

APPLICATION SERVICE PROVIDER AGREEMENT
Schwab Advisor Portfolio Connect™

This Application Service Provider Agreement (“**Agreement**”) is made as of the Effective Date (as defined below) by and between Performance Technologies, Inc. d/b/a Schwab Performance Technologies (“**SPT**”) and the independent investment advisory firm, be it an individual or entity, identified below (“**Investment Advisor**”).

1. Services. SPT shall make available to Investment Advisor the following hosted application and other services, including use of the System (as defined below) provided by SPT and/or its third-party vendors under this Agreement, as more fully described in this Section 1 (Services) (the foregoing, collectively “**Services**”). Except as expressly set forth below, SPT shall not be obligated to render any other services.

1.1 System Access. SPT shall make available to Investment Advisor for the use of its Authorized Persons (as defined below) the Schwab Advisor Portfolio Connect™ portfolio management system (the “**System**”) via, and subject to the availability of, the Schwab Advisor Center website (found at www.schwabadvisorcenter.com) (“**Schwab Advisor Center**”) of SPT’s affiliate Charles Schwab & Co., Inc. (“**CS&Co**”).¹ The System processes data for accounts of Investment Advisor’s clients custodied at CS&Co (“**Client Accounts**”) to facilitate Investment Advisor’s management of Client Accounts.

1.2 Authorized Persons. Investment Advisor’s officers (or persons performing similar functions), employees, contractors, and other agents authorized to access or use the Services (“**Authorized Persons**”) under this Agreement shall be those persons designated by Investment Advisor as “Authorized Persons” with access to Schwab Advisor Center pursuant to the Schwab Advisor Center Web Site User Agreement (the “**SAC Agreement**”) using their Schwab Advisor Center user names and sign-on passwords and any other security codes assigned by CS&Co or SPT (“**User Credentials**”). SPT may limit access to the Services to Authorized Persons to whom Investment Advisor has granted security administrator rights and roles pursuant to the SAC Agreement. Investment Advisor shall be solely responsible for all use of the Services made with the User Credentials of its Authorized Persons and the compliance by its Authorized Persons with this Agreement. Any breach of this Agreement by any one or more of Investment Advisor’s Authorized Persons will constitute a breach of this Agreement by Investment Advisor. Investment Advisor shall monitor its Authorized Persons in a manner reasonably designed to ensure that, in connection with their use of the Services, they comply with this Agreement and applicable laws, rules, and regulations. Investment Advisor, and not SPT, shall be solely responsible for managing and monitoring the System access rights and roles of all Authorized Persons. Investment Advisor will also take all reasonable and appropriate steps to maintain, and ensure that its Authorized Persons maintain, User Credentials in strict confidence and will not share such User Credentials with any third party. Investment Advisor and its Authorized Persons shall not allow any User Credentials to be used by anyone other than the Authorized Person to whom the User Credentials have been assigned. Neither Investment Advisor nor any Authorized Person will

¹ SPT and CS&Co are affiliated as separate subsidiaries of The Charles Schwab Corporation and each provides services to independent investment advisors. SPT licenses software and provides related technology products and services. CS&Co is a registered broker-dealer and member SIPC and provides advisors and their clients with custody, trading and related services. SPT and CS&Co’s respective products and services are separate from the other’s, and neither SPT nor CS&Co has any responsibility under this Agreement or otherwise for the products and services of the other.

impersonate any other person or entity, use a false or misleading user name, or otherwise attempt to use the Services in an anonymous manner. Investment Advisor agrees to immediately notify SPT if it becomes aware of any loss, theft, or improper disclosure of any part of its User Credentials or becomes aware of any unauthorized use of or access to the Services, including without limitation, any unauthorized use or acquisition of any part of its User Credentials or the Services.

