



# BRAINS INVESTMENTS, LLC

## Advisory Agreement

May 19, 2020

BRAINS INVESTMENTS, LLC Advisory Agreement - as amended as of May 19, 2020; effective as of June 1, 2020, unless otherwise noted herein This Advisory Agreement (the “Advisory Agreement”), which is entered into by you (“you” or the “Client”) and Brains Investments, LLC (“Brains”, “we” or “our”), sets forth the terms and conditions under which Brains offers the program described in Section 1 below (the “Program”) and governs the advisory services that we provide you with respect to your participation in the Program. This Advisory Agreement applies to you if you are an individual who is establishing or has previously established one or more of the accounts enumerated in Section 1 below, including an individual who has previously entered into an Advisory Agreement with Brains. By clicking or tapping “Accept and continue” or otherwise acknowledging your consent electronically, you agree to enter into and be bound by the terms and conditions of this Advisory Agreement. For the avoidance of doubt, this Advisory Agreement may govern multiple accounts enumerated in Section 1 below established by the same Client, and shall be deemed to govern each such account upon the Client’s establishment of each account.

YOU MUST READ AND CONSIDER THIS ADVISORY AGREEMENT IN ITS ENTIRETY, INCLUDING SECTION 6 AND SECTION 20 (ARBITRATION AGREEMENT), CAREFULLY AND CONTACT BRAINS TO ASK ANY QUESTIONS YOU MAY HAVE BEFORE ENTERING INTO THIS ADVISORY AGREEMENT. AS NOTED, THIS ADVISORY AGREEMENT CONTAINS AN ARBITRATION PROVISION. SEE SECTION 20 FOR AN IMPORTANT NOTICE CONCERNING YOUR RIGHTS. PURSUANT TO THE BRAINS FINANCIAL, INC. ESIGN AGREEMENT (THE “ESIGN AGREEMENT”) THAT YOU ARE REQUIRED TO ENTER INTO AS A CONDITION OF EXECUTING THIS ADVISORY AGREEMENT, CLICKING THAT YOU ACCEPT HAS THE SAME LEGAL EFFECT AS SIGNING A PAPER VERSION OF THIS ADVISORY AGREEMENT. YOU ACKNOWLEDGE THAT THIS ADVISORY AGREEMENT MAY BE AMENDED FROM TIME TO TIME. AMENDED AGREEMENTS WILL BE POSTED ON THE BRAINS WEBSITE, WWW.BRAINS.MONEY (THE “WEBSITE”) OR MOBILE APPLICATION (COLLECTIVELY WITH THE WEBSITE, THE “PLATFORM”). YOU WILL BE NOTIFIED OF AMENDED AGREEMENTS BY WEBSITE POSTINGS, EMAILS LINKING TO THE WEBSITE, OTHER EMAILS, TEXT OR PUSH MESSAGES, TRADITIONAL MAIL OR OTHER MEANS OF NOTIFICATION VIA THE APPLICATION. YOU AGREE TO CHECK THE WEBSITE FOR NEW VERSIONS OF THIS ADVISORY AGREEMENT AND OTHER AGREEMENTS RELATING TO YOUR PARTICIPATION IN THE PROGRAM. YOU AGREE THAT, BY KEEPING ONE OR MORE OF YOUR INDIVIDUAL ACCOUNTS (AS DEFINED BELOW) OR USING THE PROGRAM WITHOUT OBJECTING IN WRITING AFTER BRAINS NOTIFIES YOU OF A NEW VERSION OF AN AGREEMENT, YOU WILL AGREE TO AND ACCEPT ALL TERMS AND CONDITIONS OF ANY AMENDED AGREEMENT, INCLUDING ANY NEW OR CHANGED TERMS OR CONDITIONS.

### **1. Terms and Conditions of the Program**

Brains offers individuals a means to establish one individual account (“Individual Account”). The Program is designed to provide an easy way for individuals to regularly invest money and access Brains

advisory services. Brains interacts with the Client using a technology platform developed and maintained by Brains. Based on the information the Client provides on the Platform, Brains uses the Platform to provide the Client with investment advice in the form of suggested publicly traded securities and/or portfolios of such securities (“Suggested Investments”), including exchange-traded funds (“ETFs”), shares of stock of publicly traded companies (“Single Stocks”), and/or suggested allocations of ETFs and/or Single Stocks. You hereby understand and agree that the Platform: (a) is not a complete investment program; (b) does not account for multiple goals; (c) does not consider outside assets, concentration, debt or other accounts you may have with Brains, any of its affiliates or with any third party; (d) has limits on asset allocation models, profiles and underlying instruments; (e) is not suitable for all investors; and (f) relies on the information provided by you, including the accuracy thereof, in providing investment advice, and does not verify the completeness or accuracy of such information. Where Brains agrees to accept and open an account for the Client, Brains will open such account with the Client pursuant to the terms and conditions of this Advisory Agreement. Brains will aid you, through the Platform, in establishing an account at Apex Clearing Corporation (Apex). Apex is a registered clearing broker-dealer with the U.S. Securities and Exchange Commission (“SEC”) and a member of the Financial Industry Regulatory Authority (FINRA) and the Securities Investor Protection Corporation (“SIPC”). Apex, among other things, holds public and non-public/unlisted securities and cash on behalf of its customers.

Brains may delay establishing a Brains Account at Apex until such time as the Client authorizes a contribution to fund the Brains Account and/or until such time as Brains receives all required account opening information from you in order to establish the Brains Account. You may receive Brains advisory services under this Advisory Agreement pursuant to the Program even before an account at Apex has been established, in which case the advisory services you will receive from Brains will be financial counseling services.

Brains may remove or replace the Custodian at any time subject to the terms of the Customer Agreement (as defined below). With respect to Individual Accounts other than IRAs, your participation in the Program requires that you agree to the Apex customer agreement, whereby Apex will act as the clearing broker and qualified custodian for your Brains Account.

With respect to any Individual Account, Brains will introduce all trades and transactions from Brains to the Custodian, and the Custodian will establish and carry an account that holds your securities and cash and records your transactions in the Program (a “Brains Account”). You acknowledge that neither Brains nor any investment service provider engaged by Brains is responsible for the obligations of the Custodian or any successor custodian and that Brains and the Custodian have separate agreements with you that allocate separate sets of rights and obligations between you and the respective entity. In particular, prospectuses for your Selected Investments (as defined below) through the Program will be emailed to you by the Custodian. These statements and trade confirmations will be available through the Platform.

## **2. Program Advisory Services**

Through the Program, Brains offers various publicly traded securities including, primarily but without limitation, Single Stocks, ETFs, and/or similarly traded instruments (“Instruments”), which may be selected by Brains, third parties or affiliates, and various asset allocation portfolios and/or combinations of Instruments (the “Portfolios”), which may be developed by Brains, third parties or affiliates

(collectively, “Investments”). The Instruments are selected to make available exposure to a broad range of companies, industries, economic sectors, geographic regions, social beliefs, and investment strategies.

As of the date of this the Agreement, the Program is offering various Instruments selected by Brains and offers various strategic Portfolios designed by Brains both of which are and/or invest in unaffiliated Investments. Brains reserves the right to change, in its sole discretion from time to time and without prior notice to Clients: (i) the Investments available through the Program that it deems appropriate to address the investment objectives, investment time horizons, and risk tolerances of its clients; (ii) the Instruments that comprise each of the Portfolios; and (iii) the relative weightings of the Instruments within each of the Portfolios. Brains further reserves the right, in its sole discretion from time to time, upon providing prior notice to Clients, to engage any investment service provider from which Brains may obtain any or all Investments, change any such investment service provider and to make additional investment service providers available through the Program. For the avoidance of doubt, through the Program, Brains offers Portfolios provided by Brains and Instruments selected by Brains, which is the current investment service provider, but does not currently offer affiliated Investments or other affiliated investment products. In the future, Brains may offer affiliated Investments and other affiliated investment products through the Program.

Brains “Boutique Funds” are groups of company stocks that meet defined criteria around the Brains model, which includes World View, Interests, and Lifestyle. Brains charges a monthly investment advisory fee for all of our advisory services, and thus there are no additional direct or indirect fees associated with our Brains Boutique Funds. Brains Boutique Funds are not ETFs or mutual funds. Brains customers own the underlying company stock within each of our Boutique Funds, not the funds themselves; the fund names are just titles for each stock group. Our Brains Boutique Funds and recommended portfolios are not investment companies subject to the SEC Investment Company Act of 1940. Brains is a robo-advisor, and thus falls under SEC Rule 3a-4 under the Investment Company act, which provides a non-exclusive safe harbor from the definition of an investment company as our model relies solely on algorithms, and only provides advisory services over the internet, with no direct human interaction.

