



Vestwell Platform Terms of Use

By selecting “I Agree to this Agreement” or similar words presented during the Account registration process, you agree to comply with these Terms of Use, as may be amended by us from time to time. If you are using our services on behalf of an organization or entity, then you are agreeing to these Terms of Use on behalf of that organization and you represent and warrant that you have the authority to bind the organization to these Terms. We may update these Terms of Use and will inform you of any changes by posting the updated version in our Help Center.

For purposes of these Terms of Use:

- “Account” means your retirement plan account, emergency savings account (“ESA”), individual retirement account (“IRA”), Gradifi Powered by Vestwell account, or any other demand deposit or savings account at a bank established by Vestwell to hold ESA funds or that is supported by Vestwell for any state savings program.
- “Account Data” means all information and records that we require in order to open and support an Account.
- “Confidential Information” means non-public information clearly identified as proprietary or confidential or which by its nature should be reasonably construed to be confidential. Confidential Information may include, but is not limited to, data about Plans, clients, advisors, or other End Users of our platforms or services; Personal Information (as defined below); our proprietary software existing or under development, other solutions currently existing or under development, financial information, client and prospect lists, marketing or business strategies, proprietary databases and programs, and any information related to any aspect of our platform’s security.
- “End User” (sometimes referred to as “You” or “you” in these Platform Terms of Use) means all users of the Vestwell Platform, Gradifi Powered by Vestwell solutions, and our services, including Plan Sponsors, employers, participants and their authorized users, legal representatives, advisors, alternate payees, beneficiaries, and Third Party Administrators.
- “Good Order” means providing data or records to us (1) in our proper format for the specific transaction, (2) in accordance with our established procedures and the

established procedures of any bank, custodian, subcustodian, or network involved in processing a transaction, and (3) by the submission deadlines required by Vestwell, including compliance with specified deadlines before every regular or off-cycle pay period, at year-end, and as part of the annual compliance testing process. For Plan conversions from another service provider, Good Order also requires a full accounting in a specified format for all participant Accounts with money sources identified. We may also require additional formatting, content, or submission specifications to constitute Good Order depending on your payroll provider, TPA, Plan features, or for other reasons necessary to comply with the Vestwell Platform compatibility.

- “Instruction” means any direction or authorization provided to Vestwell, in any form or by any means acceptable to us, by (1) the Account owner, Plan Sponsor, Client, a Plan participant, beneficiary, alternate payee, you, any of your authorized users who you have provided access to your Account, any Third Party Applications or Providers (as defined in our Services Agreement), or other person who may act, who you have authorized to act, or who Vestwell reasonably believes to be acting on behalf of any such persons; (2) anyone who accesses your Account by any means using your login credentials or your authorized users’ login credentials, or who successfully completes our caller identification procedures; or (3) by anyone who has and uses your or your authorized users’ Account access credentials who gained access to those credentials without negligence of Vestwell.
- “Personal Information” means any information or data that (1) identifies an individual, including by name, signature, address, telephone number or other unique identifier; (2) can be used to identify or authenticate an individual, including passwords, PINs, biometric data, unique identification numbers (e.g., social security numbers), answers to security questions, or other personal identifiers; or (3) a bank account number, credit card number, or debit card number, in combination with any required security code, access code, or password, that would permit access to an individual's financial account.
- “Plan(s)” refers to a tax-advantaged, defined contribution retirement program offered by employers to their employees that satisfies applicable requirements of the Employee Retirement Income Security Act (“ERISA”) and related regulations.
- “Vestwell” (sometimes referred to as “we,” “us,” or “our”) refers to Vestwell Holdings Inc. and all of its subsidiaries, affiliates, employees, officers, directors, successors, assigns, and representatives.

Section 1: Our Data Privacy, Security, and Confidentiality Procedures

Protecting Personal and Confidential Information is a top priority. We have implemented a set of security and related procedures that apply to our platform. To protect against the risk of loss of any data, there are certain protocols that all End Users must follow and, by using our platform or receiving our services, you agree to comply with those procedures.

1. How We Handle Your Personal Information

We agree to protect Personal Information following industry practices and collect such information consistent with the privacy policy that applies to you, which is available on our platform and our websites, www.vestwell.com and www.gradifi.com. By using our platform or services, you acknowledge that you have read, accepted, and understand the terms of our privacy policies. We review and revise these policies periodically. We share Personal Information with other service providers to your Plan or Account who need to know this information so that we can all perform our respective contractual or regulatory obligations. They may have their own privacy policies and practices for which Vestwell is not responsible.

