



welcome to brighter

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**June 9, 2023**

## Statement of Work (“SOW”)

The objective of this Statement of Work (“SOW”) is to confirm the scope of Mercer’s work and the compensation for this engagement **Educator Trust Program – Consulting Services**. This SOW is between Mercer Health and Benefits LLC (“Mercer”) **Maquoketa Valley Community School District** (“Client”) and is subject to the terms and conditions contained in the existing engagement letter dated **March 1, 2012 (the “Agreement”)**. All capitalized terms not defined in this SOW shall have the meanings ascribed to them in the Agreement.

### 1. Description of Mercer responsibilities:

The Services under this SOW shall commence on July 1, 2023 (“Effective Date”) and continue through June 30, 2024 (“Initial Term”) and shall automatically renew for consecutive one (1) year terms thereafter (each a “Renewal Term”).

Service	Attachment Number	Commencement Date	Go-Live Date	Notice of Non-Renewal Date	Renewal Date
Core H&B Services	1	April 1, 2023	July 1, 2023	April 1, 2024	July 1, 2024
Health Advocate Services	2	April 1, 2023	July 1, 2023	April 1, 2024	July 1, 2024

Additional projects requested by Client that individually are not expected to exceed \$10,000 will be billed (i) at time and expense (based on Mercer’s 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 Agreement.

The Services are subject to the terms of the following Attachments incorporated by reference:

<b>Attachment</b>	<b>Attachment Number</b>
Health & Welfare Services Schedule	1
Health Advocate Services	2

**2. Description of Client responsibilities:**

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

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

Additional responsibilities may be listed in the Service Schedule attachment.

**3. Period of time over which work is performed:**

The Services under this SOW shall commence on July 1, 2023 (“Effective Date”) and continue through June 30, 2024 (“Initial Term”) and shall automatically renew for consecutive one (1) year terms thereafter (each a “Renewal Term”).

**4. Compensation/fees:**

Mercer will receive base commissions and/or fees from insurance carriers and/or fees from vendors, and /or fees from Client as billed, collected, and remitted by a third party (i.e. carrier) that are disclosed separately on Mercer’s Transparency and Carrier Information Form or equivalent for the Services which Mercer has provided or will provide to Client separately.

In addition to the compensation set forth herein, Mercer also bills for other expenses related to the Services requested.

If applicable, Client may be billed this compensation pursuant to a Billing and Collection Agreement or other similar arrangements with the applicable third party. If Client fails to make payments more than (30) days after the due date, Mercer may exercise our right to claim interest for late payment. If such failure to pay extends beyond ninety (90) days, Mercer 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 prior to the expiration of the Initial Term or Renewal Term, the parties agree that Mercer will not have received full compensation for Services 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 Services, 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 Services 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.

Mercer has entered this SOW with Client based, in part, on an expectation that base commissions will adequately compensate Mercer for the performance of the Services. From time to time, the level of premium volume and in turn resulting commission that is based upon premium volume may reduce due to a number of factors, including external events such as reductions in force or beneficial cost reducing decisions made by the Client. In such situations, Client agrees to renegotiate the overall level of compensation Mercer receives within 90 days of Mercer notifying Client of such reduction by (i) working with Mercer and the applicable carriers to increase Mercer's commission rates and/or (ii) directly providing Mercer additional compensation, to the extent permitted by law, for the purpose of maintaining a level of compensation for Mercer consistent with the Services provided hereunder. Such consideration will be made when the aggregate commission amounts received by Mercer across all lines of coverage subject to this SOW decrease from the prior year.

In the event Mercer is unable to negotiate the full Renewal Term Adjustment, Client will pay Mercer the difference, to the extent permitted by law, at the end of the Renewal Term.

In the event Client terminates this SOW 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.