The Program will use the Platform to recommend Suggested Investments for you based on certain Client Information (as defined in Section 23 below) you provide. The Program does not consider the entire range of information provided through the Platform for purposes of recommending Suggested Investments. You should understand that the Platform currently relies solely on the questions relating to investment time horizon and risk tolerance in recommending Suggested Investments, and that these factors are not weighted equally. You agree to access and review through the Platform information identifying and describing the Suggested Investments at least annually. You acknowledge that, based on the Client Information you provide, investment factors deemed appropriate by Brains, and the investment advisory methodology used in developing the Platform, the Suggested Investment(s) comprise(s) the investment advice that Brains recommends for you. However, you agree that there is no guarantee, representation, warranty, or covenant that the Suggested Investment(s) will perform better over any time period than any other Portfolios, Instrument, and/or investment or combination thereof made available through the Program or otherwise available in the market. You are not bound by the recommendation generated by the Platform and may, at the time when you receive such

recommendation, select the Portfolios and/or Instruments available through the Program in lieu of or in addition to the Suggested Investment(s) available through the Program.

You may cause the Platform to generate different Suggested Investments at any time by revising your Client Information. Any Portfolios and/or Instrument you ultimately select, taking into account any self-imposed investment restrictions you place on your portfolios subject to the terms and conditions of this Advisory Agreement, are referred to as the "Selected Investments." You may impose reasonable investment restrictions on the management of your Brains Account by means of your own investment discretion. Clients should be aware that the performance of a Brains Account with self-imposed investment restrictions may differ from and/or be lower than the performance of Brains Accounts without such self-imposed restrictions. You may change your Selected Investments at any time. You acknowledge and agree that you are solely responsible for the decision to invest in your Selected Investments.

You further acknowledge and agree that it is your responsibility to review and carefully consider the information available on the Platform about each of the Suggested Investments before choosing any Selected Investment. Brains Investments, Suggested Investments and Selected Investments shall not constitute legal or tax advice, analysis or opinion. If you choose a Selected Investment other than a Suggested Investment, you acknowledge and agree, without limiting any other provision of this Advisory Agreement, that:

- You assume the risk that your Selected Investment(s) may perform worse for you over any time period than a Suggested Investment or any other investment;
- Your Selected Investment(s) may not be suitable based on your risk tolerance, investment time horizon, or your investment objectives, financial condition, or other facts or circumstances that apply to you;
- Neither Brains nor its affiliates shall be liable for any losses or other damages resulting from your choice of a Selected Investment;
- The Program is designed for long-term investing in diversified holdings; and
- The Program has been designed to pursue specific investment objectives, including diversification.

Choosing Selected Investments that are different from Suggested Investments will change the investment characteristics of the holdings of your Brains Account in a way that deviates from the investment advice provided and may adversely impact performance. While the Program may include investment advice that guides you to trade your holdings such that over time such holdings maintain close replication of a particular allocation, you agree that there is no guarantee, representation, warranty, or covenant that the holdings in your Brains Account will match any particular allocation. You acknowledge that various factors (including the timing and frequency of deposits and withdrawals, market volatility and disruptions, fractional share allocation and trading procedures, the timing and frequency of your choice of or changes to holdings in your Brains Account, access interruptions, and hardware or software failures) can impact the extent to which holdings in your Brains Account will replicate any particular allocation at any particular point in time. You further understand and agree that any strategic investment advice offered through the Program is based on a long-term view of the market.

Accordingly, the Program does not provide tactical advice and you should not expect to see tactical changes to any investment advice in response to market volatility or other economic events. Notwithstanding anything to the contrary in any documentation associated with the Program and your Brains Account, you agree that Brains provides non-discretionary investment advice and shall be under no duty to, and makes no guarantee that it will, rebalance the assets in your Brains Account or purchase or sell any Instrument at any particular time or in any particular amount.

You acknowledge, understand and agree that:

- Brains will provide investment advice and deliver the advisory services solely through the Platform and via email;
- Under the Program, you will not receive investment advice in person, over the phone, in live chat, or in any other manner other than through the Platform and via e-mail; and
- You will not be entitled or able to transact in or hold securities in your Brains Account other than the Instruments that are offered through the Program.

In providing its services, Brains or any of its affiliates may, subject to applicable laws and regulations, engage unaffiliated vendors or other contractors to aid it in fulfilling its duties under this Advisory Agreement or to provide ancillary enhancements or features of the services contemplated herein. Additionally, in performing its obligations under this Advisory Agreement, Brains may, at its own discretion, delegate any or all of its discretionary investment, advisory, and other rights, powers, and functions hereunder to any of its affiliates or to any third parties, without your written consent, provided that Brains shall always remain liable to you for its obligations hereunder.

### **3. Trading Authority and Your Instructions**

Generally, the Client will direct and be responsible for the direction of investments through the Platform by: (i) carefully reviewing the information about investing and the Suggested Investments available on the Platform; (ii) carefully considering the Suggested Investment(s) that Brains generates for you through the Platform; (iii) choosing your Selected Investment(s); and (iv) deciding whether to exclude a Suggested Investment from your Selected Investment(s). Moreover, it is the Client's responsibility to conduct and monitor the inflows and outflows to and from the Brains Account by using the Platform to initiate deposits to and withdrawals from the Client's Brains Account.

However, Brains shall have discretion over assets in your Brains Account to the limited extent that Brains shall have the following authority in connection with its provision of advisory services under this Advisory Agreement:

- to determine and modify from time to time which Investments are offered through the Program and which Instruments comprise each of the Portfolios, including your Suggested Investment(s) and Selected Investment(s);
- to determine when, how often, and in what amounts to invest or reinvest dividends in your Brains Account;
- to determine when, how often, and in what amounts to have uninvested cash in your Brains Account held through the Custodian's bank sweep program;

- to determine and modify from time to time procedures used in trading and allocating fractional shares in the Program;
- to determine the timing of purchases in relation to deposits;
- to determine the timing of sales and withdrawals in relation to requests for withdrawals or transfers;
- to determine the action taken in response to a corporate action related to Instruments held in your Brains Account provided that no proxy is required to do so and the action taken by Brains is deemed to be in your best interest; and

The Instruments purchased or sold at your direction and/or held in your Brains Account may be either whole shares or fractional shares, depending upon the cost of the shares and the dollar amount contributed to your Brains Account. To the extent that fractional shares of any Instruments are allocated to any Brains Account on behalf of any Client, Brains divides a whole share and allocates any excess fractional shares to Brains fractional facilitation account. Brains in turn accumulates these fractional shares. In accordance with Brains policies pertaining to the management of such accounts and positions, Brains will manage the fractional facilitation account through trades in whole share quantities. You understand and agree that fractional shares are typically unmarketable and illiquid if held outside of your Brains Account(s) and, as a result, fractional shares generally may not be transferable to another brokerage account.

In the event of a liquidation or transfer of the assets in your Brains Account(s) to another account, you hereby authorize Brains to instruct the Broker and/or Custodian to sell fractional shares as necessary and transfer the cash to any subsequent custodian. You agree and acknowledge that the minimum balance for opening a Brains Account in the Program is \$50 for Individual Accounts (“Minimum Opening Balance”). Brains reserves the right to waive such Minimum Opening Balance requirement in its sole discretion. Furthermore, you agree and acknowledge that the minimum balance for maintaining a Brains Account in the Program is \$50 for Individual Accounts. Brains will review Brains Accounts in the Program periodically to identify any Brains Accounts with a balance below the Minimum Balance. If the balance for your Brains Account falls below the Minimum Balance, Brains reserves the right to terminate this Advisory Agreement and/or your Brains Account. Brains reserves the right to waive such Minimum Balance requirement in its sole discretion. You may continue to receive Brains advisory services under this Advisory Agreement pursuant to the Program even after a Brains Account has been closed. For example, Brains and/or the Custodian may elect to close unfunded or underfunded Brains Accounts, but Brains may continue to permit those account holders to access the Program (without the power to effect brokerage transactions). Such Clients receive our Financial Counseling Services and are considered accounts under advisement by Brains.

#### **4. Brokerage and Custody**

As noted above, your participation in the Program requires that you enter into the Customer Agreement. Your receipt of brokerage services pursuant to the Program requires that you establish a Brains Account. The Customer Agreement pertains to the brokerage services provided by Apex to effect brokerage transactions in your Brains Account. Under the Customer Agreement, and subject to its terms and conditions, Apex is generally responsible for: (i) maintaining and recording transactions in cash and securities (including fractional shares) in your Brains Account; (ii) sending orders placed by Brains for

execution, clearance, and settlement; and (iii) providing you with statements, confirmations, other required documentation, and other information about your Brains Account and transactions therein.

By entering into this Advisory Agreement, you authorize and instruct Brains to place, and Apex to execute, orders to buy and sell securities on your behalf and at your direction. You acknowledge and agree that orders for purchases or sales in your Brains Account may be combined with orders for purchases or sales of securities in other accounts under the Program and/or with purchases or sales of securities by Brains into larger orders for aggregate transactions for each applicable security in the Brains Account. You agree that Apex will introduce orders to Apex for clearance and settlement.