We train and instruct our employees about our security obligations and protocols. If we receive any order, demand, warrant, or other regulatory request to compel the production of Personal Information or any other information you provide to us in connection with your use of our platform and services, we will notify your employer or you, as applicable, unless we are prohibited from doing so by applicable law.

Upon the earlier of i) eight years following the expiration or termination of our agreement with the Plan Sponsor, Client, or Employer identified in our Services Agreement, ii) a determination that we have no business or other need for such records, or iii) upon Instructions (to the extent consistent with applicable regulatory requirements from the Plan Sponsor, Employer, or Client identified in our Services Agreement), we will dispose of all records containing Personal Information in our possession following the procedures in our Records Retention Policy. We are not obligated to discard and may not discard any such records that we are required to maintain pursuant to applicable law or our Records Retention Policy, records that are commingled with other records such that it would impose an unreasonable administrative burden to us to destroy such records, or records that are kept in an encrypted archived system that satisfies our security policies.

2. Our Information Security Program

Our handling of Personal Information complies with applicable laws and regulations and we have implemented a written information security program that includes administrative, technical, and physical safeguards and other security measures necessary to protect the confidentiality of Personal Information, guards against foreseeable threats to the security or integrity of Personal Information, and minimizes the risk of unauthorized access to Personal Information that could result in harm to an End User.

3. Our Incident Response Program

We will notify the Plan Sponsor, Client, or Employer identified in our Services Agreement and anyone affected by unauthorized loss or compromise of Personal Information upon confirming

that there has been unauthorized access, disclosure, loss, misuse, or damage to Personal Information while it was in our possession. To the extent consistent with our Corrections Policy, Services Agreement, and applicable laws and regulations, we will promptly notify the affected Plan Sponsor, Employer, or Client about the incident; investigate the incident; identify root cause(s); take appropriate action to prevent a recurrence of the incident; determine whether notice or other relief needs to be provided to any individuals, regulators, consumer reporting agencies, or others; and offer appropriate remediation to affected individuals.

Section 2: Plan Participants and Account Owners are Always in Control of their Investments and are Solely Responsible for their Investment Decisions

We Do Not Provide Legal, Investment, or Tax Advice

Neither Vestwell nor any of our subsidiaries provides any review of your financial situation, tolerance for risk, or the suitability or appropriateness of any investment or investment strategy. All of the retirement Plans supported by the Vestwell platform are intended to be covered by the protections of ERISA §404(c), 29 CFR §2550.404c-1. End Users are solely responsible for determining whether a particular investment option or strategy is suitable for them. Unless we have expressly agreed to otherwise, in writing, in our Services Agreement or agreement with any Individual Retirement Account or Emergency Savings Account owner, we are not an investment or other fiduciary; we have no authority, control, or discretion with respect to the investment options that are available to End Users; and nothing in our communications, these Terms of Use, or any materials on our website or platform create a course of dealing or should be construed otherwise.

The output of any tools we provide, educational material on our websites, or that we provide to you are not recommendations, solicitations, or endorsements of any investment, decision, or strategy. All investments involve risks, including the loss of principal, and participants are responsible for determining whether they can afford the risks of using the output from any of our tools in making any investment or creating or following any investment strategy. While we provide participants with tools and ways to help them manage their investments, we do not provide investment, tax, or legal advice to any individual. You must select and consult with your own investment, tax, or legal advisers. We provide non-fiduciary educational materials that you may wish to use in making your own investment decisions. By agreeing to these Terms of Use, you agree that we do not provide such advice and that all decisions about investing and trading in your Account or with respect to your Plan are made by you or someone you have authorized to provide Instructions on your behalf.

All investment transactions and trading activities on our platform are handled consistent with our Trading Policies and Procedures and Corrections Policy, available in our Help Center. By agreeing to these Platform Terms of Use, you acknowledge having read and understand those policies and content on our Help Center about our managed account feature or other investment options available to your plan.

Section 3: Your Responsibility to Protect Your Account and Immediately Notify Us of Unauthorized Activity

1. Your Obligation to Protect Your Password and Account Credentials

End users of our platform create their own credentials to log into our platform and access their Account. By using our platform and services, you agree to secure and protect your password, make your password sufficiently complex to minimize the risk of unauthorized access to your Account, and diligently monitor your Account for any suspicious transactions; those are good practices for all online activities. You understand that you are responsible for securing the confidentiality of your username, password, the email address associated with your Account, and other methods, processes, procedures, or mechanisms of obtaining access to your Account that we may, from time to time, make available to you.