Line(s) of Coverage/Service	Commission
Medical	\$36 PCPM
Dental - Delta Dental	10%
Dental - Delta Dental - Administrators	5.5%
Vision - VSP	Graded Schedule
Group Life/AD&D	17%
Group Voluntary Supplemental Life/AD&D	17%
Group Long Term Disability	18.5%

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

## 5. Subcontractors

Mercer may need to utilize various subcontractors (“Subcontractors”) in the course of the provision of the Services to assist in such tasks as printing and mailing, development of interactive tools, graphic design, etc. Client consents to Mercer’s use of the Subcontractors and further acknowledge and agree that Mercer may provide such Subcontractors with Client’s 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 Client’s name, logo, tradename and/or mark in connection with the performance of the Services. Client consents to such use, and grant to Mercer and its agents, vendors and subcontractors of a non-exclusive, royalty-free, limited license to use Client’s name, logo and any tradename or mark only in connection with the performance of the Services. The parties further agree that such use will be subject to Client’s instruction, direction or prior written approval as to style, form, context and general content. Client will not unreasonably delay or withhold its approval.

## 7. Additional Disclosures

a. Mercer is 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 Mercer’s engagement. Mercer does not act on behalf of any insurer or other service provider, is not bound to utilize any particular insurer or service provider, and does not have the authority to make binding commitments on behalf of any insurer or service provider. In addition, Mercer does not guarantee or make any representation or warranty that coverage or service can be placed on terms acceptable to Client. Mercer is 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 Client’s other risk or insurance coverage or other business is placed will be deemed acceptable to Client, in the absence of contrary instructions from Client.

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 Services to Client pursuant to this SOW, Mercer may involve its Affiliates, from time to time, to assist in the performance of such Services.

c. Client expressly acknowledge that, with respect to the provision of the Services, Mercer is not, nor are any of Mercer’s 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 Services, is Mercer or any of Mercer’s 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. Mercer's insurance-related work qualifies Mercer as a financial institution under this Act. Mercer's Privacy Policy Notice and additional information regarding other compliance policies at Mercer, including its conflicts of interest policy is available at the following web address <https://www.mercer.us/about-merc/er/transparency.html>. At this web address Client 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.

*[Remainder of this page left blank intentionally]*

We appreciate Client business and look forward to working with Client on this engagement. Please acknowledge Client agreement to the terms contained herein by signing below.

**Mercer Health & Benefits LLC**

By:  \_\_\_\_\_  
DocuSigned by:  
6D7EB99E04AB46E...

Name: \_\_\_\_\_  
(Please Print)

Title: \_\_\_\_\_

**ACCEPTED AND AGREED  
Maquoketa Valley Community School District**

By:  \_\_\_\_\_  
DocuSigned by:  
8763B8346246430...

Name: \_\_\_\_\_  
(Please Print)

Title: \_\_\_\_\_

## **MERCER HEALTH & BENEFITS SERVICE SCHEDULE**

### **Attachment # 1**

Our Services will consist of the following:

#### **Client Strategy Development**

- Conduct strategic planning sessions to review 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 per year
  - Pre-Renewal - 1 per year
  - Renewal meeting - 1 per year
- Meet with the Client's key designated representatives 2 times per year 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 as requested.

#### **Renewal/Marketing**

- Develop a mutually agreeable renewal action plan and timeline that meets the Client's stated objectives.
- Upon the request of Client, we will assist Client in the preparation of a RFP for purposes of obtaining competitive quotes from the marketplace, based on the timeline below. We will be the primary point of contact during the bidding process. This includes insurance policies as Identified for Coverages and Services on Mercer Transparency (TCI) or otherwise noted as Mercer Brokered Services.
- When marketing Client coverages, we will prepare an analysis comparing proposals to current costs, plan designs, administrative capabilities, network discounts and network accessibility as applicable.
- 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.

#### **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 review carrier/vendor utilization reports to determine possible causes of identified cost increases. Assist Client in managing these risks and costs.
- Provide claim reports for identified coverages detailing paid claims (and reimbursements if applicable), premium/funding and enrollment summaries. We will review these reports with Client on an annual basis and will identify and discuss trends and potential problems.
- Provide agreed upon cost projections on an annual 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.
- Provide 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.

### **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 IRS, 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).

Provide Health Advocate services for Clientr employees.

