



# Client Agreement

Last Updated: 6/6/2017

This agreement, between Earthly, a Delaware Public Benefit Corporation and an SEC registered investment advisor (“Earthly”) and you (“Client”), grants Earthly full discretionary authority to manage Client’s brokerage account at such securities custodian as Earthly may designate (“Custodian”). This Agreement is effective as of the first day such a brokerage account is opened (the “Effective Date”). In consideration of the mutual covenants herein, Client and Earthly agree to the following:

**1. Authority.** Client grants Earthly full discretionary authority to manage a securities account established and owned by Client at Custodian (the “Client Account” or “Account”). Earthly shall have full power to direct, manage, and change the investment and reinvestment of the assets in the Account, the proceeds thereof, and any additions thereto, and to take other action with respect to such assets, all without prior consultation with Client, in accordance with such investment objectives as Client may, from time to time, have furnished Earthly on [www.bearthly.com](http://www.bearthly.com) or our related mobile application (the “Site” or “App”). Earthly may also exercise, at its discretion, all rights and privileges associated with Client Account or the Securities contained within the Client Account such as proxy voting rights. In providing all services hereunder, Earthly is entitled to rely on the financial information and other information provided by Client without any duty or obligation to investigate the accuracy or completeness of the information.

Earthly shall have no authority to possess or repurpose for its own use, any asset in the Account or to direct the delivery of any security or payment of any funds in the Account to itself except for the expressed purpose of satisfying asset management fee obligations that are due from Client to Earthly.

Earthly has no obligation to advise or take any action on behalf of Client in any legal proceedings such as bankruptcies or class action suits, involving Securities held in or formerly held in the Account or the issuers of Securities.

**2. Fees.** For the services performed under this Agreement, the Client shall pay an advisory fee (“Advisory Fee”) to Earthly in the amounts as provided on Client’s Fees page on the Site. The Client hereby authorizes Earthly to instruct the Custodian to pay such fee. The only fee Earthly charges its clients is its Advisory Fee. Clients may bear additional fees, such as fees embedded in the products (ETFs) held in the Account, or Custodian-imposed charges related to ACH reversal. These fees are not charged by Earthly but rather by the providers of the services in question.

Earthly may, in its discretion, either (a) cause the Account to pay to Earthly any amount owing to Earthly under this Agreement or (b) bill Client for such amount, in which case Client shall pay such amount to Earthly within ten days of Client’s receipt of such bill. If Earthly causes the Account to pay Earthly directly, Earthly will inform Custodian of the amount of the Advisory Fee to be paid to Earthly directly from the Account and notify Client, after the Advisory Fee has been charged, the amount of the Advisory Fee and the net market values of Client’s assets on which the Advisory Fee has been based. Notification to Client will be through Client’s user account on the Site or by email at the address(es) provided by Client to Earthly.

Fees due shall be calculated by multiplying the Advisory Fee by the net market value of the Account as of the close of trading on the New York Stock Exchange ("NYSE") (herein, "close of markets") on such day, or as of the close of markets on the immediately preceding trading day for any day when the NYSE is closed, and then by dividing by 365 (except in any leap year, during which year the amount shall be divided by 366). Except as provided below, the fees due for each calendar month (consisting of the aggregate of the daily fee for each day in that calendar month) shall be due and payable in arrears no later than the tenth business day of the immediately following calendar month.

Earthly will promptly notify Client of any increase or decrease in the Advisory Fee. An increase in the Advisory Fee will be effective for the Account starting in the next month that begins at least 30 days after Earthly sends or posts such notice. A reduction in the Advisory Fee will be effective for the Account starting in the next month following its reduction.

If Client closes the Account, withdraws the entire balance of the Account, or otherwise terminates this Agreement on any date other than the last business day of the month (except under the circumstances covered by Section 5(b)), Client shall pay any outstanding aggregate daily fees for the period from the day immediately following the last day of the last calendar month for which Client has paid, through the effective date of such withdrawal or termination, as of such effective date. If, for any reason, Earthly shall close and liquidate all the positions held in the Account, Client may receive the proceeds of the liquidated portion of the Account, and this Agreement shall terminate. If for any reason there is insufficient cash available in the Account to cover Earthly's fees at the time they are charged and deducted from the Account, Earthly, in its sole discretion, may cause Securities in the Account to be liquidated to cover its fees.

Earthly reserves the right, in its sole discretion, to reduce or waive the Advisory Fee for certain Client Accounts for any period of time determined by Earthly. In addition, Client agrees that Earthly may waive its fees for the Accounts of Clients other than Client, without notice to Client and without waiving its fees for Client.