1.3 Custody Integration. The Services include integration of the System with CS&Co's systems to facilitate the transmission and exchange of certain data (the transmitted and exchanged data is referred to below as "**Data**") between the two with respect to Client Accounts. The System does not provide for the import of data related to accounts not maintained at CS&Co. Investment Advisor acknowledges and agrees that its use of the Services will involve the exchange of Data between SPT and CS&Co, including but not limited to non-public personal financial information, related to Advisor's clients. Advisor's use of Schwab Advisor Center and any other Schwab systems with which Data may be exchanged is also subject to the terms of the SAC Agreement and any other agreements governing those systems in addition to this Agreement. Investment Advisor represents and warrants that it has all requisite permission, consents and authorizations to direct and allow this exchange of Data through its use of the Services and that such exchange is consistent with its privacy policy. Investment Advisor acknowledges that SPT and CS&Co are separate companies that are independent of each other, and that neither has any responsibility for any of the products and services of the other. Investment Advisor further acknowledges and agrees that the integration and availability, timeliness, completeness, correct sequencing, and accuracy of Data received from or through, or sent to CS&Co is dependent on Schwab Advisor Center or any other system of origin and that Investment Advisor has direct access to those systems, and SPT is not responsible for reviewing and cannot verify or guarantee the accuracy, adequacy, timeliness, or completeness of the Data, and SPT will not be responsible for Investment Advisor's reliance on the information. Investment Advisor agrees that it and its applicable clients will be bound by Instructions (as defined below) to the same extent as it and they would be if the Instructions were transmitted directly to CS&Co without use of the Services.

1.4 System Data. The System processes the following Data: (i) "**Custody Data**," meaning balance, position, transaction and other Data for all Client Accounts now or in the future linked to Investment Advisor's master account(s) at CS&Co; and (ii) "**Investment Advisor Data**," meaning such Data as may be permitted to be input into the System by Investment Advisor, including, but not limited to, account groupings and instructions for opening, transacting in, billing fees to, or otherwise pertaining to Client Accounts ("**Instructions**"). Custody Data and Investment Advisor Data shall be collectively referred to as "**System Data**." Investment Advisor hereby authorizes and directs CS&Co to make Custody Data available to SPT. SPT shall have no authority with respect to Client Accounts other than receipt of Custody Data for inclusion in the System as provided in this Agreement. Investment Advisor warrants and represents to SPT and CS&Co that the disclosure of the Custody Data as provided herein is consistent with Investment Advisor's agreements with its clients, the owners of the Client Accounts, and permitted by its privacy policy.

1.5 Support and Maintenance. SPT will provide Investment Advisor with support relating to the Services as determined by SPT in its sole discretion, including, without limitation, support during its then current support hours as shown at <http://www.schwabpt.com/public/spt/nn/contact> or through a service team reachable by Investment Advisor's Authorized Persons by phone or email. SPT shall not be responsible for providing support services for items of software and hardware that it does not provide

under this Agreement. Investment Advisor shall receive access to any enhancements or new versions of the Services that SPT makes generally available without charge to its other similarly situated licensees, and Investment Advisor's continued use of the Services shall be deemed to be Investment Advisor's acceptance of such enhancements or versions.

1.6 Data Return. Upon termination of this Agreement, SPT will provide Investment Advisor with an extract of a set of System Data. The extract will be provided in one of the formats then supported by the Services. Any provision of data to Investment Advisor beyond that provided for in this Section 1.6 (Data Return) on any occasion is at SPT's sole discretion and shall not be deemed to create any duty or obligation of SPT to do so at any other time.

1.7 Beta Services. SPT may designate certain new functionality or services to be made available in connection with the Services as "**Beta Services**." Such Beta Services may not be ready for use in a production environment. Because they will be at an early stage of development, operation and use of the Beta Services may be unpredictable and lead to erroneous results. Investment Advisor acknowledges and agrees, with respect to any Beta Services it chooses to use, that: (i) the Beta Services will be experimental and will not have been fully tested; (ii) the Beta Services may not meet Investment Advisor's requirements; (iii) the use or operation of the Beta Services may not be uninterrupted or error free; (iv) Investment Advisor's use of the Beta Services will be for purposes of evaluating and testing the new functionality and services and providing feedback to SPT; and (v) Investment Advisor shall inform its employees, staff members, and other users regarding the nature of the Beta Services. Investment Advisor's use of the Beta Services shall be subject to all of the terms and conditions set forth herein relating to the Services. Investment Advisor shall promptly report any errors, defects, or other deficiencies in the Beta Services to SPT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, ALL BETA SERVICES ARE PROVIDED "AS-IS" AND "AS-AVAILABLE," WITHOUT WARRANTIES OF ANY KIND. Investment Advisor hereby waives any and all claims, now known or later discovered, that Investment Advisor may have against SPT and its suppliers/licensors arising out of Investment Advisor's use of the Beta Services.