Provide access to **Compliancedashboard**, a third-party compliance solution to help clients stay on top of compliance requirements specific to their benefit plans. It includes key deadlines, reminders and reports to assist with plan management and audit activities.

**BUSINESS SOLVER** – Coordinate with the Trust and the Trust’s enrollment vendor to implement online enrollment for selected lines of coverage and assist client in addressing online enrollment issues.

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

## HEALTH ADVOCATE SERVICES

### ATTACHMENT 2

#### IDENTIFICATION OF PLAN(s) (“Plan(s)”) TO WHICH HEALTH ADVOCATE SERVICES RELATE:

Maquoketa Valley Community School District - medical, dental, and vision plans

1. **SCOPE OF SERVICES.** The Client retains Mercer for purposes of arranging health advocacy services to the Participants and Beneficiaries which shall include spouses, retirees, dependent children, parents, and parents in-law (“Members”) described in this Attachment (the “Services”). The Vendor providing the Services hereunder is Health Advocate, Inc. (“Health Advocate”).
2. **SERVICES PROVIDED BY VENDOR.**
  - 2.1 **The Personal Health Advocate:** typically a registered nurse, assigned to serve the Member as soon as he/she calls to access the Services. The Personal Health Advocate handles a range of issues as Members seek healthcare services and interact with Providers and insurers.
  - 2.2 **24/7 HelpNet:** Health Advocate is available 24 hours a day, 7 days a week using a toll free phone number.
  - 2.3 **Care Coordination:** The Personal Health Advocate helps Members coordinate care among physicians and medical institutions.
  - 2.4 **Medical Director and Administrative Support:** Physicians and administrative staff support the Personal Health Advocates.
  - 2.5 **Benefits Advantage™**
    - 2.5.1 **Claims Assistance:** The Personal Health Advocate helps sort out and solve claims and related paperwork problems. Health Advocate can assist Members with coverage and benefits issues.
    - 2.5.2 **Fee Negotiation:** When necessary, Health Advocate can attempt to negotiate fees with healthcare Providers and can also review questionable bills.
    - 2.5.3 **Grievance Advice:** Health Advocate will provide assistance to Members when filing a complaint or grievance.
    - 2.5.4 **Coverage Advantage™:** The Personal Health Advocate can help Members through the coverage review process and, when necessary, can also assist in identifying alternative coverage options.
    - 2.5.5 **RxAdvocate™:** The Personal Health Advocate can assist Members with prescription drug issues including formulary and benefit questions.
  - 2.6 **Physician Locator:** The Personal Health Advocate can help Members identify physicians, hospitals, dentists, and other healthcare Providers for needed services.
  - 2.7 **Advocates of Excellence:** Health Advocate can help identify leading medical institutions, Centers of Excellence and medical Providers to assist Subscribers in need of complex medical care. The Personal Health Advocate can help Members schedule appointments with these Providers, as required.
  - 2.8 **Health Advocate CareQuest:** This Service locates resources and makes arrangements for Members in need of special services that typically fall outside the realm of traditional healthcare benefits. The Member may be responsible for payment for any services that they use beyond what may be covered by their health insurance plan.
  - 2.9 **Health Cost Estimator:** The Personal Health Advocate can assist Members in estimating costs for upcoming medical procedures.
  - 2.10 **Health Advocate Medical Bill Saver:**

Specialized Negotiation Unit – Eligible Members are given access to a Specialized Negotiation Unit (SNU). SNU staff will attempt to negotiate a reduction in the Member’s out-of-pocket share of medical and dental bills in excess of \$400 including, but not limited to bills from physicians, hospitals, surgery centers, radiology and other diagnostic service providers, and various ancillary medical providers (“Providers”). The SNU will attempt to negotiate any medical or dental bills regardless of insurance or benefit status (e.g., insured, underinsured, non-covered service, out-of-network service). In addition, the SNU will attempt to negotiate Provider discounts and/or payment terms prior to a Member receiving care, (e.g., non-covered services and out-of-network care).