2. Your Obligation to Monitor Your Account

By using our platform and services, you also agree to take reasonable steps to protect the security of your Account. You will receive notice by email (or such other communication method agreed to between us) periodically that your Account statement is accessible and available for online viewing and printing. Your Account portal includes a log of all transactions posted to your Account or relating to your Plan, which is updated as of the close of each business day. It is your responsibility to carefully and promptly review those logs and statements. If you do not periodically receive emails notifying you of your statement availability, you agree to notify us immediately so that we can determine the cause of the notification failure.

3. Your Obligation to Immediately Notify Us of Any Compromise of your Account Credentials or Email Address Associated with your Account

You must change your password and notify us immediately, and in no more than 24 hours, after discovering any actual or potential compromise of your Account credentials or the email address associated with your Account or if you believe there has been any unauthorized activity in your Account or if you believe your Account has been compromised in any way. You must notify us by emailing us at help@vestwell.com or calling (917) 979-5358. We will not be responsible for any direct or indirect losses or damages of any kind arising from the unauthorized use of your Account, username, or password before we are notified not to do so consistent with these Platform Terms of Use.

Unless and until you inform us, in the manner stated above, not to follow any Instructions relating to your Account, we will act on any Instructions provided to us, including Instructions to change investment selections, make password or other Account profile changes, disable multifactor authentication, and process distributions, transactions, or withdrawals from or relating to your Account. By using our Platform and services, you are authorizing Vestwell to

comply with and rely upon any Instructions that we believe to have been sent or given by you or any of your authorized representatives without further inquiry. In addition, if we do not hear from you to dispute any transaction in your Account, we will assume all transactions, transaction requests, and Instructions provided to us are authorized by you and we will not be responsible for any damages.

4. Your Option to Enable Multi-Factor Authentication (“MFA”)

For added protection of your Account, we offer Employers and Plan Sponsors the ability to implement MFA. It is your choice whether to enable this feature or not. If you enable MFA, you will receive additional validations relating to your Account. To the extent that your Account, email address associated with your Account, login credentials, or Personal Information is compromised due in whole or in part to your failure to enable MFA, and in addition to any other protections to Vestwell, Vestwell will not be responsible for any losses of any kind. If you enable MFA, it is your responsibility to instruct us of the correct and any updated email address or cell phone number to which a verification code should be sent and Vestwell will follow your Instructions.

Savers and Plan participants must complete the process to enable multi-factor authentication when they register for their Vestwell Account. Multi-factor authentication is only one potential way to protect the security of your Account and it does not change your responsibility to safeguard your Account or any of these Terms.

5. Your Obligation to Protect Our Confidential Information

As a user of our platform and services, you may receive access to our Confidential Information. By using our platform, you agree not to (i) decompile or reverse engineer the platform or otherwise attempt to obtain the source code for the platform; (ii) copy, use, appropriate, brand, distribute or disseminate the platform or any of the education materials, playbooks, tutorials, or documents provided to you about the platform; (iii) sublicense or allow any other person to use the platform on your behalf, except pursuant to your express authorization; (iv) use our name, trademark, marketing materials, branding, or proprietary logo(s) without our prior written consent; (v) use the platform for any purpose other than as stated in this Agreement; (vi) use the platform in a manner that interferes with the use of platform by other end users; or (vii) access or attempt to access any Personal Information that does not belong to you. We reserve our rights under our Plan Services Agreement in the event you violate these terms.

Section 4: [Vestwell's Fraud Detection Program and Corrections Policy](#)

We may provide compensation for our proportionate share of responsibility to End Users who suffer financial harm as a result of fraud, criminal activity, account takeover, fraudulent instruction, identity theft, or similar artifice (“Fraud Loss) consistent with our Corrections Policy, Services Agreement with your employer, and Fraud Detection Program Overview, as may be

updated from time to time and all of which are incorporated herein by reference. If you would like copies of those policies and agreements, please contact us at Legal@vestwell.com.

Section 5: Consent to Receive Electronic Communications

By accepting these Terms of Use and using our services, you consent to receive electronic communications from us. You are expressly consenting to allow Vestwell Holdings Inc., directly or by third parties acting on our behalf, to send marketing and promotional messages, including texts and calls made in an automatic telephone dialing system or pre-recorded or artificial voice messages related to our products or services to the phone number or email address that you or someone on your behalf provided to Vestwell Holdings Inc. Accepting this consent is not required to obtain any good or service.

If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding the Service or to receive further information regarding use of our services.

