

# **Marcus Invest Account Agreements**

**April 2021**

## **Contents**

**For your information, review, and records, we have created this packet containing copies of the agreements to which you have agreed to be bound. Please read and retain these agreements for your records. Inside you will find:**

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## **GOLDMAN SACHS & CO. LLC'S BUSINESS CONTINUITY PROGRAM**

### **OVERVIEW OF THE GOLDMAN SACHS BUSINESS CONTINUITY PROGRAM FOR DISASTER RECOVERY**

Business continuity for disaster recovery is a high priority for Goldman Sachs, its subsidiaries, and affiliates ("Goldman Sachs" or the "firm"). Our goal is to ensure our continued ability to serve our clients and to protect their assets and the people and assets of our firm. Our Business Continuity Program (the "program") has been developed to provide reasonable assurance of business continuity in the event that there are disruptions of normal operations at the firm's critical facilities.

The firm has established a global, structured approach designed to ensure that the firm is prepared should a business disruption occur. This approach addresses business disruptions of varying scope and severity, which may include disruptions affecting individual business or specific locations; city-wide or industry-wide failures; and regional, national, or global events that affect our business.

No contingency plan can be failsafe or provide absolute assurance that an interruption in business will not occur or that negative consequences will not ensue from a crisis or event. Because natural and other disruptions — even if anticipated generally — are unpredictable and can change over time, a disruption may not have been fully anticipated when the plan was originally designed or later modified. That said, Goldman Sachs is committed to ensuring that its program is comprehensive and up-to-date, particularly as new information, techniques, and technologies become available. We may alter, add to, or eliminate specific aspects of the program as we judge appropriate for the protection of all concerned.

### **THE GOLDMAN SACHS BUSINESS CONTINUITY PROGRAM**

We have a dedicated team of professionals responsible for training and education; for creating and maintaining the program; and for implementing, managing, and monitoring the firm's preparedness. The program, which was developed with the assistance of this team, is comprised of five key elements: Crisis Management, Business Recovery, Systems and Data Recovery, People Recovery Facilities, and Process Improvement.

#### **1. Crisis Management: Coordination, Communication, and Training**

Crisis Management encompasses the communication processes and response procedures by which the firm manages a business disruption, as well as the tools, training, and exercises we use to help prepare the firm and our people for possible disruptions. Because the first two hours following a disruption are often the most critical, the firm has established a multi-pronged, rapid response capability that includes:

- Formal Command Centers in every region of the firm's worldwide operations. The Command Centers allow the firm to monitor its environment, execute pre-established crisis management procedures, and coordinate responses.
- Crisis Management teams identified and trained to support the assessment, escalation, and decision-making processes in a business disruption.
- Communication plans with local authorities and regulators to facilitate information flow and coordination of responses.
- Processes and communication tools, including some automated tools, to notify key senior managers and personnel quickly at the onset of a disruption.
- Crisis Response Guidelines distributed to each employee, including senior management, and Crisis Handbooks or playbooks for our most senior managers.

The firm's Crisis Management responses are rehearsed on a regular basis. The firm regularly carries out both desktop drills and live exercises that reinforce these arrangements and allow the firm to study and improve its program and processes.

## **2. Business Recovery**

Business Recovery focuses on protecting client assets and assuring that the firm is able to continue business operations in the event of a business disruption.

Central to the firm's business recovery efforts is a requirement that each Goldman Sachs business unit develop, test, and maintain recovery plans for each of its core functions. As part of these plans, each business unit identifies critical risks and puts in place the appropriate level of business controls and functionality necessary to mitigate those risks. The resultant plans document the functional requirements — equipment, applications, vital records and regulatory reports, relocation sites, and recovery teams and tasks — needed to reestablish essential business operations. The plans also assess the impact of a business disruption on the firm's business constituents, banks, and counterparties.

## **3. Systems and Data Recovery**

Systems and Data Recovery focuses on restoring the firm's core infrastructure, including networking, applications, market-data feeds, and other shared technologies to ensure the continuation of critical business systems processing. Applications are prioritized based on their criticality to the business. Recovery requirements and the frequency of application testing are then established based on those priorities.

Wherever practicable, Goldman Sachs separates the people conducting business from the technology infrastructure supporting the business, housing them in separate buildings, thus reducing the likelihood of simultaneous personnel and systems disasters. Buildings are prioritized based on their criticality to the business, and backup generators are used to protect the most critical facilities.

In addition, offsite data centers have been established outside our primary facilities to support recovery of critical systems and data. Critical data is backed up to these locations on a regular basis.

## **4. People Recovery Facilities**

People Recovery Facilities focuses on ensuring that our people can quickly get back to productive work when their physical facilities are not operating. People Relocation Sites — redundant work environments — have been established for critical business units. These People Relocation Sites, available in all regions, are outfitted with the equipment and functional capabilities required to carry on business in emergency situations. The Relocation Sites are continually maintained to ensure operational readiness and are tested on a quarterly basis. As a further safeguard, depending on the kind and extent of the disruption, many critical functions can be shifted to other principal offices of Goldman Sachs, including offices outside the U.S.

## **5. Process Improvement: Continual Assessment and Testing**

Process Improvement assesses and tests our state of readiness for foreseeable business disruptions, including:

- Ongoing testing of current plans.
- Continually reassessing risk — including operational and financial risks — and integrating new risk scenarios into the program.
- Updating business requirements and integrating them into the program.
- Introducing new strategies and technologies as they become available.
- Undertaking quarterly review and refinement of the program.

## **CUSTOMER COMMUNICATIONS AND QUESTIONS**

This document provides an overview of the firm's Business Continuity Program. If you have additional questions, please call 1-833-720-6468 or send an e-mail to [invest-support@marcus.com](mailto:invest-support@marcus.com). Please bear in mind that we will not respond to specific questions about the program that could compromise our security.

Pertinent updates to this Overview will be available on the Goldman Sachs Web site ([www.gs.com](http://www.gs.com)). This Overview can also be obtained via mail by contacting customer support.

**IN THE EVENT OF A BUSINESS DISRUPTION**

Should there be a significant business disruption, customers are encouraged to visit the Goldman Sachs Web site ([www.gs.com](http://www.gs.com)) as well as the Marcus Invest site ([www.marcus.com/us/en/invest](http://www.marcus.com/us/en/invest)) for additional information.

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This Overview is designed to satisfy disclosure requirements under FINRA 4370 requiring the establishment and maintenance of a Business Continuity and Contingency Plan.

## INVESTOR'S BILL OF RIGHTS

It has always been Goldman Sachs' goal to put the interest of our clients first. Our experience shows that if we serve you well, our own success will follow. For us to serve you to the best of our abilities, it is important for you to familiarize yourself with your rights and responsibilities as a client that are described below. As a client, you have important rights, including the right to high quality investment strategies and services from the securities firm you choose. At the same time, clients need to shoulder certain responsibilities themselves — for example, to plan carefully to meet their investment goals and to stay informed about the risks and rewards of their investments.

The Securities Industry and Financial Markets Association (SIFMA) has developed and adopted statements of "Investor Rights" and "Investor Responsibilities". Goldman Sachs endorses these statements and encourages all of our clients to familiarize themselves to its provisions.

### YOUR RIGHTS AS A CLIENT OF GOLDMAN SACHS

As a client, you have the right:

#### 1. Quality Service

- To be treated in a fair, ethical, and respectful manner in all interactions with Goldman Sachs.
- To receive competent and courteous service at a fair price.
- To move your account to a new investment firm whenever you wish in a simple, efficient manner.

#### 2. Full, Clear Reporting

- To receive clear, accurate, easy-to-understand descriptions of all your transactions, statements, and other communications from Goldman Sachs or the clearing or carrying firm, Apex Clearing Corporation (or any successor firm).
- To be informed clearly about all the costs associated with your account and the costs related to individual transactions, including commissions, execution charges, and other fees.
- To receive accurate and timely regular statements of your account, including detailed investment information.
- To be provided with clear descriptions of Goldman Sachs' policies and practices for protecting the privacy of non-public, personal information.

#### 3. Responsible Investment Advice

- To be provided with responsible investment recommendations based on your time horizon and risk tolerance, as disclosed by you.
- To be apprised of significant conflicts of interest identified in a financial relationship between you and Goldman Sachs.
- To expect that Goldman Sachs will provide assistance through its platform to help you clarify your investment goals and risk tolerance for your account.
- To be able to rely on Goldman Sachs' assistance in setting realistic expectations about the long-term performance and associated risks of various investment strategies.

#### 4. Prompt, Fair Resolution of Problems

- To receive fair consideration and a prompt response from Goldman Sachs if any problem with your account ever arises.
- Of access to a clearly defined process for raising and resolving a complaint. Goldman Sachs will provide you with full information about this process, particularly about how you can elevate an issue to the appropriate level of management to gain satisfaction.

- To be apprised of alternatives if Goldman Sachs is unable to resolve a dispute to your satisfaction.

## **YOUR RESPONSIBILITIES AS A CLIENT**

To help ensure the success of your investments, you will want to take a number of important steps personally.

### **1. Communicate With Goldman Sachs**

- Provide completely accurate information about your financial status, investment goals, and risk tolerance when seeking investment advice, so that Goldman Sachs can provide you with appropriate recommendations.
- Seek out whatever information you need or want from Goldman Sachs by proactively asking any questions you have about your account, a specific transaction, risk exposures, potential conflicts of interest, and, of course, commissions, sales charges, and other fees.
- Notify Goldman Sachs promptly whenever there is a significant change in your investment objectives, risk tolerance, income, net worth, or liquidity needs.
- Review your portfolio holdings on a regular basis as well as whenever your financial circumstances change. You may want to make appropriate changes based on your investments' performance and your current objectives.

### **2. Inform and Educate Yourself**

- Read thoroughly all sales literature, prospectuses, and/or other documents and information, when available, before making any investment decisions.
- Consider carefully all investment risks, fees, and/or other factors explained in these documents.
- Make certain that you understand the relationship not only between your investment objectives and the risks and returns on your particular investments but also between your particular investments and your investment objectives. You need to remember at all times that every investment has some degree of risk and that it is possible to lose money — some or all — on any investment.

### **3. Keep Your Accounts Current**

- Have cash in your investment account, or transfer funds into that account, to ensure payment for securities purchases in your investment account by the settlement date.
- Review all transaction confirmations and account statements or reports carefully and promptly. You should report any errors or refer any questions you have by calling 1-833-720-6468 or sending an e-mail to [invest-support@marcus.com](mailto:invest-support@marcus.com).

### **4. Use the Right Resources — Carefully**

- Consult an attorney or a tax adviser for specific legal or tax advice.
- Keep in mind that you are fully responsible for your investment decisions.
- Consider carefully the validity and reliability of investment information obtained from all sources, especially unsolicited information obtained over the Internet.
- Understand that the opinions of securities analysts should never be interpreted as a guarantee of future performance or rate of return.

**Marcus Invest**  
**Customer Agreement**  
**February 2021**

**1. General Agreement**

This Customer Agreement (the “**Agreement**”), which is entered into by each natural person indicated in the title to the Account (as defined below) (“**you**” or the “**Client**”) and Goldman Sachs & Co. LLC, inclusive of its present and future affiliates, and their respective partners, officers, directors, employees and agents (“**GS&Co.**,” “**we**,” “**us**,” or “**our**”), sets forth the respective rights and obligations of GS&Co. and you in connection with your Account. It includes the application that you submit to open your Account through the Site (as defined below) and the supplements, statements, disclosures, and other agreements (each, a “**Supplement**”) for the products and services for which you have applied. This Agreement is separate and in addition to your agreement with Apex Clearing Corporation (“**Apex**”) or any successor firm that GS&Co. may designate (“**Clearing Firm**”), to which GS&Co. has introduced your Account as clearing or carrying firm and which is responsible for holding, carrying, and maintaining all Securities and Other Property (as defined below in Section 3.2) in your Account. By clicking “I agree” or otherwise acknowledging your consent electronically, you agree to enter into and be bound by the terms and conditions of this Agreement.

YOU MUST READ AND CONSIDER THIS AGREEMENT CAREFULLY AND CONTACT GS&CO. TO ASK ANY QUESTIONS YOU MAY HAVE BEFORE ENTERING INTO THIS AGREEMENT. PURSUANT TO THE ELECTRONIC SIGNATURE AND DELIVERY AGREEMENT (THE “**E-SIGN AND DELIVERY AGREEMENT**”) THAT YOU PREVIOUSLY EXECUTED, CLICKING THAT YOU AGREE HAS THE SAME LEGAL EFFECT AS SIGNING A PAPER VERSION OF THIS AGREEMENT. YOU ACKNOWLEDGE THAT THIS AGREEMENT AND ITS SUPPLEMENTS MAY BE AMENDED FROM TIME TO TIME AND AMENDED AGREEMENTS AND SUPPLEMENTS WILL BE POSTED ON GS&CO.’S WEBSITES OR MOBILE APPLICATIONS, INCLUDING, BUT NOT LIMITED TO, [WWW.MARCUS.COM/US/EN/INVEST](http://WWW.MARCUS.COM/US/EN/INVEST) (THE “**SITE**”). YOU AGREE TO CHECK THE SITE FOR NEW VERSIONS OF THIS AGREEMENT AND SUPPLEMENTS RELATING TO YOUR ACCOUNT. YOU AGREE THAT, BY KEEPING YOUR ACCOUNT OR USING SERVICES PROVIDED PURSUANT TO THIS AGREEMENT AND ANY SUPPLEMENTS WITHOUT OBJECTING IN WRITING AFTER GS&CO. POSTS A NEW VERSION OF AN AGREEMENT OR APPLICABLE SUPPLEMENT ON THE SITE, YOU WILL AGREE TO AND ACCEPT ALL TERMS AND CONDITIONS OF ANY AMENDED AGREEMENT OR SUPPLEMENT, INCLUDING ANY NEW OR CHANGED TERMS OR CONDITIONS.

GS&Co. offers individuals the ability to open and fund, through a Funding Account (as defined below in Section 3.5), a brokerage account at GS&Co. through the Site solely for the purpose of receiving investment advisory services from GS&Co. as set forth in the applicable Supplement (“**Account**”) for themselves individually, including Traditional Individual Retirement Accounts (“**IRA**”), Roth IRAs, and, in the case of a self-employed individual or independent contractor, Simplified Employee Pension (“**SEP**”) IRAs (collectively, “**Retirement Accounts**”), as well as jointly with other individuals using a technology platform that it developed and maintained with its affiliates and The Goldman Sachs Group, Inc.

Where GS&Co. agrees to accept and open an Account for a Client, GS&Co. will open such account with the Client pursuant to the terms and conditions of this Agreement. GS&Co. will aid you, through the Site or otherwise, in establishing an account at the Clearing Firm. Subject to the terms of its agreement with the Clearing Firm and the Custodial Agreement (as defined below), GS&Co. may remove or replace the Clearing Firm at any time. Apex is the current Clearing Firm and is a registered broker-dealer that is unaffiliated with GS&Co.

Opening an Account with GS&Co. pursuant to this Agreement requires you to establish a relationship with the Clearing Firm and enter into an agreement directly with the Clearing Firm to serve as your custodian (the “**Custodial Agreement**”). With respect to Retirement Accounts, the Clearing Firm will act as your IRA custodian. The Clearing Firm will establish and carry an account that holds your Securities and Other Property (as defined below in Section 3.2) and records your transactions for your Account. You

acknowledge that neither GS&Co. nor any model provider engaged by GS&Co. is responsible for the obligations of the Clearing Firm or any successor custodian and that GS&Co. and the Clearing Firm have separate agreements with you that allocate separate sets of rights and obligations between you and the applicable entity.