Fee Benchmarking Databases - The Specialized Negotiation Unit will consult with various public and proprietary databases and reference tools in order to optimize savings to Members.

Provider Acceptance – Health Advocate will secure a written release from the provider signing-off on the terms and conditions negotiated on the Member’s behalf.

Savings Result Statement – Health Advocate will provide each Member with a written statement summarizing the outcome of the negotiation with a provider and outlining any applicable terms and conditions of the required payment due to the provider. The Member shall be financially responsible for making payment in accordance with the terms and conditions outlined. The Member will be advised that in the event he/she does not adhere to such terms and conditions, the provider is not obliged to accept less than what the provider originally billed the Member.

Health Advocate will make commercially reasonable efforts to negotiate savings on behalf of Members. Health Advocate does not make any promise or guarantees regarding the outcome of such negotiations.

3. **GRANT OF RIGHTS.**

3.1 Client hereby agrees that all trademarks, including, without limitation, “Health Advocate” “HealthLinx” “CareQuest” “PaperChase Services” “Advocates of Excellence” “Physician Locator” and “DoctorReach” and all intellectual property relating thereto and goodwill associated therewith contained in this description of Services are the sole and exclusive property of Health Advocate, Inc.

3.2 Mercer represents and warrants that it is an authorized sales distributor of the Services provided by Vendor as contemplated hereunder.

4. **TERM.** This Attachment shall commence as of the Effective Date, and shall continue until July 1, 2023 (“Initial Term”). Thereafter, this Attachment shall automatically be renewed for successive one (1) year terms (each a “Renewal Term”) unless terminated as set forth in the SOW.

5. **DISCLAIMER OF WARRANTIES.** WITH RESPECT TO THE SERVICES PROVIDED UNDER THIS ATTACHMENT, CLIENT ACKNOWLEDGES THAT: (A) VENDOR PROVIDES ADMINISTRATIVE SERVICES THROUGH ITS EMPLOYEES, (B) VENDOR DOES NOT PROVIDE HEALTH INSURANCE OR MEDICAL SERVICES, AND (C) INDEPENDENT HEALTHCARE PRACTITIONERS THAT ARE NOT EMPLOYEES OR AGENTS OF VENDOR PROVIDE ALL MEDICAL SERVICES.

**BILLING TERMS**

Health Advocate Service costs will be fully covered by base commissions received with respect to Client’s insurance plans for which Mercer is the broker of record to the extent available and subject to applicable laws. This arrangement is not offered as an inducement to purchase insurance of any type, but rather to help demonstrate that the services Mercer provides are commensurate with the overall compensation Mercer receives. In the event Client terminates Mercer as broker of record with respect to any or all of

Client insurance plans, services under this SOW will immediately terminate unless otherwise mutually agreed.

## **FEE SCHEDULE**

<b>Health Advocate</b>		
<b>Description of Service</b>	<b>Fees</b>	
<b>Health Advocate Fee</b>	\$0.80	per employee per month
<b>Medical Bill Saver</b>	\$0.25	per employee per month

## **ADDITIONAL TERMS**

### **1. Definitions:**

- 1.1 Beneficiary means an individual who may receive benefits under the Plan(s) as a result of their relationship with a Participant.
- 1.2 Employee means those individuals exclusively identified by Client as being employees and recipients or users of the Services, and may include, without limitation, individuals recognized by Client as employees for federal tax reporting and withholding purposes, individuals receiving continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1986 or similar state law, and retirees.
- 1.3 Mercer Vendor means a service provider under contract with Mercer or a Mercer Affiliate which either provides Services directly to Client or assists Mercer in the provision of Services to Client.
- 1.4 Participant means an Employee who is enrolled in the Plan(s).
- 1.5 Third Party Vendor means a service provider, other than Mercer, retained by Client for the provision of services to Client or the Plan(s).