Depending on the product or service that we provide to you, we are legally required to send you certain notices and communications. You may inform us of your delivery preferences as to whether you wish to receive those communications in paper or electronic form, but you may not opt out of receiving them. To the extent legally permissible, we may charge a fee for paper delivery of any legally required notices or communications.

Section 6: Other Platform Terms of Use

1. Electronic Transactions and Electronic Delivery of Notices, Statements, Investment Education, and Disclosures (collectively, "Plan and Account Communications")

Unless explicitly required by law, any requirement for a writing, notice, or signature relating to your Plan or Account, such as for the designation of beneficiaries, loan or distribution request, or other Instruction to or from us, may be delivered by us to you in any form that can reasonably be expected to be accessible to you, that can be converted into an accurate physical record, or that can be used to confirm the identity or authority of the sender. To the extent legally permissible, we will deliver all Plan and Account Communications by posting them to your Account portal or to the email address provided to us by you or anyone acting on your behalf. It is solely your responsibility to promptly update your Vestwell Account profile if your email address or any contact information for you has changed. We will rely on the accuracy of those email addresses and the most recent update to your contact information provided to us. Plan and Account Communications that we create are stored in your Vestwell Account portal.

2. Customer Data

By submitting content, files, and data to the platform for processing, you are confirming that all of the information you submit to us is current, complete, and accurate. We are not responsible for and will not be independently reviewing, auditing, or confirming any of the information you provide to us. Any verification we conduct of the identity of an End User of our platform does not change or impose any fiduciary or other obligation, create a course of dealing, or change the scope of our liability to you or anyone else.

3. Service Interruption

We periodically perform routine website maintenance to optimize the performance of our website and platform. As a result, you may occasionally see a posted notification that a particular feature or service is temporarily unavailable. We generally try to limit routine maintenance to non-business hours to minimize its potential impact on you. Most routine maintenance is brief, and any service or feature interruptions it may cause are resolved quickly. We occasionally perform more significant website maintenance or upgrades that require longer times to complete. We try when possible to provide advanced notification and details on our website regarding such maintenance and the expected duration and service impacts of any such activities. You agree that we are not liable for any losses caused directly or indirectly by events or conditions beyond our control, such as government actions, exchange or market rulings, suspensions of trading, or other third-party errors, failures, or outages.

We cannot plan for or guarantee against all contingencies. No contingency plan can eliminate all risks of service or Account access interruption. We will evaluate alternatives for minimizing the disruption to services in the event of any emergency and will promptly provide End Users with information about how to access their Accounts.

4. Client Service and Troubleshooting

Our client service team is available to assist you between 9:00 am and 6:00 pm EST on days on which the New York Stock Exchange is open for business by email at help@vestwell.com or by calling our helpline at (917) 979-5358. You may also access our client support assistance anytime using the chatbot on our platform. You may be able to find answers to questions by reviewing at any time our on-demand tutorials, videos, and other materials in our Help Center. By accepting these Platform Terms of Use, you also consent to Vestwell contacting you by phone, SMS messaging, or email in order to respond to or complete any troubleshooting or other End User request. Our response time may be slightly longer during certain times of year where we experience high inbound volume.

5. We Do Not Make Any Performance Warranties

We do not warrant, guarantee, or make any representation that the platform will meet your requirements or that the use of the platform will be uninterrupted or error-free. No other verbal or written information provided by us will create a warranty or increase our liability. We do not endorse or make any warranties concerning any sites linked from our platform or websites. Our platform and services, including any tools or content that we provide to you, are provided “as is” without warranty of any kind. Any warranties implied by law, the course of dealing, or otherwise are excluded to the fullest extent permitted by law and they do not change the scope of our services or create a fiduciary relationship with you. No other verbal or written information provided by us will create a warranty or in any way increase our liability, and you must not rely on such information.

6. You Must Use the Platform and Our Confidential Information Only for its Intended Purpose

You must use the platform only for its intended purpose, which is to support and administer your retirement Plan and access your Account. You will not (and will not permit or authorize any third party to): (a) use the platform, APIs, or any tools or other materials except as expressly permitted by us in writing; (b) reverse engineer, decompile, disassemble, modify, merge, or translate the platform, APIs, or create derivative works; (c) transfer, assign, sublicense, sell, or otherwise convey any of your limited rights to use the platform; (d) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property rights notices provided on or with platform; (d) transmit or upload any software, files, records or other materials that contain any virus, worm, time bomb, trojan horse, or other harmful or disruptive component; (e) use any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, “data mine,” or in any way reproduce or circumvent the navigational structure or presentation of the platform, APIs, or Documentation; (f) probe, scan or test the vulnerability of any system or network or breach any security or authentication measures; (g) use the platform, APIs, or documentation for any illegal, inappropriate, and/or unauthorized purpose.