Brains may transmit or help facilitate your requests for withdrawals or transfers to the ACH Operator (as defined below) and/or the Custodian. Brains shall have no authority to initiate any withdrawal or otherwise to transfer any securities or money out of your Brains Account other than (i) fee deductions, (ii) in connection with the termination of your Brains Account pursuant to the terms and conditions of this Advisory Agreement. Other than in connection with our automated deposit features which are planned for late 2020, in each case if you have chosen to enroll in one or more of such features, Brains shall have no authority to initiate any deposit or otherwise transfer any securities or money into your Brains Account except in limited circumstances disclosed to the Client. As noted above, Apex will act as the introducing broker-dealer, introducing your orders to Apex, and Apex will act as the clearing broker and qualified custodian for your Brains Account.

## **5. Client Rights and Obligations**

The Client retains sole ownership of the Brains Account (i.e., the right to withdraw securities or cash, exercise or delegate proxy voting, proceed directly as a security holder against the issuer of any security in the Brains Account, and receive transaction confirmations), and the Client may make deposits and withdrawals at any time, subject to any maintenance requirements of the Custodian. As noted in Section 14, Brains has no right to, and shall not, vote any securities in your Brains Account; voting any securities in your Brains Account is your responsibility.

## **6. Deposits and Purchases**

You agree that you will fund your Brains Account by contributions made through a Funding Account, by using the Platform to direct the transfer of money to your Brains Account(s) in accordance with the terms and conditions of this Advisory Agreement. You agree and acknowledge that there may be no more than one bank account connected to your Brains Account for deposit funding purposes unless otherwise permitted by Brains. You agree that, by initiating or directing a deposit, you authorize the bank or other vendor that Brains engages from time to time to facilitate the use of the Automated Clearing House (“ACH”) payment system for the transfer of money to or from the Custodian (such bank or vendor, the “ACH Operator”) to request that the financial institution that maintains your Funding Account transfer the amount of the deposit to the Custodian for deposit in your Brains Account.

You agree and acknowledge that you are responsible for any fees, charges, or expenses imposed by your financial institution that maintains your Funding Account in connection with any deposit or transfer of money to or from your Brains Account. You further agree and acknowledge that, unless otherwise agreed to by Brains and the Custodian, you do not have any right to fund (or direct the funding of) any deposit or transfer of money to or from your Brains Account in any manner other than by an ACH

transfer to the Custodian. Brains and the Custodian reserve the right to accept cash funded from other sources as they may mutually agree and to the extent permitted by applicable law and such cash funding methods may be subject to additional terms and conditions, which will be disclosed to you. Ancillary fees associated with cash funded from sources other than ACH transfer to the Custodian are listed in Attachment A, which fees shall be charged to the Client and shall be in addition to the Brains Fee.

Brains also reserves the right to accept investments funded from other sources or through other means on a case by case basis. You further agree that, by initiating, authorizing, or directing a deposit or transfer to your Brains Account, you authorize Brains to place orders with the Broker on your behalf for purchases of the securities that comprise your Selected Investments at the time(s) and in amounts calculated by Brains portfolios management system. You agree and acknowledge that any deposit or transfer to your Brains Account, and/or purchases of securities, may not be cancelled by you following the initiation, authorization, and/or direction of such transaction. Orders from all of the Platform's users are combined and orders that have been approved are released to be executed.

All orders are executed through the Broker's average price account, which allocates all executions to the Client's Brains Account with any residual (due to round ups) being allocated to Brains fractional facilitation account. In order to permit sufficient time to ensure that the transfer of assets into your Brains Account has been successfully completed by the financial institution that maintains your bank account, Brains may wait up to five Business Days after the day the Custodian credits the applicable deposit to your Brains Account to generate and place the orders for such purchases. As used herein, "Business Day" means any day on which all banks (or the applicable branch thereof) involved in any transfer of funds are physically open for business during their normal business hours, and specifically excluding any U.S. federal holiday and any day on which any applicable securities exchange is not open during its normal business hours. You hereby acknowledge and agree that, as a result, each deposit or transfer you make generally will not be invested in your Selected Investment(s) for up to five Business Days and that such uninvested cash will not be subject to financial gains or losses resulting from movement in market prices during that time period. In the event a deposit or transfer of assets into your Brains Account is not successfully completed within seven (7) calendar days of your initiation, Brains may cancel any corresponding order to purchase securities that you had directed in connection with such deposit or transfer.

You may, subject to the terms and conditions of this Advisory Agreement, fund your Brains Account by initiating or directing a deposit in any whole dollar amount of \$50 or more through the Platform at any time. In addition to one-time deposits, you may elect through the Platform to make recurring deposits. You may fund your Brains Account with recurring deposits by enrolling in one or more of the Platform's automated deposit features, planned for late 2020.

You represent and warrant that none of the money you deposit in your Brains Account is derived from, or will be used to promote the conduct of, any crime or other illegal activity. You agree not to deposit (or direct the deposit of) any money in your Brains Account that comes from, or that will be used to promote the conduct of, any crime or other illegal activity. You represent that no individual or entity has an interest in any money you use for deposits or in any money or securities in your Brains Account other than you or any other individual you have disclosed to Brains during account opening (including, but not limited to, a beneficiary in the case of a Custodial Account).



## **7. Withdrawals**

You may withdraw money from an Individual Account by initiating a withdrawal request through the Platform at any time. You acknowledge and agree that, notwithstanding anything to the contrary in any agreement governing your participation in the Program, including this Advisory Agreement, you will not be able to request withdrawals, rollovers, or sales, unless and until you connect a bank account to your Brains Account. You agree and acknowledge that, in addition to your Brains Debit Account (if applicable), there may be no more than one other bank account connected to your Brains Account for withdrawal purposes unless otherwise permitted by Brains. For the avoidance of doubt, although you may be permitted to contribute funds to your Brains Account via a Third-Party Debit Card, you will not be able to withdraw funds from your Brains Account via such method unless otherwise permitted by Brains. You agree that, by requesting a withdrawal or rollover, you authorize Brains to place an order with the Broker and/or Custodian on your behalf to sell the securities in your Brains Account at the time(s) and in amounts calculated by Brains portfolios management system. You agree and acknowledge that any withdrawal, rollover, or transfer from your Brains Account, and/or sales of securities, may not be cancelled following the initiation, authorization, and/or direction of such transaction. Brains will undertake good faith efforts to generate and place the orders for such sales on the Business Day you request a withdrawal or rollover, but you acknowledge and agree that such orders may be placed at any time within five Business Days after your request. Any withdrawal or rollover request you initiate will be sent to the ACH Operator. You agree that, by requesting a withdrawal or rollover, you authorize the ACH Operator to request that the Custodian transfer the proceeds of the applicable sales in the amount you request (or less if the money remaining in your Brains Account after deducting any Brains Fee (as defined below) or other fee due is less) to your bank account. You acknowledge and agree that the Custodian will not initiate a transfer of money for a withdrawal or rollover until the Business Day after the last applicable sale for such withdrawal has settled and that it may take up to seven to ten Business Days after the Custodian initiates a transfer of money for the proceeds of a withdrawal or rollover to arrive at the destination account. You further acknowledge and agree that Brains and the Custodian may require additional information from you before effecting any withdrawal or rollover request, and that such requested withdrawal or rollover may be subject to delay or cancellation in the event that you do not timely provide such additional information. Brains and the Custodian reserve the right to permit cash withdrawals to other sources as they may mutually agree and to the extent permitted by applicable law.

Any such cash withdrawal methods may be subject to additional terms and conditions, which will be disclosed to you. Ancillary fees associated with cash withdrawals to sources other than ACH transfer from the Custodian are listed in Attachment A, which fees shall be charged to the Client and shall be in addition to the Brains Fee. You acknowledge that if you are permitted to withdraw, and do withdraw, an amount below the value at which such ancillary fee converts to a variable pricing model, the ancillary fee is charged as a fixed fee that does not vary based on the amount of your withdrawal, and accordingly, the overall withdrawal fee paid may be disproportionately high relative to the amount of your withdrawal. In such case, you further represent and warrant, and have determined, that the ancillary fee is reasonable irrespective of your withdrawal amount.

## **8. Term and Termination**

This Advisory Agreement becomes effective as of the date it is accepted by Brains, as evidenced in accordance with Brains procedures and/or practices regarding account opening. The date your Brains Account(s) is opened may or may not be the same effective date of this Advisory Agreement. You agree that Brains and/or any of its affiliates or contractors may suspend the provision of services to you or delay, limit, restrict, or refuse any transaction for you at any time for any length of time without prior notice to you if Brains believes in good faith that such suspension or delay is necessary or appropriate: (i) to ensure compliance with, or to avoid, violating any law or regulation applicable to Brains or its affiliates or a transaction relating to the Program; (ii) to comply with a request or guidance from a regulatory or law enforcement authority with jurisdiction over Brains or its affiliates or a transaction relating to the Program; (iii) to avoid a loss to Brains or its affiliates (including if your payment of the Brains Fee is 60 days or more overdue, except with respect to charges then under reasonable and good faith dispute); (iv) to remediate or otherwise address problems with technology; (v) due to interruptions in the access to or operation of any technology that Brains or its affiliates directly or indirectly uses in connection with the Program; (vi) to prevent a breach or violation of any term, condition, or other provision of this Advisory Agreement; or (vii) to obtain from you any additional information that Brains in its reasonable discretion deems necessary for advisory services to be provided to you pursuant to this Advisory Agreement.