### **2. Additional Terms.** The following terms and conditions apply to the Engagement Letter, SOW and the Attachments:

- 2.1 **Provision of Services by Mercer and Mercer Affiliates.** Client retains Mercer for purposes of providing or arranging for the provision of the services more fully described in the Attachment(s) noted pursuant to the terms of this Statement of Work and the applicable Attachment(s) (which are incorporated herein by this reference)(referred to herein as the "Services"). As identified in certain Attachment(s), if applicable, Services may be performed by a Mercer Affiliate or a Mercer Vendor under the terms and conditions of the Engagement Letter.
- 2.2 **Precedence.** In the event of a conflict between the terms of the Statement of Work and the applicable Attachment(s), the terms of the Attachment(s) shall prevail. In the event of a conflict between the terms of this Statement of Work and the Engagement Letter, the Statement of Work will prevail. In the event of a conflict between the terms of this Attachment and another Attachment, the terms of this Attachment will prevail.
- 2.3 **Relationship of the Parties.** The relationship of Client and Mercer shall be that of independent entities contracting with each other for the sole purpose of carrying out the provisions of this Statement of Work. Nothing contained herein shall be construed to create an employment, partnership, or other joint venture relationship between Client and Mercer.
- 2.4 **Plan Fiduciary Instruction.**
  - 2.4.1 NEITHER MERCER NOR ANY MERCER VENDOR IS A PLAN ADMINISTRATOR OR FIDUCIARY AS DEFINED UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 ("ERISA"). Client acknowledges, agrees and warrants that Client is the named Plan Administrator and/or Fiduciary for the Plan(s) within the meaning of ERISA, and, notwithstanding anything to the contrary contained herein, that neither Mercer nor any Mercer Vendor is a fiduciary or has any discretionary authority or responsibility with respect to the Plan(s) or Plan assets. It is understood

and agreed that Client and/or the relevant Plan(s) have full and final authority and responsibility for the Plan(s), Plan(s) assets, and Plan(s) operation. Client shall defend, indemnify and hold harmless Mercer from and against any and all losses, damages or expenses incurred by Mercer as a result of a finding that Mercer is a "Plan Administrator" or "fiduciary", as defined by ERISA, by virtue of its performance of this Statement of Work. Neither Mercer nor any Vendor shall have any duty or power to act on behalf of Client or any Member in connection with the Plan(s) other than as expressly stated in this Statement of Work or upon instruction from Client.

2.4.2 Client shall provide necessary instruction with respect to the Services hereunder regarding Client's operation of the Plan(s). Mercer and Mercer Vendors, if applicable, shall exclusively rely on instruction from Client with respect to the operation of the Plan(s).

2.4.3 Mercer and Mercer Vendors, if applicable, shall be entitled to conclusively rely on any written communication received from Client, which it reasonably believes to be genuine and signed by a person with apparent authority to issue such a communication. Neither Mercer nor Mercer Vendors, if applicable, shall then be under any duty to make an investigation or inquiry as to the truth, accuracy, or completeness of any statement or information contained therein.

2.4.4 The Statement of Work, the plan documents or summary plan descriptions for the Plans shall constitute Client direction.

## 2.5 **Grant of Rights.**

2.5.1 Client hereby grants to Mercer and any Mercer Vendor a non-exclusive, royalty-free license to use Client's name, logo, any tradename or trademark, and any service marks or service names in connection with Mercer's performance of the Services provided such use shall be subject to the prior written approval of Client as to style, form, context and general content. Client shall not unreasonably delay or withhold its approval.

2.5.2 Client hereby grants to Mercer and any Mercer Vendor a non-exclusive, royalty-free license to use all data or information (in whatever form or media, including Member data) that is supplied to Mercer by or on behalf of Client hereunder or Client makes accessible to Mercer as a result of the Services contracted for or provided under this Statement of Work. Client represents and warrants to Mercer that it owns or is lawfully authorized to use all data and Client information that are provided to Mercer in order that Mercer may provide the Services.

2.6 **Third Party Services.** In performing its responsibilities under this Statement of Work, Mercer may use the services of independent contractors, Mercer Vendors, or an Affiliate without notice to, or consent of Client. Mercer's use of independent contractors, Mercer Vendors, or an Affiliate shall not relieve Mercer of any responsibility to Client hereunder. This provision supersedes the subcontractors provision of the Engagement Letter with respect to the Services.