7. Security Procedures

We may require your cooperation to assist us with our compliance activities, such as by verifying your identity and by using our platform you agree to provide us with that assistance. Additionally, when processing a Distribution Request¹ from your Account or a withdrawal from your ESA, we will not begin to process your request and the time to do so will not begin until your request is submitted in Good Order, meaning that you have completed all forms and

¹ A Distribution Request, as used in these Terms of Use and throughout our website and platform, includes in-service withdrawals, rollovers, loans, hardship withdrawals, disability or death benefit payments, distributions for birth or adoption of a child, distributions pursuant to a Qualified Domestic Relations Order, Required Minimum Distributions, permissible withdrawals from automatic contributions arrangements pursuant to 26 CFR § 1.414(w)-1.

provided all relevant documentation or self-certification related to the distribution, by the format and deadline that we require, and we have completed our security review. We will not be responsible for any losses or damages of any kind due to market fluctuations or other losses that may occur between the time you submit a Distribution Request and it is fully processed so that we can perform our security review.

8. Participants Who Utilize the Schwab Personal Choice Retirement Account

Vestwell provides limited services with respect to self-directed brokerage accounts. Participants in Plans supported by the Vestwell Platform who have a Schwab Personal Choice Retirement Account may choose to link it to their Vestwell account portal. If they wish to do so, participants understand that Vestwell is not a fiduciary with respect to that account and we do not provide any investment advice with respect to the investments in that account. Vestwell will only display the balance provided to us by Schwab in the participants' Vestwell account portal and on benefit statements and we will process participants' Instructions with respect to the transfer of assets between that account and their retirement plan. Vestwell does not provide any services or perform any activities at all with respect to any other self-directed brokerage account product.

9. Arbitration and Dispute Resolution

BE SURE THAT YOU HAVE READ THIS PROVISION CAREFULLY AND UNDERSTAND THAT IT LIMITS YOUR RIGHTS IN THE EVENT OF A DISPUTE BETWEEN YOU AND US.

If an issue arises, our goal is to address your concerns and, if we are unable to do so, to provide you with a neutral and cost-effective means of resolving the dispute quickly. You agree that before filing any Claim in arbitration, you will first submit your Claim to us by email at the address specified on our website and provide us with the opportunity to resolve your concern prior to initiating arbitration.

If we are unable to resolve your concern, you and we agree that the sole and exclusive forum and remedy for resolution of any Claim no matter how described, pleaded or styled, shall be finally and exclusively resolved by binding individual arbitration conducted by the American Arbitration Association ("AAA") under its Consumer Arbitration Rules at a location that is reasonably convenient for both parties pursuant to this Section (the "Arbitration Provision"). This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16.

Solely as used in this provision, "Claim" includes any past, present, or future claim, dispute, or controversy involving you (or persons claiming through or connected with you), on the one hand, and us (or any Bank or service provider), on the other hand, relating to or arising out of this Agreement, your Account, your usage of our platform to access your Account, transactions involving your Account, and/or any related activities or relationships that involve, lead to, or result from the foregoing, including the validity or enforceability of this Arbitration Provision, the Agreement, or any part thereof. Claims are subject to arbitration regardless of whether they arise from contract, tort (intentional or otherwise), a constitution, statute, common law, or principles of equity, or otherwise. Claims include matters arising as initial claims, counterclaims, cross-claims, third-party claims, or otherwise. Please note that you may continue to assert Claims in small claims court, if your Claims qualify and so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis. The scope of this Arbitration Provision is to be given the broadest possible interpretation that is enforceable.

ARBITRATION OF ANY CLAIM IS BINDING AND MANDATORY. NEITHER YOU NOR WE WILL HAVE THE RIGHT TO LITIGATE A CLAIM THROUGH A COURT. IN ARBITRATION, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO A TRIAL BY JUDGE OR JURY.

You and we will have every remedy available in arbitration as you and we would have from a court and will be entitled to reasonable discovery. All determinations as to the scope, interpretation, enforceability, and validity of this Agreement shall be made finally and exclusively by the arbitrator. The arbitrator's award will be binding and final. Judgment on the arbitration award may be entered in any court having jurisdiction. In addition, unless otherwise required by applicable law, in the event that this Arbitration Provision is found not to apply to you or your Claim, you and we agree that any judicial proceeding (other than small claims actions) will be brought in the jurisdiction consistent with section 10 below.