1.8. Suspension of Services. SPT may, in its sole discretion, suspend Investment Advisor's access to the Services or reject or remove from the Services any System Data for any reason, including, but not limited to the following: (i) to prevent damages to, or degradation of, the Services; (ii) to comply with any law, regulation, court order, or other request by any governmental, regulatory, or self-regulatory body; (iii) to otherwise protect SPT from potential legal liability, regulatory risk, or security risk; or (iv) in response to Investment Advisor's breach of this Agreement. SPT shall use reasonable efforts to provide Investment Advisor with notice prior to or promptly following any suspension of the Services or removal of any System Data; provided, however, that SPT's failure to provide such notice shall not be considered a breach of this Agreement. SPT will restore access to the Services as soon as the event giving rise to suspension has been resolved. This Section 1.8 (Suspension of Services) shall not be construed as imposing any obligation or duty on SPT to monitor Investment Advisor's use of the Services or the integrity of Investment Advisor Data.

2. SAC Agreement. Investment Advisor's access to the System is through Schwab Advisor Center, and Investment Advisor's use of the System is subject to the SAC Agreement (available at: <https://si2.schwabinstitutional.com/SI2/Home/Utilities/AgreementDisplay.aspx?AgrmtKey=WebSiteAgrmtTitle&AgrmtId=15>) in addition to this Agreement. Investment Advisor acknowledges and agrees that the Services are "Site Services" and the System is "Software" and a "Site System," within in the respective meanings of those terms in the SAC Agreement. In the case of

any conflict between the provisions of this Agreement and the SAC Agreement, this Agreement shall control.

3. Grant of Limited License. SPT hereby grants to Investment Advisor, upon the terms and subject to the conditions set forth in this Agreement, a limited, non-transferable, non-exclusive, non-sublicensable license to access and use the Services solely for its internal business operations in the continental United States. The term of the license shall be the Term (as defined below) of this Agreement. Investment Advisor shall only use the Services in the form provided by SPT and solely as provided in this Agreement. Investment Advisor shall not rent, sell, assign, lease, sublicense, or otherwise transfer or encumber the Services.

4. Proprietary Rights. Investment Advisor acknowledges that all Services are protected by intellectual property rights, as applicable, of SPT, its affiliates, and its vendors/licensors and that Investment Advisor has no rights to transfer or reproduce any of the Services or prepare any derivative works with respect to, or disclose Confidential Information (as defined below) pertaining to, any of the Services or any part thereof. Under no circumstances shall Investment Advisor be deemed to receive title to any portion of any Services, title to which at all times shall vest exclusively, as applicable, in SPT, its affiliates, and its vendors/licensors. Investment Advisor shall preserve all Services from any liens, encumbrances, and claims of any individual or entity. Investment Advisor shall not make or permit any alterations or modifications to any Services or remove any proprietary notices (e.g., copyright and trademark notices) from the Services. Investment Advisor hereby grants SPT a non-exclusive, world-wide, fully paid-up, royalty-free license to use the Investment Advisor Data for purposes of performing this Agreement and rendering and maintaining the Services.

5. Feedback. Investment Advisor may provide suggestions, comments or other feedback (collectively, “*Feedback*”) to SPT with respect to its products and services, including the Services. Feedback is voluntary, and SPT is not required to hold it in confidence or otherwise treat it as Confidential Information (as defined below) under this Agreement. SPT may use Feedback for any purpose without obligation of any kind. To the extent a license is required under Investment Advisor’s intellectual property rights to make use of the Feedback, Investment Advisor hereby grants SPT and its affiliates an irrevocable, non-exclusive, perpetual, fully paid-up, royalty-free license to use the Feedback in connection with SPT’s current and future business, including the enhancement of the Services.

6. Investment Advisor Roles; Compliance. Investment Advisor shall be solely responsible for its compliance with all applicable foreign, federal, state and local laws, rules and regulations, and the rules and regulations of any self-regulatory organization of which Investment Advisor is a member (collectively, “*Applicable Law*”), including but not limited to the Investment Advisers Act of 1940 (“*Advisers Act*”) with respect to its use of the Services. Notwithstanding Section 1.6 (Data Return), Investment Advisor shall be responsible for creating and maintaining any and all archives and taking any and all recordkeeping measures with respect to System Data as may be required by Applicable Law or otherwise necessary or appropriate for its business. SPT expressly disclaims, and Investment Advisor acknowledges and agrees that SPT and its directors, officers, employees, agents and affiliates shall not have any responsibility for maintenance of the books and records, in whole or in part, of Investment Advisor or its affiliates, as may be required under Applicable Law.