2.7 **Security of Systems.** Client shall not cause or knowingly permit (i) any person to use the Services other than its own authorized Members, or (ii) any use of the Services in any unauthorized manner. Client agrees to promptly report to Mercer all unauthorized uses and users of the Services. Client shall maintain any IDs and passwords issued by or on behalf of Mercer in strict confidence and shall advise its authorized Members to maintain such IDs and passwords in strict confidence. Client acknowledges that Mercer reserves the right to disable any ID or password upon reasonable belief that security has been, or will be, compromised.

## 2.8 **Indemnification and Hold Harmless.**

2.8.1 Client shall indemnify, defend and hold harmless Mercer, its Affiliates and subcontractors, and their respective members, directors, officers and employees ("Mercer Indemnified Person") from and against any and all Losses which may be



imposed on or incurred by or instituted against any such Mercer Indemnified Person relating to or arising out of: (a) any data or information furnished by or for Client to Mercer; or (b) any act or omission by Mercer to a transaction executed at the direction of Client provided, that Client will not be liable under this indemnity to the extent any losses are determined, in a final judgment by a court, not subject to further appeal, to have resulted primarily from the gross negligence, or bad faith conduct of Mercer Indemnified Person; or (c) Client's breach under this Statement of Work.

2.8.2 For purposes of this Statement of Work "Loss" means damages, claims liabilities, losses, awards, judgments, penalties, interest, costs and expenses, including reasonable attorneys' fees, whether arising in tort, contract 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.

2.8.3 This provision shall survive the termination of this Statement of Work.

## 2.9 **Use of Personal Information Practices.**

2.9.1 Mercer shall receive, maintain, use and disclose Protected Health Information, as defined in HIPAA ("PHI"), regarding Members in accordance with the Business Associate Agreement between Client and Mercer and Mercer Health & Benefits Administration LLC is hereby included in the definition of "Business Associate" for purposes of that agreement.

2.9.2 Client shall send and receive PHI and other personal information through a secure transmission application including, without limitation, encrypted WinZip® files, the https Connect site maintained by Mercer, secure FTP, US Mail, or other mutually agreeable means and shall not use any unsecure means to transmit PHI or personal information such as, but not limited to, fax or unencrypted email.

## 2.10 **Ownership and Restrictions on Use.**

2.10.1 Client acknowledges and agrees that (a) no licenses under any patents, copyrights, trademarks, trade secrets or any other intellectual property rights, express or implied, are granted by Mercer or Mercer Vendor hereunder; (b) all patents, copyrights, circuit layouts, mask works, trade secrets, source code, listing(s) and procedure(s) and any part or executable derivative of the Services are and will remain the exclusive property of Mercer Vendor and/or Mercer; and (c) it shall not sell, transfer, publish, disclose, display or otherwise make available Mercer's or Mercer Vendor's trademarks or any other intellectual property or copies thereto to third parties. Client will not take any action that jeopardizes Mercer's or a Mercer Vendor's proprietary rights or acquire any right in the Services or Mercer Information, or a Mercer Vendor's, confidential information.

2.10.2 Where applicable, Client will not modify or attempt to modify the Services in any manner. A Mercer Vendor and/or Mercer will own all rights in any copy, translation, modification, adaptation of the Services or other items of confidential information, including any improvement or development thereof. Client shall execute, at Mercer's reasonable request, any instrument that may be appropriate to assign these rights to Mercer or a Mercer Vendor or perfect these rights in Mercer Vendor's and/or Mercer's name.

2.10.3 Where applicable, Client shall not download, decompile, disassemble or reverse engineer the Services, the Mercer or Mercer Vendor software (including web sites, if any) or any of their component parts.

2.10.4 Except to the extent expressly permitted in this Statement of Work, Client shall not allow any third party within Client's control other than its Members, to have access to the Services without the prior written consent of Mercer.