You agree that if you intend to operate your Retirement Account as part of a SEP IRA, you must establish the SEP IRA by completing IRS Form 5305-SEP and other related documents and fulfill any other requirements as necessary under applicable law to establish the SEP IRA prior to participating in the SEP IRA.

## **2. Client Information**

You acknowledge and agree that GS&Co. relies on the Client Information you provide through the Site to provide services in connection with your Account. **"Client Information"** means all information about you, which may include, among other things, information about your identity, age, e-mail address, physical address, location, nationality, citizenship, tax residency, financial situation, liquidity, or other information which you supply, or are asked to supply, to GS&Co. through the Site or otherwise. You further acknowledge and agree that GS&Co. shares some or all of the Client Information with the Clearing Firm and that, subject to the terms and conditions of the Custodial Agreement, the Clearing Firm 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 firms like GS&Co. and Clearing Firm are permitted to provide you with services under applicable United States economic sanctions against various countries, individuals, and organizations.

You represent and warrant to GS&Co. that all Client Information you supply is true, accurate, complete, and current and that you are not providing any Client Information for the purpose of impersonating another person or otherwise misrepresenting your identity to GS&Co. 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 GS&Co. that is no longer accurate promptly using the Site. You agree that your guardian will give GS&Co. written notice of your incompetency and that your estate will give GS&Co. written notice of your death. If your Account is a joint account with two or more owners, each person indicated in the title to the Account who enters into this Agreement (referred to below as a "joint owner") agrees to give written notice to GS&Co. in the event of bankruptcy, insolvency, incompetency, or death of any other joint owner.

GS&Co. may, before or after receiving notice of any of the conditions described in the preceding paragraph, commence any proceedings, require any documents, instruct the Clearing Firm to retain any portion of, or restrict transactions in, your Account, or demand immediate repayment of any amounts owed to GS&Co., as it deems advisable in its discretion to protect itself against any potential tax, liability, penalty, expense, or loss. The person subject to the condition and the remaining joint owners, as well as the estate of any deceased joint owner and each surviving joint owner will be liable, jointly and severally, to GS&Co. for: (a) any tax, liability, expense, or loss in your Account resulting from the completion of transactions initiated prior to GS&Co.'s receipt of a written notice of the condition; (b) any tax, liability, expense, or loss incurred in the liquidations of your Account or the adjustment of the interests of the joint owners; and (c) any other obligations owing with respect to your Account.

If your Account is a joint account with two or more owners, then any tax, liability, penalty, expense, or loss becoming a lien against or payable out of your Account as the result of any of the conditions described above or through the exercise of any power by a trustee or the representatives of an estate, will be chargeable against the interest of the remaining joint owners or surviving joint owners as well as the interest of the estate and the beneficiaries of the estate.

### 3. Brokerage and Custody

#### 3.1 Relationship with Clearing Firm

As noted above, your use of our services under this Agreement requires that you establish an Account and enter into the Custodial Agreement. The Custodial Agreement is between the Clearing Firm and you and pertains to the brokerage services that the Clearing Firm provides as the broker that holds, carries, and maintains all Securities and Other Property (as defined below in Section 3.2) in your Account. Under the Custodial Agreement, and subject to its terms and conditions, the Clearing Firm is generally responsible for: maintaining and recording transactions in your Securities and Other Property (including fractional shares) in your Account; clearing orders placed by GS&Co.; and providing you with statements, confirmation e-mails (if you request them), and other information about your Account and transactions therein.

With respect to Retirement Accounts, in its capacity as IRA custodian, and subject to the terms and conditions of the Custodial Agreement, the Clearing Firm keeps all necessary and appropriate records of all actions undertaken in the custodial capacity, and files any reports, such as statements and tax notices, required either by the Custodial Agreement or the law. It may also be responsible for distributing the IRA's assets in accordance with your instructions, and filing the appropriate paperwork.

#### 3.2 Ownership

You agree that all Securities and Other Property held for your Account will be held in the manner indicated in the title to the Account, with all the legal and equitable rights and subject to all the obligations and conditions that the form of ownership imposes. You represent that no one has an interest in your Account except you or others that you have previously disclosed to GS&Co. as part of your application to open an Account or in a manner authorized by GS&Co. "**Securities and Other Property**" includes cash, stocks, bonds, mutual funds, money market funds, financial instruments including but not limited to checks and negotiable instruments, options and related contracts and any other securities, whether certificated or uncertificated, securities entitlements, securities accounts, commodity contracts, commodity swap contracts and related options thereon, and any other assets and the proceeds thereof. This definition includes Securities and Other Property currently or in the future held, carried, or maintained by the Clearing Firm, or in the possession or control of the Clearing Firm, in or for any of your current or future accounts, including any accounts in which you may have an interest, and regardless of the purpose for which the Securities and Other Property are so held, carried, maintained, possessed, or controlled.

#### 3.3 Trading Along

As a participant in the global financial markets, GS&Co. purchases and sells Securities and Other Property for our own account. Subject to applicable exemptions, orders for client accounts are executed at prices that are better or the same as prices GS&Co. obtains when it trades in the same Securities and Other Property and on the same side of the market for its own account. Specifically, where we have accepted and hold an order for a Security and Other Property from a customer, we will not trade that Security and Other Property on the same side of the market for our own account at a price that would satisfy the customer order (a practice known as "trading along") unless we are able to execute the customer order up to the size and at the same or better price at which we traded for our own account. Notwithstanding the foregoing, you agree that we may trade along with an order that you place (without executing your order up to the size of and at the same or a better price as the trade we execute for our own account) where (i) we obtain your oral or written consent on a trade-by-trade basis; or (ii) in circumstances or transactions where we are permitted to trade along under applicable law (including under FINRA Rule 5320). These include, without limitation, riskless principal transactions, "not held" orders (in which you give us price and time discretion to exercise our professional judgment in handling the orders), odd lot transactions, corrections of bona fide errors, certain intermarket sweep orders, and certain transactions executed where we have implemented an effective system of internal controls (including information barriers) that prevent our principal trading and market making unit from obtaining

knowledge of customer orders outside of that unit that would trigger exemptions under the rule (the “no knowledge” exemption). The principal trading and market making unit will handle large orders (orders for 10,000 shares or more and for greater than \$100,000) and orders for institutional accounts that have not opted out of consent, while the execution coverage unit (which handles client orders on an agency basis) will handle orders for non-institutional accounts, small orders and orders for institutional accounts that have opted out of consent (on a blanket or order-by-order basis). You also agree that, where permitted by applicable law, GS&Co. may bunch or aggregate orders for your account with orders of other clients or accounts in which GS&Co. has a beneficial interest and allocate the aggregate amount of the Securities and Other Property obtained through those orders among the accounts participating in the transaction (including accounts in which GS&Co. has a beneficial interest) in a manner in which GS&Co. determines appropriate.

As a general matter, Rule 5270 prohibits a broker-dealer from trading for its own account while taking advantage of knowledge of an imminent client block transaction, and GS&Co. employees are strictly prohibited from engaging in such activity.

Rule 5270 recognizes certain exceptions to this general prohibition. Among the exceptions, the Rule does not preclude a broker-dealer from trading for its own account for purpose of fulfilling or facilitating the execution of a client’s block transaction. Consistent with this exception, you acknowledge that GS&Co. may engage in trading to hedge the risk of a block transaction using market data and other forms of permissible information that are available to us. This hedging activity may coincidentally impact the market prices of the securities or financial instruments you are buying or selling. As always, we will conduct this trading in a manner designed to limit market impact and consistent with our best execution obligations.

#### 3.4 Payment for Order Flow

The rules of certain regulatory organizations require that all broker-dealers inform their customers, when a new account is opened, on an annual basis thereafter, and on confirmations (if applicable), of payment for order flow practices. In an effort to seek best execution, GS&Co. routes orders for listed and over-the-counter equity securities to primary exchanges and other market centers, including regional exchanges, securities dealers that make markets over-the-counter and alternative trading systems (ATSs). In addition, GS&Co. may have ownership interests in trading networks, securities or derivatives indices, trading tools and settlement systems. GS&Co. receives cash credits or other benefits from (or pays fees to) exchanges and other market centers to which it, as broker, routes order flow based on the volume (including volume not associated with client orders) and type of order flow routed and whether the order contributes or extracts liquidity to or from the given market. The amounts of such fees and credits vary and may or may not exceed the fees paid by GS&Co. to a market center during any given time period. Further information about the source and nature of payment for order flow received by GS&Co. will be provided upon your written request. In addition, GS&Co. may from time to time have a financial interest in exchanges or other market centers. Information about exchanges in which GS&Co. may have a financial interest may be found in the “Disclosure of SEC-Required Order Routing Information” available on the Goldman Sachs Web site (<http://www2.goldmansachs.com/compliance/Rule606/>).

#### 3.5 Deposits, Contributions, Transfers, Rollovers and Related Purchases

You agree that you will fund your Account by deposits or contributions made through an account or accounts established by you, at a financial institution identified by you to GS&Co., for the purpose of facilitating deposits into your Account (each, a “**Funding Account**”) by using the Site to direct the transfer of money to your Account in accordance with this Section 3.5. You further agree and acknowledge that GS&Co. reserves the right to limit your ability to fund (or direct the funding of) any deposit or transfer of money to or from your Account solely by way of an Automated Clearing House (“**ACH**”) transfer to the Clearing Firm. GS&Co. reserves the right to accept investments funded from other sources or through other means on a case by case basis. The Clearing Firm may, but is not obligated to, accept checks, including checks from third parties made out to, or negotiated by, you, and other items from you to fund your Account. When submitting checks and other items to the Clearing Firm for your Account, you warrant that all signatures are genuine and authorized, including that of the

drawer, the item has not been altered, the item is not subject to a defense or claim in recoupment of any person, and you have no knowledge of any insolvency proceeding commenced with respect to the drawer. You represent and warrant that you will not deposit substitute checks or other image replacement documents created by you or another nonbank person into your account. In the event the Clearing Firm determines in its sole discretion not to accept such a check or other item from you, it will return to you either that check or other item or funds in the amount of that check or other item. Credits to your Account resulting from ACH transfers, wire transfers (as described in Section 3.7. below), and checks and other items submitted to the Clearing Firm for your Account that are processed by the Clearing Firm will be governed by your agreement or arrangements with the Clearing Firm. You understand and agree that GS&Co. will not be liable for any failure to credit your Account for such ACH or wire transfer, check, or other item at any particular time.

If you authorize us to ascertain the balance of a Funding Account prior to our facilitation of any contribution or deposit to your Account initiated or otherwise scheduled by you, we reserve the right to exercise such authority in our discretion. In no event shall GS&Co. be obligated to exercise such authority and we shall not be liable for facilitating any contribution or deposit to your Account initiated or otherwise scheduled by you that results in an overdraft or any other fee charged by any financial institution. GS&Co. further reserves the right to refuse to facilitate a contribution or deposit to your Account initiated or otherwise scheduled by you in the event that we believe that the amount of such contribution or deposit exceeds the balance in a Funding Account or that facilitating such contribution or deposit could otherwise result in a Funding Account having a negative balance. GS&Co. will notify you of any such refusal to facilitate a contribution or deposit.

You agree that, by initiating or directing a deposit or contribution, you authorize the bank or other vendor that GS&Co. engages from time to time to facilitate the use of the ACH payment system for the transfer of money to or from the Clearing Firm (such bank or vendor, the “**ACH Operator**”) to request that the financial institution that maintains a Funding Account transfer the amount of the deposit to the Clearing Firm for deposit in your Account. You agree that deposits and contributions will only be initiated on Business Days (as defined below in Section 3.6) and that any deposit or contribution that is scheduled to take place on a day other than a Business Day will be initiated on the next available Business Day.

In the event that contributions to your Retirement Account for any calendar year reach the maximum contribution generally set by the Internal Revenue Service (“**IRS**”) for the relevant type of retirement account and the relevant year (the “**Maximum Contribution**”), no further contributions will be processed for such Retirement Account for the remainder of such year, unless otherwise agreed by you and GS&Co. To the extent that a scheduled contribution to your Retirement Account would cause your total annual contribution to exceed the Maximum Contribution, such scheduled contribution will not be processed, unless otherwise agreed by you and GS&Co. In the event that contributions to your Retirement Account for any calendar year are below the Maximum Contribution, you may elect to deposit additional cash into your Retirement Account before year-end, or to make one-time contributions to your Retirement Account following year-end but prior to the due date for your tax return as set by the IRS, to be designated by GS&Co. as counting toward the total annual contribution for the preceding tax year, in either case for a total annual contribution of no more than the Maximum Contribution. You agree that any recurring contributions to your Retirement Account made after year-end shall be designated by GS&Co. as counting towards the Maximum Contribution for the subsequent year, unless otherwise agreed by you and GS&Co. You agree and acknowledge that such calculations with respect to the Maximum Contribution are provided by GS&Co. for informational purposes only and applied as described above solely for purposes of servicing your Account, and that GS&Co. shall not be responsible for monitoring any limitations or restrictions that apply under IRS rules and guidance to contributions or deposits into your Retirement Account. You further agree and acknowledge that GS&Co. calculates a Client’s Maximum Contribution based solely on the Client’s age and retirement account type, without considering any other individual circumstances (including any other aspects of the Client Information such as income or tax filing status), and that such other individual circumstances may result in the maximum contribution applicable to your Retirement Account for any particular year pursuant to IRS rules and guidance to differ from the Maximum Contribution shown on the Site and used with respect to your Retirement Account.

You may initiate a request to transfer assets in an account maintained by a third party custodian to an Account, or rollover assets in a retirement plan or account maintained by a third party custodian or recordkeeper to a Retirement Account, through the Site, or by contacting GS&Co. by calling 1-833-720-6468 or emailing [invest-support@marcus.com](mailto:invest-support@marcus.com). GS&Co. will convey the information that you provide in connection with such request to the Clearing Firm. You will be notified, through the Site or by e-mail, of additional steps that you will need to take to complete the transfer or rollover you requested, which may include contacting the third party custodian or recordkeeper that maintains the assets you wish to transfer or rollover, and you acknowledge that your transfer or rollover request may not be completed until you have taken such additional steps. You acknowledge and agree that any such transfer or rollover will be subject to the terms and conditions of the Custodial Agreement. Before deciding to roll over a retirement account, you should consider your personal circumstances and needs. If you are considering moving from one account to another, you typically can decide among a number of options such as: keep the assets in the existing plan or account; roll over the assets to your new employer's plan (if applicable); and/or roll over the assets to an IRA. These options may offer different benefits and drawbacks in the context of your overall planning and retirement goals. Some general considerations include fees and expenses, available investment options, distribution rules including required minimum distributions, tax considerations, protection from creditors and legal judgments, differences in service levels, and other factors that may be specific to your circumstances. Any communications by GS&Co. to you about rollovers are provided to you solely on the basis that they are educational and intended to provide you with general information that does not address your specific personal circumstances. They are not intended to be an individualized recommendation that you take any particular action.