If we initiate arbitration, we will pay the administrator's filing costs and administrative fees (other than hearing fees). If you initiate arbitration, filing costs and administrative fees (other than hearing fees) will be paid in accordance with the rules of the administrator selected, or in accordance with countervailing law if contrary to the administrator's rules.

Each party will bear the expense of its own attorneys' fees, except as otherwise provided by law or this Agreement. If a statute gives you the right to recover any of these fees, these statutory rights will apply in the arbitration notwithstanding anything to the contrary herein.

NO CLASS ACTION, OR OTHER REPRESENTATIVE ACTION, OR PRIVATE ATTORNEY GENERAL ACTION, OR JOINDER OR CONSOLIDATION OF ANY CLAIM WITH THE CLAIM OF ANOTHER PERSON SHALL BE ALLOWABLE IN ARBITRATION, EVEN IF THE CLAIM OR CLAIMS THAT ARE THE SUBJECT OF THE ARBITRATION HAD PREVIOUSLY BEEN

ASSERTED (OR COULD HAVE BEEN ASSERTED) IN A COURT AS CLASS REPRESENTATIVE OR COLLECTIVE ACTION IN A COURT.

Unless consented to in writing by all parties to the arbitration, no party to the arbitration may join, consolidate, or otherwise bring claims for or on behalf of two or more individuals or unrelated corporate entities in the same arbitration unless those persons are parties to a single transaction. Unless consented to in writing by all parties to the arbitration, an award in arbitration will determine the rights and obligations of the named parties only, and only with respect to the claims in arbitration, and will not (i) determine the rights, obligations, or interests of anyone other than a named party, or resolve any Claim of anyone other than a named party or (ii) make an award for the benefit of, or against, anyone other than a named party. No administrator or arbitrator will have the power or authority to waive, modify, or fail to enforce this Section, and any attempt to do so, whether by rule, policy, arbitration decision or otherwise, will be invalid and unenforceable. Any challenge to the validity of this section will be determined exclusively by a court and not by the administrator or any arbitrator.

This Arbitration Provision will survive: (i) the termination of this Agreement; (ii) the bankruptcy of any party; and (iii) any transfer, sale or assignment of your Account, or any amounts owed in relation to your Account, to any other person or entity. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force. Any different agreement regarding arbitration must be agreed to in writing.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE A RIGHT TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR JURY BUT ARE HEREBY KNOWINGLY AND VOLUNTARILY WAIVING THAT RIGHT BY AGREEING TO THIS AGREEMENT AND ARBITRATION PROVISION.

IN NO EVENT WILL YOU BE ABLE TO RECOVER FROM US, OUR BANK(S), OR OUR SERVICE PROVIDERS ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, OR EXEMPLARY DAMAGES, LOSSES OR EXPENSES (INCLUDING COUNSEL OR THIRD PARTY FEES OR FINES), LOST PROFITS, LOST REVENUE, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, (i) EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR EXPENSES; (ii) EVEN IF SUCH DAMAGES, LOSSES OR EXPENSES WERE FORESEEABLE, (iii) WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND (iv) EVEN IF YOUR REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. IF APPLICABLE LAW LIMITS THE APPLICATION OF THE PROVISIONS OF THIS SECTION, OUR LIABILITY AND THE BANK'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE.

OUR SERVICES ARE PROVIDED “AS IS”, “WHERE IS,” AND “AS AVAILABLE” WITHOUT WARRANTY OF ANY KIND, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, TITLE, NON-INFRINGEMENT, SAFETY OR SUITABILITY OF INVESTMENT CHOICES, OR ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WE DO NOT WARRANT THAT YOUR ESA, THE VESTWELL PLATFORM, OR RELATED SERVICES OR FEATURES (INCLUDING SERVICES OR FEATURES OF ANY THIRD PARTY) WILL MEET YOUR REQUIREMENTS; BE CONTINUOUS, UNINTERRUPTED, SECURE, TIMELY, OR ERROR-FREE; OR THAT DEFECTS WILL BE CORRECTED. TO THE EXTENT THAT WE MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER APPLICABLE LAW

10. Governing Law, Forum, and Time Limits

All actions relating to your Account and this Agreement will be governed by the laws and regulations of the United States and the State of New York, irrespective of conflict of law principles.

You agree that any dispute arising under this Agreement or relating in any way to your relationship with us will be resolved in a federal or state court located in New York and that you will be subject to such court’s jurisdiction.