2.10.5 Client shall not use Mercer's or a Mercer Vendor's name, trademarks or logo without Mercer's and/or Mercer Vendor's prior written consent except that nothing herein shall prohibit Client from using Mercer's and/or Mercer Vendor's trademark or logo in materials approved by Mercer or Mercer Vendor, as applicable. Client is not authorized to prepare or distribute any promotional or descriptive material relating to this Statement of Work or the Services, without the prior written approval of Mercer or, if applicable, a Mercer Vendor. Client shall make no use of the name "Mercer" except as expressly authorized in writing by Mercer.

2.10.6 The obligations set forth in this Section 2.10 shall survive the expiration or termination of this Statement of Work.

2.11 **Disclaimer of Warranties.** EXCEPT AS PROVIDED HEREIN, ALL SERVICES AND THIRD PARTY LICENSED PRODUCTS ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND. MERCER MAKES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS WITH RESPECT TO SUCH LICENSED PRODUCTS OR SERVICES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR INTENDED USE.

2.12 **Force Majeure.** Mercer shall not be deemed to have breached this Statement of Work if its delay or failure to perform all or any part of its obligations hereunder results from a condition beyond its reasonable control, including without limitation, acts of God or the public enemy, flood or storm, strikes, power failure, hacker attacks, failures or substitution of equipment, communication line failure, acts or omissions of any third party Vendor, statute, or rule or action of any federal, state or local governmental agency. As soon as reasonably practicable following removal of a force majeure event, Mercer will commence performance under this Statement of Work and be subject to its provisions.

2.13 **Termination.** Notwithstanding any contrary provision of the Engagement Letter, this Attachment may only be terminated as follows:

- A. Mutual Consent. Upon the mutual written consent of the parties.
- B. Unilateral Notice. With respect to this Attachment only, at the expiration of the Initial Term or any Renewal Term by either party providing a written notice of termination to the other party on or before the applicable Notice of Non-Renewal Date (or the proper anniversary of the Notice of Non-Renewal Date in the case of a current Renewal Term) set forth above.
- C. Breach. In the case of a material breach of the Engagement Letter or this Statement of Work the non-breaching party may provide the breaching party with thirty (30) days prior written notice and opportunity to cure said breach. Said notice must specify the nature of the breach. If such breach is not cured to the reasonable satisfaction of the non-breaching party within said thirty (30) day notice and cure period, the non-breaching party may, at its option and upon written notice to the breaching party, immediately terminate this Attachment that was breached, in which event the Administration Fee shall be reduced to eliminate the applicable charges for the Services set forth in this Attachment.
- D. Bankruptcy. Either party may terminate this Attachment immediately upon written notice to the other party in the event the other party becomes insolvent, or enters into bankruptcy or other reorganization proceedings.
- E. Loss of License. Mercer may terminate this Attachment immediately upon any termination of Mercer's right to access, use, or resell a Service provided by a Mercer Vendor in total or solely with respect to Client.
- F. Broker of Record Change. If Client substantially alters its consulting engagement or terminates its current broker of record for all or a portion of Client's Plan(s), Mercer may terminate Services under this Attachment immediately upon ninety

(90) days prior written notice and all fees due or paid for Services rendered through the date of termination hereunder will be deemed earned in full.

**Events Upon and After Termination.** Upon and after termination of this Attachment Client shall (a) immediately pay Mercer any and all fees or other amounts set forth in this Attachment, (b) timely and adequately notify all appropriate parties, including but not limited to employees and service providers to the Plan(s), that services with Mercer under this Attachment have terminated, and (c) select and appoint a successor to whom Mercer can send appropriate Plan(s) records, or copies thereof, at Client's sole expense. In the absence of an appointed successor, Mercer may forward Plan(s) records, and/or copies thereof, directly to Client or its designee at Client's sole expense. For the avoidance of doubt, upon termination Mercer shall charge Client all Fees due hereunder for services performed prior to the date of termination and all Fees relating to the remainder of the Initial Term (or Renewal Term, if applicable).

This provision supplements the provisions of the Engagement Letter relating to term and termination of Services under this Attachment and shall govern in the event of a conflict.