Notwithstanding anything to the contrary in this Agreement, including, without limitation, in Sections 2 and 3, Brains reserves the right, at any time and without notice, to delay or manage the trading of client orders if Brains determines it is appropriate and consistent with its obligations under this Advisory Agreement. You may terminate this Advisory Agreement, one or more of your Brains Accounts, and/or your Platform Tier Service (if applicable) at any time for any reason by sending an e-mail to [support@brains.money](mailto:support@brains.money).

Brains may terminate this Advisory Agreement and your Brains Account at any time for any reason by sending you a notice of termination by e-mail, by mail or other means of notification via the Platform. Specifically, and not limiting the foregoing sentence, Brains may terminate your Brains Account following a period of 90 consecutive calendar days of an unfunded or underfunded balance. The termination of this Advisory Agreement, the Platform Tier Service, and/or your Brains Account(s) will occur as follows:

- If either Brains or you terminate this Advisory Agreement, the Customer Agreement applicable to your Brains Account will be deemed to have been simultaneously terminated and your Brains Account will be terminated;
- If either Brains or you close your Brains Account, you will be deemed to have simultaneously terminated the Customer Agreement with respect to any such closed account, but not the others;
- If either Brains or you terminate your Brains Account, the Custodian and/or Broker will, before closing your Brains Account, settle any purchases or sales pending when Brains sends or receives a request to close your Brains Account; and
- If either Brains or you terminate your Brains Account, Brains and/or the Custodian will, before closing your Brains Account, deduct any unpaid fees, including those owed for ancillary services, including paper delivery of documents, transfer of shares, or physical delivery of shares.

If either Brains or you request to close your Brains Account, you hereby authorize Brains to instruct the Broker and/or Custodian to sell all shares in your Brains Account and any distributions generated by such shares following such request, and to send the cash, less any portion of the Brains Fee or other fees due, to either your address of record or the bank account connected to your Brains Account.

Notwithstanding the foregoing, if you explicitly request that shares be transferred to another custodian or broker-dealer, Brains will instruct the Custodian to transfer, in accordance with your instructions and subject to such new custodian or broker-dealer's policies and procedures with respect to fractional shares, the shares remaining after each of the following are paid for with the proceeds of a sale: (i) any withdrawals pending when the termination notice was received or sent by Brains; (ii) any unpaid Brains Fee or portion thereof due; (iii) the fees charged for processing the in-kind transfer to another custodian or broker-dealer; and (iv) any other fees due. You hereby acknowledge that, subject to the terms of the Customer Agreement, you may be required to provide additional instructions to the Custodian in order to obtain your cash or transfer your shares in the event of the termination of your Brains Account. Upon cancellation or termination of this Advisory Agreement, we may immediately deactivate your user account (which includes your Brains Account(s)) and all related information and/or files in your user account and/or bar any further access to such information and/or files, our Platform (or part hereof) and/or the Program, except as we may otherwise provide from time to time.

Your death or incapacity shall not terminate the authority of Brains granted herein until Brains receives written termination notice thereof from your executor, guardian, attorney-in-fact or other authorized legal representative.

## **9. Legal Capacity**

If this Advisory Agreement is established by the undersigned Client, or the Client's authorized representative in a fiduciary capacity, the Client hereby certifies that he/she is legally empowered to enter into or perform this Advisory Agreement in such a capacity. The Client represents that he or she is 18 years of age or older and no person shall use or attempt to use the Program unless he or she is of such age.

## **10. Representation**

It is understood by the Client that Brains is licensed/registered with all of the appropriate regulatory jurisdictions that Brains believes it has a duty to be licensed/registered. It is understood and acknowledged by the Client that Brains is not engaged in the practice of law or accounting, and as such, will not render any legal, tax, or accounting advice hereunder, nor prepare any legal or accounting documents for the implementation of any of the Client's financial or investment plans. Nothing in this Advisory Agreement or any other document received from Brains shall be construed as providing any legal, accounting, estate, actuary, or tax advice.

The Client agrees to review information available to the Client regarding the securities, as well as the brokerage statements, transaction confirmations and tax reporting forms provided by the Custodian for tax-related information. Each Client must rely upon its own representatives, including its own legal counsel and accountant, as to legal, tax and related matters concerning any Investments, any assets in the Brains Account or any Brains Account transactions and for preparation of any legal, accounting or tax documents. You can access tax documents through the Platform when such documents are ready.

You will also be able to download them from the Custodian's website in the event you do not have access to the Platform.

The taxation of securities transactions is extremely complex and no attempt is made herein to fully describe the various tax rules that apply to such transactions or to explain in complete detail the rules which are mentioned. However, some general points may be noted. Any sales, exchanges or dispositions of securities may have U.S. federal, state, local and non-U.S. income tax consequences for the Client and may result in the Client having to pay additional income taxes. An ETF may take many forms for U.S. federal income tax purposes, including a grantor trust, regulated investment company, or real estate investment trust, each of which has special tax considerations for U.S. taxable, tax-exempt and non-U.S. investors. Although not currently offered as an Investment on the Platform, an investment in a non-U.S. security, such a non-U.S. ETF, may have adverse tax consequences for certain U.S. Clients. For example, a non-U.S. ETF may constitute a "passive foreign investment company" and there is no assurance that Clients would be able to make a "qualified electing fund" election. Non-U.S. Clients may be subject to withholding tax on certain U.S.-source payments received with respect to securities held in their Account. Clients may have a variety of tax reporting obligations with respect to certain securities, including the filing of a FinCEN Form 114 and/or Internal Revenue Service Forms 8621, among other filing and reporting obligations.

It is possible that in certain circumstances a Client may incur taxable income on their investments without a cash distribution to pay the tax due. Each Client should confer with their personal tax advisor regarding the tax consequences of investing with Brains based on the Client's particular circumstances. The Client and Client's tax advisors are responsible for how Investments and the transactions in the Client's Brains Account are reported to the Internal Revenue Service or any other taxing authority. Brains assumes no responsibility to the Client for the tax consequences of any transaction.

## **11. Fees**

For the services provided by Brains under this Advisory Agreement, and the custodial and brokerage services provided by the Custodian and the Broker under the Customer Agreement (if any), you agree to pay a "per-account" in order to establish and maintain one or more Individual Accounts (the "Brains Fee").

The Brains Fee is applicable to each Brains Account and is \$3 per month for accounts under \$5,000, and .25% for accounts greater than \$5,000.

*Ancillary Fees* - The Brains Fee includes most of the investment expenses that are typically paid by investors, such as: account establishment/maintenance expenses, and investment advisory fees. Expenses that are excluded from the Brains Fee and for which you are independently responsible, if incurred, are listed on Attachment A, which is incorporated by reference herein. The Brains Fee does not include fees charged by each ETF's managers or other fees and expenses that are reflected in the price of ETF shares. In addition, Brains and/or the Custodian may charge fees in addition to the Brains Fee for ancillary services as disclosed in Attachment A to this Advisory Agreement. In particular, and notwithstanding anything to the contrary in this Advisory Agreement, you agree that, pursuant to the Customer Agreement, if you request the preparation and delivery of paper documents that Brains, the Broker, and/or the Custodian normally provides in electronic form or that Brains, the Broker, and/or the

Custodian is not required to provide in paper form, Brains, the Broker, and/or the Custodian charge additional fees for the preparation and delivery of such paper documents.

From time to time, in their sole discretion, Brains, the Broker, and/or the Custodian may adjust the amounts or types of fees they charge for ancillary services. Fees for ancillary services will be deducted from one of either your Brains Account or your Funding Account in the same manner as you are charged for the Brains Fee.

As described in Section 4 above, Brains shares in certain fees paid by the Client to the Custodian or otherwise (including, without limitation, additional fees for the preparation and delivery of paper documents, account transfers and other services) and shares in certain revenue paid to Apex through money market or bank sweep programs and/or fully paid for securities lending programs, which create a conflict of interest for Brains in performing its services pursuant to this Advisory Agreement.

*Other Terms and Conditions of Brains Fees* - Unless otherwise agreed between the parties hereto, the Brains Fee is payable monthly in advance and will be billed during the monthly period for which the services are performed. The monthly billing period is each calendar month. The Brains Fee is determined as described in Sections A and B above. In the event of the closure of your Individual Account and/or Platform Tier Service (as applicable) and termination of this Advisory Agreement, Brains shall refund any and all pre-paid fees in excess of \$0.50, which is retained to cover administrative costs related to closing the account(s) including, but not limited to, data entry on the part of employees of Brains. Unearned pre-paid fees will be calculated and refunded based upon the number of days remaining in the applicable billing month and any whole months that were prepaid. The number of days in each billing period in respect of which payment is being made is calculated on the basis of a year of 360 days with 12 30-day months.