### 3.6 Withdrawals and Related Sales

You may withdraw money from your Account to your Funding Account by initiating a withdrawal request through the Site. To request any other type of transfer from your Account, including, but not limited to, a transfer to another IRA custodian or eligible retirement plan, contact GS&Co. by calling 1-833-720-6468 or emailing [invest-support@marcus.com](mailto:invest-support@marcus.com). You acknowledge and agree that, notwithstanding anything in any agreement governing your Account, including this Agreement, to the contrary, you will not be able to request withdrawals, transfers, or sales to fund your Account, unless and until you connect a bank account to your Account. Any withdrawal requests you initiate through the Site will be sent to the ACH Operator. You agree that, by requesting a withdrawal from your Account, you authorize the ACH Operator to request that the Clearing Firm transfer the amount you request (or less if the money remaining in your Account after deducting any fees due) to your Funding Account. You acknowledge and agree that the Clearing Firm will not initiate a transfer of money for a withdrawal 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 Clearing Firm initiates a transfer of money for the proceeds of a withdrawal to arrive at the destination account. "**Business Day**" means a day when the New York Stock Exchange is open for trading and banking institutions located in the State of New York are open for business during all or part of the day."

You acknowledge and agree that GS&Co. and the Clearing Firm may require additional information from you before effecting any withdrawal request, and that such requested withdrawal may be subject to delay or cancellation in the event that you do not timely provide such additional information.

Your Retirement Account is intended to constitute a qualified account for tax purposes. Accordingly, if you access the funds held in your Retirement Account you may trigger a taxable distribution with adverse tax consequences. Moreover, if you withdraw the funds in your Retirement Account before the age of 59-1/2, you may incur penalties in addition to tax liabilities. Please refer to your Custodial Agreement for more information.

### 3.7 Wire Transfers

In the event that GS&Co. agrees to allow you to transfer funds to or from your Account through wire transfers, such transfers will be governed by this Section 3.7. GS&Co. reserves the right to require that you make requests for any withdrawals from your Account by way of wire transfer in writing, and such withdrawals may be limited by any fees or other obligations you owe to GS&Co. or the Clearing Firm. Wire transfers are subject to applicable terms and conditions of Attachment A, attached hereto, as may be amended by GS&Co. in its sole discretion from time to time. Each time you request a wire transfer, you are authorizing GS&Co. or the Clearing Firm to withdraw the amount of any requested wire transfer, plus any applicable fees and charges, from your Account and send them to the account you designate. Wire transfers in and out of your Account processed by the Clearing Firm will be governed by the Custodial Agreement. Generally, wire transfer requests will be processed on the Business Day received, provided that such request is received and authenticated by the cut-off time established by GS&Co. or the Clearing Firm from time to time. Transfer requests received by GS&Co. or the Clearing Firm after the cut-off time will be treated as received on the following Business Day. Contact GS&Co. for information about cut-off times and authentication procedures. All requests for wire transfers from your Account are subject to such restrictions or conditions as GS&Co. or the Clearing Firm may impose.

You do not have the right to cancel or amend a wire transfer request after it has been received by GS&Co. Wire transfers in U.S. dollars shall be limited to locations in the U.S. If permitted, wire transfers to locations outside of the U.S. must be sent either in the appropriate foreign currency, or sent in U.S. dollars to a foreign bank's U.S. correspondent bank for forwarding to the foreign bank in the appropriate country, subject in each case to applicable law.

You agree that the payment of a wire transfer request may be made by GS&Co., the Clearing Firm, or any financial institution used to carry out the wire transfer request on the basis of the identifying number of the account or financial institution provided by you, even if the number identifies a beneficiary or financial institution different from the one named. GS&Co. and the Clearing Firm shall have the right to reject or impose conditions that must be satisfied before it will accept a wire transfer for any reason. The wire transfer may also be rejected by an intermediary or beneficiary bank other than GS&Co. or the Clearing Firm or by operation of law. If a wire transfer is rejected, GS&Co. shall endeavor to notify you of the rejection, but is not obligated to do so. GS&Co. shall have no liability or other obligation for a rejected wire transfer request or for any unauthorized wire, except with respect to the error resolution or cancellation rights for certain consumer foreign wire transfers as set forth in the additional disclosures you will receive in connection with any given wire transfer ("**Wire Transfer Disclosures**").

GS&Co. shall not be responsible for any delays or mistakes caused by others through whom it transmits funds, whether selected by you or GS&Co., except with respect to errors involving certain consumer foreign wire transfers to the extent provided for in the Wire Transfer Disclosures. GS&Co., if applicable, generally will contract for use of Fedwire but it may use any means and routes that GS&Co. in its sole discretion may consider suitable for the transmission of funds. You agree that GS&Co. shall not be liable or responsible for any delay or failure to transfer any amount requested because of rules, regulations or policies of the Federal Reserve Board which limit, in the aggregate, the amount GS&Co. or any financial institution it may use to transfer funds, can transfer from time to time during any banking day; provided, however, that GS&Co. promptly notifies you of any such failure or delay and that GS&Co. arranges to effectuate the transfer as soon as reasonably possible thereafter.

### 3.8 Fractional Shares

Shares purchased or sold on your behalf and/or held in your Account may be either whole shares or fractional shares, depending upon the cost of the shares and the dollar amount you contribute to or deposit in your Account. To the extent that fractional shares are traded on behalf of Clients, this is done by allocating any excess fractional shares to the Clearing Firm's fractional facilitation account and having the Clearing Firm in turn accumulate fractional shares and manage their fractional facilitation account through trades in whole share quantities in accordance with their own policies as they pertain to management of such accounts and positions. You understand and agree that fractional shares are typically unmarketable and illiquid if held outside of your Account and, as a result, fractional shares

generally may not be transferrable to another brokerage account. In the event of a liquidation or transfer of the assets in your Account to another account, you hereby authorize GS&Co. to instruct the Clearing Firm to sell fractional shares as necessary and transfer the cash to any subsequent custodian. You also understand and acknowledge that dividends received in connection with assets in your Account will be allocated pro-rata based on the fractional shares you hold and that you will not receive a dividend if the pro-rata amount of such dividend is less than \$0.01.

### 3.9 Taxes

Unless otherwise stated, any fee charged to your Account 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, interest, and penalties imposed by any taxing authority, if any, associated with your Account, including any taxes due on the sale of any Securities and Other Property in your Account. The Clearing Firm, and not GS&Co., shall be responsible to withhold and pay over to the appropriate taxing authorities any amount of Taxes it is required to withhold under applicable tax laws. When you withdraw money from your Retirement Account, the Clearing Firm has the obligation to reduce the amount of the distribution by the amount of any tax mandatory withholding as required by applicable law. In addition, with respect to your Retirement Account, you have the ability to request through the Site that state and/or federal taxes be withheld from any withdrawal you make from such account, and GS&Co. will communicate such request to the Clearing Firm. Notwithstanding the foregoing, GS&Co. will not be responsible for the accuracy or timeliness of any withholding of Taxes effected or remitted by the Clearing Firm with respect to your Account, and will not be liable or responsible for any withholding of any penalties or interest incurred by you in connection with your obligation to pay Taxes associated with your Account.

## 4. Source of Funds

You represent and warrant that none of the money you deposit in your Account is derived from, or will be used to promote the conduct of, any crime or other illegal activity. You covenant not to deposit (or direct the deposit of) any money in your 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 Securities and Other Property in your Account other than you or any other individual you have disclosed to GS&Co. during account opening.

## 5. Warranties, Representations, and Acknowledgments

You understand and acknowledge that GS&Co. does not provide tax, legal, or accounting advice, unless explicitly agreed in writing between you and GS&Co. You acknowledge and agree that you have been advised to, and afforded the opportunity to, seek the advice and counsel of your own tax advisor and financial advisers. Moreover, neither GS&Co. nor any of its affiliates warrants, represents or otherwise guarantees that a Traditional IRA, Roth IRA, SEP IRA, or any other type of account that may be offered through the Site is compliant with the Internal Revenue Code in form or function or that any deposits are compliant with the terms of such account or law. Furthermore, none of GS&Co. or any of its affiliates is responsible for monitoring your Traditional IRA, Roth IRA, SEP IRA, or any other type of account that may be offered through the Site for compliance with the Internal Revenue Code or determining your individual tax treatment regarding such account. You understand and agree that the responsibility for the establishment and maintenance of a Traditional IRA, Roth IRA, or SEP IRA and such account's compliance with the requirements of the Internal Revenue Code, and determining your individual tax treatment regarding such account remains exclusively your responsibility. In addition, you understand and agree that neither GS&Co. nor any of its affiliates is responsible for withholding any tax penalties that may apply to your Traditional IRA, Roth IRA, SEP IRA, or any other type of account that may be offered through the Site or for any state or federal income tax withholding, except as may otherwise be required by applicable law.

You understand and agree that that you are solely responsible and liable for (i) maintaining and making contributions to, and requesting or taking required minimum distributions from, your Retirement Account;

and (ii) applying any and all limitations or restrictions applicable to contributions or deposits into, or transfers or withdrawals from, your Retirement Account.

You understand and agree, subject to the specific terms of your plan or arrangement, that (i) opening a Retirement Account does not guarantee or otherwise oblige you to make a contribution to your Retirement Account every year and (ii) taking a distribution from an IRA account may trigger adverse tax consequences.

You represent and warrant to GS&Co. that: (a) you are the sole beneficial owner of the Securities and Other Property in your Account, that no restrictions apply to the transfer, sale, or other disposition of the Securities and Other Property, that no options, liens, charges, security interest or encumbrances exist or will exist, due to your acts or omissions, over any of the Securities and Other Property, and that the Securities and Other Property are not subject to any securities lending program, except as you have disclosed in writing to GS&Co., (b) without limitation, all transactions in Securities and Other Property are within your power and are authorized by you, (c) you will have full responsibility for payment of all Taxes due on capital gains or income held or collected for your Account, and (d) you will not deal or authorize anyone other than GS&Co. to deal with your Account while this Agreement is in effect.

You agree to inform GS&Co. promptly in writing if any of the representations made by you in this Agreement or in other documents, or any other information you have provided to GS&Co., are no longer true or require a change to remain true.

You acknowledge and agree that you shall be solely responsible for maintaining and funding any Funding Account you establish to facilitate contributions to, distributions from, and closing of any Retirement Account. Moreover, you acknowledge and agree that you shall be solely responsible and liable for the timely transfer and accurate crediting of any and all deposits you make with respect to any Retirement Account. Additionally, you acknowledge and agree that you shall be solely responsible for applying any and all limitations or restrictions applicable to contributions or deposits into any of your Retirement Accounts.

## **6. Credit and Background Check**

You authorize GS&Co. and any agent or service provider to use, verify, and confirm any of the information that you provide, including conducting background checks, obtaining reports concerning your credit standing and business conduct (and your spouse's if you live in a community property state) and to share all such information with their successors, assigns, agents, and service providers to determine your eligibility for an Account or any feature or otherwise. Upon your written request, we will inform you whether we have obtained credit reports, and, if so, we will provide you with the name and address of the reporting agency that furnished the reports. You agree that without notifying you, we may request a new credit report in connection with any review, extension, or renewal of the Account. You further agree that GS&Co. may submit information reflecting on your credit record to a credit reporting agency. You authorize GS&Co. to share with its affiliates credit bureau information, information contained in your application to open an Account, information obtained from third parties, and similar information, or to use such information consistent with the Marcus Invest Privacy Policy and Privacy Notice.

## **7. Monitoring of Account**

You acknowledge and agree that GS&Co. may monitor and record your use of the Site and any communications between GS&Co. and you that occur over the internet and any other network, including telephone, cable, and wireless networks, and that we may use the resulting information for internal purposes or as may be required by applicable law. Any such monitoring and recording will be carried out consistent with the Marcus Invest Privacy Policy and Privacy Notice.

## **8. Confirmations and Account Statements**

Reports or confirmations of the execution of securities orders and statements of your Account will be provided by the Clearing Firm and will be binding if you do not object in writing within ten (10) Business Days (or such other earlier time as specified in your agreement with the Clearing Firm) after the confirmation or statement is forwarded to you by mail or another method of delivery.

## **9. Corporate Actions and Legal Proceedings Related to Securities in Your Account**

The Clearing Firm as your custodian may receive, and send to you, notices of corporate actions, including tender offers, reorganizations and bankruptcies, annual and other periodic mailings from issuers, and class action notices so that you may take action for your Account. You agree that GS&Co. will not be responsible or liable for failing to notify you of any of the aforementioned rights or actions. You are responsible for providing instructions with respect to the exercise of rights and performance of all actions which may be exercisable in relation to any assets held, or that were held, in your Account, including without limitation the right to vote, tender, exchange, endorse, transfer, or deliver any investments in your Account to participate in or consent to any class action, distribution, plan of reorganization, creditors committee, merger, combination, consolidation, liquidation, underwriting, or similar plan with reference to such investments. In the absence of instructions from you, GS&Co. will refrain from exercising such rights or performing such actions.

## **10. Conflicts of Interest**

GS&Co. is a major participant in global financial markets and as such has activities and interests that include potential multiple advisory, transactional, financial, and other interests in accounts, securities, instruments, and companies that may be purchased or sold in your Account. GS&Co. acts as an investor, investment banker, research provider, investment manager, financier, advisor, market maker, trader, prime broker, lender, agent and principal, and has other direct or indirect interests in the global fixed income, currency, commodity, equity, and other markets in which your Account may invest. GS&Co. and its personnel assigned to your Account, may take positions in securities or take actions for their own accounts which conflict with positions in your Account, and GS&Co. may act as counterparty to any transaction executed for your Account, subject to applicable law. Additionally, GS&Co. may on a proprietary basis sell, redeem, purchase, take short positions in, or take similar actions with respect to securities, currencies, funds, or other investments in which your Account may be invested ("underlying assets") without having to notify you of such investment or activity. GS&Co. may also create, write, sell, or issue, or act as placement agent or distributor of derivatives and structured investment products whose value may be linked to the value of underlying assets. To the extent permitted by applicable law, GS&Co. may hedge its derivative positions by buying or selling such underlying assets, and reserves the right to sell or redeem some or all of these underlying assets without notice to you. Such actions may have an adverse effect on the amount of fees, expenses, and other costs incurred directly or indirectly in connection with your Account. For instance, GS&Co. may for its own account, have long or short positions in, and actively buy or sell, the products or related securities purchased or sold for your Account, or derivatives of these products or related securities. In addition, GS&Co. may act as adviser to clients in investment banking, financial advisory, asset management, and other capacities in advisory, transactional, financial, or other assignments of all types including those related to instruments that may be purchased, sold, or held in your Account. Further, GS&Co. may issue, or be engaged as underwriter, financial advisor, or the issuer of, instruments that your Account may purchase, sell, or hold. In its market making activities, occasionally, GS&Co. may enter the market in anticipation of a likely client transaction or order to "set up for" or "pre-hedge" the transaction and it is possible that such trading could impact the market price of securities purchased or sold in your Account.

GS&Co. receives compensation when Accounts invest in products managed by GS&Co. such as mutual funds and exchange-traded funds. GS&Co. and its employees will generally directly or indirectly receive a portion of fees paid by you. Such fees vary according to the type of product or service and may be higher

for certain products or services. The present and future activities of GS&Co. may give rise to additional conflicts of interest with you.

You agree that GS&Co., in its sole discretion, may refrain from effecting transactions including due to (a) regulatory requirements, (b) GS&Co.'s internal policies and procedures, and (c) its determinations regarding actual or potential conflicts of interest or the appearance of such conflicts. However, you also agree that GS&Co. may determine to effect transactions notwithstanding the existence of such conflicts. You acknowledge that you understand the risks and conflicts of interest disclosures referred to above.

