

# ValueWorks:

Redefining wealth management through critical thinking and independent research

1 4 5 0 B r o a d w a y 4 2 <sup>n</sup> <sup>d</sup> f l N Y N Y 1 0 0 1 8 2 1 2 8 1 9 1 8 1 8

## **INVESTMENT ADVISORY AGREEMENT**

This Investment Advisory Agreement (this "Agreement") is between ValueWorks Investments LLC (the "Adviser") and the undersigned client (the "Client"). The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), and the Client seeks to engage the Adviser's services as to those assets of the Client identified on Schedule A hereto (the "Account"). The terms of this Agreement are effective as of the date last set forth below (the "Effective Date").

### **Appointment of the Adviser:**

The Client hereby appoints the Adviser as the investment adviser to the Account with the power to supervise and manage the assets of the Account in accordance with the terms and conditions of this Agreement, and the Adviser hereby accepts such appointment. The Client authorizes the Adviser, in the sole discretion of the Adviser and without prior consultation with the Client, to make investment decisions for the Account, it being understood that the Adviser shall have complete discretion as to the nature, amount and timing of all transactions to be effected in the Account.

### **Registered Adviser:**

This Section applies if the Account is for a (a) pension or other employee benefit plan (including a 401(k) plan) governed by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), (b) tax-qualified retirement plan (including a Keogh plan) under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and not covered by ERISA, or (c) an individual retirement account ("IRA") under Section 408 of the Code. The Adviser represents that it is registered as an Investment Adviser under the Advisers Act and, in addition, is qualified to serve as an "investment manager" within the meaning of Section 3(38) of ERISA, with respect to those clients subject to ERISA. The Adviser acknowledges that through the term of this Agreement it will serve as such an investment manager and shall be a "fiduciary" within the meaning of Section 3(21)(A) of ERISA with respect to accounts subject to ERISA. Further, the Adviser will, at its own expense, be bonded in such manner and to such extent as may be required under Section 412 of ERISA.

If Client is subject to ERISA, Client represents that Adviser has been furnished true and complete copies of all documents establishing and governing the plan and evidencing Client's authority to retain Adviser. Client will furnish promptly to Adviser any amendments to the plan, and Client agrees that, if any amendment affects the rights or obligations of Adviser, such amendment will be binding on Adviser only when agreed to by Adviser in writing.

### **Custodian and Execution of Investment Account Transaction:**

The Client's custodian (the "Custodian") is identified on Schedule A hereto. The Custodian has custody of the Account assets and is responsible for the collection of interest, dividends, distributions and other income (whether in cash or securities) attributable to the assets in the Account. The Adviser may not act as the Custodian. The Client will direct the Custodian to accept settlement instructions issued by the Adviser for the Account, and the Adviser shall not be liable to the Client for (a) any failure of the Custodian to perform its responsibilities to the Account, including, but not limited to, any losses that arise from the failure of the Custodian to notify the Adviser of any notices affecting called securities, deadline expirations, dates and capital reorganization events affecting the securities in the Account or (b) for any liability or loss with respect to the transmittal or safekeeping of cash, securities or other assets.

The Adviser will arrange for execution of securities transactions for the Account through the broker (the "Broker") identified on Schedule A hereto. In accordance with Section 28(e) under the Securities Exchange Act of 1934, the Adviser may cause the Broker executing transactions for the Account to be paid commissions above those another broker or dealer might charge, after determining in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services provided to the Adviser by such Broker.

It is understood that when the Adviser determines that it would be appropriate for the Client and one or more of the other accounts managed by the Adviser ("Managed Accounts") to purchase or sell a security, the Adviser will seek to execute orders for the Client and for such Managed Accounts on a basis which the Adviser considers equitable, but that equality of treatment of all Managed Accounts is not assured. In such situations, the Adviser may (but shall not be required to) place orders for the Client and each Managed Account simultaneously and if all such orders are not filled at the same price, the Adviser may cause the Client and each Managed Account to pay or receive the average of the prices at which the orders were filled for the Client and all Managed Accounts. If all such orders cannot be fully executed under prevailing market conditions, the Adviser may allocate the securities traded among the Client and the Managed Accounts in a manner which it considers equitable, taking into account the size of the order placed for the Client and each such Managed Account as well as any other factors which it deems relevant.

The Adviser is hereby authorized on behalf of the Client to access current and historic records held by Client's Broker with respect to the Account.

**Account Information:**

The Adviser will furnish the Client at least quarterly an investment summary of securities held in the Account. The Client will provide the Adviser with information the Adviser may reasonably request in order to provide such summary.

**Valuation:**

In determining the value of the Account or any of its assets, any equity security listed on a national securities exchange shall be valued at the last quoted sale price on the valuation date on the principal exchange on which the security is traded. Any other security or asset shall be valued as determined in good faith by the Adviser to reflect its fair value.

**Compensation:**

The compensation of the Adviser shall be calculated and paid in accordance with the attached Schedule of Fees on the basis of asset values determined as provided in this Agreement.

If the Adviser shall serve for less than the whole of any quarterly period, its compensation determined as provided above shall be calculated and shall be payable on a pro-rata basis for that portion of the period which it has served as the Adviser hereunder. All commissions, Custodian fees and other Account expenses shall be the responsibility of the Client.

**Service to Other Clients:**

It is understood that the Adviser also provides similar investment management services to other accounts and the Adviser may take investment action on behalf of such other accounts which may be similar or different from the action taken on behalf of the Account in terms of securities, timing, nature of transaction and other factors. Nothing herein shall impose on the Adviser any obligation to purchase or sell for the Account any security which the Adviser purchases or sells for any other account.