Investment Advisor acknowledges and agrees, and Investment Advisor will not represent or imply anything to any of its clients or any other third party contrary to the following: SPT (and each of its affiliates, including but not limited to CS&Co) (i) does not act as an investment adviser or endorse, recommend or give advice to Investment Advisor or any of its clients or any of its or their accounts in conjunction with the Services; and (ii) does not review and cannot verify or guarantee the accuracy, adequacy or completeness of any portfolio or account

information, historical performance, cost basis, tax lot accounting or other information about the Investment Advisor or its clients and will not be responsible for Investment Advisor's or any of its clients' reliance on such information.

7. Account Information. Investment Advisor shall be solely responsible for: (i) obtaining any and all consents or permissions required from its clients for use of their account information in connection with the Services; and (ii) examining Investment Advisor's privacy policy and determining and ensuring that use of its clients' account information in connection with the Services is consistent with Investment Advisor's privacy policy; each of the foregoing as required by Applicable Law, including but not limited to Regulation S-P.

8. Investment Advisor Warranties. Investment Advisor represents and warrants that: (i) it has full power, capacity, and authority to enter into this Agreement and to grant the license set forth in Section 4 (Proprietary Rights); (ii) any Investment Advisor Data or other information provided by Investment Advisor to SPT for use in connection with the Services do not infringe the intellectual property, publicity, or privacy rights of any person or are defamatory, obscene, or in violation of any law, rule, or regulation (including but not limited to applicable policies and laws related to spamming, privacy, and consumer protection) or contain any viruses, Trojan Horses, worms, spyware, or other similarly destructive or malicious code; (iii) it has complied with the requirements of Section 7 (Account Information); (iv) its use of the Services will be in compliance with all Applicable Law, including but not limited to the Advisers Act; (v) Investment Advisor possesses all necessary and required approvals, licenses and registrations under all Applicable Law related to its use of the Services and provision of Investment Advisor Data, and the approvals, licenses, consents, and registrations are in effect as of the date of this Agreement and will remain in effect, to the extent required, throughout the Term; (vi) there is no pending or threatened litigation that would have a material adverse impact on Investment Advisor's use of the Services or performance of this Agreement; and (vii) Investment Advisor's use of the Services shall take place within the continental United States, and it shall not make available or permit to be made available any Confidential Information (as defined below) of Schwab to any entity or individual outside the continental United States.

9. Investment Advisor Indemnity. Investment Advisor shall defend, indemnify and hold harmless SPT and its affiliates, officers, directors, employees, agents, licensors, vendors, and suppliers from any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses (including but not limited to reasonable attorneys' fees and all related costs and expenses) ("**Losses**") incurred by SPT or any of the other foregoing indemnitees as a result of any claim, judgment, or adjudication ("**Claim**") related to or arising from: (i) Investment Advisor's or its officers', employees', contractors', or other agents' use of the Services, including any claims by its clients arising from or related to the Services (except to the extent such claims are solely the result of SPT's gross negligence or willful misconduct); (ii) breach (or claim or threat thereof that, if true, would be a breach) of any of Investment Advisor's obligations, representations, or warranties hereunder by Investment Advisor or its officers, employees, contractors, or other agents; or (iii) any violation of Applicable Law by Investment Advisor or its officers, employees, contractors, or other agents.

10. SPT Indemnity. SPT shall defend, indemnify and hold harmless Investment Advisor from any and all Losses incurred by Investment Advisor as a result of any Claim related to or arising from (i) the gross negligence or willful misconduct of SPT in providing the Services or (ii) any claim by a third party that any content or programming created or developed by SPT and provided to Investment Advisor in connection with the Services infringes any United States patent or copyright of the third party. SPT shall have no indemnification obligation hereunder for Losses or Claims that relate to or arise from: (i) a breach by Investment Advisor or its officers, employees, contractors, or other agents of this Agreement; (ii) use of the Services in excess of the

rights granted hereunder; (iii) any content, programming, information, data, or other intellectual property provided by any of SPT's licensors, vendors, or Third-Party Providers (as defined below); (iv) Investment Advisor's or its officers', employees', contractors', or other agents' gross negligence or willful misconduct; (v) use of the Services in combination with software and/or hardware outside specifications provided by SPT; (vi) Investment Advisor's failure to implement an enhancement, update, or modification to the Services, provided SPT provides Investment Advisor with notice that implementing the enhancement, update, or modification would avoid the claim or liability; or (vii) any modification of the Services made other than by SPT or at SPT's direction.

