

## **FutureAdvisor Subscription Analysis Service Agreement**

FutureAdvisor is the business name under which XULU, Inc. provides its investment advisory services. Throughout this Subscription Analysis Services Agreement (this “Agreement”), the name “FutureAdvisor” is used to refer to the investment advisory firm, which is registered as an investment adviser with the U.S. Securities and Exchange Commission (the “SEC”) under the Investment Advisers Act of 1940, as amended (the “Advisers Act”).

FutureAdvisor and the “Client” identified below agree to enter into a nondiscretionary investment advisory relationship under the terms of this Agreement.

### **I. Agreements**

FutureAdvisor agrees to provide investment advice to Client through its Subscription Analysis Service. FutureAdvisor generates its investment advice through proprietary, automated, computer algorithms. Client agrees to provide full and accurate information regarding Client’s investment objectives, financial condition, income, other investments, personal circumstances, and all other information requested of Client when subscribing to the Subscription Analysis Service (referred to below as “Client Information”).

FutureAdvisor’s automated Analysis Service will provide analyses and recommendations based on the Client Information provided by Client. The investment advice may include recommendations to buy, sell, or exchange specific securities, to consider a different broker, to move assets from one account to another, and related advisory information.

### **II. Portfolio(s)**

Client will identify the initial Portfolio(s) for which FutureAdvisor will provide analyses and recommendations. Client will enter information about the portfolio using the FutureAdvisor web site and web application at <https://www.futureadvisor.com> once they’ve signed in. For each Portfolio, Client will provide FutureAdvisor information concerning:

- A. The current holdings in the Portfolio;
- B. The current value of the Portfolio as established in Client’s account records from the custodian;
- C. Whether the Portfolio is wholly or partially a retirement other employee benefits plan account; and
- D. All other information that is material to FutureAdvisor in providing investment advice for the portfolio.

### **III. Type of Services**

#### **A. Subscription Analysis Service**

Client will determine whether to implement the analyses and recommendations made through the Subscription Analysis Service. Client is fully responsible for making investment decisions concerning the Portfolio(s).

Client is also responsible for account monitoring, and updating information in the Portfolio(s) in the event of material changes (such as addition of a new account to the portfolio, etc) so that recommendations are made based on actual account holdings.

FutureAdvisor does not place transactions based on its recommendations, and does not provide ongoing supervision of the Portfolio(s) for clients who use the Subscription Analysis Services.

#### **IV. Client's Responsibilities and Representations**

##### **A. Notification**

Client shall notify FutureAdvisor via the software at FutureAdvisor.com in the event that: (a) any assets included in Client's initial Account are retirement or other employee benefit plan assets; (b) any additions to Client's Account include retirement or employee benefit plan assets; or (c) any amendment to the organizing documents of Client's employee benefit plan or any related document affects the activities performed by FutureAdvisor under the terms of this Agreement.

##### **B. Decision to Use FutureAdvisor**

Client has made an independent assessment of the services offered by FutureAdvisor, and has determined that the advisory services are appropriate for Client based on Client Information.

##### **C. Information Provided by Client**

Client represents and confirms that Client has reported full and accurate Client Information on FutureAdvisor.com, or in any other communications with FutureAdvisor. Client is solely responsible for providing true and accurate Client Information to FutureAdvisor, whether reported directly or through a third party authorized by Client to do so.

Client acknowledges that if Client gives false or materially inaccurate information to FutureAdvisor, the investment advice provided to Client by FutureAdvisor will be based on that information. Therefore, the investment advice provided by FutureAdvisor may not meet Client's investment needs.

##### **D. Changed Circumstances**

Client shall notify FutureAdvisor promptly regarding any changes in Client Information that might affect the advisory services provided by FutureAdvisor.

##### **E. Account Fees and Terminations**

###### **1. Subscriptions**

FutureAdvisor's paid Subscription Analysis Services are available through a quarterly fee of \$12.25 for the Gold Plan or \$48.75 for the Platinum Plan. A Basic Plan is also available at no charge. Details about the features of these plans can be found at <https://www.futureadvisor.com/pricing>.