#### **11. Nondisclosure of Confidential and Material Nonpublic Information**

GS&Co. provides a variety of services to its customers. In connection with providing these services, GS&Co. may, from time to time, come into possession of confidential and material, nonpublic information. GS&Co. is prohibited from improperly disclosing or using such information for its own benefit or for the benefit of any other person, regardless of whether such other person is a customer of GS&Co. GS&Co. maintains and enforces written policies and procedures that prohibit the communication of such information to persons who do not have a legitimate need to know such information and to assure that it is meeting its obligations to customers and remains in compliance with applicable law. You understand and agree that these policies and procedures are necessary and appropriate and recognize that, in certain circumstances, GS&Co. will have knowledge of certain confidential or material, nonpublic information which, if disclosed, might affect your decision to buy, sell, or hold a security, but that GS&Co. will be prohibited from communicating such information to you or using it for your benefit. You will not disclose GS&Co.'s name to the public or use GS&Co.'s name unless GS&Co. consents to such disclosure in writing. In addition, you hereby consent to the disclosure by GS&Co. of your name to prospective clients of GS&Co. as part of a representative client list. Notwithstanding any provisions to the contrary herein, and without limiting any of GS&Co.'s rights under applicable law, GS&Co. may and you agree that GS&Co. may, without notice to you, disclose, publish to third parties, or otherwise use information relating to you on an anonymized basis.

#### **12. Debit Balances/Credits**

Debit Balances in your Account may be charged interest in accordance with the Clearing Firm's or GS&Co.'s established rules and policies, as disclosed to you. In this Agreement, "Debit Balances" means account balances representing money owed to the Clearing Firm and/or GS&Co. You agree to satisfy, promptly upon demand, any indebtedness, to pay any Debit Balance in your Account, and to satisfy all other outstanding obligations relating to your Account. You acknowledge and agree that GS&Co. may pay or otherwise settle a Debit Balance in your Account at the Clearing Firm, but that you remain liable and responsible for this amount notwithstanding that such amount may no longer be reflected in your Account at the Clearing Firm and you will remain liable for such amount to GS&Co. until you have paid such amount to GS&Co. (or the Clearing Firm if so directed by GS&Co.) in full (including any interest). You further acknowledge and agree that GS&Co. or the Clearing Firm will not be required to process any requests for withdrawals of funds from your Account if there is a Debit Balance in the Account or if there are unsettled transactions in your Account.

#### **13. Applicable Rules and Regulations; Compliance with Laws**

Your Account and any transactions executed through your Account will at all times be subject to the rules and regulations of the applicable country or other jurisdiction, exchange or market, and its clearing house, as well as any applicable self-regulatory organization, if any, where the transactions are executed by GS&Co. or its agents. You agree to use your Account only in accordance with these rules and regulations. In no event will GS&Co. or its affiliates be obligated to effect any transaction they believe would violate any federal or state law, rule, or regulation or the laws of any applicable country or jurisdiction or the rules or regulations of any regulatory or self-regulatory body no matter where located and GS&Co. and its affiliates may cancel any such transactions or liquidate or repurchase securities purchased or sold in such transactions at your sole expense if such transactions are deemed to have violated, or be in violation of, any of the rules and regulations of any applicable exchange, market,

clearing house, or self-regulatory organization or the laws or rules of any applicable country or jurisdiction.

You represent that you are in compliance with all applicable legal, tax, and other financial disclosure obligations to which you are subject relating to the Account or Securities and Other Property therein.

#### **14. Privacy**

The information you provide to GS&Co., including your personal information, is subject to the terms of the Marcus Invest Privacy Policy and Privacy Notice, which are available on the Site. By entering into this Agreement, you agree to and acknowledge receipt of the Privacy Policy, which GS&Co. may amend from time to time by posting new versions on the Site, and acknowledge receipt of the Privacy Notice.

You consent to GS&Co. recording and monitoring your telephone calls and your electronic communications with representatives and associated persons of GS&Co. without further notice unless further notice is required by law.

#### **15. Contacting You by Telephone, Text Messages, and Other Methods of Communication**

You agree that GS&Co. may contact you using any kind of telecommunications technology. This includes contacting you by automatic telephone dialing systems, artificial or prerecorded voice message systems, text messaging systems, automated email systems, or other systems. You agree that we may contact you for any non-telemarketing reason. You agree that GS&Co. may use any telephone numbers (including wireless, landline, and voice over IP numbers) or email addresses that you give to us, from which you call us or at which we believe we can reach you. You understand and agree that anyone with access to your telephone or email account may listen to or read the messages that GS&Co. leaves or sends to you. You agree that GS&Co. will not be liable for anyone accessing those messages. You agree that GS&Co. will not be liable for any charges that you incur in connection with text messages, emails or other communications that we send to you

You agree to notify us immediately if you change telephone numbers or are no longer the subscriber or usual user of a telephone number that you give to us. You agree that we may monitor and record your telephone calls and other communications with us. To withdraw your consent to receive text messages and calls to your cell phone, to receive artificial or prerecorded voice message system calls, or to change your contact preferences, you must call us at 1-833-720-6468 (toll-free). To stop text messages, you must reply "STOP" to any text message we send to you. To stop marketing emails, you must follow the opt-out instructions provided at the bottom of our marketing emails.

#### **16. Trusted Contact Person**

You may appoint an adult at least 18 years of age as a Trusted Contact Person whom we may contact about your Account. We may disclose information about your 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.

#### **17. Term and Termination**

##### **17.1 Effective Date**

This Agreement becomes effective as of the date it is accepted by GS&Co. and an Account is opened, as evidenced in accordance with the GS&Co.'s procedures or practices regarding account opening. Collection and processing of the required documentation may delay the acceptance of this Agreement. Any amendment or modification to this Agreement will be effective on the date determined in accordance with Section 19.8 below.

## 17.2 Suspension of Services

You agree that GS&Co. and 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 GS&Co. 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 GS&Co. or its affiliates or a transaction relating to your Account; (ii) to comply with a request or guidance from a regulatory or law enforcement authority with jurisdiction over GS&Co. or its affiliates or a transaction relating to your Account; (iii) to avoid a loss to GS&Co. or its affiliates (including if your payment of the any fees owed by you is 60 days or more overdue, except with respect to charges then under reasonable and good faith dispute); (iv) to remediate or otherwise to address problems with technology; (v) due to interruptions in the access to or operation of any technology that GS&Co. or its affiliates directly or indirectly uses in connection with the Site or your Account; (vi) to prevent a breach or violation of any term, condition, or other provision of this Agreement; or (vii) to obtain from you any additional information that GS&Co. in its reasonable discretion deems necessary for services to be provided to you pursuant to this Agreement. Notwithstanding anything to the contrary in this Agreement or any applicable supplement thereto, GS&Co. reserves the right, at any time and without notice, to delay or manage the trading of client orders if GS&Co. determines it is appropriate and consistent with its obligations under this Agreement or any applicable supplement.

## 17.3 Termination

You may close one or more of your Accounts and terminate this Agreement at any time for any reason by sending a request to close your Accounts through the Site. GS&Co. may at any time for any reason, with or without notice to you, terminate this Agreement, any Supplements, and any or all of your Accounts. Termination of your Account will be effective immediately or at a later time if so specified in writing, except that the relevant parts of the Agreement and of any applicable Supplement will remain in effect with respect to all transactions and other obligations then outstanding. The termination of your Account will occur as follows:

- If you terminate either this Agreement or the Custodial Agreement, you will be deemed to have simultaneously terminated the other agreement as well as all Supplements, unless otherwise agreed to by GS&Co. or the Clearing Firm, as applicable;
- If either GS&Co. or you terminate an Account, the Clearing Firm will, before closing such Account, settle any purchases or sales pending when GS&Co. sends or receives a request to close such Account; and
- If either GS&Co. or you terminate an Account, GS&Co. and/or the Clearing Firm will, before closing such Account, deduct any unpaid fees, including those owed for ancillary services, including paper delivery of documents, or transfer or physical delivery of Securities and Other Property.

You hereby acknowledge that, subject to the terms of the Custodial Agreement, you may be required to provide additional instructions to the Clearing Firm in order to obtain or transfer your Securities and Other Property in the event of the termination of an Account.

Securities and Other Property held in any dormant account may escheat to the State of New York under applicable New York law or to another appropriate state, generally being the state of the last known residence or domicile of the account holder. A dormant account under New York law is an account for which there has been no customer contact for the time period specified thereby, but under the laws of other states longer or shorter time periods or inactivity criteria may apply.

## 18. Disclaimer of Liability

### 18.1 Limitation of Liability

To the fullest extent allowed by applicable law, you agree that GS&Co. and its affiliates, officers, directors, employees, representatives, successors, assigns, and authorized agents (collectively, the “**Indemnified Persons**”) shall not be liable for any expenses, losses, damages, liabilities, demands, charges, and claims of any kind or nature whatsoever (including without limitation any legal expenses and costs and expenses, including reasonable attorneys’ fees, relating to investigating or defending any demands, charges, and claims) (“**Losses**”) by or with respect to this Account, except to the extent that such Losses are actual Losses proven with reasonable certainty, are not speculative, are proven to have been fairly within the contemplation of the parties as of the date the Account was opened, and are determined by a court of competent jurisdiction or an arbitration panel in a final non-appealable judgment or order to have resulted solely from GS&Co.’s or any Indemnified Person’s gross negligence or willful misconduct and without limiting the generality of the foregoing, GS&Co. and its Indemnified Persons will not be liable for any indirect, special, incidental, or consequential damages or other losses (regardless of whether such damages or other losses were reasonably foreseeable).

In the event an action or inaction by GS&Co. or an Indemnified Person results in an error in your Account not otherwise covered by specific error provisions in this Agreement, GS&Co. will generally seek to put you in the economic position you would have been had the error not occurred. In such circumstances, you authorize and direct GS&Co. to move positions purchased or sold in error out of your Account or cash credit to you in error out of your Account to remedy the error. Generally, errors resulting in de minimis losses or gains may not be corrected.

### 18.2 Indemnification

Without limiting any other indemnity provision of this Agreement, GS&Co. shall have no liability for and you agree, to the fullest extent allowed by applicable law, to reimburse, indemnify, and hold GS&Co. and its Indemnified Persons harmless from any Losses that arise out of, are based upon, or result from: (i) your or your agent’s misrepresentation, act, or omission or alleged misrepresentation, act, or omission; (ii) GS&Co.’s following your or your agent’s directions or failing to follow your or their unlawful or unreasonable directions; (iii) any of your actions or the actions of your previous advisers or custodians; (iv) the failure of any person not controlled by GS&Co. to perform any obligations to you; (v) any service provided under the Custodial Agreement; and (vi) your failure to provide true, accurate, complete, and current information (including Client Information) or to update Client Information. In the event that any GS&Co. Indemnified Person becomes involved in any capacity in any claim, action, proceeding, or investigation brought by or against any person in connection with any matter arising out of or in connection with this Agreement or your Account (including a breach of this Agreement by you), you agree to periodically (but no less than on a quarterly basis) advance funds to (or reimburse) such GS&Co. Indemnified Person for the legal and other expenses (including the cost of any investigation and preparation) it expects to incur (or has incurred) in connection therewith, provided that such GS&Co. Indemnified Person will promptly repay to you the amount of any such advanced or reimbursed expenses paid to it if it will ultimately be determined by a court having appropriate jurisdiction in a decision that is not subject to appeal that such GS&Co. Indemnified Person is not entitled to be indemnified by you in connection with such action, proceeding, or investigation.

### 18.3 Vendors

Subject to applicable law, neither GS&Co. nor its Indemnified Persons shall be liable for the acts or omissions of their vendors, contractors, or other third parties, including, but not limited to, the ACH Operator or the Clearing Firm.

#### 18.4 ACH Transactions

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 a Funding Account or in payment instructions to make a deposit or contribution 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 GS&Co. may request and the ACH Operator or the Clearing Firm may make ACH transfers for withdrawals solely by reference to the account number of the recipient. None of GS&Co., its affiliates, or the ACH Operator shall be obligated by any provision of this Agreement or any other agreements governing your Account to determine whether there is a discrepancy relating to names or account numbers in transfers between your Account and a Funding Account. You agree to indemnify and hold GS&Co. 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 deposits or withdrawals. 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 GS&Co. promptly. You agree that money transferred via an ACH transfer may not be reflected in a deposit credited to your Account during periods of ACH processing delays. You agree that, notwithstanding anything to the contrary in any of the agreements, neither GS&Co. nor any of its Indemnified Persons 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 to your Account resulting from an ACH transfer associated with a deposit is provisional until the Clearing Firm receives payment. Without limiting any other rights of GS&Co. to delay a withdrawal or deny a request for a withdrawal, GS&Co. reserves the right to delay or prevent a withdrawal of the proceeds of any deposit pending verification of final payment. If the Clearing Firm does not receive final payment for any deposit or contribution, or if your Account has been credited by mistake, you hereby agree to reimburse the Clearing Firm for such final payment or the amount of such erroneous credit, as applicable, and authorize GS&Co. to liquidate assets in your Account to facilitate such reimbursement. You hereby agree to hold harmless and indemnify GS&Co. for any Losses resulting from, or arising out of, such liquidations.

#### 18.5 Legal Process

If GS&Co. or any affiliate is served with levies, attachments, garnishments, summons, subpoenas, court orders, or other legal process which name you as debtor or otherwise, GS&Co. or such affiliate shall be entitled to rely upon the representations, warranties, and statements made in such legal process. You hereby agree that GS&Co. 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 Clearing Firm or such other party as may be appropriate. You hereby agree to hold harmless and indemnify GS&Co. and its affiliates for any Losses incurred as a result of responding to such legal process or forwarding such legal process to the appropriate entity.

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

#### 18.6 Force Majeure

GS&Co. shall not be liable for (i) force majeure or other events beyond the control of GS&Co., including without limitation any failure, default, or delay in performance resulting from computer or other electronic or mechanical equipment failure, unauthorized access, theft, operator errors, government restrictions, exchange or market rulings or suspension of trading, strikes, failure of common carrier or utility services, severe weather, or breakdown in communications not reasonably within the control of GS&Co. or other causes commonly known as “acts of god”, whether or not any such cause was reasonably foreseeable, or (ii) general market conditions unrelated to any violation of this Agreement by GS&Co.

## **19. Miscellaneous**

### **19.1 Entire Agreement**

You acknowledge and agree that this Agreement together with any Supplements that you and GS&Co. enter into relating to your Account, as may be amended from time to time in accordance with their respective terms, any procedures established by GS&Co. with respect to the use of your Account, and terms contained on statements and confirmations sent to you by or on behalf of GS&Co. contain the entire understanding between you and GS&Co. concerning the subject matter of this Agreement. This Agreement is in addition to (and in no way limits or restricts) any of the provisions of or rights which you or any of your affiliates may have under any other agreements between you or any of your affiliates and GS&Co. You acknowledge and agree that this Agreement supersedes any previous agreements with GS&Co. concerning the subject matter of this Agreement.

### **19.2 Severability**

If any provision of this Agreement 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 Agreement's remaining provisions. Without limiting the foregoing, if any portion of the Arbitration Agreement set forth in Section 22 is invalidated, such invalidation shall not invalidate the remaining portions of the Arbitration Agreement.

### **19.3 Interpretation**

Headings in this Agreement are descriptive and for convenience only. The headings shall not be construed as altering the scope of the rights and obligations created by this Agreement or the Terms of Use. Defined terms shall have their assigned meanings wherever used in this Agreement or Supplements, regardless of whether defined in this 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 GS&Co., nor any delay by GS&Co. in exercising any rights or remedies hereunder, shall be deemed to be a waiver of any such rights or remedies. Any such right or remedy may be exercised as often as GS&Co. may determine in its sole discretion.

### **19.4 Notice**

Pursuant to the E-Sign and Delivery Agreement you previously executed, you acknowledge that the usual way GS&Co. will provide you notice under this Agreement, including notices of new versions of this Agreement when modified pursuant to Section 19.8 below, is by posting such notices on the Site. You agree to check the Site frequently. If required by applicable law or if it decides in its sole discretion, GS&Co. will provide you with notices by other means, including e-mails linking to the Site, other e-mails, text messages, and traditional mail.

### **19.5 Geographic Scope**

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

your Account using the account opening functionality through the Site. You acknowledge that access to the Site from outside of the United States may be limited or, in some cases, unavailable.

#### 19.6 Authority

You represent and warrant that you have the full power and authority to enter into this 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 below, this 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 Agreement. You acknowledge and agree that you are fully responsible for all acts and omissions relating to the use of the Site, including, but not limited to, deposits, contributions, and withdrawals from your Account, by any person who uses your user Id and password(s), as described in the Terms of Use. You may not share your password(s) with others, and you must notify GS&Co. 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 ID and password to access the Site and your Accounts.

If your Account is a joint account with two or more owners, each joint owner agrees that each joint owner will have authority on behalf of all of the joint owners to deal with GS&Co. as fully and completely as if each was the sole owner of such Account. Notwithstanding the foregoing, each joint owner agrees that GS&Co. may, at its sole discretion: (a) require joint instruction from some or all of the joint owners before taking action under this Agreement; and (b) if GS&Co. receives instructions from any joint owner that are, in GS&Co.'s opinion, in conflict with instructions received from any other joint owner, comply with any of these instructions and/or advise each joint owner of the apparent conflict and/or take no action as to any of these instructions until it receives instructions from any or all of the joint owners that are satisfactory to it. Notice provided by GS&Co. to any joint owner will be deemed notice to all joint owners. Each joint owner further agrees that he/she will be jointly and severally liable for the Account with each other joint owner.

If you have a joint account, you agree that we may consider the investment experience of any joint owner as determinative of the investment experience of the applicable Account as a whole (even when that investment experience is not shared with any other joint owners), including when deciding whether to extend to the account certain account features, products, services, or recommendations, except where inconsistent with applicable law. Certain investments may be limited to accounts where each joint owner meets specific investment experience or eligibility requirements.

#### 19.7 No Conflict

You represent and warrant that no term of this Agreement conflicts with or violates any duty you have under any law, regulation, or agreement.

#### 19.8 Waiver and Amendment

Nothing in this Agreement shall be deemed waived or amended without the prior express written consent of GS&Co. executed by a duly authorized representative of GS&Co. GS&Co. may amend this Agreement from time to time by adding, revising, or deleting any terms or conditions, upon notice to you. Although GS&Co. may e-mail you about changes to this Agreement, the usual way for GS&Co. to notify you of amendments is to post notice on the Site, which will be available for you to access, download, review, print, and retain.

You agree to check the Site for new versions of this Agreement. You agree that, by keeping your Account or using the services provided on the Site without objecting after GS&Co. posts a new version of the Agreement, you will agree to and accept all terms and conditions of this Agreement as so amended.

#### 19.9 Assignment

You may not assign your rights or obligations under this Agreement without the prior express written consent of GS&Co. GS&Co. may assign any of its rights and obligations under this Agreement to any of its affiliates or successors without giving you notice.

## 19.10 SIPC Insurance Coverage

GS&Co. is a member of the Securities Investor Protection Corporation (“SIPC”). SIPC currently protects SIPC-eligible assets (including cash, stocks, bonds, mutual funds, money market funds, financial instruments, options, and related securities, but excluding commodity contracts, commodity accounts, currency contracts, and swap contracts) up to a maximum of \$500,000, of which \$250,000 (subject to inflation adjustments within the determination of SIPC) may be in cash. You may obtain information about SIPC, including the SIPC Brochure and information about which assets are eligible for SIPC protection, by contacting SIPC at (202) 371-8300 or visiting their website at [www.sipc.org](http://www.sipc.org). SIPC does not provide coverage for decline in value of securities, mutual funds, or other investments. Please refer to information in the Custodial Agreement and account statements regarding the Clearing Firm’s status as a member of SIPC and coverage applicable to Securities and Other Property held by the Clearing Firm in your Account.

## 20. U.S. Special Resolution Regimes and Insolvency Proceedings

The provisions of this Section apply in certain circumstances in which a GS Party and/or GS Affiliate could become subject to (i) a proceeding under a U.S. Special Resolution Regime or (ii) an Insolvency Proceeding. For purposes of this Section, “**Goldman Entity**” means GS&Co. or any of its “affiliates,” as that term is defined in, and interpreted under, 12 U.S.C. § 1841(k); “**GS Party**” means a Goldman Entity that is party to this Agreement; “**GS Affiliate**” means any “affiliate” of a GS Party, as the term “affiliate” is defined in, and interpreted under, 12 U.S.C. § 1841(k); “**U.S. Special Resolution Regime**” means each of (x) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (y) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder; “**Insolvency Proceeding**” means a receivership, insolvency, liquidation, resolution, or similar proceeding; “**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. § 252.81, 12 C.F.R. § 47.2, or 12 C.F.R. § 382.1, as applicable, which meaning may include, without limitation, any right to liquidate, terminate, cancel, rescind or accelerate; set off or net amounts owing; exercise remedies in respect of collateral or other credit support; demand payment or delivery; suspend, delay or defer payment or performance; modify obligations; alter the amount of collateral or margin provided; demand the return of any collateral or margin; or modify any right to reuse collateral or margin; “**Credit Enhancement**” means any guarantee, collateral arrangement or any other credit enhancement or credit support arrangement in support of the obligations of a GS Party to any other party or the obligations of another party to a GS Party under this Agreement or any transaction hereunder or contemplated hereby (including without limitation any pledge, charge, mortgage or other security interest or title transfer collateral arrangement, trust or similar arrangement, letter of credit, transfer of margin or any similar arrangement); “**GS Affiliate Credit Enhancement**” means any Credit Enhancement provided by a GS Affiliate that supports the obligations of a GS Party; “**Relevant Transferee**” means, with respect to a GS Affiliate Credit Enhancement, a person to whom such GS Affiliate Credit Enhancement is transferred upon the GS Affiliate that provided such Credit Enhancement entering Insolvency Proceedings or thereafter as part of the resolution, restructuring, or reorganization involving such GS Affiliate; and “**Relevant Agreement**” means this Agreement, each transaction under this Agreement that is a “qualified financial contact,” as such term is defined in, and interpreted under, 12 U.S.C. § 5390(c)(8)(D) and each Credit Enhancement related thereto.

### 20.1 Recognition of U.S. Special Resolution Regimes

- i. In the event that any GS Party becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from the GS Party of this Agreement and any other Relevant Agreement, and any interest and obligation in or under, and any property securing, this Agreement and any other Relevant Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement and such Relevant Agreement, and any interest and obligation in or under, and any property

securing, this Agreement and such Relevant Agreement, were governed by the laws of the United States or a state of the United States.

- ii. In the event that a GS Party or any GS Affiliate becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights with respect to this Agreement and such Relevant Agreement that may be exercised against the GS Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement and such Relevant Agreement were governed by the laws of the United States or a state of the United States. The requirements of this Section 20.1 apply notwithstanding the following Section 20.2.

## 20.2 Limitation on the Exercise of Certain Rights Related to Affiliate Insolvency Proceedings

Notwithstanding anything to the contrary in this Agreement or any other agreement, except the requirements of Section 20.1 as noted above,

- i. no party to this Agreement or any other Relevant Agreement shall be permitted to exercise any Default Right against a GS Party with respect to this Agreement or any other Relevant Agreement that is related, directly or indirectly, to a GS Affiliate becoming subject to Insolvency Proceedings, except to the extent the exercise of such Default Right would be permitted under the creditor protection provisions of 12 C.F.R. § 252.84, 12 C.F.R. § 47.5, or 12 C.F.R. § 382.4, as applicable; and
- ii. nothing in this Agreement or any other Relevant Agreement shall prohibit the transfer of any GS Affiliate Credit Enhancement, any interest or obligation in or under such GS Affiliate Credit Enhancement, or any property securing such GS Affiliate Credit Enhancement to a Relevant Transferee upon or following a GS Affiliate becoming subject to Insolvency Proceedings, unless the transfer would result in the party supported thereby being the beneficiary of such Credit Enhancement in violation of any law applicable to such party. After a GS Affiliate has become subject to Insolvency Proceedings, if any party other than a GS Party seeks to exercise any Default Right with respect to this Agreement or any other Relevant Agreement, such party shall have the burden of proof, by clear and convincing evidence, that the exercise of such Default Right is permitted hereunder.

## 21. Governing Law

**To the extent not inconsistent with federal law, this Agreement, each transaction entered into hereunder, and all matters arising in connection with this Agreement shall be governed by, and construed and enforced in accordance with, the law of the State of New York without reference to its choice of law doctrine.**

## 22. Binding Arbitration

**22.1 This Agreement contains a pre-dispute arbitration clause. By signing an arbitration agreement the parties agree as follows:**

- i. **All parties to this 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.**
- ii. **Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.**

- iii. The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.
- iv. The arbitrators do not have to explain the reason(s) for their award unless, in an eligible case, a joint request for an explained decision has been submitted by all parties to the panel at least 20 days prior to the first scheduled hearing date.
- v. The panel of arbitrators may include a minority of arbitrators who were or are affiliated with the securities industry.
- vi. The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.
- vii. The rules of the arbitration forum in which the claim is filed and any amendments thereto, shall be incorporated into this agreement.

**22.2** You agree to settle by arbitration any controversy between you and GS&Co. arising out of or relating to this Agreement or your use of your Account. The arbitration will be conducted in accordance with the rules then in effect for the Financial Industry Regulatory Authority. The award of the arbitrator or a majority of the arbitrators, as the case may be, will be final, and judgment upon the award rendered may be entered in any court having jurisdiction.

**22.3** No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until:

- i. the class certification is denied;
- ii. the class is decertified; or
- iii. the other party is excluded from the class by the court.

Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this Agreement except to the extent stated herein.

#### **Electronic Signature**

**If you want to open an Account and have carefully reviewed this Agreement, including the PRE-DISPUTE ARBITRATION CLAUSE IN SECTION 22, then please check the box to the left of this Agreement.**

BY CHECKING SUCH BOX, YOU AGREE TO ENTER INTO THIS AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

**Marcus Invest**  
**Advisory Agreement**

**April 2021**

This Advisory Agreement (the “**Supplement**”) is part of your Customer Agreement and sets forth the terms and conditions under which GS&Co. offers the program described in Section 1 below (the “**Program**”). This Supplement governs the advisory services that we provide you with respect to your participation in the Program and the Account through which you receive such services (“**Advisory Account**”). Unless otherwise defined in this Supplement, defined terms have the same meaning as in your Customer Agreement. In the event any provision of this Supplement conflicts or is inconsistent with any provision of your Customer Agreement, the applicable provisions of this Supplement shall control for investment advisory services provided to you. You agree to be bound by the applicable terms and conditions of this Supplement for your Advisory Account and you certify that, to the best of your knowledge, the information you have provided to GS&Co. is complete and correct. If you maintain both Retirement Accounts and Accounts that are not Retirement Accounts, you should understand that any advice or recommendations made by GS&Co. with respect to non-Retirement Accounts should not be relied on in connection with your Retirement Accounts, which may present different considerations.

YOU MUST READ AND CONSIDER THIS SUPPLEMENT CAREFULLY AND CONTACT GS&CO. TO ASK ANY QUESTIONS YOU MAY HAVE BEFORE ENTERING INTO THIS SUPPLEMENT. PURSUANT TO THE E-SIGN AND DELIVERY AGREEMENT THAT YOU PREVIOUSLY EXECUTED, CLICKING THAT YOU AGREE HAS THE SAME LEGAL EFFECT AS SIGNING A PAPER VERSION OF THIS SUPPLEMENT. YOU ACKNOWLEDGE THAT THIS SUPPLEMENT MAY BE AMENDED FROM TIME TO TIME AND AMENDED SUPPLEMENTS WILL BE POSTED ON THE SITE. YOU AGREE TO CHECK THE SITE FOR NEW VERSIONS OF THIS SUPPLEMENT AND OTHER AGREEMENTS RELATING TO YOUR PARTICIPATION IN THE PROGRAM. YOU AGREE THAT, BY KEEPING YOUR ADVISORY ACCOUNT OR USING SERVICES PROVIDED AS PART OF THE PROGRAM WITHOUT OBJECTING IN WRITING AFTER GS&CO. POSTS A NEW VERSION OF AN AGREEMENT ON THE SITE, YOU WILL AGREE TO AND ACCEPT ALL TERMS AND CONDITIONS OF ANY AMENDED AGREEMENT, INCLUDING ANY NEW OR CHANGED TERMS OR CONDITIONS.

**1. Program Services**

The Program is designed to provide an easy way for individuals to regularly invest money and access GS&Co.’s digital advisory services through their Advisory Accounts. Through the Program, GS&Co. interacts with Clients using a technology platform that it developed and maintained with its affiliates and The Goldman Sachs Group, Inc. The Client chooses for their Advisory Account one of the investment strategies that GS&Co. makes available through the Program (each, an “**Investment Strategy**”), each of which employs its own portfolio management methodology. Based on information the Client provides on the Site, GS&Co. uses a portfolio recommendation tool (the “**Portfolio Recommendation Tool**”) to provide the Client with investment advice in the form of recommendations of (i) an asset allocation that aligns with the Client’s investment objective based on certain information that the Client provides through the Site, and, (ii) a Portfolio (as defined in Section 2.1 below) that aligns with that asset allocation following the Client’s selection of an Investment Strategy (“**Suggested Portfolio**”). You hereby understand and agree that the Program: (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 GS&Co., any of their 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 Clients in providing investment advice, and does not verify the completeness or accuracy of such information.

You further acknowledge that the services you receive through participating in the Program are sufficient consideration for you to enter into this Supplement.

## 2. Advisory Services Provided by GS&Co.

You agree that GS&Co. may provide certain advisory services to you with or through its affiliates. This Supplement is entered into by GS&Co. on its own behalf and on behalf of its affiliates. All rights and limitations of liability and obligations of GS&Co. in this Supplement are for the benefit of GS&Co. and each of its present and future affiliates. You further agree and irrevocably appoint GS&Co. with full power as your true and lawful attorney-in-fact, to the extent permitted by law, for the purpose of carrying out the provisions of this Supplement.

### 2.1 Investment Strategies and Portfolios

Through the Program, GS&Co. offers various asset allocation portfolios (each, a “**Portfolio**”) of exchange-traded funds (“**ETFs**”) for each of the Investment Strategies that are available through the Program. Each of the Investment Strategies and corresponding Portfolios may be developed by GS&Co., any of its affiliates, or third parties. The Portfolios are designed to allocate assets among ETFs that represent different asset classes in accordance with the investment methodology and style of the corresponding Investment Strategy. Currently the Program is offering various strategic Investment Strategies and Portfolios that are designed by GS&Co. The investment advisers for the ETFs in the Portfolios include affiliates of GS&Co. as well as third parties unaffiliated with GS&Co. GS&Co. reserves the right to change, in its sole discretion from time to time and without prior notice to Clients: (i) the number of Investment Strategies and Portfolios available through the Program that it deems appropriate to address the investment objectives, investment time horizons, and risk tolerances of its clients; (ii) the ETFs that comprise each of the Portfolios; and (iii) the relative weightings of the ETFs within each of the Portfolios.

GS&Co. further reserves the right to change, in its sole discretion from time to time, upon providing prior notice to Clients, the model provider from which GS&Co. obtains any or all Investment Strategies or Portfolios, and to make additional model providers available through the Program.

### 2.2 Suggested Portfolio

The Program will use the Portfolio Recommendation Tool to recommend an asset allocation and a Suggested Portfolio for you based on certain Client Information you provide and the Investment Strategy you select. The Portfolio Recommendation Tool does not consider the entire range of information a Client provides for purposes of recommending a Suggested Portfolio. You should understand that in recommending a Suggested Portfolio the Portfolio Recommendation Tool currently relies solely on your responses to questions relating to investment time horizon and risk tolerance, which are not weighted equally, and the Investment Strategy that you select. You agree to access and review through the Site information identifying and describing the Suggested Portfolio using the Portfolio Recommendation Tool.

You acknowledge that, based on the Client Information you provide and the investment advisory methodology used in developing the Portfolio Recommendation Tool, the Suggested Portfolio is the Portfolio that GS&Co. recommends for you. You further acknowledge that if you maintain multiple Advisory Accounts and choose a different Investment Strategy or provide different Client Information regarding your investment time horizon and risk tolerance for each Advisory Account, GS&Co., through the Portfolio Recommendation Tool, may recommend a different Suggested Portfolio for each Advisory Account. You agree that there is no guarantee, representation, warranty, or covenant that any Suggested Portfolio will perform better over any time period than any other Portfolio or investment made available through the Program or otherwise available in the market.

### 2.3 Selected Portfolio

You are not bound by the recommendation generated by the Portfolio Recommendation Tool and may, at the time when you receive a Suggested Portfolio, select either of the Portfolios adjacent to the Suggested Portfolio on the risk spectrum of Portfolios for the Investment Strategy that you selected and are available through the Program. The Portfolio you ultimately select, taking into account any reasonable restrictions

you impose subject to the terms and conditions of this Supplement, is referred to as the “**Selected Portfolio.**” You may impose reasonable investment restrictions on the management of your Advisory Account by calling us at 1-833-720-6468 or emailing [invest-support@marcus.com](mailto:invest-support@marcus.com). The decision as to whether an investment restriction is reasonable is solely that of GS&Co. GS&Co. may, in its discretion, hold the amount that would be invested in the restricted security in cash, invest in substitute securities, or invest it on a pro rata basis across the other securities in the Portfolio that are not restricted. Clients should be aware that the performance of an Advisory Account with restrictions will differ from, and may be lower than, the performance of Advisory Accounts without restrictions.

Once you choose a Selected Portfolio, your investment transactions will be executed in accordance with the Selected Portfolio’s target allocation. You agree that by initiating, authorizing, or directing a deposit or transfer to your Advisory Account, you authorize GS&Co. to place orders with the Clearing Firm on your behalf for the ETFs that comprise your Selected Portfolio at the time(s) and in amounts calculated by GS&Co.’s portfolio management system such that the resulting holdings in your Advisory Account after settlement of such purchases will approximate your Selected Portfolio. In order to permit sufficient time to ensure the transfer of assets in your Advisory Account has been successfully completed, GS&Co. generally will wait at least one Business Day after the day the Clearing Firm credits the applicable deposit or transfer to your Advisory Account to generate and place the orders for such purchases. You hereby acknowledge and agree that, as a result, each deposit or transfer you make will generally not be invested in your Selected Portfolio for at least one Business Day after the day the Clearing Firm credits the applicable deposit or transfer to your Advisory Account and that such uninvested cash will not be subject to financial gains or losses resulting from movement in market prices during that time. You further agree that, by requesting a withdrawal or transfer of funds from your Advisory Account, you authorize GS&Co. to place orders with the Clearing Firm on your behalf to sell Securities and Other Property in your Advisory Account at the time(s) and in amounts calculated by GS&Co.’s portfolio management system such that the resulting holdings in your Advisory Account after settlement of such sales will more closely approximate your Selected Portfolio. You authorize GS&Co. to, unless otherwise instructed by you and agreed to by GS&Co., sell in connection with your request to withdraw or transfer funds from your Advisory Account from tax lots in the following order: (i) lots with unrealized short-term losses; (ii) lots with unrealized long-term losses; (iii) lots with unrealized long-term gains; and (iv) lots with unrealized short-term gains, and within each foregoing category GS&Co. will sell lots with the highest cost basis first. You acknowledge and agree that such orders generally will be placed at any time within five Business Days after your request to withdraw or transfer funds. You further acknowledge that in the event that you request to withdraw or transfer the entire balance of your Advisory Account market movements between the time you initiate the withdrawal or transfer request and the time it is completed may impact the value of your Advisory Account’s balance such that it may be lower than when you initiated such request.

You may change your Investment Strategy or Selected Portfolio at any time by revising certain Client Information and thereby causing the Portfolio Recommendation Tool to generate a new Suggested Portfolio. However, you may not have more than one Investment Strategy or Selected Portfolio for an Advisory Account. You acknowledge and agree that you are solely responsible for the decision to select an Investment Strategy and invest in your Selected Portfolio. GS&Co. shall not have authority or discretion to designate the Investment Strategy or Selected Portfolio for implementation in your Advisory Account. You further acknowledge and agree that it is your responsibility to review and carefully consider the information available on the Site about the Investment Strategies and Portfolios made available to you and their constituent ETFs before choosing your Selected Portfolio.

While the Program is designed so that trading in your Advisory Account over time causes the holdings to replicate your Selected Portfolio, you agree that there is no guarantee, representation, warranty, or covenant that the holdings in your Advisory Account will match the allocations of your Selected Portfolio. 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 your Selected Portfolio, any exclusion of an ETF from your Selected Portfolio, access interruptions, and hardware or software failures) can impact the extent to which holdings in your Advisory Account will replicate your Selected Portfolio at any particular point in time. You

further understand and agree that the Program offers strategic asset allocation models that are 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 your Selected Portfolios in response to market volatility or other economic events.

If you choose a Selected Portfolio other than the Suggested Portfolio, you acknowledge and agree, without limiting any other provision of this Supplement, that:

- You assume the risk that your Selected Portfolio may perform worse for you over any time period than the Suggested Portfolio or any other investment;
- Your Selected Portfolio may not be suitable based on your risk tolerance, investment time horizon, your investment objectives, financial condition, or other facts or circumstances that apply to you;
- Neither GS&Co. nor its affiliates shall be liable for any losses or other damages resulting from your choice of a Selected Portfolio;
- The Program is designed for investments in ETFs allocated so that the resulting holdings tend to replicate one of the Portfolios over time; and
- The selection and relative weighting of the ETFs in each of the Portfolios has been designed to pursue specific investment objectives, including diversification. You will not be able to change the ETFs underlying a Portfolio, except by imposing an investment restriction on the management of your Advisory Account, provided GS&Co. has determined in its sole discretion that such restriction is reasonable. Removing any ETF from any of the Portfolios will change the investment characteristics of the Portfolio in a way that deviates from the investment advice provided and may adversely impact performance.

#### 2.4 Going Advice to Help Your Holdings Track Selected Portfolio

You authorize GS&Co. to rebalance, from time to time, your Advisory Account. GS&Co.'s portfolio management system will calculate the purchases and sales based on automated analysis of your Advisory Account holdings relative to the Selected Portfolio. You agree that GS&Co. may modify at any time the manner in which, or the frequency with which, GS&Co. calculates, generates, and places with the Clearing Firm the orders to rebalance. You acknowledge that changes, particularly volatile changes, in the market price of the ETFs in your Selected Portfolio relative to each other may prevent rebalancings from successfully making your Advisory Account's holdings more closely approximate your Selected Portfolio. You acknowledge and agree that during the pendency of a withdrawal request your Advisory Account will not be eligible for rebalancing.

You authorize GS&Co. to invest dividends generated by the ETF shares in your Advisory Account in accordance with the Selected Portfolio. Dividends are invested as part of the rebalancing process.

Notwithstanding anything to the contrary in any documentation associated with the Program and your Advisory Account, you agree that GS&Co. shall be under no duty to, and makes no guarantee that it will, rebalance the assets in your Advisory Account or purchase or sell any ETF shares at any particular time or in any particular amount.

#### 2.5 Trading Authority to Modify and Track Portfolios

Generally, you will direct and are responsible for the direction of your investments in your Advisory Account by carefully: (i) reviewing the information about investing, the Investment Strategies, and the Portfolios available to you through the Program; (ii) choosing your Investment Strategy; (iii) considering the Suggested Portfolio that GS&Co. generates for you through the Portfolio Recommendation Tool; and (iv) choosing your Selected Portfolio. Moreover, it is your responsibility to direct and monitor the inflows and outflows to and from your Advisory Account. However, GS&Co. shall have discretion over assets in your Advisory Account to the limited extent that GS&Co. shall have the authority under this Supplement:

- to determine and modify from time to time which Investment Strategies and Portfolios are offered in the Program, and which ETFs comprise each of the Portfolios, including your Suggested Portfolio and Selected Portfolio;
- to determine when, how often, and in what amounts to rebalance and invest or reinvest dividends in your Advisory Account;
- 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; and
- to determine the timing of sales and withdrawals in relation to requests for withdrawals or transfers.

#### 2.6 Authority to Receive Notices, Information, Prospectuses, and Other Communications

You authorize GS&Co. to receive notices, information, prospectuses, and other communications relating to investment decisions and other matters within the scope of GS&Co.'s discretionary authority on your behalf. Copies of communications received by GS&Co. on your behalf are available on your request.

#### 2.7 Scope and Delivery of Our Investment Advice

You acknowledge and agree that GS&Co. does not provide investment advice for the Program in a manner other than the investment advice described in this Section 2. You agree that GS&Co. will provide investment advice and deliver the advisory services for the Program primarily through the Portfolio Recommendation Tool. You acknowledge and understand that under the Program, you generally will not receive investment advice in person, over the phone, in live chat, or in any other manner other than through the Site. You acknowledge that you will not be entitled or able to transact in or hold securities in your Advisory Account other than the ETF shares that are offered through the Program.

#### 2.8 Delegation

In providing its services, GS&Co. 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 Supplement or to provide ancillary enhancements or features of the services contemplated herein. Additionally, in performing its obligations under this Supplement, GS&Co. 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 GS&Co. shall always remain liable to you for its obligations hereunder.

### 3. Minimum Balance

You agree and acknowledge that you must maintain a minimum balance (\$1,000 or as otherwise specified to you in writing by GS&Co.) for your Advisory Account (the "**Minimum Balance**"). GS&Co. will review Advisory Accounts in the Program periodically to identify any Advisory Accounts with a balance below the Minimum Balance. If the balance for your Advisory Account falls below the Minimum Balance, GS&Co. reserves the right to terminate this Supplement and your Advisory Account. GS&Co. reserves the right to waive such Minimum Balance requirement in its sole discretion.

### 4. Fees

#### 4.1 Advisory Fee

For the services provided by GS&Co. under this Supplement, and the custodial and brokerage services provided by the Clearing Firm under the Custodial Agreement, you agree to pay a "per-account" fee in order to establish and maintain your Advisory Account (the "**Advisory Fee**"), which is a fee of 35 basis points per year on the entire value of your Advisory Account or as otherwise specified to you in writing by

GS&Co. The Advisory Fee is determined based on the average daily value of the assets in the Advisory Account. The Advisory Fee is payable quarterly in arrears and shall be deducted from your Advisory Account. GS&Co. reserves the right to discount or waive any fees associated with the Program at its sole discretion.

You agree and acknowledge that you are responsible for paying any and all fees, including, without limitation, the Advisory Fee, that you owe pursuant to this Section 4. You are responsible for maintaining complete and accurate billing and contact information with GS&Co. You acknowledge that such fees may change from time to time and will be available on the Site and in the Goldman Sachs & Co. LLC Marcus Invest Form ADV Part 2 Brochure (the "**Brochure**"). In the event of a change in fees, GS&Co. will provide you notice on the Site. You agree to check the Site from time to time for updates to the fees applicable to your Advisory Account.

The Advisory Fee includes most of the investment expenses that are typically paid by investors, such as: account establishment/maintenance expenses, investment advisory fees, and brokerage fees. The Advisory Fee does not include fees charged by each ETF's managers or other fees and expenses that are reflected in the price of the ETF shares, which are discussed in Section 4.3 below. Expenses that are excluded from the Advisory Fee and for which you are independently responsible, if incurred, are listed on Attachment A, attached hereto and incorporated herein by reference as if fully restated herein. From time to time, in their sole discretion, GS&Co. and/or the Clearing Firm may adjust the amounts or types of fees they charge for ancillary services. You may obtain the current schedule of such fees and services for your Advisory Account through the Site, by calling 1-833-720-6468, or emailing [invest-support@marcus.com](mailto:invest-support@marcus.com).

#### 4.2 Authorization of Fee Deduction

You authorize and direct GS&Co. to instruct the Clearing Firm to sell, as necessary, shares in your Advisory Account and to transfer money out of your Advisory Account to pay GS&Co. the Advisory Fee and, if any, other fees due under this Supplement. You agree and acknowledge that such fee deduction may trigger rebalancing of your Advisory Account, in accordance with GS&Co.'s rebalancing procedures and portfolio management system, including as described in Section 2.4 of this Supplement. Any sales of ETF shares in your Advisory Account may result in tax consequences to you, as described in Section 3.9 of your Customer Agreement. Deducted fees will be reflected in the account statements provided to you by the Clearing Firm.

#### 4.3 ETF Fees and Expenses

The Advisory Fee does not cover the internal expense ratios (or similar type fees) applicable to ETFs held in your Advisory Account from time to time. These ETFs charge their own internal advisory, brokerage and other fees and/or expenses. These internal fees and expenses are deducted from the ETF's net asset value and are borne by the ETF's shareholders or equity investors, which would include your Advisory Account under the Program. However, with respect to ETFs for which GS&Co. or its affiliates acts as an investment adviser, GS&Co. will offset your Advisory Fee that portion of the ETF fees that are retained by GS&Co. or its affiliates up to an amount equal to your Advisory Fee. You acknowledge that you have access to information available on the Site and provided by the Clearing Firm, including hyperlinks to ETF prospectuses, about the fees charged and costs incurred by the ETFs in which investments may be made pursuant to this Supplement.

#### 4.4 Appropriateness of Advisory Fee

You acknowledge that GS&Co. 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 Advisory 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.

#### 4.5 Payments to Affiliates and Employees

You agree that GS&Co. will, in its sole discretion and to the extent permitted by applicable law, make payments out of the Advisory Fee you pay GS&Co. to any of its affiliates and employees, including those persons who are responsible for managing your Advisory Account. This will create a conflict of interest between your interests and the interest of GS&Co. and its employees, since it gives us an economic interest in transactions effected for your Advisory Account.

#### 4.6 Fees for Paper Documents

Notwithstanding anything to the contrary in this Supplement, you agree that, pursuant to the E-Sign and Delivery Agreement, if you request the preparation and delivery of paper documents that GS&Co. or the Clearing Firm normally provides in electronic form or that GS&Co. or the Clearing Firm is not required to provide in paper form, GS&Co. may charge additional fees for the preparation and delivery of such paper documents.

### **5. Brokerage and Custody Services for your Advisory Account**

#### 5.1 Establishment of Account with GS&Co. and Clearing Firm

Your use of our advisory services under this Supplement requires that you establish an Account and enter into the Customer Agreement and Custodial Agreement.

Although GS&Co. may transmit the written requests you make through the Site for withdrawals or transfers to the ACH Operator and/or the Clearing Firm, GS&Co. shall have no authority to initiate any withdrawal or otherwise to transfer any securities or money out of your Advisory Account other than for fee deduction or in connection with the termination of your Advisory Account pursuant to Sections 4 and 13 of this Supplement, respectively.

#### 5.2 Brokerage Direction

Unless otherwise provided herein, all transactions for your Advisory Account will be introduced by GS&Co. and executed through the Clearing Firm which will clear and settle such transactions because you have chosen to direct order execution for your Advisory Account to GS&Co. and because any commissions charged by GS&Co. for executing transactions in your Advisory Account are included in the Advisory Fee you pay for the Program. You have chosen to direct order execution for your Advisory Account to GS&Co. in light of the value of brokerage and other services received by or made available by GS&Co. to your Advisory Account (including, without limitation, research, reporting, trade execution, and other account services from GS&Co. and individualized service and other advice and expertise you obtain from GS&Co. through the Site). You acknowledge and agree that you are giving direction to use GS&Co. even if execution by a different broker-dealer would result in lower prices or transaction costs or otherwise offer more favorable execution.

In giving the foregoing brokerage direction, and notwithstanding the potential disadvantages described above, you have independently and prudently (i) considered any information concerning GS&Co.'s execution capabilities and pricing you believe relevant (including information available on request from GS&Co.); (ii) concluded that GS&Co. is capable of providing best execution of your Advisory Account's transactions; and (iii) otherwise determined that the foregoing brokerage direction is consistent with your Advisory Account's interest in obtaining best execution of transactions generally. You agree to monitor the services provided by GS&Co. so as to assure that GS&Co. has provided best execution of your Advisory Account's transactions. You may revoke your brokerage direction at any time on written notice to GS&Co., and any such revocation will be effective once GS&Co. has received and has had a reasonable time to act on it. Revocation of your brokerage direction may cause GS&Co. to impose restrictions on or close your Advisory Account or to increase the Advisory Fee or other fees paid under this Supplement.

### 5.3 Order Bunching, Assignment of Average Prices, and Net Trades

You acknowledge and agree that GS&Co., in its sole discretion, may, but is not required to, (i) combine or “bunch” orders for your Advisory Account with orders for other accounts under the Program and/or with orders by GS&Co. for other clients’ accounts or accounts in which GS&Co. or its personnel have a beneficial interest into larger orders for aggregate transactions and allocate the securities or proceeds acquired among the participating accounts in a manner that GS&Co. believes is fair and equitable over time; and (ii) permit the Clearing Firm, with whom the order is placed, in accordance with applicable rules of any exchange or self-regulatory organization, to trade along with your order. You understand that GS&Co. may not be able to seek better prices or lower costs on transactions for your Advisory Account by including your order in a bunched or combined trade. If GS&Co. does not obtain the same price or execution for the entire combined order, it may average the prices paid or received and charge or credit your Advisory Account with the average net price. Details about average execution prices will be furnished on request. You acknowledge that aggregation of orders may work to your advantage or disadvantage. Where GS&Co. determines not to bunch or combine an order for your Advisory Account with orders for other client accounts, your order may be placed after trading activity for those other client accounts. When this occurs, your transactions may be subject to price movements, particularly in the case of illiquid securities or large orders, that may result in your Advisory Account receiving less favorable prices than obtained for other client accounts.

### 5.4 Order Types

Unless you notify GS&Co. otherwise, you specifically consent and authorize GS&Co. to execute orders on your behalf and at your risk as “not held” orders (in which you provide us with discretion to use our professional judgment as to the price, time, and manner of execution of the orders) as and when GS&Co. determines in its sole discretion, and in each case upon such terms and conditions that GS&Co. considers appropriate. All “not held” orders for your Advisory Account will be executed by GS&Co. in accordance with applicable rules and internal policies of GS&Co. GS&Co. regularly reviews transactions for quality of execution.

### 5.5 Cross/Agency Cross Transactions

You authorize GS&Co. to execute Cross Transactions and Agency Cross Transactions for your Advisory Account in accordance with applicable law and GS&Co.’s internal policies. A “**Cross Transaction**” occurs when GS&Co. causes your Advisory Account to buy securities or other instruments from, or sell securities or other instruments to, another GS&Co. client account or an advisory client of an affiliate of GS&Co. that provides advisory services, and GS&Co. does not receive a commission from the transaction. An “**Agency Cross Transaction**” occurs when GS&Co. acts as broker for your Advisory Account and a brokerage or advisory account on the other side of the transaction in connection with the purchase or sale of securities by your Advisory Account, and GS&Co. receives a commission from the transaction. GS&Co. may (but is under no obligation to) cause your Advisory Account to enter into Cross Transactions or Agency Cross Transactions. These transactions may enable GS&Co. to purchase or sell Securities and Other Property for your Advisory Account at a set price and possibly avoid an unfavorable price movement that may be created if GS&Co. were to enter such purchase or sell order into the market, but there can be no assurance that Cross Transactions or Agency Cross Transactions will be effected in the manner that is most favorable to your Advisory Account. You acknowledge that (i) GS&Co. has a potentially conflicting division of loyalties and responsibilities to both parties to a Cross Transaction and Agency Cross Transaction and (ii) GS&Co. may receive commissions from a party in an Agency Cross Transaction. You may revoke your consent to Cross Transactions and Agency Cross Transactions at any time by written notice to GS&Co., and any such revocation will be effective once GS&Co. has received and had reasonable time to act on it. No Cross Transactions and Agency Cross Transactions are effected in which GS&Co. has recommended the transaction to both any purchaser and any seller.

## 5.6 Consent to Certain Transactions

Pursuant to Section 11(a) of the Securities Exchange Act of 1934, certain transactions effected by GS&Co. for certain clients on a national securities exchange may be executed with GS&Co. only on receipt of your consent. You specifically consent, in the absence of contrary instructions, to GS&Co. acting as broker for your Advisory Account. Where transactions are effected through GS&Co., GS&Co. may act, in the absence of contrary instructions, on an agency or principal basis, to the extent permitted by law and subject to applicable restrictions.

## 5.7 Cross Transactions and Agency Cross Transactions with Retirement Accounts

Subject to GS&Co.'s execution obligations described below, GS&Co. is hereby authorized pursuant to and in accordance with Department of Labor Prohibited Transactions Class Exemption 86 128 ("PTCE 86 128") to execute so much or all of the transactions, on an agency basis, for your Retirement Account with or through itself as GS&Co. in its sole discretion shall determine. You hereby acknowledge receipt from us of sufficient information to determine whether to grant such authorization. In all such dealings, GS&Co. shall be authorized and entitled to retain any commissions, remuneration or profits which may be made in such transactions and shall not be liable to account for the same to you or the Retirement Account, and the Advisory Fee shall not be abated thereby. GS&Co. shall, with respect to transactions subject to Section 11(a) of the Securities Exchange Act of 1934, and Rule 11a2-2(T) thereunder (or any similar rule which may be adopted in the future), provide you with information annually disclosing commissions, if any, retained by GS&Co. in connection with exchange transactions for your Retirement Account to the extent required by such provisions. GS&Co. is also authorized to execute, where permitted under applicable law (including PTCE 86 128 or other available exemption), Cross Transactions and Agency Cross Transactions for your Retirement Account. Cross Transactions and Agency Cross Transactions may enable GS&Co. to purchase or sell Securities and Other Property for your Retirement Account at a set price and possibly avoid an unfavorable price movement that may be created if GS&Co. were to enter such purchase or sell order into the market, but there can be no assurance that Cross Transactions or Agency Cross Transactions will be effected in the manner that is most favorable to your Retirement Account. GS&Co. believes that such transactions can provide meaningful benefits for its clients. You acknowledge that: (i) GS&Co. has a potentially conflicting division of loyalties and responsibilities to both parties to a Cross Transaction and Agency Cross Transaction and (ii) GS&Co. may receive commissions from the other party to an Agency Cross Transaction. You understand that your authorization to GS&Co. to execute Cross Transactions and Agency Cross Transactions for your Retirement Account is terminable at will, without penalty, effective upon receipt by GS&Co. of written notice from you, and that the failure to terminate such authorization will result in its continuation.

## 6. Investment Risks

You acknowledge that:

- Investing in securities involves risk of loss that you should understand and be prepared to bear. Investment performance of any kind can never be predicted or guaranteed and the value of your Advisory Account will fluctuate due to market conditions and other factors. Past performance does not guarantee future results.
- Back tested performance of the Suggested Portfolio, the Selected Portfolio, or other Portfolios are hypothetical and do not reflect actual investment results. Any hypothetical back tested returns associated with any Portfolio are based on assumptions and do not reflect actual results of your Advisory Account. The performance results were derived from the retroactive application of a model developed within the benefit of hindsight and not with real money at stake. No representation is being made that your Advisory Account will or is likely to achieve results similar to those shown. Actual results may differ significantly from the hypothetical returns that are 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 the Suggested Portfolio, your Selected Portfolio, other Portfolios or your Advisory 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 Portfolio may not materialize.

- By participating in the Program you may lose opportunities to make other investments and to realize gains from such other investments.
- Data provided by GS&Co. may not be free from error or inaccuracies.
- Investments in your Advisory Account are not guaranteed by the Federal Deposit Insurance Corporation, any bank, or any government. Cash in your Advisory Account, including the one percent (1.0%) allocation to cash in the Portfolios, is held as a free credit balance by the Clearing Firm.
- The services provided under this Supplement, including the Suggested Portfolio, are highly reliant on the accuracy of the Client Information you provide through the Site. If you provide inaccurate information, this could materially impact the quality and applicability of the advice you receive through the Program. Further, you understand that the Portfolio Recommendation Tool currently focuses exclusively on your investment time horizon and risk tolerance in recommending a Suggested Portfolio. There are many other components of Client Information that are not currently considered by GS&Co. or the Portfolio Recommendation Tool 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 Supplement, including the Suggested Portfolio, are highly reliant on the accurate performance of the algorithms underlying the Portfolio Recommendation Tool and the portfolio management system, and the technology that generates such algorithms. A malfunction or failure in either an algorithm or the underlying technology could cause you to receive a Suggested Portfolio 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.
- The algorithm underlying the Portfolio Recommendation Tool relies on a number of assumptions based upon a limited amount of Client Information provided through the Site 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 major losses.
- 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.
- We rely on third parties – often to a material extent – for the provision of the Portfolios, market statistics, ETF details, performance, and related information. 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 Supplement. 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 Supplement could be materially compromised.

## 7. Disclaimer of Liability

### 7.1 Limitation of Liability

You acknowledge that Section 18.1 of the Customer Agreement applies to your Advisory Account. To the fullest extent allowed by applicable law, you agree that GS&Co. and its Indemnified Persons shall not be liable for any Losses by or with respect to your Advisory Account, except to the extent that such Losses are actual Losses proven with reasonable certainty, are not speculative, are proven to have been fairly within the contemplation of the parties as of the date hereof, and are determined by a court of competent jurisdiction or an arbitration panel in a final non-appealable judgment or order to have been the direct result of an act or omission taken or omitted by GS&Co. during the term hereof which constitutes gross negligence, willful misconduct, bad faith, illegal conduct or reckless disregard of its obligations under this Supplement. Without limiting the generality of the foregoing, GS&Co. will not be liable for (i) any indirect, special, incidental or consequential damages or other Losses (regardless of whether such damages or other Losses were reasonably foreseeable); (ii) any inaccuracy or breach of your representations, warranties, covenants or agreements contained herein; (iii) any Losses resulting from GS&Co. using inaccurate, outdated or incomplete information furnished by you; (iv) differences between projected or potential performance and actual results; (v) any service provided under the Custodial Agreement; or (vi) GS&Co.'s placement of orders on your behalf in your Advisory Account if the Clearing Firm does not receive final payment for a deposit credited to your Advisory Account. GS&Co. shall not be responsible for any Losses incurred after termination of an Advisory Account. GS&Co. shall have no responsibility whatsoever for the management of any of your other assets and shall incur no liability for any Losses which may result from the management of such other assets. U.S. federal and state securities laws and ERISA impose liabilities under certain circumstances on persons who act in good faith; nothing herein shall constitute a waiver or limitation of any rights which you may have, if any, under any applicable U.S. federal and state securities laws or ERISA. Subject to the foregoing, your rights under this Section 7.1 shall be your exclusive remedy for any breach by GS&Co. under this Supplement.

### 7.2 No Warranty

Investments in Securities and Other Property involve risk and will not always be profitable. GS&Co. does not give any warranty or guarantee as to the performance or profitability of your Advisory Account or any part thereof. GS&Co. will only manage the assets in your Advisory Account and, in making investment decisions for those accounts, will not consider any other assets that you own. GS&Co. gives no warranty or guarantee that the investment objectives, expectations, or targets described in this Supplement and/or on the Site will be achieved, including, without limitation, any risk control, risk management, or return objectives, expectations, or targets. Your Advisory Account may suffer loss of principal, and income, if any, may fluctuate. Neither GS&Co. nor any of its affiliates guarantees a specific level of performance, the success of any given investment decision or strategy that GS&Co. may recommend or undertake, or the success of the overall management of the Advisory Account through the Program. Investment recommendations or decisions are subject to various market, currency, economic, and business risks as well as the risk that those investment decisions will not always be profitable or prove to have been wise. The value of the investments held in your Advisory Account may be affected by a variety of factors, including, but not limited to, economic and political developments, interest rates and issuer-specific events, market conditions, sector positioning, and other factors. GS&Co. shall not be responsible for the performance by any person not affiliated with GS&Co. of such person's commercial obligations in executing, completing, or satisfy such person's obligations.

### 7.3 Indemnification

Without limiting any other indemnity provision of this Supplement, to the greatest extent permitted by law, you agree that GS&Co. shall have no liability for, and you agree to reimburse, indemnify, and hold GS&Co. and its Indemnified Persons harmless from all Losses that (i) result from (A) any misrepresentation, act, or omission or any alleged misrepresentation, act, or omission by you or your previous or other advisers, custodians, or other agents, (B) any inaccuracy or breach of your representations, warranties, covenants, or

agreements contained herein, (C) GS&Co.'s following your or your agent's directions or failing to follow your or their unlawful or unreasonable directions, (D) any of your actions or the actions of your previous or other advisers, custodians or other agents, or (E) the failure by any person not controlled by GS&Co. to perform any obligations to you; or (ii) arise out of or relate to any demand, charge, or claim in respect of a GS&Co. Indemnified Person's acts, omissions, transactions, duties, obligations, or responsibilities arising pursuant to this Supplement, unless (y) a court with appropriate jurisdiction shall have determined by a final judgment that is not subject to appeal that such GS&Co. Indemnified Person is liable in respect of the demands, charges, and claims referred to in this subparagraph or (z) such GS&Co. Indemnified Person shall have settled such demands, charges, and claims without your consent.

In the event that any GS&Co. Indemnified Person becomes involved in any capacity in any action, proceeding, or investigation brought by or against any person in connection with any matter arising out of or in connection with this Supplement or your Advisory Account (including a breach of this Supplement by you), you agree to periodically (but no less than on a quarterly basis) advance funds to (or reimburse) that GS&Co. Indemnified Person for the legal and other expenses (including the cost of any investigation and preparation) it expects to incur (or has incurred) in connection therewith, provided that the GS&Co. Indemnified Person will promptly repay to you the amount of any such advanced or reimbursed expenses paid to it if a court having appropriate jurisdiction shall have determined by a final judgment that is not subject to appeal that the GS&Co. Indemnified Person is not entitled to be indemnified by you in connection with such action, proceeding, or investigation.

#### 7.4 Force Majeure

In addition, and without limiting any other provision of this Supplement, GS&Co. shall not be liable for (i) force majeure or other events beyond the control of GS&Co., including without limitation any failure, default, or delay in performance resulting from computer or other electronic or mechanical equipment failure, unauthorized access, theft, operator errors, government restrictions, exchange or market rulings or suspension of trading, strikes, failure of common carrier or utility services, severe weather, or breakdown in communications not reasonably within the control of GS&Co. or other causes commonly known as "acts of god", whether or not any such cause was reasonably foreseeable, or (ii) general market conditions unrelated to any violation of this Supplement by GS&Co.

### 8. Performance of Rights and Obligations in Relation to Assets Held in Your Advisory Account

GS&Co. will not vote (or give advice about how to vote) proxies relating to Securities and Other Property in your Advisory Account on a discretionary basis. In this regard, you will receive all annual reports and proxy materials relating to such Securities and Other Property, and you will need to vote such proxies directly or instruct the Clearing Firm.

GS&Co. will not render advice or take any action on your behalf with respect to Securities and Other Property currently or formerly held in your Advisory Account or the issuers thereof that become the subject of any legal proceedings, including bankruptcies and class actions.

### 9. Receipt of Brochure and Form CRS

You acknowledge receipt of the Brochure, which contains a description of certain policies and procedures applicable to GS&Co. in connection with the Program, as well as 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, and any supplements to the Brochure which provide information about the educational background, business experience, and any disciplinary history of individuals who provide advisory services through Marcus Invest. You further acknowledge receipt of the Goldman Sachs & Co. LLC's Form Customer Relationship Summary ("**Form CRS**"), which discloses important information about the services provided by GS&Co. and its relationship with you. The Brochure and Form CRS are also available on the Site and the Securities and Exchange Commission's Investment Adviser Public Disclosure page on [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

## **10. Reports**

You will receive periodic statements and, if required by law, confirmations reporting all transactions effected by GS&Co. for your Advisory Account from the Clearing Firm. You agree to review these statements and confirmations and to notify GS&Co. within ten (10) Business Days following the first issue of the statement or confirmation if you believe that any transactions listed therein are inconsistent with any investment restrictions imposed on your Advisory Account or your instructions. Reports will be provided to you by GS&Co. or the Clearing Firm on GS&Co.'s behalf showing the value and status of your Advisory Accounts on a quarterly basis. You agree that, except as required by applicable law, GS&Co. will have no responsibility under this Supplement to send you copies of any trade confirmations that it receives.

## **11. Conflicts of Interest**

GS&Co. is a major participant in global financial markets and as such has activities and interests that include potential multiple advisory, transactional, financial, and other interests in accounts, securities, instruments and companies that may be purchased or sold in your Advisory Account. GS&Co. acts as an investor, investment banker, research provider, investment manager, financier, advisor, market maker, trader, prime broker, lender, agent and principal, and has other direct or indirect interests, in the global fixed income, currency, commodity, equity, and other markets in which your Advisory Account may invest. GS&Co. and its personnel may take positions in securities or take actions for their own accounts which conflict with positions in your Advisory Account, and GS&Co. may act as counterparty to any transaction executed for your Advisory Account, subject to applicable law. Additionally, GS&Co. may on a proprietary basis sell, redeem, purchase, take short positions in or take similar actions with respect to securities, currencies, funds, or other investments in which your Advisory Account may be invested ("underlying assets") without having to notify you of such investment or activity. GS&Co. may also create, write, sell or issue, or act as placement agent or distributor of derivatives and structured investment products whose value may be linked to the value of underlying assets. To the extent permitted by applicable law, GS&Co. may hedge its derivative positions by buying or selling such underlying assets, and reserves the right to sell or redeem some or all of these underlying assets without notice to you. Such actions may have an adverse effect on the amount of fees, expenses and other costs incurred directly or indirectly in connection with your Advisory Account. For instance, GS&Co. may for its own account, have long or short positions in, and actively buy or sell, the products or related securities purchased or sold for your Advisory Account, or derivatives of these products or related securities. In addition, GS&Co. may act as adviser to clients in investment banking, financial advisory, asset management, and other capacities in advisory, transactional, financial, or other assignments of all types including those related to instruments that may be purchased, sold, or held in your Advisory Account. Further, GS&Co. may issue, or be engaged as underwriter, financial advisor, or the issuer of instruments that your Advisory Account may purchase, sell, or hold. The present and future activities of GS&Co. may give rise to additional conflicts of interest with you.

GS&Co. and its employees will generally directly or indirectly receive a portion of fees paid by you. Such fees vary according to the type of product or service and may be higher for certain products or services. The present and future activities of GS&Co. may give rise to additional conflicts of interest with you.

You agree that GS&Co., in its sole discretion, may refrain from effecting transactions including due to (a) regulatory requirements, (b) GS&Co.'s internal policies and procedures, and (c) its determinations regarding actual or potential conflicts of interest or the appearance of such conflicts. However, you also agree that GS&Co. may determine to effect transactions notwithstanding the existence of such conflicts. You acknowledge that you understand the risks and conflicts of interest disclosures referred to above.

You understand that GS&Co. and its affiliates provide, among other things, investment banking, research, brokerage, and investment advisory services to other clients. By reason of its investment banking or other activities, GS&Co. may from time to time acquire confidential information and information about corporations or other entities and their securities. You acknowledge and agree that GS&Co. will not be free to divulge to you, or to act on, such information with respect to its activities, including its activities pursuant to this Supplement. You recognize that GS&Co. may give advice and take action in the performance of its duties to such clients (including those who may also be participating in investment consulting account

programs) that may differ from advice taken with respect to you. Nothing in this Supplement will be deemed to impose on GS&Co. or its affiliates any obligation to purchase or sell for you any Securities or Other Property that such parties may recommend, purchase or sell, or recommend for purchase or sale, for its or their own account, or for the account of any other client.

The recommendations implicit in any Portfolio may reflect recommendations being made by GS&Co. to, or investment advisory decisions made contemporaneously for, similarly situated clients. As a result, other accounts (including accounts advised by GS&Co., its affiliates, or their respective personnel) may have already commenced trading before GS&Co. has received or had the opportunity to evaluate or act on such recommendations. In such circumstances, trades ultimately placed for you may be subject to price movements, particularly with large orders or where the securities are thinly traded, that may result in you receiving prices that are less favorable than the prices obtained for other accounts advised by GS&Co., its affiliates, or their respective personnel. These are considerations of which you should be aware and which may cause conflicts that could disadvantage the Advisory Account.

You acknowledge that you understand the risks and conflicts of interest disclosures described above and in the Brochure, and authorize GS&Co. to provide the advisory services described in this Supplement notwithstanding any of these actual or potential conflicts of interest and such additional conflicts of interest as may be set forth in the Brochure as amended from time to time, and which is available upon your request.

## **12. Nondisclosure of Confidential and Material Nonpublic Information**

You agree and acknowledge that information and advice furnished to you by GS&Co. (including, without limitation, information directly or indirectly obtained by you from GS&Co. or through the Clearing Firm evidencing transactions effected at the direction of GS&Co., or other information evidencing GS&Co.'s expertise, investment strategies, or trading activities) has been developed by GS&Co. through the application of methods and standards of judgment and through the expenditure of considerable work, time, and money and is the exclusive and proprietary intellectual property of GS&Co., which is (i) confidential and shall be treated as such by you, (ii) shall not be used by you or your agents as a basis for effecting or replicating transactions, (iii) shall not be used for any purpose other than your analysis of the performance of GS&Co., and (iv) shall not be disclosed, directly or indirectly, to third parties by you. Notwithstanding the above, confidential information may be disclosed if (i) requested by or through, or otherwise in connection with, a judicial, administrative, governmental, or self-regulatory organization process, investigation, inquiry or proceeding, or is otherwise legally required, (ii) required in order for each party to carry out its responsibilities hereunder, or (iii) permitted upon the prior written consent of the other party. It is understood and agreed that in the event of a breach of this Section, damages will not be an adequate remedy and the Indemnified Persons shall be entitled to injunctive relief to restrain any such breach, threatened or actual. Any injunction obtained in accordance with this paragraph will be effectuated or obtained in a court in the State of New York located in the Borough of Manhattan in New York City.

Notwithstanding any of the other provisions in this Supplement, you shall be liable and reimburse, indemnify, and hold harmless the Indemnified Persons for, from and against any and all Losses, including without limitation and for the avoidance of doubt, direct, indirect, special, incidental, or consequential damages and claims of any kind or nature whatsoever, regardless of whether such Losses were reasonably foreseeable, incurred by the Indemnified Persons as a result of you or your agent's violation of this Section. You further agree to impleader status in any dispute resolution forum in which GS&Co. is litigating its conduct arising out of your activities.

Notwithstanding anything herein to the contrary, you (and each of your employees, representatives, or other agents) may disclose to any and all persons, without limitation of any kind, the tax treatment of any transaction or potential transaction in your Advisory Account and all materials of any kind (including opinions or other tax analyses) that are provided to you relating to such tax treatment. However, any information relating to the tax treatment shall remain subject to the confidentiality provisions hereof (and the foregoing sentence shall not apply) to the extent reasonably necessary to enable the parties hereto,

their respective affiliates, and their respective affiliates' directors and employees to comply with applicable securities laws.

### **13. Term and Termination**

#### 13.1 Effective Date

This Supplement becomes effective as of the date it is accepted by GS&Co. and an Advisory Account is opened, as evidenced in accordance with the GS&Co.'s procedures or practices regarding account opening. Collection and processing of the required documentation may delay the acceptance of this Supplement. Any amendment or modification to this Supplement will be effective on the date determined in accordance with Section 14.2 below.

#### 13.2 Termination

You may close one or more of your Advisory Accounts and terminate this Supplement at any time for any reason by sending a request to close your Advisory Accounts through the Site. GS&Co. may at any time for any reason, with or without notice to you, terminate this Supplement and close any or all of your Advisory Accounts. Termination of your Advisory Account will be effective immediately or at a later time if so specified in writing, except that the relevant parts of the Supplement and of any applicable supplement will remain in effect with respect to all transactions and other obligations then outstanding. The termination of this Supplement by you or GS&Co. will also be deemed to be the termination of the Customer Agreement and Custodial Agreement, unless otherwise agreed to by GS&Co. or the Clearing Firm, as applicable. Any termination will not affect the liabilities or obligations of the parties incurred, or arising from transactions initiated, under this Supplement before, as a result of, or otherwise relating to, termination, or the arbitration provisions in the Customer Agreement, which will survive any expiration or termination of this Supplement.

If either GS&Co. or you request to close an Advisory Account, you hereby authorize GS&Co. to instruct the Clearing Firm to liquidate any Securities and Other Property in such Advisory Account within a reasonable period of time following such request, and to send the cash, less any portion of the Advisory Fee or other fees due, to either your address of record or a Funding Account. Notwithstanding the foregoing, if you explicitly request that Securities and Other Property be transferred to another custodian or broker-dealer, GS&Co. will instruct the Clearing Firm 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, such Securities and Other Property remaining after each of the following are paid for with the proceeds of a sale: any withdrawals pending when the termination notice was received or sent by GS&Co.; any portion of the Advisory Fee due; the fees charged for processing the in-kind transfer to another custodian or broker-dealer; and any other fees due.

Without limiting any other rights GS&Co. may have in this regard, upon termination by either party, GS&Co. may transfer the assets from your Advisory Account to a brokerage account or otherwise hold such Securities and Other Property on a nondiscretionary basis, pending further action by you or GS&Co., subject to the terms of the Customer Agreement or this Supplement, as applicable.

### **14. Miscellaneous**

#### 14.1 Geographic Scope of Program

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 GS&Co. nor its affiliates intend to offer the Program, any securities, or any other products or services outside of the United States. You acknowledge that GS&Co. and its affiliates do not offer the Program to non-resident aliens subject to tax withholding. Neither GS&Co. nor its affiliates represent or warrant that any aspect of the Program, including information available from the Site and information provided through the Portfolio Recommendation Tool, 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 GS&Co. when applying for your Advisory Account using the account opening functionality through the Site. You acknowledge that access to the Site from outside of the United States may be limited or, in some cases, unavailable.

#### 14.2 Waiver and Amendment

Nothing in this Supplement shall be deemed waived or amended without the prior express written consent of GS&Co. executed by a duly authorized representative of GS&Co. GS&Co. may amend this Supplement from time to time by adding, revising, or deleting any terms or conditions, upon notice to you. Although GS&Co. may e-mail you about changes to this Supplement, the usual way for GS&Co. to notify you of amendments is to post notice on the Site, which will be available for you to access, download, review, print, and retain.

You agree to check the Site for new versions of this Supplement. You agree that, by keeping your Advisory Account or using the services provided in the Program without objecting after GS&Co. posts a new version of the Supplement, you will agree to and accept all terms and conditions of this Supplement as so amended.

#### 14.3 Assignment

You may not assign your rights or obligations under this Supplement without the prior express written consent of GS&Co. GS&Co. shall not assign (within the meaning of the Investment Advisers Act of 1940, as amended (the "**Advisers Act**")) its rights or obligations under this Supplement 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 60 calendar days of being notified through the Site or by e-mail of any intent of GS&Co. to assign such rights or obligations. You further agree that any reorganization, restructuring, or other transaction affecting the ownership of GS&Co. will not be deemed to be an assignment (within the meaning of the Advisers Act) of this Supplement, so long as such reorganization, restructuring, or transaction does not result in a change of actual control or management.

#### **Electronic Signature**

**If you want to participate in the Program and have carefully reviewed this Supplement, then please check the box to the left of this Supplement.**

BY CHECKING SUCH BOX, YOU 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 ADVISORY FEE**

Below is a list of Apex fees you may incur that are not included in the Advisory Fee. These fees would be incurred at your request, beyond our control and accordingly excluded from the fees and services covered by the Advisory Fee. Should you incur any of these fees, you will be responsible for their payment in accordance with the terms and conditions of this Advisory Agreement and your Custodial Agreement. This list of fees is the current list of Apex fees, as represented to us by Apex, but Apex reserves the right to change these fees in the future.

### **Banking:**

Wire Transfers (Domestic Bank)	\$25.00 per wire
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
Paper Tax Statements	\$5.00 per statement
Historical statements	
Requested Data That Cannot Be Retrieved From The SFTP Site:	\$150.00/Hour Fee (2 Hour Minimum)
Account Transfers (full or partial):	
Outgoing	\$75.00 per account
DTC Delivery	\$25.00 per security
Internal	\$75.00 per account
TOD Account Transfer Fee	\$200.00 per transfer
Mailgrams / FINRA Reg T Extensions	\$25.00 per item
Prepayment, if amount is:	
less than \$10,000	\$20.00
If amount is over \$10,000	0.2% of unsettled amount
Overnight Mail – Domestic	\$50.00 per request
Overnight Mail – International (including Canada)	\$100.00 per request
Reorganization Activity	
Dividend Check	\$ 5.00 per item
Domestic Voluntary / Post Actionable Reorgs	\$50.00 per CUSIP, per Account
International Voluntary / Post Actionable Reorgs	\$100.00 per CUSIP, per Account
Death Put	\$100.00 per request
Reorg Physical Processing Fee	\$125 plus Transfer Agent Fee
Reorg Wire Fee (Domestic)	\$25.00 each
Reorg Wire Fee (International)	\$50.00 each
Short Forced Buy-In Fee	\$25.00 per ticket
Non-transferable stocks	\$10.00 per month each
Custodial Account Cancellation Fee	\$60.00