11. Third-Party Providers.

11.1 In General. SPT may use third-party providers, suppliers and licensors to assist in providing certain aspects of the Services with or without notice to Investment Advisor (each, a "**Third-Party Provider**"). SPT may also change Third-Party Providers or may itself provide a Service without the assistance of such third party. Investment Advisor agrees that the terms and conditions of this Agreement, including any warranty disclaimers and liability disclaimers, inure to the benefit of such Third-Party Providers and such Third-Party Providers are deemed to be third-party beneficiaries of this Agreement. Investment Advisor also agrees that all references to "SPT" within this Agreement and any incorporated terms are also deemed to include, where applicable, SPT's agents, such as the Third-Party Providers.

11.2 Third-Party Terms and Conditions. In addition to any third-party terms and conditions that may be presented during use of the Services, Investment Advisor acknowledges it has read and understands the terms and conditions available at <http://www.schwabpt.com/public/license-agreement> (the "**Third-Party Terms and Conditions**") and agrees to be bound by all such terms in its use of the Services and services provided by Third-Party Providers. SPT reserves the right, without prior notice, to modify, delete, and add to the Third-Party Terms and Conditions from time-to-time and Investment Advisor agrees to periodically visit the foregoing site and review the Third-Party Terms and Conditions for any such changes. Investment Advisor's continued use of the Services shall constitute its acceptance of and agreement to be bound by any such modifications, deletions, and additions to the Third-Party Terms and Conditions. In the event Investment Advisor is unwilling to be bound by any or all of the Third-Party Terms and Conditions, Investment Advisor must immediately notify SPT in writing and Investment Advisor will not be able to use the associated Services, which may be all Services. Unless expressly provided otherwise in the Third-Party Terms and Conditions, Investment Advisor shall use the Services provided by the Third-Party Providers solely and exclusively in connection with the Services and for no other purpose. Investment Advisor understands and acknowledges that use of Services furnished by Third-Party Providers is subject to license and service agreements pending between SPT and the relevant Third-Party Providers. In the event those agreements terminate or expire, Investment Advisors access to and license to use the associated Services of the Third-Party Providers shall also terminate. SPT shall have no liability to Investment Advisor for any such termination.

12. Confidentiality.

12.1 "Confidential Information" shall mean, with respect to a party hereto, all information or material that: (i) gives or could give that party some competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of that party; (ii) which from all the relevant circumstances should reasonably be assumed to be confidential and proprietary; or (iii) which constitutes personally identifiable, non-public customer or client information. Each party's Confidential

Information shall remain the sole and exclusive property of that party. Confidential Information includes, but is not limited to, the Services. Neither party shall have any obligation with respect to confidential information which: (a) is or becomes generally known to the public by any means other than a breach of the obligations of the receiving party; (b) was previously known to the receiving party as evidenced by written records kept in the ordinary course of business of or proof of actual use by the receiving party ; (c) is rightly received by the receiving party from a third party without breach of any duty of confidentiality; or (d) is independently developed by the receiving party without reference ; or access to Confidential Information.

12.2 Treatment of Confidential Information. Each party recognizes the importance of the other's Confidential Information. In particular, each party recognizes and agrees that the Confidential Information of the other is critical to the other's business and that neither party would enter into this Agreement without assurance that such information and the value thereof will be protected as provided in this Section 12 (Confidentiality) and elsewhere in this Agreement. Accordingly, each party agrees as follows:

(i) each party will hold any and all Confidential Information it obtains in strictest confidence, using the same degree of care, but no less than reasonable care, to avoid disclosure or use of Confidential Information as the receiving party employs with respect to its own Confidential Information of like importance, and will use and permit use of Confidential Information solely as permitted under this Agreement;