The initial billing occurs upon signing up for a paid plan, and subsequent billings occur every three months thereafter. Client is free to upgrade or downgrade between plans at any time the appropriate proration will be made. Client is free to cancel at any time although partial refunds will not be made for any unused portion of the current quarter.

## **2. Payment of Account Fees**

Subscription fees are payable in advance through credit debit card. Client shall provide payment information when the subscription is placed, and shall authorize FutureAdvisor to bill the account on a quarterly basis under the terms of this Agreement.

## **3. Subscription Rates**

Subscription rates are subject to change at any time. Clients will be notified upon changes to their subscription rate.

## **F. Client Authorizations**

Client will sign all documents necessary to authorize FutureAdvisor to carry out its responsibilities under this Agreement.

## **V. ERISA Accounts**

If Client's Account or a portion of the Account is subject to the Employee Retirement Income Security Act of 1974 (ERISA), the following additional representations and responsibilities apply:

- A. Client shall notify FutureAdvisor if any assets in the initial portfolio or any additions to Client's Account are subject to ERISA.
- B. Client has independently determined that the retention of FutureAdvisor by Client satisfies all requirements of Section 404(a)(1) of ERISA, specifically including the "prudent man" standards of Section 404(a)(1)(B) and the "diversification" standard of Section 404(a)(1)(C), and will not be prohibited under any of the provisions of Section 406 of ERISA or Section 4975(c)(1) of the Internal Revenue Code of 1986, as amended. The undersigned authorized signatory for Client has requested and received all information from FutureAdvisor that the undersigned, after due inquiry, considered relevant to such determinations. In determining that the requirements of Section 404(a)(1) are satisfied, the undersigned has taken into account that (1) there is a risk of a loss of the Account, (2) the Account may be relatively illiquid, and (3) funds so invested may not be readily available for the payment of employee benefits. Taking into account these and all other factors relating to retention of FutureAdvisor by Client, the undersigned has concluded that the retention of FutureAdvisor by Client constitutes an appropriate part of Client's overall investment program.

- C. In accordance with Sections 405(b)(1), 405(c)(2) and 405(d) of ERISA, the fiduciary responsibilities of FutureAdvisor and any partner, employee or agent of FutureAdvisor shall be limited to his, her or its duties in managing the Account, and FutureAdvisor shall not be responsible for any other duties with respect to Client (specifically including evaluating the initial or continued appropriateness of Client's retention of FutureAdvisor under Section 404(a)(1) of ERISA).
- D. FutureAdvisor accepts appointment as an "Investment Adviser" for purposes of ERISA.
- E. FutureAdvisor understands that it shall be a "fiduciary" of Client, as that term is defined in Section 3(21)(A) of ERISA.

## **VI. Risk Acknowledgment**

FutureAdvisor will exercise good faith and diligence in the execution of its duties to Client under this Agreement; however, FutureAdvisor makes no guarantees regarding performance of client accounts. There may be loss or depreciation of the value of any investment due to the fluctuation of market values or other related factors. FutureAdvisor shall not be responsible for any loss or damage incurred due to any act or omission of any custodian, broker-dealer, or other investment adviser not under FutureAdvisor's supervision, whether appointed by Client or chosen in good faith by FutureAdvisor. Except for gross negligence, malfeasance, or violation of applicable law, FutureAdvisor shall not be liable hereunder for any action performed or omitted to be performed as well as any error in judgment and/or for any investment losses in managing Client's account. Federal and certain state securities laws (and ERISA where applicable) impose liability under certain circumstances on people who act in good faith, and therefore nothing herein shall in any way constitute a waiver or limitation of any rights which Client may have under federal or state securities laws (or ERISA where applicable).