Brains reserves the right to discount or waive any fees associated with the Program in its sole discretion. The Brains Fees vary as Brains services themselves vary. This will result in one client paying different fees (as applicable) than another client for similar services. In addition, lower fees for comparable services described may be available from other sources. The Brains Fee shall be deducted from one of either your Brains Account or your Funding Account, as described below, or paid by certain debit and/or credit cards if permitted by Brains in its sole discretion. Brains generally deducts the Brains Fee from either the free cash balance in your Brains Account or from your Funding Account; however, Brains may, as necessary and in its sole discretion, sell securities in your Brains Account to generate free cash in order to deduct the Brains Fee. In the event a Brains Account balance falls below the Minimum Balance, Brains may in its sole discretion deduct the entirety of the balance of the Brains Account (whether such balance is in cash or securities) when such balance is less than the Brains Fee in lieu of collecting the Brains Fee otherwise due. You authorize and direct Brains and Brains Capital to deduct the Brains Fee directly from your Funding Account and/or to instruct the Custodian to sell, as necessary, securities in your Brains Account and to transfer money out of your Brains Account to pay Brains the Brains Fee and, if any, other fees due under or as described in this Advisory Agreement. You agree and acknowledge that such fee deduction may trigger rebalancing of your Brains Account, in accordance with Brains's rebalancing procedures and portfolios management system, including as described in this Advisory Agreement.

Fees deducted from your Brains Account will be reflected in the account statements provided to you by the Custodian. You agree and acknowledge that you are responsible for paying any and all fees, including, without limitation, the Brains Fee, that you owe pursuant to this Advisory Agreement. You are

responsible for maintaining complete and accurate billing and contact information with Brains. You acknowledge that such fees may change from time to time and will be available on the Website and in the Brochure (as defined below). In the event of a change in fees, Brains will provide you notice electronically on the Website. You agree to check the Website from time to time for updates to the Brains Fees applicable to you. You acknowledge that Brains designed the Program with frequent investing in mind and that the fee structure might not be economical or appropriate for individuals looking to make few or infrequent small-dollar investments. You acknowledge that the Brains Fee may exceed the aggregate costs of purchasing separately the products and individual services that comprise the advisory services and the brokerage services offered through the Program.

You acknowledge that if your Brains Account(s) has or have a value equal to or less than the applicable value at which the Brains Fee converts to a variable monthly pricing model, the Brains Fee is charged as a fixed fee that does not vary based on the size of your Brains Account(s) and accordingly, the overall Brains Fee paid may be disproportionately high relative to the value of your Brains Account(s). You further represent and warrant, and have determined, that the Brains Fee is reasonable irrespective of whether your Brains Account has a value greater or less than the applicable conversion threshold. Unless otherwise stated, the Brains Fee does not include any direct or indirect local, state, federal, or foreign taxes, levies, duties or similar government assessments of any nature, including value-added, use, or withholding taxes (collectively, "Taxes"). You are responsible for paying all Taxes associated with your participation in the Program, excluding taxes based on Brains net income or property. If Brains and/or the Custodian has the legal obligation to pay or collect Taxes for which you are responsible under this section, the appropriate amount shall be invoiced to and paid by you, unless you provide Brains and/or the Custodian with a valid tax exemption certificate authorized by the appropriate taxing authority.

When you withdraw money from your Brains Account, the Custodian may reduce the amount of the distribution by the amount of any tax mandatory withholding as required by applicable law. Notwithstanding the foregoing, Brains will not be responsible for the accuracy or timeliness of any such withholding effected or remitted by the Custodian, and will not be liable to withhold any penalties incurred by you in connection with your obligation to pay Taxes associated with your participation in the Program. As more fully described in Section 10, you acknowledge and agree that Brains does not provide tax advice.

## **12. Non-Exclusive Management**

It is understood that Brains performs investment advisory services for other clients. The Client agrees that Brains may give advice and take action with respect to any of its other clients, which may differ from the advice given or the timing or nature of action taken with respect to the Client's Individual Account. Brains, its officers, employees, and agents, may have or take the same or similar positions in specific investments for their own accounts, or for the accounts of other clients, as Brains recommends for the Client's Individual Account.

## **13. Notices and Communication**

Communications will be sent to the Client at the e-mail and/or physical address provided by the Client at the time the Client opens the Individual Account, or to another e-mail and/or physical address as may be provided to Brains in writing in the future. All communications sent to the Client at the given e-mail

and/or physical address, whether by mail, facsimile, messenger, electronically, or otherwise, will be treated as if they were given to the Client personally, whether or not the Client receives them.

#### **14. Proxies and Legal Proceedings**

Brains will not vote proxies on behalf of the Client's Brains Account. Additionally, Brains will not be required to take any action or render any advice with respect to voting of proxies solicited by or with respect to the issuers of securities in which assets of the Brains Account may be invested from time to time. Further, Brains will not take any action or render any advice, or otherwise be responsible, with respect to any securities held in or formerly held in the Brains Account, which are named in or subject to legal proceedings, including bankruptcies or class action lawsuits.

#### **15. Investment Risks and Risk Acknowledgment**

There are significant risks associated with any investment program, including Brains's Program. You understand and agree that neither Brains nor any of its affiliates has made, and is not making, any warranty or guarantee as to the performance or profitability of your Brains Account and/or any of the Investments therein. Investment performance of any kind can never be predicted or guaranteed and Brains does not guarantee that you will avoid financial loss. Brains does not make any guarantee that the investment objectives, expectations or targets described on the Platform will be achieved, including without limitation any risk control, risk management, or return objectives, expectations, or targets. Neither Brains nor any of its affiliates guarantees the success of any given investment decision or strategy that Brains may recommend or undertake, or the success of the overall management of the Brains Account through the Program.

The following risks are not inclusive and should be carefully considered by you. You acknowledge, understand and agree that:

- Investing in securities involves risk of loss, potentially significant, that you should understand and be prepared to bear.
- Brains does not guarantee any level of performance of any investments in your Brains Account(s) or that you will avoid financial loss. The value of your Brains Account(s) and the securities held in such account(s) will fluctuate due to a variety of reasons, including but not limited to market conditions, market sentiment, legislative or regulatory changes, inflation, interest rates, and other factors. The Brains Account(s) may suffer loss of principal, and income, if any, may fluctuate.
- ETF performance may not exactly match the performance of the index or benchmark the ETF is designed to track for a variety of reasons, including ETF expenses and costs not incurred by the relevant index or benchmark, the availability of certain securities comprising the relevant index or benchmark, and supply and demand of the ETF and/or securities held by the ETF.
- Past performance of any security or benchmark does not guarantee or indicate future results.
- Back tested performance of any Suggested Investment, Selected Investment, or other Investment are hypothetical and do not reflect actual investment results. Any hypothetical back tested returns associated with any Investment are based on assumptions and do not reflect actual results of any Brains Account. Such performance results, if any, were derived from the retroactive application of a model

developed with the benefit of hindsight and not with real money at stake. No representation is being made that your Brains Account will or is likely to achieve results similar to any hypothetical results shown. Actual results may differ significantly from any hypothetical returns presented.

- Projected returns are hypothetical, do not reflect actual investment results, and are not guarantees of future results. Such projected performance is subject to a number of limitations and assumptions designed to determine the probability or likelihood of a particular investment outcome based on a range of possible outcomes. Performance of any Suggested Investment, Selected Investment, other 18 Investment or your Brains Account may differ materially from investment gains and avoidance of investment losses projected, described, or otherwise referenced in forward-looking statements, and the projected returns associated with any Investment may not materialize.
- By participating in the Program you may lose opportunities to make other investments and to realize gains from such other investments.
- Investments in your Brains Account are not guaranteed by the Federal Deposit Insurance Corporation (“FDIC”), any bank, or any government, except that uninvested cash held through the Custodian’s bank sweep program is insured by the FDIC, subject to the FDIC coverage limit of \$250,000 per depositor in each insurable capacity (e.g., individual or joint) at the relevant bank. If you have other deposits at the relevant bank, such deposits may be aggregated with the cash held in the bank sweep program for purposes of determining FDIC deposit insurance coverage.
- The services provided under this Advisory Agreement, including any Suggested Investment, are highly reliant on the Client Information, including the accuracy thereof, you provide through the Platform. If you provide inaccurate or incomplete information, or information you provided becomes inaccurate or incomplete, this could materially impact the quality and applicability of the advice you receive through the Program. Further, you understand that the Platform currently focuses exclusively on your investment time horizon and risk tolerance in recommending any Suggested Investment. There are many other components of Client Information that are not currently considered by the Program or the Platform in making recommendations. If you believe that there is additional information relating to your investment objectives and financial circumstances that should be considered to inform the investment advice and recommendations the Program provides, this may not be the appropriate program for you.
- The services provided under this Advisory Agreement, including any Suggested Investment, are highly reliant on the accurate performance of the algorithms underlying the Platform and the portfolios management system and the technology that generates such algorithms, among other things. A malfunction or failure in either an algorithm or the underlying technology could cause you to receive a Suggested Investment that is not suitable based on your risk tolerance and investment time horizon, and to experience losses, some or all of which could be significant. A malfunction, computer equipment failure, loss of internet access, viruses or other events may impair access to the services provided under this Advisory Agreement.
- The algorithm underlying the Platform’s recommendations rely on a number of assumptions based upon a limited amount of Client Information provided through the Platform and a number of other variables. 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 significant losses. There is no guarantee that the



algorithm or Brains recommendations will necessarily produce the intended results, and they may prove incorrect and/or cause you to not achieve your investment objectives.