(ii) each party may disclose or provide access to Confidential Information to its responsible employees and agents who have a need to know such Confidential Information or as otherwise permitted hereunder, and may make copies, of Confidential Information only to the extent permitted under this Agreement and reasonably necessary to carry out its obligations hereunder;

(iii) each party currently has, and in the future will maintain in effect and enforce, rules and policies to protect against access to or use or disclosure of Confidential Information other than in accordance with this Agreement, including without limitation written instruction to and agreements with employees and agents who are bound by an obligation of confidentiality no less stringent than set forth in this Agreement to ensure that such employees and agents protect the confidentiality of Confidential Information; and

(iv) the receiving party will notify the disclosing party immediately of any unauthorized disclosure or use, and will cooperate with the disclosing party to protect all proprietary rights in and ownership of its Confidential Information. To the extent required by applicable law or by lawful order or requirement of a court or governmental authority having competent jurisdiction over the receiving party, the receiving party may disclose Confidential Information in accordance with such law or order or requirement, subject to the following conditions: As soon as possible after becoming aware of such law, order or requirement and prior to disclosing Confidential Information pursuant thereto, the receiving party will so notify the disclosing party in writing and, if possible, the receiving party will provide the disclosing party notice not less than five business days prior to the required disclosure. The receiving party will use reasonable efforts not to release Confidential Information pending the outcome of any measures taken by the disclosing party to contest, otherwise oppose or seek to limit such disclosure by the receiving party and any subsequent disclosure or use of Confidential Information that may result from such disclosure. The receiving party will cooperate with and provide assistance to the disclosing party regarding such measures. Notwithstanding any such compelled disclosure by the receiving party, such compelled disclosure will not otherwise

affect the receiving party's obligations hereunder with respect to Confidential Information so disclosed.

12.3 Non-Exclusive Equitable Remedy. Each party acknowledges and agrees that due to the unique nature of the Confidential Information there can be no adequate remedy at law for any breach of its obligations hereunder, and therefore, that upon any such breach or any threat thereof, each party will be entitled to appropriate equitable relief from a court of competent jurisdiction.

12.4 Aggregated Data. Notwithstanding any other provision of this Agreement, SPT shall have the right to compile, distribute, and otherwise exploit data derived from the Services ("**Aggregated Data**"). Such Aggregated Data shall be appropriately redacted by SPT and shall not identify Investment Advisor or any of its clients. To the extent a license is required under Investment Advisor's intellectual property rights to make use of the Aggregated Data, Investment Advisor hereby grants SPT and its affiliates an irrevocable, non-exclusive, perpetual, fully paid-up, royalty-free license to use the Aggregated Data in connection with SPT's current and future business.

13. Limited Warranty. During the Term, SPT warrants that the Services shall materially comply with this Agreement. Investment Advisor's sole and exclusive remedy and SPT's sole and exclusive liability for breach of the foregoing warranty shall be for SPT to repair or replace the defective element of the Service or, if repair or replacement cannot be provided within a reasonable time, terminate the applicable element of the Service and refund any pre-paid fees therefor.

14. Disclaimer of Warranties. EXCEPT AS PROVIDED IN SECTION 13 (LIMITED WARRANTY), THE SERVICES ARE PROVIDED "AS IS" AND "AS-AVAILABLE," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. SPT, ITS PARENT, THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES, AND THEIR VENDORS/LICENSORS AND THIRD PARTY PROVIDERS DISCLAIM ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND TITLE/NON-INFRINGEMENT. SPT, ITS PARENT, THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES, AND THEIR VENDORS/LICENSORS AND THIRD-PARTY PROVIDERS MAKE NO WARRANTY REGARDING NONINTERRUPTION OF USE OR FREEDOM FROM BUGS. INVESTMENT ADVISOR EXPRESSLY AGREES AND ACKNOWLEDGES THAT USE OF THE SERVICES IS AT INVESTMENT ADVISOR'S SOLE RISK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SPT OR ITS REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF SPT'S OBLIGATIONS HEREUNDER.