Except where prohibited by law, you agree that you must file any lawsuit or arbitration against us within two (2) years after the claim arises unless federal or New York law, or another agreement you have with us, provides for a shorter time. If federal or New York law requires a longer time period than the time periods in this Agreement, you agree to the shortest time period permitted under the law.

Section 7: Additional Terms of Use for Third Party Investment Fiduciaries Using Our Platform

1. Vestwell is not Responsible for any Investment-Related Activities for the Plan or your Account

Plans that are supported by the Vestwell Platform may have engaged a third party advisory firm to act as a fiduciary investment manager or investment adviser, as those terms are defined in §§3(21) and 3(38) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 USC §1001 and the Investment Advisers Act of 1940, 15 USC §80(b)(1) et. seq. (“Advisers Act”) with respect to your Plan or Account. In those instances, Vestwell provides only the administrative, technology, and other non-fiduciary services needed to service the Plan that are set forth in our Services Agreement and we act at the direction of the investment fiduciary. By way of example only, Vestwell does not select,

monitor, benchmark, or provide any oversight of investments that the investment fiduciary selects for Plans on our platform. We also do not review any investments that the investment fiduciary selects for compliance with applicable legal or regulatory requirements. It is important for you to understand the division of responsibilities for plans where you serve as the investment fiduciary and by clicking “accept” you confirm that you have read the [Division of Responsibilities](#) chart on our Help Center, which you can also obtain from your Vestwell Sales Team representative.

2. Good Standing

You represent and warrant that you are in compliance with the applicable regulatory requirements and will remain in compliance throughout your use of our platform. You further represent and warrant that your regulatory filings are up to date, that such filings accurately reflect your advisory operations, and that you are in compliance with applicable state and federal rules and regulations pertaining to investment advisers. You will furnish all Plan Sponsors and participants with your Form ADV and any other disclosures required by ERISA, the Advisor’s Act, or any other applicable law or regulation. You also confirm that the information that you provided to us in the [Advisor Intake Form](#) is accurate and complete and you agree to update us promptly with any changes.

3. Trading Policies

Our platform requires advisors to submit the initial investment lineup or changes to it in a specific format. By using our platform, you agree to comply with our Trading Policies and Procedures, which is available in our Help Center. For example, reallocations made within the risk or target model (excluding fund removals/additions) take at least 10 business days to process after submission in Good Order. Fund removals, additions, or changes to risk or target models, core lineups, or managed account portfolios may take a minimum of 45 days to process because we may be legally required to send a notice to affected participants and eligible employees at least 30 days ahead of the change.

Section 8: Additional Terms of Use for Third Party Administrators (“TPA”) Using Our Platform

1. Vestwell Will Not Oversee any TPA’s Services or Deliverables

If a Plan Sponsor has selected your firm to serve as a TPA to support its Plan, neither Vestwell nor any of our subsidiaries will have any responsibility, authority, or discretion in any respect to oversee your firm’s services or independently review or verify any deliverables that you provide with respect to the Plan. We will not benchmark or monitor the reasonableness of your fees. Unless otherwise agreed upon in writing, we will also not include a description of your firm or your fees in any fee disclosures that we prepare for the Plan and participants nor will they be included in our fee schedule in our Plan Services Agreement.

2. Vestwell Will Take Direction from You

As TPA to the Plan, you understand that your firm is solely responsible for the proper administration of the Plan in compliance with applicable law and the Plan documents. Vestwell is not a party to nor the third party beneficiary of your agreement with the Plan or Plan Sponsor. Vestwell will take direction from you, including with respect to Plan design changes or amendments, calculating employer match that is handled outside of the payroll process, and distributions that are not handled by Vestwell. Vestwell will not independently review, exercise any authority or discretion, or verify the scope of your authority or discretion, any of your work product (including any such calculations or your approval or denial decision regarding any Distribution Request), and we will not be responsible for any errors, omissions, or delays with respect to any of your services or other activities in connection with the Plan. With respect to any Distribution Request or any other services you perform for the Plan, Vestwell will not be considered as a fiduciary to the Plan or any participants and Vestwell is solely acting as a directed recordkeeper to implement directions from you. While Vestwell will calculate participant eligibility, we do so based on Plan feature specifications that your firm provides to us and based solely on Plan Data that we receive from the Plan or from you.

3. You Must Align the Plan Documents with Our Capabilities

By accepting these Terms of Use, you confirm that you have read and understand Vestwell's plan feature support capabilities and that you will prepare all Plan documents, Adoption Agreements, restatements, amendments, communications, and any interpretations thereof (collectively referred to as "Plan Documents") consistent with those capabilities. Vestwell will not interpret or review any Plan Documents, including the Adoption Agreement, for compliance with our capabilities. We will rely solely on your submission of an abstract of Plan features for purposes of performing our services to support Plans using the Vestwell Platform. The services you provide to the Plan or Plan Sponsor must be consistent with the description set forth in the TPA Intake Form that you provided to us.

4. You Agree to Follow Our Procedures

At all times, you agree to communicate all Instructions to us, including your decision regarding the permissibility of certain Distribution Requests, such as domestic relations, death benefits, and required minimum distributions, and submission of a Plan features abstract to us in our required format. Vestwell will follow your Instructions without any further review. We will not be responsible for any losses or damages of any kind in connection with following your Instructions or for any errors, omissions, delays in those Instructions, or your failure to comply with our communications and document submission requirements.

5. Collection and Payment of Fees for TPA members of the Vestwell Flex Program

For all TPAs that participate in the Vestwell Flex program, you will be required to complete a TPA Intake Form and we will collect payment from the Plan or Plan Sponsor (as the Plan Sponsor selects) for your firm's services that are within the scope of the Vestwell Flex program. We send an invoice to all Plan Sponsors and Plans at the end of each quarter, bill quarterly in arrears, and Vestwell's payment to your firm is contingent and conditioned on our receipt of fees from the Plan Sponsor or the Plan. In the event that the Plan or Plan Sponsor does not pay fees to Vestwell, then neither Vestwell nor any of our subsidiaries are irresponsible for payment of any fees for your firm's services and your only recourse is to seek and obtain payment from the Plan or Plan Sponsor. Approximately 14 days after Vestwell collects fees from the Plan or Plan Sponsor, we will issue payment to your firm at the rate at which you have agreed upon with your Vestwell sales representative. You must provide us with your firm's correct contact and information on the TPA Intake Form, which we rely upon in order to process payment to your firm. If Vestwell is collecting payments for your firm's services, we will also disclose those fees in fee disclosure notices provided to the Plan Sponsor and Plan. If your firm charges any "true up" fees, you are responsible for preparing an invoice to the Plan or Plan Sponsor and collecting all such fees. If your firm performs services for the Plan or Plan Sponsor outside of the scope of the Vestwell Flex program, you are responsible for invoicing and collecting payment for those fees.

For all other TPAs that are not participants in the Vestwell Flex program, this section does not apply, Vestwell is not responsible to collect or make payment to your firm for its services, and your firm's sole recourse for payment for your services is the Plan or Plan Sponsor.

6. Use of Your Trademarks and Logo

By accepting the terms of this Agreement, you give Vestwell a limited, non-exclusive, royalty-free license to use your logo and/or trademark for the purposes of performing the services to support Plans using the Vestwell Platform, Vestwell's business development purposes, or for any joint marketing activities or creating marketing collateral. Vestwell will use your logos or trademarks in the form provided to us.

7. Non-Solicitation, Non-Compete

Unless we have agreed otherwise in writing, you and your firm agree not to solicit to employ any employee of Vestwell or Vestwell client or prospective client that you come to know solely by way of this Agreement. General advertisements and other similar broad forms of solicitation shall not constitute solicitation for purposes of this Agreement. Other than as expressly permitted by this Agreement or otherwise agreed upon in writing by Vestwell, you also agree not to provide, directly or indirectly, or assist others in providing services that compete with Vestwell's services to any Vestwell client or end user of the Vestwell Platform.

8. Marketing and Business Development

You and your firm will devote sufficient time and resources to cooperate in good faith with Vestwell and/or create appropriate public and promotional announcements relating to the relationship set forth in this Agreement. This potentially includes conspicuously highlighting Vestwell on your website, inviting Vestwell as a speaker at in-person or virtual events, introducing Vestwell to Qualified Leads², and otherwise engaging in joint business development activities and regular meetings designed to promote and expand the Parties' relationship and evaluate opportunities to expand the use of the Vestwell Platform for clients and potential clients.

9. Warranties

At all times while this Agreement is in effect and while you are using the Vestwell Platform, you represent and warrant that you and your firm have the expertise to perform your services for any Plans using the Vestwell Platform in a professional, competent and workmanlike manner; that any personnel have the proper skills, training and professional background to perform the services; and that you will perform your services in accordance with the provisions of this agreement.

² "Qualified Leads" means the identity and valid, current contact information for a potential client that may be appropriate for our services and has expressed or otherwise indicated interest or consent in engaging or receiving information about Vestwell.