**The Adviser's Interest in Certain Securities:**

The Client acknowledges and accepts that the Adviser may purchase for the Account, or recommend a purchase for the Account, (i) securities of the same class owned by the Adviser, its partners or affiliates, (ii) securities of companies for which the Adviser or its affiliates or directors act as financial adviser or perform other investment banking services, and (iii) securities of companies where partners, directors or employees of the Adviser, or its or their affiliates, serve on the Board of Directors or other managing body.

**Proxies:**

The Client agrees that the Adviser has the authority, but is not required, to vote proxies for securities held in the Account. The Client further agrees that the Adviser will not give any advice about how to vote proxies for securities held in the Account.

**Authority:**

Each of the Adviser and the Client represents, one to the other, that it has duly authorized the execution, delivery and performance of this Agreement, and neither such execution and delivery nor the performance of their respective obligations hereunder conflict with or violate any provision of law, rule or regulation, nor any instrument to which it is a party, nor to which any of their respective properties are subject.

**Liability:**

The Client agrees that, to the extent permitted by applicable law, neither the Adviser nor any partner or employee of the Adviser shall be liable for any loss due to an error in judgment or for any act or omission to act by the Adviser or any broker or Custodian, except for losses resulting from the Adviser's or such partner's or employee's negligence or misfeasance. Without limiting the foregoing, the Adviser does not assume responsibility for the accuracy of information furnished to the Adviser by the Client, the Custodian, a broker or by any other person on whom the Adviser reasonably relies. The federal securities laws and ERISA 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 parties may

have under any federal or state securities laws or ERISA.

**Risk Acknowledgment:**

The Adviser does not guarantee the future performance of the Account or any specific level of performance, the success of any investment decision or strategy that Adviser may use, or the success of the Adviser's overall management of the Account. Client understands that investment decisions made for Client's Account by Adviser are subject to various market, currency, economic, political and business risks, and that those investment decisions will not always be profitable. Adviser will manage only the securities, cash and other investments held in Client's Account and in making investment decisions for the Account, Adviser will not consider any other securities, cash or other investments owned by Client.

**Termination and Assignment:**

This Agreement may be terminated by either party at any time by written notice to the other party. Such termination shall be without the payment of any penalty and without liability of either party to the other, except for any compensation due in accordance with Section "Compensation" above.

No assignment (as defined in the Investment Advisers Act of 1940) of this Agreement by the Adviser shall be effective without the written consent of the Client. The Client acknowledges that any name change effected by the Adviser shall not constitute an assignment for purposes of this Agreement.

If Client is a natural person, the death, disability or incompetence 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 the Adviser.

**Governing Law:**

This Agreement will be governed by and construed in accordance with the laws of the State of Delaware without giving effect to any conflict or choice of law provisions of that State, provided that nothing in this Agreement will be construed in any manner inconsistent with the Advisers Act, any rule or order of the Securities and Exchange Commission under the Advisers Act and, if applicable to the Account, ERISA and any rule or order of the Department of Labor under ERISA.

**Arbitration Disclosures:**

The undersigned agrees to and understands the following:

Arbitration is final and binding on the parties.

The parties hereto are waiving their right to seek remedies in court, including the right to jury trial, provided, however, that adviser acknowledges that client may have certain non-waivable rights of action available under federal or state law.

Pre-arbitration discovery is generally more limited than and different from court proceedings. The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited. The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

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; or (ii) the customer is excluded by the class by the court, such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement to the extent stated herein.

Client agrees, and by carrying an account for client, the adviser agrees, that all controversies that may arise between the parties concerning any transaction or the construction, performance or breach of this or any other agreement between the parties pertaining to securities or other property, whether entered into prior, on or subsequent to the date hereof, shall be determined by arbitration. Any arbitration under this agreement shall be conducted pursuant to the federal arbitration act, before the American Arbitration Association. The award of the arbitrators, or of the majority of them, shall be final, and judgment upon the award rendered may be entered into any court, state or federal, having jurisdiction.

**Notices:**

Any notice, report or other written communication provided for herein shall be effective when received and shall be communicated in writing and delivered via U.S. mail or overnight courier (postage prepaid) or sent by facsimile transmission (followed by a copy sent via U.S. mail) to the Adviser at the address registered with the Securities and Exchange Commission or the Client at the address listed below, unless either party notifies the other in writing of a different address.

**Disclosure Statement:**

The Client acknowledges having received and reviewed the Adviser’s SEC Form ADV Part II, as well as a copy of this Agreement. The Client authorizes the Adviser to list the Client as a client as a matter of fact and not as a testimonial to investment services provided.

**Miscellaneous:**

This Agreement, including the Schedules hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof as of the Effective Date and supersedes all prior agreements, negotiations, representations and proposals written or oral. This Agreement shall bind and inure to the benefit of each party, and except as otherwise expressly provided to the contrary herein, each of their respective heirs, successors and assigns. This Agreement may be amended only by written agreement executed by both the Client and the Adviser. This Agreement may be executed in counterpart copies.

\_\_\_\_\_  
Name (Please Print)

Accepted in New York City  
ValueWorks Investment Management LLC

\_\_\_\_\_  
Signature (Individual/Joint Account Holder)

By: \_\_\_\_\_

\_\_\_\_\_  
Signature (Individual/Joint Account Holder)

\_\_\_\_\_

By: \_\_\_\_\_  
(Officer, Partner, Trustee/Title)

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

By: \_\_\_\_\_  
(Officer, Partner, Trustee/Title)

---

**Schedule A**

○ For the services described in this Agreement ValueWorks LLC will charge the Client a yearly fee of \_\_\_\_\_% of the total assets under management.

○ Assets in Client Account (attach statement of client account to this page):

○ Custodian:

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(account number)

○ Broker information:

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(firm)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(address)

Client Initials:

\_\_\_\_\_