INVESTMENT ADVISOR AGREES THE SERVICES ARE NOT INTENDED TO REPLACE INVESTMENT ADVISOR'S PROFESSIONAL SKILL AND JUDGMENT. INVESTMENT ADVISOR AGREES AND ACKNOWLEDGES THAT THE SERVICES DO NOT AND ARE NOT INTENDED TO SUPPLY TAX, INVESTMENT, OR LEGAL ADVICE. INVESTMENT ADVISOR IS SOLELY RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE LAW (AS DEFINED IN SECTION 6 (INVESTMENT ADVISOR ROLES; COMPLIANCE) OF THIS AGREEMENT), INCLUDING ITS RESPONSIBILITY TO MAKE ALL NECESSARY DISCLOSURES TO ITS CLIENTS RELATING TO THE SERVICES.

THE SERVICES ARE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. INVESTMENT ADVISOR ACKNOWLEDGES AND AGREES SPT, ITS PARENT, THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES, AND THEIR VENDORS/LICENSORS AND THIRD PARTY PROVIDERS DO NOT OPERATE OR

CONTROL THE INTERNET AND THAT VIRUSES, WORMS, TROJAN HORSES, OTHER UNDESIRABLE DATA OR SOFTWARE, OR UNAUTHORIZED USERS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE INVESTMENT ADVISOR'S DATA, WEBSITES, COMPUTERS, OR NETWORKS. SPT SHALL NOT BE RESPONSIBLE FOR SUCH ACTIVITIES.

15. Limitation of Liability and Damages. NONE OF SPT, ITS PARENT, THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES, OR THEIR VENDORS/LICENSORS AND THIRD PARTY PROVIDERS SHALL HAVE ANY LIABILITY TO INVESTMENT ADVISOR OR ANY OTHER INDIVIDUAL OR ENTITY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, EXEMPLARY AND PUNITIVE DAMAGES OR DAMAGES RESULTING FROM LOST PROFITS, SALES, BUSINESS OR DATA) OF ANY KIND OR NATURE RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, INCLUDING USE OF THE SERVICES. THE TOTAL LIABILITY OF SPT, ITS PARENT, THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES, AND THEIR VENDORS/LICENSORS AND THIRD PARTY PROVIDERS TO INVESTMENT ADVISOR OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT OR USE OF THE SERVICES IN CONNECTION WITH ANY CLAIM OR TYPE OF DAMAGE SHALL NOT EXCEED ONE HUNDRED DOLLARS (\$100.00). THIS LIMITATION OF LIABILITY SHALL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH ABOVE FAIL OF THEIR ESSENTIAL PURPOSE.

16. Term and Termination. The term of this Agreement shall begin on the Effective Date and shall continue in full force and effect until such time as it is terminated as provided in this Agreement (the "**Term**"). This Agreement shall terminate: (i) on the 30th day after either party gives the other written notice of its intent to terminate for any reason or no reason; (ii) on the 30th day after either party gives the other written notice of a curable material breach by the other party of any term or condition of this Agreement, unless the breach is cured before that day; (iii) immediately upon written notice by a party of an incurable material breach by the other party of any term or condition of this Agreement; (iv) upon termination of the SAC Agreement; (v) immediately in the case that any law or any rule, regulation, guidance or other pronouncement of a regulatory authority with jurisdiction over SPT, CS&Co or Investment Advisor makes the continued offering of any of the Services illegal or noncompliant and the changes required to the Services to make them legal or compliant are, in the sole discretion of SPT, not commercially viable; or (vi) on 60 days' notice from SPT in the event SPT plans to cease providing the Services generally to its customers. For the avoidance of doubt, the parties acknowledge and agree that breaches of Sections 4 (Proprietary Rights), 12 (Confidentiality), and 17 (Publicity) shall constitute incurable material breaches as described in subpart (iii) above. If use of the Services or any portion thereof becomes, or in SPT's sole opinion is likely to become, the subject of an intellectual property infringement claim, SPT may, in its discretion: (a) procure the right for Investment Advisor to continue to use the Services; (b) replace or modify the Services with one of comparable quality and performance capabilities; or (c) terminate this Agreement. All licenses granted by SPT hereunder shall terminate on termination of this Agreement.