- The recommendations we provide and other information that appears on the Platform 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 Platform may be subject to different interpretations as market conditions and other factors change.
- Data provided by Brains may not be free from error or inaccuracies.
- We rely on third parties – often to a material extent – for the provision of the Investments, market statistics, Suggested Investment details, performance, and related information. Although we believe 19 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 Advisory Agreement. Further, some or all of these agreements may allow the third party service provider to terminate the agreement for any reason or no reason at all with no advance notice to us. In such instances, our ability to perform under this Advisory Agreement could be materially compromised.
- Failures, delays, and/or interruptions in the timely or proper execution of trades and trading instructions may occur for any reason, including but not limited to the following: any kind of interruption of the services provided by the Broker or the Custodian, the inability to communicate with the Broker or Custodian, hardware or software malfunction, failure or unavailability, or force majeure.
- Volatility and liquidity conditions for a security may prevent you from selling such security at all or at a favorable time or price and/or you may be forced to sell at a significant discount to market value. In addition, ETFs may be adversely affected by volatility and liquidity conditions as they manage their holdings.
- The securities held in your Brains Account generally are valued based on reasonably available exchanged-traded security data, but we may receive or use inaccurate data that could adversely affect valuations, among other things.

## **16. Limitation of Liability and Indemnification**

To the fullest extent allowed by applicable law, you agree and understand that Brains and its affiliates and the officers, directors, employees, representatives, successors, assigns, and authorized agents of Brains and/or its affiliates (collectively, the “Indemnified Persons”) will not be liable for (i) any loss arising from any action taken or omitted in good faith by Brains with the degree of care, skill, prudence and diligence that a person acting in a fiduciary capacity would use under the circumstances; (ii) any loss arising from adhering to your written or oral instructions; (iii) any act or failure to act by the Custodian of any assets in the Brains Account or any third party, including the ACH Operator and other vendors and contractors; (iv) any loss arising from any services provided to Client prior to the execution of this Agreement by any person or entity who at the time of the provision of such services was not an Indemnified Person; (v) the loss or failure or delay in performance of any obligation under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond Brains reasonable control, including acts of God, earthquakes, fires, floods, wars, terrorism, civil or military disturbances, sabotage, epidemics, riots, interruptions, loss or malfunctions of utility, telecommunications, computer

software or hardware, transportation or communication service, accidents, labor disputes, acts of civil or military authority, governmental, regulatory authority or securities exchanges actions, the inability to obtain labor, material, equipment, or transportation and a custodian refusing to act on Brains instructions; or (vi) any loss that Client may suffer for any reason whatsoever that is outside the Brains Account(s) or the relationship between the parties.

Except where prohibited by applicable law, Brains and its Indemnified Persons will not be liable for any losses incurred or damages (including but not limited to lost opportunities and lost profits) relating to differences between projected or potential performance and actual results or any service provided by the Custodian under the Customer Agreement. Without limiting any other indemnity provision of this Advisory Agreement, you shall, to the fullest extent allowed by applicable law, indemnify and hold harmless Brains and its Indemnified Persons from any and all obligations, claims, judgments, losses, damages, liabilities, costs, fees and expenses, including reasonable attorneys' fees, arising out of or relating to: (i) any breach of this Agreement by Client, including your failure to provide true, accurate, complete, and current information (including Client Information) or to update Client Information or any misrepresentation or omission made by Client in this Agreement; (ii) any use of or access to the Platform and the advisory services provided hereunder, (iii) any direction, instruction or communication you provide with respect to this Advisory Agreement, your Brains Account (including deposits, withdrawals, or transfers of assets to or from such account) or the assets in your Brains Account or (iv) any claim brought against any Indemnified Person relating to services provided to Client prior to the execution of this Agreement by any person who at the time of the provision of such services was not an Indemnified Person. This indemnification shall survive the termination of this Agreement, the Client's use of the Platform and the Brains Account(s).

Without limiting the generality of the foregoing, except where prohibited by applicable law, Brains and its Indemnified Persons will not be liable for any indirect, special, incidental, non-compensatory, punitive or consequential damages or other losses (regardless of whether such damages or other losses were reasonably foreseeable). If the assets with respect to which Brains is providing advice under this Agreement are only a portion of Client's total assets, Brains shall not be responsible for (a) any of Client's assets that Brains is not managing under this Agreement; or (b) diversifying all of Client's assets. In addition, Brains shall have no liability for Client's failure to promptly inform Brains of changes in Client's financial and/or economic situation, Client's investment objectives, or any restrictions Client wishes to impose that may affect the management of the assets in the Brains Account(s).

You acknowledge that it is your responsibility to provide correct payment instructions for your Funding Account to Brains, the Custodian and the ACH Operator when requested in connection with setting up your Brains Account(s). You agree to be bound by the National Automated Clearing House Association ("NACHA") operating rules and any applicable local ACH operating rules. You acknowledge that mismatched, incorrect, or incomplete identifying information regarding your Funding Account or in payment instructions to make a deposit may result in an ACH transfer being rejected, lost, posted to an incorrect account, or returned to the originating bank without notice to you. You agree that Brains may request and the ACH Operator or Custodian may make ACH transfers for withdrawals from your Brains Account(s) solely by reference to the account number of the recipient. None of Brains, its affiliates, the Custodian, or the ACH Operator shall be obligated by any provision of this Advisory Agreement or any other agreements governing your participation in the Program to determine whether there is a

discrepancy relating to names or account numbers in transfers between your Brains Account and your Funding Account.

You agree to indemnify and hold Brains, the Custodian, and the other Indemnified Persons harmless from any and all damages resulting from or relating to any mismatched, incorrect, or incomplete identifying information regarding your Funding Account or in payment instructions for an ACH transfer to make deposits or withdrawals with respect to your Brains Account or Funding Account. You agree that processing of ACH transfers for deposits or withdrawals may be delayed for five Business Days or longer. If you believe a transfer has not been properly credited to you, you agree to notify Brains promptly. You agree that money transferred via an ACH transfer may not be reflected in a deposit credited to your Brains Account during periods of ACH processing delays. You agree that, notwithstanding anything to the contrary in this Agreement or the Customer Agreement, neither Brains nor any of its Indemnified Persons, nor the Custodian, shall be liable for ACH transfer processing delays, any act or omission of, including without limitation any overdraft or other fee charged by any financial institution, or for any act or omission of any service provider or vendor of any such financial institution. Any credit resulting from an ACH transfer associated with a deposit is provisional until the Custodian receives payment.

Without limiting any other rights of Brains or the Custodian to delay a withdrawal or deny a request for a withdrawal, Brains and the Custodian reserve the right to delay or prevent a withdrawal of the proceeds of any deposit pending verification of final payment. If the Custodian does not receive final payment, or if your Brains Account has been credited by mistake, you authorize Brains to instruct the Custodian to reverse the credit to your Brains Account or will otherwise reimburse the Custodian and/or Brains, as applicable, if assets in your Brains Account are not sufficient, for such final payment or the amount of such erroneous credit, as applicable. If a payment funding a deposit to your Brains Account does not become final, the originator (which is you in the case of a deposit originating in your Funding Account and the holder of money) will not be deemed to have paid you in your Brains Account. The federal and state securities laws impose liability under certain circumstances on persons who act in good faith.

Consequently, nothing in this Advisory Agreement shall waive or limit any rights that you may have under federal or state securities laws. If Brains or any of its affiliates is served with levies, attachments, garnishments, summons, subpoenas, court orders, or other legal process which name you as debtor or otherwise, Brains or such affiliate shall be entitled to rely upon the representations, warranties, and statements made in such legal process. You hereby agree that Brains or any affiliate may respond to any such legal process in its own discretion without regard to jurisdiction or forward such legal process to the Custodian or such other party as may be appropriate. You hereby agree to hold harmless and indemnify Brains and its affiliates for any losses, expenses, and costs, including attorneys' fees, incurred as a result of responding to such legal process or forwarding such legal process to the appropriate entity.

If Brains or any affiliate receives written notice from a personal representative, executor or administrator purporting to represent your estate, Brains or such affiliate shall be entitled to rely on all figures supplied and representations made in such written notice if Brains or such affiliate is provided with letters of appointment bearing a duly recognized court seal without regard to jurisdiction.

## **17. Entire Agreement, Amendments, and Notice**

You acknowledge and agree that this Advisory Agreement, as it may be amended from time to time in accordance with its terms, constitutes the entire and final understanding with respect to the subject matter of the Advisory Agreement. You acknowledge and agree that this Advisory Agreement, and the terms and conditions contained herein, supersedes any prior Advisory Agreement or similar contracts you entered into with Brains. Pursuant to the ESIGN Agreement you executed concurrently with this Advisory Agreement, you acknowledge that the usual way Brains will provide you notice under this Advisory Agreement, including notices of new versions of this Advisory Agreement when modified pursuant to the terms and agreements hereof, is by posting such notices on the Website. You agree to check the Website frequently.

If required by applicable law or if it decides in its sole discretion, Brains will provide you with notices by other means, including e-mails linking to the Website, other e-mails, text messages, and traditional mail. Nothing in this Advisory Agreement shall be deemed waived or amended without the prior express written consent of Brains executed by a duly authorized representative of Brains. Brains may amend this Advisory Agreement from time to time by adding, revising, or deleting any terms or conditions, upon notice to you. Although Brains may e-mail you about changes to this Advisory Agreement, the usual way for Brains to notify you of amendments is to post notice on the Website, which will be available, subject to Brains Terms of Use, for you to access, download, review, print, and retain. You agree to check the Website for new versions of this Advisory Agreement.

You agree that, by keeping your Brains Account or using the services provided in the Program without objecting after Brains posts a new version of the Advisory Agreement, you will agree to and accept all terms and conditions of this Advisory Agreement as so amended. Any amendment or modification to this Advisory Agreement will be effective on the date determined in accordance with the terms and conditions discussed herein.

#### **18. Governing Law**

Except to the extent that it is preempted by federal law, the law of the State of New York (without regard for conflicts of law principles) will govern the construction, validity, and administration of this Advisory Agreement. However, nothing in this Advisory Agreement will be construed contrary to the Investment Advisers Act of 1940, as amended (the "Advisers Act").

#### **19. Assignment of Agreement**

You may not assign your rights or obligations under this Advisory Agreement without the prior express written consent of Brains. Brains shall not assign (within the meaning of the Advisers Act) its rights or obligations under this Advisory Agreement without your consent, provided however that you will be deemed to have consented to an assignment if you do not object to such assignment within 30 calendar days of being notified through the Platform or by e-mail of any intent of Brains to assign such rights or obligations. You further agree that any reorganization, restructuring, or other transaction affecting the ownership of Brains will not be deemed to be an assignment (within the meaning of the Advisers Act) of this Advisory Agreement, so long as such reorganization, restructuring, or transaction does not result in a change of actual control or management.

#### **20. Arbitration Agreement**

ALL PARTIES TO THIS ADVISORY AGREEMENT AGREE THAT UPON THE ELECTION OF ANY OF THEM, ANY DISPUTE RELATING IN ANY WAY TO THIS AGREEMENT, YOUR ACCOUNT(S), OR TRANSACTIONS WILL BE RESOLVED BY BINDING ARBITRATION AS DISCUSSED BELOW, AND NOT THROUGH LITIGATION IN ANY COURT. THIS ARBITRATION AGREEMENT IS ENTERED INTO PURSUANT TO THE FEDERAL ARBITRATION ACT, 9 U.S.C. §§ 1-16:

- ALL PARTIES TO THIS ADVISORY AGREEMENT ARE GIVING UP THE RIGHT TO SUE EACH OTHER IN COURT, INCLUDING THE RIGHT TO A TRIAL BY JURY EXCEPT AS PROVIDED BY THE RULES OF THE ARBITRATION FORUM IN WHICH A CLAIM IS FILED;
- ALL PARTIES TO THIS ADVISORY AGREEMENT WAIVE ANY ABILITY TO PARTICIPATE IN A CLASS OR REPRESENTATIVE BASIS IN COURT OR IN ARBITRATION. ALL DISPUTES MUST BE RESOLVED BY BINDING ARBITRATION, ON AN INDIVIDUAL BASIS, WHEN EITHER YOU OR WE REQUEST IT.
- ARBITRATION AWARDS ARE GENERALLY FINAL AND BINDING; A PARTY'S ABILITY TO HAVE A COURT REVERSE OR MODIFY AN ARBITRATION AWARD IS VERY LIMITED; 23
- THE ABILITY OF THE PARTIES TO OBTAIN DOCUMENTS, WITNESS STATEMENTS AND OTHER DISCOVERY IS GENERALLY MORE LIMITED IN ARBITRATION THAN IN COURT PROCEEDINGS;
- THE ARBITRATORS DO NOT HAVE TO EXPLAIN THE REASON(S) FOR THEIR AWARD EXCEPT IN VERY LIMITED CIRCUMSTANCES;
- THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY;
- THE RULES OF SOME ARBITRATION FORUMS MAY IMPOSE TIME LIMITS FOR BRINGING A CLAIM IN ARBITRATION; AND
- THE RULES OF THE ARBITRATION FORUM IN WHICH THE CLAIM IS FILED, AND ANY AMENDMENTS THERETO, SHALL BE INCORPORATED INTO THIS ADVISORY AGREEMENT. THIS ARBITRATION PROVISION SHOULD BE READ IN CONJUNCTION WITH THE DISCLOSURES IN THIS ADVISORY AGREEMENT. ANY AND ALL CONTROVERSIES, DISPUTES OR CLAIMS BETWEEN BRAINS AND THE CLIENT OR THEIR REPRESENTATIVES, EMPLOYEES, DIRECTORS, OFFICERS, OR CONTROL PERSONS, ARISING OUT OF, IN CONNECTION WITH, FROM, OR WITH RESPECT TO (a) ANY PROVISIONS OF OR THE VALIDITY OF THIS ADVISORY AGREEMENT OR OTHER AGREEMENTS RELATING TO YOUR PARTICIPATION IN THE PROGRAM, (b) THE RELATIONSHIP OF THE PARTIES HERETO, (c) ANY CONTROVERSY ARISING OUT OF BRAINS'S BUSINESS OR THE CLIENT'S INDIVIDUAL ACCOUNT OR BRAINS ACCOUNT (COLLECTIVELY, "CLAIMS"), OR (d) ANY TRANSACTIONS IN YOUR BRAINS ACCOUNT SHALL BE CONDUCTED SOLELY BY ARBITRATION PURSUANT TO THE RULES THEN IN EFFECT OF THE AMERICAN ARBITRATION ASSOCIATION. ARBITRATION MUST BE COMMENCED BY SERVICE OF A WRITTEN DEMAND FOR ARBITRATION OR A WRITTEN NOTICE OF INTENTION TO ARBITRATE UPON THE OTHER PARTY. THE DECISION AND AWARD OF THE ARBITRATOR(S) SHALL BE CONCLUSIVE AND BINDING UPON ALL PARTIES. EACH SIDE IS RESPONSIBLE FOR ITS OWN SHARE OF ARBITRATOR FEES ASSESSED BY THE ARBITRATOR UNDER THE ARBITRATION ADMINISTRATOR'S RULES OF PROCEDURE. IF YOU BELIEVE THAT YOU ARE UNABLE TO AFFORD ANY FEES THAT WOULD BE YOURS TO PAY, YOU MAY REQUEST THAT WE PAY OR REIMBURSE THEM, AND WE WILL CONSIDER YOUR REQUEST IN GOOD FAITH. THE PARTIES AGREE THAT THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED ON A CLASS ACTION BASIS,

AND THE CLIENT EXPRESSLY WAIVES ANY RIGHT TO BRING A CLASS ACTION LAWSUIT OR ARBITRATION AGAINST BRAINS OR ITS REPRESENTATIVES, EMPLOYEES, DIRECTORS, OFFICERS, OR CONTROL PERSONS WITH RESPECT TO ANY CLAIMS.

Notwithstanding the foregoing or anything to the contrary in this Advisory Agreement, in no way shall this Advisory Agreement constitute a waiver or limitation of rights that the Client may have under federal or state securities laws to pursue a remedy by other means if and to the extent such laws guaranty such right to the Client and do not permit the waiver thereof.

## **21. Delivery of Brochure**

You acknowledge receipt of the Brains Wrap Fee Program Brochure (the “Brochure”), available on the Website, which contains certain disclosures concerning brokerage practices, risk factors and potential conflicts of interest, all of which may be amended from time to time subject to law. The Brochure is also available on the Website and the Securities and Exchange Commission’s Investment Adviser Public Disclosure page on [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

## **22. Confidentiality, Privacy, and Trusted Contact**

The information you provide to Brains, including your personal information, is subject to the terms of Brains Privacy Policy, which is available at [www.brains.money](http://www.brains.money). By entering into this Advisory Agreement, you acknowledge receipt of the Privacy Policy, which Brains may amend from time to time by posting new versions on the Website. Except as required by law or requested by regulatory authorities, Brains agrees to maintain in strict confidence all of your nonpublic personal and financial information that you furnish to Brains, except for information that you explicitly agree to share publicly. You agree that you shall not use investment advice, investment recommendations, or other confidential information you receive from Brains for developing a service that competes with the Platform or the services of Brains or any of its affiliates.

You consent to Brains recording and/or monitoring your telephone calls and electronic communications with representatives and associated persons of Brains without further notice. You expressly authorize Brains representatives or associated persons to contact you for purposes of evaluating the offering of the advisory services, the Program, and other products and services by calling, writing, or e-mailing at the telephone number(s), mailing address, and/or e-mail address(es) you provide in connection with your Individual Account, including any additional or updated telephone numbers, mailing addresses, or e-mail addresses.

The authorization in the preceding sentence will remain in effect unless and until you specifically revoke it by notifying Brains or associated persons with whom you are in contact. Furthermore, you may appoint an adult at least 18 years of age as a Trusted Contact Person whom we may contact about your Brains Account. We may disclose information about your Brains Account to your Trusted Contact Person in order to address possible wrongful or unauthorized use of your assets or to confirm the specifics of your contact information, health status, or the identity of any legal guardian, executor, trustee, or holder of a power of attorney.

## **23. Client Information**

For purposes of this agreement, “Client Information” means all information about you, which may include, among other things, information about your identity, liquidity needs, age, e-mail address, physical address, location, nationality, citizenship, tax residency, financial situation, or other information which you supply through the Platform. You acknowledge and agree that Brains relies on the Client Information you provide through the Platform to provide the advisory services under the Program, including the Platform’s recommendation of any Suggested Investment. You further acknowledge and agree that Brains shares some or all of the Client Information with the Custodian and/or Broker and that, subject to the terms and conditions of the Customer Agreement, the Custodian and/or Broker relies on such Client Information to perform certain compliance functions including verifying your identity for customer identification purposes and anti-money laundering purposes and confirming that United States firms like Brains, Broker, and Custodian are permitted to provide you with services under applicable United States economic sanctions against various countries, individuals, and organizations.

You represent and warrant to Brains that all Client Information you supply is true, accurate, complete, and current. Without limiting the generality of the preceding sentence, you represent and warrant that you are neither insolvent nor have you been found by a court or regulatory body to be bankrupt or insolvent through a judicial or regulatory proceeding. You agree to update any Client Information you provided Brains that is no longer accurate promptly using the Platform.

#### **24. Terms of Use**

You acknowledge receipt of the Terms of Use at [www.brains.money](http://www.brains.money), which apply to the Platform and your use of the services offered through the Program contemplated hereunder and agree to adhere to the Terms of Use throughout your participation in the Program.

#### **25. Miscellaneous**

Headings in this Advisory Agreement are descriptive and for convenience only and shall not be construed as altering the scope of the rights and obligations created by this Advisory Agreement. Defined terms shall have their assigned meanings wherever used in this Advisory Agreement or any of the agreements governing your participation in the Program, regardless of whether defined in this Advisory Agreement or used in the singular or the plural. Unless expressly provided otherwise, the word “including” shall be construed as introducing examples of a category without limiting such category and shall therefore be construed as if the word “including” were replaced with the phrase “including but not limited to” or “including without limitation.”

No course of dealing between you and Brains, nor any delay by Brains in exercising any rights or remedies hereunder, shall be deemed to be a waiver of any such rights or remedies. Any waiver of such rights or remedies shall not be construed as a waiver of any other right or remedy. Any right or remedy may be exercised as often as Brains may determine in its sole discretion, and a waiver granted on one occasion shall not be construed as applying to any other occasion.

You acknowledge that the Program is intended for natural persons who are citizens or other lawful residents of the United States and who are located in the United States, and that neither Brains nor its affiliates intend to offer the Program, any securities, or any other products or services outside of the United States. You acknowledge that Brains and its affiliates do not offer the Program to non-resident aliens subject to tax withholding. Neither Brains nor its affiliates represent or warrant that any aspect of

the Program, including information available from the Website and information provided through the Platform, complies with any law or regulation of any jurisdiction outside of the United States. You represent and warrant that you are a lawful resident of and located in the United States and that you have been lawfully issued by the government of the United States the social security number or tax identification number you provided to Brains when applying for your Brains Account using the account opening functionality through the Platform. You represent and warrant that you have the full power and authority to enter into this Advisory Agreement. You certify that you are of legal age to enter into contracts in the state where you live. You agree that, when you sign as described herein, this Advisory Agreement will have been duly authorized and will be binding. You acknowledge that you are solely responsible for carefully reviewing and understanding all terms and conditions of this Advisory Agreement.

You acknowledge and agree that you are fully responsible for all acts and omissions relating to the use of the Platform, including the selection of Investments and deposit and contributions to and withdrawals from your Brains Account, by any person who uses your user account and password(s), as described in the Terms of Use. You may not share your password(s) with others, and you must notify Brains immediately if you know or suspect that the confidentiality of your password(s) has been compromised. You are the only person who may use your user account and password to access the Platform and your Brains Account. You represent and warrant that no term of this Advisory Agreement conflicts with or violates any duty you have under any law, regulation, or agreement.

If any provision of any of this Advisory Agreement or other agreement related to the Program and your Brains Account is held unenforceable or invalid under any law, rule, or administrative or judicial order or decision, that holding shall not alter the enforceability or validity of this Advisory Agreement's remaining provisions. Without limiting the foregoing, if any portion of the Arbitration Agreement set forth below is invalidated, such invalidation shall not invalidate the remaining portions of the Arbitration Agreement.

Electronic Signature If you want to participate in the Program and have carefully reviewed this Advisory Agreement, including the PRE-DISPUTE ARBITRATION CLAUSE ABOVE, then please click or tap "Accept and continue." BY CLICKING OR TAPPING "ACCEPT AND CONTINUE" I AGREE TO ENTER INTO THIS ADVISORY AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.



## **Attachment A: Potential Expenses Not Covered By the Brains Fee**

Below is a list of ancillary fees Clients may incur that are not included in the Brains Fee. These fees would be incurred based on a Client's request, beyond our control and accordingly excluded from the fees and services covered by the Brains Fee. Should a Client incur any of these fees, such Client will be responsible for their payment in accordance with the terms and conditions of this Advisory Agreement and such Client's other account opening agreements. This list of fees is the current list of ancillary fees, but we reserve the right to change these fees in the future.

### **Miscellaneous Services**

Advisor Requested Document Copies \$5.00 each  
Return Mail \$2.00 per piece  
Paper Statement Insert \$0.25 per mailed pg/acct/month  
Paper Prospectus Mailing \$2.50 per mailing  
Overnight Mail – Domestic \$50.00 per request  
Overnight Mail – International (including Canada) \$100.00 per request  
Paper Tax Statements \$5.00 per statement  
Tax Form 5498 \$5.00 per delivery

### **Banking:**

Outgoing Wire Transfers (Domestic Bank) \$25.00 per wire  
Outgoing Wire Transfers (Foreign Bank) \$50.00 per wire  
Paper Check Draft (USD) Domestic \$5.00 per check  
Paper Check Draft (USD) International \$10.00 per check  
Returned Checks, ACH, Wires and Recalls \$30.00 per item (Including amendments/repairs)  
ACH Notice of Correction \$5.00 per notice  
Stop Payments on Apex Issued Checks \$30.00 each  
Check Copies \$15.00 each  
Third Party Distribution Notification \$2.00 per notification

### **Operations:**

Postage and Handling (Paper Only) Confirms \$2.00 per confirm  
Statements (monthly and quarterly) \$5.00 per statement  
Outgoing ACAT Transfers \$75.00 per account

## **Attachment B: Blogs, Discussion Board, Library, Newsletters Additional Terms and Conditions**

Brains blogs, Discussion Board, Library, Newsletters, Commentary excerpts thereof (“Reports”), may be distributed through the Platform and/or delivered by e-mail. These Reports may include qualitative and/or quantitative analysis on financial markets. The purpose of our reporting is to provide users education and other information on an investment topic or topics, as well as data, statistics, and/or written analysis. Brains may also prepare commentaries such as market overviews, sector overviews, industry reports, and thematic insights, as well as various other types of reports that are a more condensed and/or targeted format.

These Reports may supplement other investment advisory services made available to Clients. Brains also has and maintains investment recommendations that are available pursuant to the terms and conditions of this Advisory Agreement both to users and invested Members. Any decision as to the investment recommendations made available pursuant to the terms and conditions of this Advisory Agreement are solely those of Brains.

Reports are prepared without taking into consideration the Client Information you provide through the Platform, or any other facts and circumstances specific to the Client, and thus are generic/impersonal investment advice intended to be educational in nature. You agree that there is no guarantee, representation, warranty, or covenant that advice delivered Reports will perform better over any time period than any other investment advice made available through Brains or otherwise available in the market. Our Reports are not intended to constitute legal, financial, or tax advice.

Brains reserves the right to enhance or otherwise modify the presentation, content, manner of delivery, and any other characteristics of the Reports. While any changes are intended to improve or enhance the Reports, there is no guarantee that such changes will result in improvement or enhancement of the Reports. In some cases, such enhancements or modifications may cause unforeseen consequences with the provision of Reports that could be detrimental to you.