## **VII. FutureAdvisor's Other Clients**

Client understands that FutureAdvisor acts as investment adviser for other clients and will continue to do so. Since FutureAdvisor is engaged in the business of providing investment advice, FutureAdvisor and its personnel may give advice and take action in other client and their own accounts that may differ from the advice given to Client or the action taken on behalf of Client.

## **VIII. Independent Contractor**

FutureAdvisor is and will continue to act as an independent contractor and not as an employee of Client. Nothing in this Agreement shall create an employment, partnership, or joint venture or other relationship between FutureAdvisor and Client, other than the investment advisory relationship established by this Agreement.

## **IX. Assignment**

FutureAdvisor will not make an assignment of this Agreement without Client's prior consent. For this provision only, the term "assignment" shall be interpreted in accordance with the provisions of the

Advisers Act and SEC rules and policies. Neither FutureAdvisor nor Client shall assign this Agreement as defined under applicable state law without the written consent of the other party. This Agreement shall bind and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

## **X. Delivery of Information**

Client confirms the receipt of the following documents:

- FutureAdvisor's Firm Brochure
- The Supplemental Brochure of the individual person who provides or develops the investment advice for Client.
- FutureAdvisor's Privacy Policy, as required by Regulation S-P of SEC rules.

If Client receives the Firm Brochure and the appropriate Supplemental Brochure less than 48 hours prior to signing the Agreement, Client may terminate this Agreement without penalty within five (5) business days from the effective date of the agreement.

## **XI. Arbitration**

FutureAdvisor and Client agree to attempt to resolve any disputes arising from their obligations under this Agreement informally through communication between the parties. If the dispute is not resolved informally, FutureAdvisor and Client shall settle the dispute through arbitration under the Streamlined Arbitration Rules and Procedures of JAMS, through its location in Seattle, Washington. Parties residing more than 100 miles outside of the Seattle metropolitan area may appear through video conferencing, at their own expense. Both parties will provide all documents related to the arbitration within the timeframes set under JAMS rules and procedures. The streamline rules provide for a single arbitrator. The arbitrator must have experience in some aspect of the securities industry.

Any award issued by the arbitrator shall be final and judgment may be entered based on the award in any court of competent jurisdiction. The arbitrator's costs shall be borne equally between the parties. The parties shall be responsible for payment of their own separate costs in an arbitration proceeding. When parties agree to resolve disputes through arbitration, they waive their right to seek remedies in court, including the right to a jury trial. The parties understand that: (A) pre-arbitration discovery is generally more limited than and different from discovery in judicial proceedings; (B) an arbitration award is not required to include factual findings or legal reasoning; and (C) any party's right to appeal or to seek modification of rulings in an arbitration is severely limited.

## **XII. Governing Law**

This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of Washington, without regard to conflict of laws. Certain portions of this Agreement are governed by the Advisers Act, other securities laws, and applicable SEC rules.

## **XIII. Notices**

All notices given under this Agreement must be in writing and will be considered given when delivered personally, when sent by facsimile transmission, three days after being sent by first class mail, or one business day after being deposited for next-day delivery with Federal Express or another nationally recognized overnight delivery service, all charges or postage prepaid, properly addressed to the party to receive such notice at the address indicated below that party's signature on this Agreement, or at any other address that either party may designate by notice to the other.

#### **XIV. Severability**

The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any and all other provisions hereof.

#### **XV. Entire Agreement**

This Agreement (including any attachments or material provided electronically or through links that are incorporated into the Agreement) is the entire agreement of the parties and supersedes all prior or contemporaneous written or oral negotiations, correspondence, agreements and understandings regarding the subject matter of the Agreement.

#### **XVI. Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument. This Agreement may be signed electronically, including through secure means that do not include a manual signature.

#### **XVII. No Third-Party Beneficiaries**

Neither FutureAdvisor nor Client intends for this Agreement to benefit any third party not expressly named in this Agreement.

#### **XVIII. Effective Date**

This Agreement becomes effective Client agrees to this agreement as part of signing up for an account with FutureAdvisor.