17. Publicity. During the Term and at all times after the termination of this Agreement, Investment Advisor shall not make any media release or other public announcement relating to or referring to this Agreement without SPT's prior written consent. Investment Advisor shall acquire no right to use, and shall not use, without SPT's prior written consent, the terms or existence of this Agreement, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials, of SPT or its affiliates. Notwithstanding the foregoing, Investment Advisor may inform its clients of its relationship with SPT and the Services it will be obtaining from SPT to the extent required by Applicable Law. Investment Advisor agrees that SPT may, with Investment Advisor's prior written consent, use Investment Advisor's name,

trademarks, and logos in identifying Investment Advisor as a client in SPT's client listings, Web sites, and other promotional materials.

18. General Provisions.

18.1 Subcontractors and Vendors. Some or all of the Services, including support, may be provided by SPT's affiliates, agents, subcontractors and information system vendors. The rights and obligations of SPT may be, in whole or in part, exercised or fulfilled by its parent and their respective affiliates, joint ventures, and subsidiaries.

18.2 Force Majeure. Neither party shall be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, Internet delays and failures, telecommunications failures, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments or government instructions.

18.3 Venue. The parties consent to exclusive jurisdiction and venue in the state and federal courts (if permitted by law and a party elects to file an action in federal court) located in San Francisco, California. This choice of venue is intended by the parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the parties with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this Section 18.3 (Venue). Each party waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or theory or to object to venue with respect to any proceeding brought in accordance with this Section 18.3 (Venue).

18.4 Governing Law. The interpretation and enforcement of this Agreement shall be governed by the law of the State of California without reference to its choice of law rules.

18.5 Entire Agreement. This Agreement sets forth the entire agreement between the parties with regard to the subject matter hereof. No other agreements, representations, or warranties have been made by either party to the other with respect to the subject matter of this Agreement, except as referenced herein.

18.6 Amendment. SPT may amend this Agreement, including but not limited to the exhibits, at any time upon 30 days' written notice to Investment Advisor, except to the extent any amendment is required by Applicable Law to become effective at an earlier time. Investment Advisor's continued use of the Services following any such amendment will evidence investment Advisor's agreement to the amendment.

18.7 Relationship of the Parties. The parties agree that SPT shall perform its duties under this Agreement as an independent contractor. Nothing contained herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties. Personnel employed or retained by SPT who perform duties related to this Agreement shall remain under the supervision, management, and control of SPT.

18.8 Assignment. Investment Advisor may not assign this Agreement without prior written notice to SPT. SPT may assign its rights and obligations under this Agreement to its parent or any of their respective affiliates, subsidiaries or joint ventures or to a successor by merger or consolidation without notice to Investment Advisor, or to any other entity after 30 days' written notice.

18.9 Severability. If any of the provisions of this Agreement are found or deemed by a court to be invalid or unenforceable, they shall be severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement.

18.10 Waiver. Neither party shall by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of any of the provisions of this Agreement. Further, the waiver by either party of a particular breach of this Agreement by the other party shall not be construed as, or constitute, a continuing waiver of such breach, or of other breaches of the same or other provisions of this Agreement.

18.11 Survival. The following Sections shall survive termination or expiration of this Agreement: 4 (Proprietary Rights), 5 (Feedback), 6 (Investment Advisor Roles; Compliance), 9 (Investment Advisor Indemnity), 12 (Confidentiality), 14 (Disclaimer of Warranties), 15 (Limitation of Liability and Damages), 16 (Term and Termination), 17 (Publicity), and 18 (General Provisions).

18.12 Notices. Any written notice or demand required by this Agreement shall be sent by secure email to the email address of the party to be notified as set forth below. SPT may also give written notice by posting it as a message displayed to Investment Advisor's Authorized Persons upon accessing the System as provided in Section 1.1 (System Access). The notice shall be effective as of the date of delivery. Any party may change the email address at which it receives notices by giving written notice to the other party in the manner prescribed by this Section 18.12 (Notices). In addition, notices by SPT related to assignment or amendment of this Agreement may be given by posting to Schwab Advisor Center.

* * *

The parties have executed this Agreement to become effective as of the last signature date below (the "*Effective Date*").

**PERFORMANCE TECHNOLOGIES, INC.
d/b/a SCHWAB PERFORMANCE
TECHNOLOGIES**

INVESTMENT ADVISOR
Firm Name:

(Please print)

By: _____
(Signature)

By: _____
(Signature)

Name: _____
(Please print)

Name: _____
(Please print)

Title: _____

Title: _____

Date: _____

Date: _____

Email Address for notices:

Email Address for notices:
