

## Terms of Use and Subscription Agreement for Managed Service

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Please print and keep this document for your records.

Please read the following Terms of Use and Subscription Agreement (the “Agreement”) carefully, which governs your access to and use of the investment advisory and educational services offered through this website or through our mobile applications (collectively, the “Site”). This Agreement is between you and FutureAdvisor, Inc. (“FutureAdvisor”, “we”, “us”, or “our”), an investment adviser registered with the U.S. Securities and Exchange Commission.

The provisions of this Agreement apply to all users of the Managed Service and include all uses of the Site by such users. As a Managed Service user, you have access to Educational Service on the Site. In addition, you receive the Managed Service from us and you have access to functions of the Site that are only available for Managed Service users. References to the Site include the Educational Service and the Managed Service made available on or through the Site. The Educational Service and the Managed Service are described below.

**By clicking “I accept” or otherwise acknowledging your consent electronically, you agree to be bound to the terms and conditions of this Agreement, as it may be amended from time to time. You also acknowledge receipt of our Form ADV, Part 2A and Part 2B and our Privacy Notice. If you do not agree to this Agreement, then you may not use the Site.**

### 1. Investment Advisor Relationship

By selecting the “Managed Service” (sometimes referred to as the “Premium Service”), you agree that you are entering into a discretionary investment advisory relationship with us as more fully described in the Agreement.

### 2. Description of Our Services

(a) Our Site is designed to provide you with a range of financial information, education, analysis and advice through our Educational Service and our Managed Service. We generate our portfolio analysis and investment recommendations through proprietary, automated, computer algorithms (the “Algorithms”). The analysis and recommendations we provide are based on and generated in reliance on the information you provide to us regarding your investment objectives, financial condition, income, other investments, and all other information requested of you when using or subscribing for the services on the Site. The information you provide to us directly or through services that you have authorized is referred to as “Client Information.”

The analysis and recommendations we provide are intended to help you attempt to maximize your returns through sensible investments and low fees, given the length of your long-term investment horizon and risk tolerance.

(b) Educational Service.

(i) The Educational Service provides you with access to tools and analysis to assist you in evaluating your investment goals. The Educational Service is provided free of charge and is intended to be used for your own educational and informational purposes only.

(c) Managed Service.

(i) As part of your subscription to the Managed Service, we provide portfolio analysis and ongoing investment management services on a discretionary basis, which means that based on our Algorithms we will execute transactions for your Accounts. We also assist you in the process of opening one or more accounts with or transferring assets to the financial institution that will serve as the custodian (“Custodian”) for the assets in your advisory account (your “Account”). You agree that FutureAdvisor does not have actual custody of the securities and other property in your Account. All such securities and other property are held by the Custodian, which is a “qualified custodian” as defined in Rule 206(4)-2 of the Investment Advisers Act of 1940 (the “Advisers Act”).

(ii) As a Managed Service user, subject to the terms and conditions of this Agreement, you hereby appoint us as your agent and attorney-in-fact with full power and authority to supervise and direct the investment and reinvestment of all assets in your Account, and any proceeds or contributions, on a fully-discretionary basis and without prior consultation with you. This authority includes, without limitation, the power to buy, sell, retain and exchange securities and other assets in the Account and trade on your behalf and at your risk. We will also exercise discretionary authority in determining the timing of purchases and sales of securities in accordance with our policies and procedures, which include procedures for mitigating potential market risk. This authority will remain in effect until you terminate the Agreement in accordance with Section 11.

(iii) We provide ongoing portfolio rebalancing of your Accounts based on material changes to the recommendations generated by the Algorithms and material changes you make to your Client Information. The analysis, recommendations and investment decisions may include, but may not be limited to, recommendations to buy, sell, hold or otherwise gain exposure to equity securities that are exchange traded or that are offered by foreign issuers, commercial paper, mutual fund shares, exchange traded funds (“ETFs”), and U.S. Government securities. Where appropriate, FutureAdvisor will invest your Account in mutual fund shares or ETFs, which may include U.S. iShares ETFs or mutual funds that are advised or sub-advised by BlackRock Fund Advisors or one of our other affiliates. Our analysis and recommendations may also include, but may not be limited to, recommendations to consider a different broker, to move assets from one account to another, and related advisory information.

(iv) You may communicate to us restrictions on the sale of certain securities that you wish to continue to hold in your Account (or cash allocations that you wish to maintain), which we may implement or limit, in our sole discretion and subject to our operating processes.

(d) As a Managed Service client, you have the ability to interact with a professional advisor representative employed by FutureAdvisor, subject to the caveat and conditions set forth in this Agreement. Information detailing how to contact a representative is posted on the Site. Your access to or the methods available for contacting a representative may be limited or vary based on the value of your Account.

(e) The analysis and advice we provide through the Site are based on the variables incorporated into our Algorithms and the Client Information you provide to us. The Educational Service and the Managed Service do not provide comprehensive financial planning and there may be other relevant factors and financial considerations (e.g., debt load or financial obligations) that we do not take into consideration in formulating the analysis and advice we provide. You are invited to call a licensed financial counselor at any time to discuss any such additional information or other financial circumstances that you believe may be relevant to the analysis or advice provided by FutureAdvisor.