**3. Proxies.** Earthly shall not be required to take any action or render any advice with respect to voting of proxies solicited by or with respect to, the issuers of securities in which assets of the Account may be invested from time to time. In addition, the Earthly will not be obligated to render any advice or take any action on behalf of the Client with respect to securities or other investments held in the Account, or the issuers thereof, which become the subject of any legal proceedings, including those under the Federal bankruptcy laws.

**4. Account Management:** Client understands and agrees that an Account's composition and performance may be different for a variety of reasons from those of any initial Plan recommendation to a Client. These differences can arise each time the Plan is adjusted or rebalanced, including, but not limited to, the following instances: (A) when the Account is established and the initial Securities positions are established; (B) when Client contributes additional capital to such Account; (C) when Client revises his/her Investment Profile which causes Earthly to recommend a new Plan or revise the existing Plan; (D) each time the Advisory Fee (described in Section 5) is charged and paid from such Account; and (E) any time Earthly adjusts its algorithm by which the composition of the Account is maintained as specified for the Plan. On any such adjustment, Earthly may adjust the Plan in its discretion to approximate the composition specified in the Plan as closely as reasonably practicable based on the conditions at the time.

5. **Non-Exclusivity.** Client understands that Earthly acts as advisor to other clients, and may publish or give advice and take action with respect to any other client which may differ from the timing or nature of action taken with respect to the Account. Client further understands that Earthly will not have any obligation to purchase or sell for the Account, or to recommend for purchase or sale by the Account, any securities which Earthly, its principals, affiliates, or employees may purchase or sell for any other client or themselves if in their opinion such transaction appears inadvisable for the Account. Client recognizes that transactions in a specific security may not be accomplished for all clients at the same time at the same price.

6. **Risk Acknowledgement.** Earthly does not guarantee the future performance of the Account or any specific level of performance, the success of any investment decision or strategy that Earthly may use, or the success of Earthly's overall management of the Account. Client understands that investment decisions made for the Account by Earthly are subject to various risks, and that those investment decisions will not always be profitable or optimal.

7. **Delivery of Information.** Client acknowledges electronic delivery of Earthly's brochure that would be required to be delivered under the Advisors Act (including the information in Part 2 of Earthly's Form ADV), which is available on the Site and provided here by link:

[https://www.beeearthly.com/docs/Earthly\\_Form\\_ADV\\_Part\\_2A.pdf](https://www.beeearthly.com/docs/Earthly_Form_ADV_Part_2A.pdf)

On written request by Client, Earthly agrees to annually deliver electronically, without charge, Earthly's brochure required by the Advisors Act.

8. **Privacy Policy.** The Client acknowledges prior receipt of the Earthly's Privacy Policy.

9. **Authority.** The Client acknowledges that he/she/they/it has (have) all requisite legal authority to execute this Agreement, he/she/they/it is of legal age, and that there are no encumbrances on the Assets. The Client correspondingly agrees to immediately notify the Earthly, in writing, in the event that either of these representations should change.

10. **Power of Attorney.** Client hereby constitutes and appoints Earthly as Client's agent and attorney--in--fact with full power and authority for Client and on Client's behalf to buy, sell and otherwise deal in Securities and contracts relating to same for the Account, for the purpose of satisfying the conditions of full discretionary authority as described in Section 1. Furthermore, client grants to Earthly as Client's agent and attorney--in--fact full power and authority to do and perform every act necessary and proper to be done in the exercise of the foregoing powers as fully as Client might or could do if personally present. This power of attorney is coupled with an interest and shall terminate only on termination of this Agreement or on receipt by Earthly of written notice of the death, incapacity or dissolution of Client.

11. **Confidentiality.** All information and advice furnished under this Agreement by either party to the other, including respective agents and employees, shall be confidential and shall not be disclosed to third parties, except as may be required by law or as required or necessary to enable Earthly or its agents and employees to perform under this Agreement.

**12. Termination.** This Agreement will continue in effect until terminated by either party by written notice to the other. Termination of this Agreement will not affect (i) the validity of any action previously taken by Earthly under this Agreement; (ii) liabilities or obligations of the parties from transactions initiated before termination of this Agreement; (iii) Client's obligation to pay advisory fees (prorated through the date of termination). Upon the termination of this Agreement, Earthly will have no obligation to recommend or take any action with regard to the securities, cash or other investments in the Account.

**13. Limitations of Liability.** Earthly, acting in good faith, shall not be liable for any action, omission, investment recommendation/decision, or loss in connection with this Agreement including, but not limited to, the investment of the Assets, or the acts and/or omissions of other professionals or third party service providers recommended to the Client by the Earthly, including a broker-dealer and/or custodian. If the Account contains only a portion of the Client's total assets, Earthly shall only be responsible for those assets that the Client has designated to be the subject of the Earthly's investment management services under this Agreement without consideration to those additional assets not so designated by the Client.

The Client acknowledges that investments have varying degrees of risk, and that Earthly shall not be responsible for any adverse financial consequences to the Account resulting from any investment that, at the time made, was consistent with the Client's investment objectives. The federal securities laws impose liabilities under certain circumstances on persons who act in good faith, and therefore nothing herein shall in any way constitute a waiver or limitation of any rights which the Client may have under any federal or state securities laws.

**14. Assignment.** This Agreement may not be assigned (within the meaning of the Advisors Act) by either the Client or Earthly without the prior written consent of the other party. The Client acknowledges and agrees that transactions that do not result in a change of actual control or management of the Earthly shall not be considered an assignment pursuant to Rule 202(a)(1)-1 under the Investment Advisors Act of 1940, and/or relevant state law.

**15. Death or Disability.** The death, disability or incompetency of Client will not terminate or change the terms of this Agreement. However, Client's executor, guardian, attorney-in-fact or other authorized representative may terminate this Agreement by giving written notice to Earthly. Client recognizes that the custodian may not permit any further Account transactions until such time as any documentation required is provided by the custodian.

**16. Arbitration.** In the event of any dispute or disagreement between the parties arising out of or in relation to the interpretation, application or meaning of this Agreement, or respecting compliance with provisions, the parties will meet in good faith to attempt to resolve such dispute or disagreement. If the parties are unable to resolve such dispute or disagreement through such meetings, within 30 days after receipt of written notice (or within such time as mutually agreed to by the parties) by either party from the other that such dispute or disagreement exists, such dispute or disagreement will be submitted for arbitration to the American Arbitration Association ("Association") at its office in San Francisco, California, in accordance with the procedures rules and regulations of the Association.

The parties agree that the hearing locale of the arbitration will be in San Francisco, California. Any dispute or disagreement submitted for arbitration wherein monetary damages are claimed, shall be only for actual damages and the parties expressly agree that no claims for punitive or multiple damages in excess of actual

damages shall be made by either party against the other. Any judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. In any such arbitration, each party will bear its own costs and expenses, including attorneys' fees and administrative expenses in connection with the arbitration. Unless mutually agreed upon by the parties in writing, there shall be no obligation to arbitrate changes in or additions to the terms of this Agreement and no arbitrator shall have the power to add to or subtract from the terms of this Agreement.

**17. Notices.** All notices and communications under this Agreement must be made through the Site or by email. Earthly's contact information for this purpose is support@beearthly.com, and Client's contact information for this purpose is contained in Client's user account on the Site and the primary email address(es) in Client's Account Application as Client shall update from time to time.

**18. Severability and Amendment.** The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any and all other provisions hereof. Client acknowledges that Earthly may amend this Agreement from time to time by notifying Client by email or message to Client's Earthly user account, which amendment will be effective immediately.

**19. Governing Law.** This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of California. This Agreement supersedes and replaces, in its entirety, all previous client agreement(s) between the parties.

**20. Indemnification.** Each party hereto (the "Indemnifying Party") agrees to indemnify and hold harmless each other party (each, an "Indemnified Party") and all employees, representatives, directors, officers, shareholders and persons affiliated with the Indemnified Party against all claims, damages, losses, liabilities, costs and expenses (including, without limitation, settlement costs and any reasonable legal, accounting or other expenses for investigating or defending any actions or threatened actions) (collectively "Losses") incurred by the Indemnified Party arising out of or resulting from (a) the gross negligence, willful misconduct or fraud of the Indemnifying Party or (b) a breach by the Indemnifying Party of its representations and warranties, covenants or other obligations under this Agreement. In addition, except in the case of fraud or willful misconduct, Client agrees to indemnify and hold harmless the Advisor and its respective employees, representatives, directors, officers, shareholders and persons affiliated with them against all Losses incurred by them in the performance of their obligations under this Agreement.

**21. Force Majeure.** Neither Client nor Advisor shall be responsible to the other for delays or errors in performance or breach under this Agreement occurring solely by reason of circumstances beyond control of the Client or Advisor, including acts of civil or military authority, national emergencies, fire, major mechanical breakdown, labor disputes, flood or catastrophe, acts of God, insurrection, war, riots, delays of suppliers or failure of transportation.

Signature of Client: \_\_\_\_\_

Printed Name of Client: \_\_\_\_\_

Date: \_\_\_\_\_