties, which offer services similar to or compete with Vendor Services. Nothing herein requires Mercer to offer Vendor or Vendor Services to Mercer Clients, and nothing herein restricts Mercer from working with vendors who do not participate in MercerVIP. Vendor further acknowledges and agrees that it is the Mercer Client, not Mercer, that selects its vendors.
- g. **Advertisement.** Vendor will not make any advertisement, announcement or publication in any media form with respect to, or referring to, Mercer or MercerVIP without first obtaining Mercer's prior written consent.
- h. **Amendment, Waiver and Assignment.** The Terms of Use are subject to modification by Mercer. Mercer reserves the right to review and amend these Terms of Use from time to time. The effective date of the then-current version of the Terms of Use will be noted at the top of the document, as the "Last Revised" date. Such updated terms are effective as of the date we post them or, if applicable, the later date we specify in the updated Terms of Use. Any such updated Terms of Use will be posted on [mercervip.mercer.com](http://mercervip.mercer.com) and notice will be provided to the Vendor's primary email address contained in MercerVIP. Vendor is obligated to maintain accuracy of such email addresses in MercerVIP.

The modified Terms of Use will be effective with respect to any use of the Platform from and after the effective date of the modified Terms of Use. Vendor's use of the Platform after the foregoing notice signifies Vendor's acceptance of the modified Terms of Use. If Vendor does not agree to the updated Terms of Use, then Vendor should discontinue use of the Platform. Each time Vendor uses the Platform, it is deemed to ratify its agreement to the then-current Terms of Use. It is Vendor's responsibility to know and understand these Terms of Use, including any changes or additional terms added in accordance with the procedure in these Terms of Use. As a result, Mercer strongly recommends that Vendor checks regularly for any updates or changes to these Terms of Use, which is accessible at any time on or through the Platform.

The waiver of any breach or violation of any term or condition of these Terms of Use will not constitute a waiver of any subsequent breach or violation of the same or any other term or condition.

Vendor shall not have the right to assign or transfer these Terms of Use or any rights hereunder to any third party without the prior written consent of Mercer. Any purported assignment in violation of this paragraph will be void



and constitute a material breach of these Terms of Use. Mercer may pledge or otherwise encumber, as well as assign, transfer or otherwise dispose of these Terms of Use to any affiliate of Mercer, and/or in connection with any merger, consolidation or sale or other transfer of all or substantially all of the assets to which these Terms of Use relate (and, for the avoidance of doubt, any subsequent assignees or successors shall have the same transfer rights to Affiliates and successors and assignees). These Terms of Use are binding upon and shall inure to the benefit of all parties and their respective successors, heirs, executor, administrators, personal representatives and permitted assigns.

- i. **Authority.** Vendor represents and warrants that the Vendor Authorized User who accepts these Terms of Use on behalf of Vendor has the necessary corporate power and authority to accept these Terms of Use on behalf of and bind its organization, to carry out its obligations hereunder and to grant the rights herein granted.
- j. **Entire Agreement; Force Majeure; No Third Party Beneficiaries** Together with the [Mercer Privacy Policy](#), the Terms of Use constitute the entire understanding between Vendor and Mercer with respect to MercerVIP Platform, and supersede all previous agreements, understandings, negotiations and arrangements between the parties with respect to MercerVIP Platform, whether written or oral. The Terms of Use shall be binding upon and inure to the benefit of the parties' respective successors and assigns. The obligations of the parties that by their nature continue beyond the termination of the Terms of Use shall survive any termination of the Terms of Use. Neither party shall have any liability for any failure or delay in performance of its obligations under the Terms of Use because of circumstances beyond its reasonable control, including, without limitation, pandemics, acts of God, fires, floods, earthquakes, acts of war or terrorism, civil disturbances, sabotage, accidents, unusually severe weather, governmental actions, power failures, computer/network viruses that are not preventable through generally available retail products, catastrophic hardware failures or attacks on its server. There are no third party beneficiaries with respect to the Terms of Use.
- k. **Injunctive Relief.** Vendor acknowledges that Mercer will be irreparably harmed if your obligations under these Terms of Use are not specifically enforced and that it would not have an adequate remedy at law in the event of an actual or threatened violation by you of your obligations. Therefore, Vendor agrees that Mercer will be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violations or breaches by Vendor without the necessity of posting a bond, showing actual damages or that monetary damages would not afford an adequate remedy.
- l. **Contact Information.** Any legal notices by you to Mercer relating to these

Terms of Use should be sent by email to Mercer at the following address: [MercerVIP@mercer.com](mailto:MercerVIP@mercer.com). Should you have questions regarding these Terms of Use, you may contact Mercer by writing to Mercer Health & Benefits LLC, 1166 Avenue of the Americas, New York, NY 10036 USA, Attention: MercerVIP.