(f) The analysis and advice we provide through the Site does not include or account for any assets held within employer retirement plans that are subject to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), or other accounts that you have not aggregated for our discretionary advisory services.

(g) The services that we refer to as the Educational Service and the Managed Service are not intended to constitute legal or tax advice or comprehensive financial planning.

(h) We reserve the right to enhance or otherwise modify the Algorithms or other elements of the Site at any time without notice to you in order to make changes we deem necessary or appropriate for the provision of the Educational Service or the Managed Service. These changes may at times, have a material impact on the Algorithms or the analysis and advice we provide through the Site. While these changes are intended to improve or enhance the performance, reliability or utility of one or more of the Algorithms, the Managed Service, the Educational Service or the Site, there can be no guarantee that such changes will result in the desired improvement or enhancement. In some cases, these enhancements or modifications may cause unforeseen consequences with the provision of the Managed Service or the Educational Service that could be detrimental to you. Use of the Managed Service or the Educational Service is subject to such risks, and your execution of this Agreement constitutes your acknowledgement and acceptance of such risks.

### **3. Client Information**

(a) Our analysis and recommendations are highly reliant on the accuracy of the Client Information you provide to us. If you provide us with inaccurate or incomplete Client Information, this could materially impact the quality and relevance of our analysis and recommendations.

(b) You agree to provide us with the information that is requested on the Site in order to use the Educational Service and the Managed Service. You understand and agree that we rely on the completeness and accuracy of your Client Information in providing analysis and recommendations to you on the Site and placing transactions on your behalf in connection with the Managed Service.

(c) You agree that you are responsible for the accuracy and completeness of your Client Information and for monitoring and updating your Client Information in the event of changes (such as the addition of a new account to your portfolio, a change to your e-mail address, a life-change event, or a change to your retirement horizon, etc.). You agree to promptly provide us with these updates by either updating your Client Information on the site or e-mailing us your updates at [help@FutureAdvisor.com](mailto:help@FutureAdvisor.com).

### **4. Your Account Information from Your Third Party Sites**

(a) The Site provides the ability to access information for the accounts you have with third party financial institutions, such as your brokerage firm (“Account Information”). In order to use the Managed Service, you must agree to authorize us to access your Account Information. You understand and agree that to enable this feature you must enter on the Site the User ID, Password and other login information and credentials (“Access Information”) necessary to access your Account Information. By enabling this feature, you grant to us express permission to use the Access Information to access your Account Information in connection with the services we provide you through the Educational Service and/or the Managed Service. You represent and warrant that in providing us with your Access Information and Account Information you are not violating any agreement or terms that you are subject to.

(b) With respect to the Managed Service, you agree to notify us prior to disabling our access to your Account Information.

(c) For purposes of this Agreement, and solely to obtain the Account Information in connection with the provision of the services contemplated under this Agreement, where you have enabled this feature, you grant FutureAdvisor (or its designee) a limited power of attorney, and appoint FutureAdvisor (or its designee) as your attorney-in-fact and agent, with full power of substitution and re-substitution, for you and in your name, place and stead, in any and all capacities, to access third party sites, servers or documents, retrieve information and use your information and your information with the full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection with such activities, as fully to all intents and purposes as you could do in person.

(d) You acknowledge and agree that when FutureAdvisor (or its designee) is accessing and retrieving Account Information from third party sites, FutureAdvisor (or its designee) is acting as your agent, and not as the agent of or on behalf of any third party. You agree that third party account providers shall be entitled to rely on the foregoing authorization, agency and power of attorney granted by you.

(e) If you utilize the householding feature on the Site (i.e., the aggregation of accounts held by you and your spouse or spousal equivalent), you and your spouse or spousal equivalent have determined that you both have the same risk tolerance and the same investment horizon (i.e., number of years until retirement).

(f) If you utilize the householding feature on the Site, the email address provided as part of the User Information will be identified as that of the primary user spouse. The primary user spouse is issued a username and password to view and access the householded accounts through the Site. Additionally, the primary user spouse’s email address will be used FutureAdvisor to communicate with all members of the household. The secondary user spouse is not provided with a separate username and password. Householding requires the secondary user spouse to share personal information with the primary contact/accontholder in the household and to rely upon the primary contact/accontholder to share information and correspondence relating to the householded accounts. Householding will also result in certain notices and other important information being provided only once to the household.

(g) We do not store your Access Information. We have engaged a third party service provider, currently Yodlee, Inc. (“Aggregation Vendor”), to serve as a conduit between the financial institutions and us where your Account Information is housed. In the future we may retain a different third party service provider for this purpose. While we believe we have exercised reasonable care in our selection of the Aggregation Vendor, you understand and agree that, with respect to the services provided by Aggregation Vendor, we make no representation or warranty of any kind, express or implied that the services provided by Aggregation Vendor will operate uninterrupted or will be error-free. By authorizing us to access your Account Information you are agreeing to the Aggregation Vendor’s End User Terms which are incorporated herein by reference and available at the following link: [www.FutureAdvisor.com/legal/yodlee-terms.pdf](http://www.FutureAdvisor.com/legal/yodlee-terms.pdf).

## 5. Risk Factors

(a) In addition to the other important disclosures included throughout this Agreement, this subsection contains some of the key risk factors that you must consider when determining whether to become our client and to use the Site. The following list does not purport to be an exhaustive list and cannot be a complete list of all possible risk factors.

(i) At present, our retirement analysis recommendations are appropriate only for investors with medium-term and long-term investment horizons, *specifically two years or more*, before such investors plan to access assets that are invested pursuant to our recommendations.

(ii) Investing in any type of security involves risk, including the risk that you could lose your entire investment.

(iii) Past performance is no guarantee of future results.

(iv) There is no certainty or guarantee that your investment objectives will be met through the use of our Site or the implementation of our recommendations.

(v) If you need access to the assets invested pursuant to our recommendations at any point prior to the end of the investment horizon, the prices at which these assets are liquidated may cause you to experience a material loss and will negatively compromise the ability of our recommendations to help you meet your long-term investment goals.

(vi) The recommendations we provide and other information that appears on the Site may be time sensitive, especially during times of significant market volatility and when there are time limits on the availability of a particular investment product. Thus, our recommendations and other information on the Site may be subject to different interpretations as market conditions and other factors change. You agree to take into account the time sensitivity of recommendations and information that you provide to us and that we provide to you.

(vii) Our recommendations are highly reliant on the accurate operation of the Algorithms and the technology that generates these Algorithms. A malfunction or failure in either could cause you to experience losses, some or all of which could be significant.

(viii) The Algorithms employ a number of quantitative models that involve assumptions based upon a limited number of variables that may be extracted from complex financial markets or instruments that they intend to replicate. Any one or all of these assumptions, whether or

not supported by past experience, could prove over time to be incorrect, which could result in major losses.

(ix) While our Algorithms include a component that seeks to provide recommendations intended to achieve tax efficient asset placement, this component is only one of many that comprise an individual's comprehensive tax management plan and supplementary tax advice that is outside the scope of the services we provide may be necessary to minimize the impact of tax liabilities you could incur. The tax efficient investment strategies that we recommend or implement are not intended to be tax advice and we do not represent that any particular tax consequences will be obtained. You should consult with your personal tax advisors regarding the tax consequences of investing.

(x) We rely on third parties – often to a material extent – for the provision of market statistics, certain of the Client Information, fund details, performance and related information and, for Managed Service clients, trade execution capabilities. Although we believe these third party service providers are generally reliable, there could be errors that are beyond our control in the information and/or services they provide and such errors could compromise the quality of our recommendations and otherwise compromise our ability to perform under this Agreement. Further, some or all of these third party service providers may be able to terminate their agreements with us for any reason or no reason at all with no advance notice. In such instances, our ability to perform under this Agreement could be materially compromised.

(xi) Losses may arise from shortcomings or failures in internal processes, people or systems, or from external events. Operational risk can arise from many factors ranging from routine processing errors to potentially costly incidents related to, for example, major systems failures. There are operational, information security and related risks associated with the increased use of technologies such as the Internet to conduct business. In general, information security incidents can result from deliberate attacks or unintentional events and are not limited to, gaining unauthorized access to digital systems, and misappropriating assets or sensitive information, corrupting data, or causing operational disruption, including the denial-of-service attacks on websites. Information security failures or breaches by a third party service provider, including service providers selected by clients and the issuers of securities in which the portfolio invests, have the ability to cause disruptions and impact business operations, potentially resulting in financial losses, the inability to transact business, violations of applicable privacy and other laws, regulatory fines, penalties, reputational damage, reimbursement or other compensation costs, and/or additional compliance costs, including the cost to prevent cyber incidents.

(xii) Subject to our discretion, we place transactions on your behalf as soon as reasonably practicable after generating the recommendations. However, there could be material delays in the amount of time it takes us to place transactions. Any delays in our placing transactions on your behalf could reduce, perhaps materially, the profit you gain from the transaction or could cause a material loss.

(xiii) We execute transactions for you by placing “market orders.” A “market order” is an order to buy or sell an investment immediately at the best available current price. Because market orders are executed immediately (as opposed to an order that specifies a target price at which the

security should be bought or sold and remains open for a longer period of time, during which the price of the security may or may not hit the target price) market orders bear inherent risks, particularly in times of high volatility and for investments that are thinly traded. This could result in your paying a higher purchase price or receiving a lower sale price when we place market orders on your behalf. It could also result in higher execution fees charged by the brokers handling these transactions.

## **6. Subscription Fees**

(a) As a Managed Service client, you are billed a subscription fee of up to 0.50% of the assets in your Account (“Subscription Fees”). Subscription Fees are billed in four quarterly installments (the “Billing Period”) of  $\frac{1}{4}$  of the annualized fee rate (the “Quarterly Fee”). The Quarterly Fee is billed in advance on the first business day of each and every subsequent Billing Period.

(b) Subscription Fees are calculated based on the market value of the assets in the Account as of the last business day of the preceding period. Subscription Fees for any partial period will be pro-rated based on the number of days in which the Account was open during such partial period. In determining the market value of any securities and other property in the Account, we will value securities listed on a national securities exchange at the closing price, as of the valuation date, on the principal exchange or market on which such securities are traded. We will value any other securities and other property in the Account in a manner we determine in good faith to reflect fair market value.

(c) In our sole and absolute discretion, we may charge other clients subscription fees for the Managed Service that differ from those paid by you. FutureAdvisor at its sole discretion, to the extent permissible under applicable law, may elect to waive all or a portion of its fee with respect to any assets of a client’s account. In addition, we may engage third-party solicitors, such as banks, broker-dealers and/or credit unions, and we may agree on a modified and perhaps more favorable fee structure for individuals referred to FutureAdvisor by such third-parties. Furthermore, from time to time, FutureAdvisor may run promotions where new or existing Managed Service clients may be eligible for reduced Subscription Fees for a period of time.

(d) The Subscription Fee is payable as described above and you hereby authorize and direct the Custodian to deduct the Subscription Fees from your Account and pay them to us directly, in advance, in accordance with the terms of the agreements you enter into with your Custodian when enrolling in our Managed Service. Subject to notice to you, we may, in our sole discretion, revise the frequency of the payment terms that apply at the time you subscribe to the Managed Service.

(e) If you have more than one Account that we manage for you under the Managed Service, we calculate the amount of assets you have under management with us by aggregating the value in each of your Accounts. The Subscription Fee is billed to the taxable Account with the largest balance before the payment of such fee. If you do not have any taxable accounts under our management, the Subscription Fee is prorated and billed to the non-taxable accounts managed by us.

(f) As a Managed Service client, under the terms of your agreement with the Custodian, you will incur brokerage costs with respect to transactions by us in your Accounts and may incur other costs. In addition, you may incur “transfer out” fees charged by other brokers when you transfer your accounts to a Custodian. FutureAdvisor is not involved in any way with the establishment of a

Custodian's fee structures and receives no remuneration from any Custodian or from brokers who may charge you exit fees.

(g) We invest assets in your Account in funds that are registered investment companies, including ETFs, and as a result, you will bear the expenses incurred within such funds. The fund expenses are in addition to any Subscription Fees that you are charged for the Managed Services.

## **7. ERISA Information**

If, and to the extent, your portfolio(s) is subject to ERISA and/or Section 4975 of the Internal Revenue Code of 1986 (“Code”) (a “Retirement Account”), the following additional provisions apply:

(i) You are a fiduciary to the Retirement Account with full authority to enter into this Agreement. You shall terminate this Agreement if the documents governing your Retirement Account are amended in a manner that would prohibit us from performing services under this Agreement;

(ii) FutureAdvisor acknowledges that it is a qualified professional asset manager within the meaning of PTE 84-14 and that it is a fiduciary with respect to Retirement Account assets included in the Managed Service.

(iii) If your Retirement Account is subject to ERISA, you have independently determined that retaining us satisfies all requirements of Section 404(a)(1) and 408(b)(2) of ERISA, including the “prudent man” standards of Section 404(a)(1)(B) and the “diversification” standard of Section 404(a)(1)(C), and will not be prohibited under any of the provisions of Section 406 of ERISA or Section 4975(c)(1) of the Code. You have requested and received all information from us, that you, after due inquiry, considered relevant to such determination. Taking into account these and all other factors relating to your retention of us, you have concluded that our compensation is reasonable and your retention of us constitutes an appropriate part of your overall investment program.

## **8. Investments in Affiliated Funds**

(a) We may invest your Account in iShares ETFs, which are advised by one or more affiliates of FutureAdvisor, including BlackRock Fund Advisors. When investing in iShares ETFs, the Account, as a fund shareholder, will bear the fund's internal fees and expenses, which are described in the relevant fund's prospectus. Prospectuses for iShares ETFs are available at [www.iShares.com](http://www.iShares.com). These fees and expenses may include management, administration, distribution, transfer agent, custodial, legal, audit, securities lending and other customary fees and expenses related to operating exchange traded mutual funds, and a portion of these fees and expenses may be paid to BlackRock Fund Advisors and other affiliates of FutureAdvisor. For a summary of such iShares ETFs in which the Account may invest and their applicable expense ratios, management fees and other types of compensation payable to BlackRock Fund Advisors and FutureAdvisor's other affiliates, please refer to the iShares Disclosure, available at <https://s3.amazonaws.com/fa-public/iShares-disclosure.pdf>.

(b) By entering into this Agreement, you are agreeing that you: (i) are independent of FutureAdvisor, (ii) have received and had an opportunity to review the relevant iShares prospectuses and fee information at [www.iShares.com](http://www.iShares.com) and <https://s3.amazonaws.com/fa-public/iShares-disclosure.pdf> to the extent you deem necessary, and (iii) approve, based on these disclosures and your

review of the prospectuses, the investment of your Retirement Account assets in iShares ETFs. We believe that the iShares ETFs are consistent with our investment strategy as they provide investors access to different types of asset classes and market segments on a cost-effective basis with high levels of liquidity.

(c) With respect to your Retirement Accounts, FutureAdvisor intends to comply with Department of Labor Prohibited Transaction Exemption 2012-09 (“PTE 2012-09”) when investing assets in iShares ETFs. Under PTE 2012-09, FutureAdvisor is permitted to purchase, sell, and hold iShares ETFs, subject to certain conditions, which may restrict the amount or timing of iShares ETF purchases in your Account.

## **9. Your General Representations and Warranties**

(a) You represent and warrant to us that:

(i) You have reported full and accurate Client Information on the Site, or, as applicable, in any other communications you have with us. You understand and agree that you are solely responsible for providing true and accurate Client Information to us, whether reported directly or through a third party who you authorize to do so.

(ii) You have made an independent assessment of the services we offer and have determined that the services are appropriate for you based on your Client Information.

(iii) Your use of the Educational Service, the Managed Service or the Site does not violate any applicable law or regulation.

(iv) You will abide by all applicable local, state, national and international laws and regulations when using the Educational Service, the Managed Service and the Site.

(b) Further, you acknowledge and agree that:

(i) If you provide us with false or materially inaccurate information then the investment recommendations we provide may not meet your needs and our ability to execute transactions to help meet your investment objectives may be materially compromised.

(ii) You will not use the Managed Service or any other feature on the Site for any purpose that is prohibited by this Agreement.

(iii) You will not directly or indirectly sublicense, resell, rent, lease, transfer, assign, time share or otherwise make the Managed Service or the Site available to any third party in violation of this Agreement.

(iv) You are a natural person who is a U.S. citizen or a resident in the U.S. who is at least 18 years old.

(v) You are not on any governmental sanctions list of prohibited individuals.

(vi) You will not, directly or indirectly: (1) decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Managed Service or the Site, except to the limited extent applicable laws specifically prohibit such restriction; (2) modify, translate, or otherwise create derivative works of any part of the Managed

Service, or any other aspect of the Site; (3) copy, distribute, or otherwise transfer any or all of the rights that you receive under this Agreement; or (4) use or access the Managed Service, or the Site in order to build a competitive product or service.

## **10. Protection of Your Account**

(a) You understand and agree that you are solely responsible for the activity that occurs in the account you create and you are responsible for maintaining the confidentiality of the password you select for your account. You further agree to notify us of any unauthorized use of your account or any other security breach related to your use of the Managed Service or the Site of which you are aware.

## **11. Termination and Refusal**

(a) You may terminate your access to the Site at any time simply by sending us an e-mail specifying that you wish to terminate your access. The termination will take effect promptly upon our receipt of your e-mail.

(b) We may, in our sole discretion, for any reason or no reason at all:

(i) refuse your application to subscribe to the Managed Service or otherwise access the Site; or

(ii) terminate your access to the Managed Service and/or the Site: (1) by giving you not less than five (5) days' written notice if you are not in breach of this Agreement; and (2) immediately if you are in breach of this Agreement.

(c) If you or we terminate your Account (including by discontinuing the Managed Service), we will remit to you a pro-rated refund for the unused portion of your Subscription Fee promptly after the effective date of the termination. If you terminate your Managed Service, or if we terminate access to the Managed Service, intra-month, the amount of your pro-rated refund will be rounded to the end of the month in which termination occurs.

(d) You agree that Sections 9, 16, 17, 18, 20 and 24 shall survive termination of this Agreement.

## **12. Modifications**

(a) Except as otherwise provided in this Agreement, we may, in our sole discretion, take any of the following actions after giving not less than five days' notice:

(i) modify or replace any terms of this Agreement;

(ii) change, suspend or discontinue the Site and the Managed Service (including without limitation, the availability of any feature, database, or content); and,

(iii) impose limits on certain features or restrict your access to parts of the Site or Managed Service.

(b) We may also, in our sole discretion and for any reason or no reason at all, remove from the Site any "Content," which, for purposes of this Agreement, includes but is not limited to, recommendations (but excludes the specific investment recommendations that are generated based on your individual Client Information), suggestions, blogs or forum comments, links, information, data,

text, photographs, software, scripts, graphics, and interactive features generated, provided or otherwise made accessible by us or by others who are outside our control.

### **13. Consent to Electronic Delivery**

(a) By entering into this Agreement, you consent to electronic delivery of all current and future Form ADVs, brochure supplements, privacy notices, prospectuses and offering documents, tax forms and other legal and regulatory notices, disclosures and communications (collectively, “Communications”) delivered or provided by us in connection with the services offered through the Site. You authorize us to post the Communications on [www.FutureAdvisor.com](http://www.FutureAdvisor.com) or such other password protected website as we may designate and you understand that we will, to the extent required by law, send you an e-mail notification directing you to the relevant website. You also authorize us to deliver the Communications to your e-mail address of record. You agree that all Communications provided in any of the ways described above will constitute good and effective delivery of those Communications to you when posted or sent, regardless of whether you actually or timely access, view or otherwise retrieve the Communications.

(b) Your consent is effective immediately and you agree that your access to the services provided through the Site is conditioned on your consent to electronic delivery. If you do not wish to receive Communications electronically, or if you wish to revoke this electronic consent at any time, contact us at +1 (800) 975-7199 or by e-mail at [help@FutureAdvisor.com](mailto:help@FutureAdvisor.com). In lieu of electronic Communications, we will deliver the Communications to you at the mailing address of record; however, if you revoke your consent, your revocation will be deemed to be a notice from you to us to terminate your account we may, in our sole and absolute discretion, terminate your Account. You agree that your revocation of consent will not affect the legal effectiveness, validity or enforceability of any previous electronic delivery.

(c) You agree that, for as long as you are a user of the Site, you will ensure we have a valid e-mail address for you and you will notify us promptly in writing of any change in your e-mail address by contacting us at [help@FutureAdvisor.com](mailto:help@FutureAdvisor.com). Until we have received and had a reasonable time to act on any notice of a change, we may continue to send Communications to your previous e-mail address. You have access to a computer with adequate hardware and software capability to access any Communications sent electronically, including Internet access, a valid e-mail address and a printer or other device to download and save any information you wish to retain. You are aware that there may be other costs associated with that use (such as Internet access fees, phone charges, printing costs, etc.) for which you are responsible.

### **14. Alerts**

(a) As part of the Managed Service, you are automatically signed up for various types of e-mail alerts. You can customize, modify or de-activate alerts at any time on the Account Settings page when logged into the Site. However, we may still send you communications as provided for in this Agreement regardless of whether you have de-activated alerts. We may, in our sole discretion, modify the alerts that are available or stop providing them.

(b) Because alerts are not encrypted, we will never include your password in them. However, alerts may include your User ID and/or information about your portfolios. Anyone with access to your email will be able to view the content of these alerts.

(c) You understand that alerts may be delayed or prevented by a variety of factors. We will endeavor to provide alerts in a timely manner but we do not guarantee the delivery or accuracy of any alert. You agree that we will not be liable: (i) for any delays in delivery or failure to deliver any alert; (ii) for any errors in the content of an alert; or (iii) for any actions taken or not taken by you or any third party in reliance on or in response to an alert.

## **15. Links to Third Party Sites**

(a) As a convenience to you, you may be able to link to other websites or resources on the Internet, and other websites or resources may contain links to the Site. When you access third party websites, you do so at your own risk. These other websites are not under our control, and you acknowledge that we are not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any such link does not imply endorsement by us or any association with the linked third party site, its sponsor, or any of the policies, activities, products, or services offered on the third party site or by any advertiser on the third party site.

## **16. Intellectual Property Protection**

(a) You agree that the Managed Service and the Site contain Content provided by us or by others and that such Content is or may be protected by copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights and laws. You agree to abide by all copyright notices, information, and restrictions contained in any Content accessed through the Site. You agree not to, directly or indirectly, sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit, create derivative works from, or otherwise exploit any Content or any other submissions or other proprietary rights not owned by you (i) without the consent of the respective owners or other valid right, and (ii) in any way that violates any third party right.

(b) You may, to the extent the Site or a website of a third party (where applicable) expressly authorizes you to do so, download or copy Content, and other items displayed on the applicable website for download, for personal use only, provided that you maintain all copyright and other notices contained in such Content. You agree not to store any significant portion of any Content in any form. Copying or storing of any Content for other than personal, noncommercial use is expressly prohibited without prior written permission from the copyright holder identified in such Content's copyright notice.

## **17. Disclaimers**

(a) We make no representations concerning any Content contained in or accessed through the Site, and we will not be responsible or liable for the reliability, timeliness, quality, suitability, availability, accuracy, completeness, copyright compliance, legality or decency of any Content. You should independently verify all Content and other information that you access through the Site. By accessing the Site, you agree that we shall not be responsible for: (i) any Content; (ii) any person's reliance on any such Content, whether or not correct, current and complete; or (iii) the consequences of

any action that you or any other person takes or fails to take based on any Content. Your use of or reliance on any Content is at your own risk.

(b) The Content is provided “As Is” and “As Available” and is without warranty of any kind, express or implied, including, but not limited to, the implied warranties of title, non-infringement, merchantability and fitness for a particular purpose, and any warranties implied by any course of performance or usage of trade, all of which are expressly disclaimed.

(c) We and our affiliates, directors, employees, agents, suppliers, partners and content providers do not represent and/or warrant that: (i) the Site, the Managed Service and/or Content will be secure or available at any particular time or location; (ii) the use of the Site, the Managed Service, and/or Content will be secure, timely, uninterrupted or error-free, or operate in a combination with any other hardware, software, system or data; (iii) any defects or errors will be corrected; (iv) any Content or software available at or through the Site is free of viruses or other harmful components; or (v) the results of using the Managed Service or the Site will meet your requirements or expectations. Your use of the Site, the Managed Service and/or Content is solely at your own risk. The Site, the Managed Service, and/or the Content may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications, and we are not responsible for any delays, delivery failures, or other damage resulting from such problems.

(d) The foregoing warranty disclaimers will apply to the extent allowed by applicable law. Electronic Communications Privacy Act Notice (18 USC 2701- 2711): Except as provided for in the Privacy Notice referenced in the preamble to this Agreement: (i) we make no guarantee of confidentiality or privacy of any communication or information transmitted on the Site or any other sites referenced to in or linked to this Agreement; and (ii) we will not be liable for the privacy of email addresses, registration and identification information, disk space, communications, confidential or trade-secret information, or any other Content stored on our equipment, transmitted over networks accessed by the Site, or otherwise connected with your use of the Site, the Managed Service and/or the Content.

## **18. Risk Acknowledgment, Limitation of Liability and Indemnification**

(a) We will exercise good faith and diligence in the execution of our duties to you under this Agreement. However, we have not made, and are not making, any guarantee about the future performance of your Account, including, without limitation, any guarantee of a specific level of performance, the success of any given investment decision or strategy that we may recommend or undertake your behalf, or the success of our overall management of the Account. There may be loss or depreciation of the value of any investment due to the fluctuation of market values or numerous other factors. In addition, we make no guarantee or representation that your investment objectives will be achieved and you agree we are not responsible and/or liable for any failure to achieve such investment objectives.

(b) We shall not be responsible or liable for any loss or damages incurred due to any act or omission of any custodian, broker-dealer, or other investment adviser whether appointed by you or chosen in good faith by us.

(c) In the unlikely but possible event of a trade error that causes your Account to incur a loss, you agree that we will bear the actual cost of the trade error in an amount that is the lesser of the amount of the loss or up to, and not in excess of, the amount of the Subscription Fees paid to us by you during the 12 month period immediately preceding the date of the loss caused by the trade error but only in those instances where the trade error results from our gross negligence or violation of applicable laws. We define “trade error” as:

- (i) the purchase or sale of securities other than those identified by the Algorithm or in a quantity other than the quantity identified by the Algorithm;
- (ii) the purchase or sale of securities for the wrong Account; or
- (iii) a purchase when it should have been a sale, or *vice versa*.

When a trade error results in a net positive financial impact to your Account, you are entitled to retain the gain resulting from the trade error.

(d) To the fullest extent allowed by applicable law and except as otherwise provided for in this Agreement, neither we nor our affiliates and each of our, and our affiliates’ employees, contractors, directors, suppliers and representatives (each of the foregoing, including but not limited to FutureAdvisor, being the “Service Parties”) are liable:

- (i) for any action performed by the Service Parties or by you as well as any error in judgment and/or for any investment losses you incur;
- (ii) for decisions and/or actions that you take or authorize third parties to take on your behalf based on information you see on the Site;
- (iii) under contract, tort, strict liability, negligence or any other legal or equitable theory with respect to the Site, the Managed Service and/or Content: (1) for any lost profits, data loss, cost of procurement of substitute goods or services, or special, indirect, incidental, punitive, or consequential damages or any kind whatsoever (however arising); or (2) for any damages or losses of any kind whatsoever arising from or in connection with any bugs, viruses, Trojan horses, or the like (regardless of the source); or
- (iv) for any services provided by the Aggregation Vendor.

(e) Notwithstanding the foregoing, certain federal and state securities laws and ERISA impose liability under certain circumstances on persons who act in good faith. Consequently, nothing in this Agreement shall, in any way, constitute a waiver or limitation of any rights that you may have under federal or state securities laws or ERISA.

(f) You shall defend, indemnify, and hold harmless the Service Parties from all liabilities, claims, and expenses, including, without limitation, judgments, fines, amounts paid or to be paid in settlements, and reasonable attorneys’ fees incurred or suffered by a Service Party: (i) in connection with the good faith performance of such Service Party’s responsibilities to you under this Agreement; (ii) that arise from or relate to your use or misuse of, or access to, the Site, the Managed Service, Content, or otherwise from any content that you post to the Site; (iii) that arise from or relate to your violation of this Agreement; (iv) that arise from or relate to infringement by you, or any third party using the your

account, of any intellectual property or other right of any person or entity; or (v) that arise from or relate to your provision of incomplete or inaccurate Client Information. Notwithstanding the foregoing, a Service Party will not be indemnified for losses resulting from his, her, or its gross negligence or violation of applicable laws. We reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will assist and cooperate with us in asserting any available defenses. A Service Party will, upon request and to the extent legally permissible, be advanced amounts in connection with your indemnification obligation; provided however, that if it is later determined that such party was not entitled to indemnification, then such party will promptly reimburse you for all advanced amounts. If you are a California resident, you waive California Civil Code Section 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." If you are a resident of another jurisdiction, you waive any comparable statute or doctrine.

## **19. International Use**

(a) We make no representation that the Site, the Managed Service or the Content is appropriate or available for use in locations outside of United States, or that accessing the Site is legally permitted in countries or territories where the Site, the Managed Service, and such Content may be illegal. If you access the Site from other locations, you do so at your own risk and are responsible for compliance with local laws.

## **20. Dispute Resolution**

(a) A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflicts of law rules. Any dispute arising from or relating to the subject matter of this Agreement shall be finally settled by arbitration in San Francisco, California, using the English language in accordance with the Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. ("JAMS") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with the Arbitration Rules and Procedures of JAMS. You and we agree to require the arbitrator to complete the arbitration within nine (9) months from the date that the demand for arbitration is filed. The prevailing party in the arbitration shall be entitled to receive reimbursement of its reasonable expenses (including reasonable attorneys' fees, expert witness fees and all other expenses) incurred in connection therewith. Judgment upon the award so rendered may be entered in a court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, each party shall have the right to institute an action in a court of proper jurisdiction for injunctive or other equitable relief pending a final decision by the arbitrator. For all purposes of this Agreement, the parties consent to exclusive jurisdiction and venue in the United States Federal Courts

located in the Northern District of California. Use of the Site is not authorized in any jurisdiction that does not give effect to all provisions of this Agreement, including without limitation, this section.

(c) In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to seek to recover costs and attorneys' fees.

(d) Notwithstanding anything in this Agreement to the contrary, you acknowledge and agree that under no circumstances will we be obligated to remunerate or pay you for any liability and/or costs of any kind whatsoever beyond the amount of the Subscription Fees you have paid to us during the 12 months preceding the date on which such determination of liability is made. To the greatest extent permitted by law, our entire liability to you, whether in contract, tort, or otherwise, will be capped at said amount of fees.

## **21. Integration and Severability**

(a) This Agreement is the entire agreement between you and us with respect to the Managed Service and your use of the Site, and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between you and us. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder.

## **22. Assignment**

(a) This Agreement is personal to you, and is not assignable, transferable or sublicensable by you except with our prior written consent.

(b) We will not assign this Agreement (within the meaning of the Advisers Act) without your consent. If, after 30 days of receiving notice of an assignment from us you do not terminate your use of the Site or the Managed Service as provided for in this Agreement, you will be deemed to have consented to our assignment of this Agreement.

## **23. Third Party Beneficiaries**

(a) This Agreement is for the sole benefit of the parties hereto and is not intended to confer any benefits, rights or remedies upon any other not expressly named as a third-party beneficiary under this Agreement.

## **24. Miscellaneous**

(a) Notwithstanding any other provision of this Agreement to the contrary, neither we nor our officers, directors, affiliates and employees shall be liable for any failure to perform our obligations under this Agreement or any loss to you where such failure or loss is caused directly or indirectly by circumstances beyond our control, including, but not limited to, government restrictions, exchange or market rulings, actions affecting securities or commodity exchanges including suspensions of trading or extensions of trading hours, acts of civil or military authority, national emergencies, labor difficulties, fires, earthquakes, floods or other catastrophes, acts of God, wars, acts of terrorism, riots, or

mechanical, electronic, power supply or communications failure or degradation (including “line-noise” interference).

(b) No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect.

(c) Throughout this Agreement, the use of “or” and “and/or” shall be deemed to be accurate unless the content suggests otherwise.

## **25. Other Clients**

(a) You understand and agree that we act as an investment adviser for other clients and will continue to do so. Since we are engaged in the business of providing investment recommendations, we and our personnel may make recommendations and take action for other clients and their accounts that may differ from the recommendations we give to you or the action we take on your behalf.

(b) In addition, our personnel may take actions for their own accounts that differ from the recommendations we give you or actions we take on your behalf.

## **26. Copyright and Trademark Notices**

(a) Unless otherwise indicated, this Agreement and all Content provided by FutureAdvisor are copyright © 2017 FutureAdvisor, Inc. All rights reserved.

## **27. Counterparts and Electronic Signature**

(a) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument. This Agreement may be signed electronically, including through secure means that do not include a manual signature, and your acceptance of this Agreement electronically will be deemed to be the legal equivalent of your handwritten signature. You further agree that you will not contest the legally binding nature, validity or enforceability of this Agreement or any related instruction, election or disclosure based on the use of an electronic signature.

## **28. Communications and Notices**

(a) All notices under this Agreement will be in writing and will be deemed to have been duly given when either posted on the Site or sent to you via your e-mail address, or your mailing address if requested.

(b) If we have a notice or communication that is specific to you, we will e-mail you at the e-mail address you provided us (or your mailing address if requested), and have agreed to keep current, under the terms of this Agreement.

(c) If we have a notice or communication that is not specific to you we will post this notice or communication at the top of the page after you sign in at [www.FutureAdvisor.com](http://www.FutureAdvisor.com). You agree that you are responsible for checking for any notices we may post on the Site.

(d) If you have a notification for us or need to contact us for any other reason, you agree to contact us at [help@FutureAdvisor.com](mailto:help@FutureAdvisor.com).

## **29. Effective Date:** April 1, 2017

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Client Signature

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Joint/Co-Householder Client Signature (if applicable)

(v.04.01.17)