



**BayRock Financial, L.L.C.  
Discretionary Portfolio Management Agreement**

This Portfolio Management Agreement (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between BayRock Financial, L.L.C. (hereinafter referred to as "Adviser"), a registered investment adviser, located at 5000 Gulf Freeway, Houston, TX 77023, and \_\_\_\_\_ (hereinafter referred to as "Client").

Adviser shall provide Client with discretionary portfolio management services, which may include the strategic organization, structure and management of assets, and the coordination and selection of other professionals. Client will also complete a statement of investment selection or other suitability forms (collectively referred to as "statement of investment objectives") that details Client's financial profile and the assets that are subject to Adviser's management (the "Account"). BayRock typically requires a minimum of \$50,000 to open and maintain an advisory account, however, we may waive this minimum account size at our discretion.

**1. Scope of Engagement.**

- a. Client hereby appoints Adviser as an investment adviser to perform the services hereinafter described, and Adviser accepts such appointment. Adviser shall be responsible for the investment and reinvestment of those assets of Client designated by Client to be subject to Adviser's management (which assets, together with all additions, substitutions and/or alterations thereto are hereinafter referred to as the "Assets" or "Account");
- b. Client delegates to Adviser all of its powers with regard to the investment and reinvestment of the Assets and appoints Adviser with limited power of attorney to buy, sell, or otherwise effect investment transactions involving the Assets in Client's name and for Client's Account;
- c. Adviser is authorized, without prior consultation with Client, to buy, sell, and trade in stocks, bonds, mutual funds, and other securities and/or contracts relating to the same, on margin (only if written authorization has been granted) or otherwise, and to give instructions in furtherance of such authority to the registered broker-dealer and the custodian of the Assets;
- d. Client acknowledges that Adviser may, in accordance with Client's investment objective(s), determine to allocate all or a portion of the Assets among various individual debt and/or equity securities and/or mutual funds, or other securities or investment contracts; and,
- e. Client agrees to provide information and/or documentation requested by Adviser in furtherance of this Agreement as it pertains to Client's investment objectives, needs and goals, and to keep Adviser duly informed of any changes regarding same. Client acknowledges that Adviser cannot adequately perform its services for Client unless Client diligently performs Client's responsibilities under this Agreement. Adviser shall not be required to verify any information obtained from Client, Client's attorney, accountant or other professionals, and is expressly authorized to rely thereon.

## **2. Adviser Compensation.**

- a. Adviser's annual fee for portfolio management services provided under this Agreement is in accordance with the fee schedule annexed hereto and made a part hereof as **Exhibit A**. The annual fee shall be prorated and details related to payment of the fee are also included at **Exhibit A**. No increase in the annual fee shall be effective without Client's prior written consent;
- b. Unless Client pays Adviser directly for its services (in which event Adviser's fee is due and payable upon receipt of Adviser's billing invoice), Client authorizes the custodian of the Assets to charge the Account for the amount of Adviser's fee and to remit such fee to Adviser in accordance with required regulatory procedures;
- c. In addition to Adviser's annual portfolio management fee, Client shall also incur, relative to all mutual fund and exchange traded fund ("ETF") purchases, charges imposed directly at the mutual fund or ETF level (e.g. advisory fees and other fund expenses); and,
- d. No portion of Adviser's Compensation shall be based on capital gains or capital appreciation of the Assets except as provided for under the Investment Advisers Act of 1940, and/or relevant state law.

**3. Custodian.** The Assets shall be held by an independent custodian, not the Adviser. Adviser is authorized to give instructions to the custodian with respect to all investment decisions regarding the Assets and the custodian is hereby authorized and directed to effect transactions. The fees charged to Client by the custodian are exclusive of, and in addition to, Adviser's Compensation as defined in Item 2 above, and other charges discussed herein. Adviser does not share in any portion of the fees assessed by Client's custodian(s).

**4. Execution of Brokerage Transactions.** Unless otherwise agreed, Adviser will arrange for the execution of securities brokerage transactions for the Account through custodians that Adviser reasonably believes will provide "best execution." In seeking best execution, the determinative factor is not the lowest possible commission cost but whether the transaction represents the best qualitative execution, taking into consideration the full range of a custodian's services including the value of research provided, execution capability, commission rates, and responsiveness. Accordingly, although Adviser will seek competitive commission rates, it may not necessarily obtain the lowest possible commission rates for Account transactions. Adviser does not obligate itself to seek the lowest transaction charges in all cases except to the extent that it contributes to the overall goal of obtaining the best results for Client's account.

## **5. Account Transactions.**

- a. Client recognizes and agrees that in order for Adviser to discharge its responsibilities, it must engage in securities brokerage transactions described in Item 1 herein;
- b. Commissions and/or transaction fees are generally charged for effecting securities transactions;
- c. Adviser, in return for effecting securities brokerage transactions through certain broker-dealers, may receive from those broker-dealers certain investment research products and/or services which assist Adviser in its investment decision making process for the Client.

**6. Risk Acknowledgment.** 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 Adviser's overall management of the Account. Client understands that investment decisions made for the Account by Adviser are subject to various market, currency, economic, political and business risks, and that those investment decisions will not always be profitable.

**7. Directions to Adviser.** All directions by Client to Adviser (including notices, instructions, directions relating to changes in the Client's investment objectives) shall be in writing. Adviser shall be fully protected in relying upon any such direction, notice, or instruction until it has been duly advised in writing of changes therein.

**8. Adviser Liability.** Except as otherwise provided by federal or state laws, Adviser, 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 Client by Adviser, including a broker-dealer and/or custodian. If the Account contains only a portion of Client's total assets, Adviser shall only be responsible for those assets that Client has designated to be the subject of Adviser's portfolio management services under this Agreement without consideration to those additional assets not so designated by Client. The federal and state securities laws impose liabilities under certain circumstances on persons who act in good faith, and therefore nothing in this Agreement will waive or limit any rights that Client may have under those laws.

**9. Proxies.** Client shall be responsible for: (1) directing the manner in which proxies solicited by issuers of securities beneficially owned by Client shall be voted, and (2) making all elections relative to any mergers, acquisitions, tender offers, bankruptcy proceedings or other type events pertaining to the Assets. Adviser is authorized to instruct the custodian to forward to Client copies of all proxies and shareholder communications relating to the Assets.

**10. Reports.** Client will receive confirmations of each transaction executed for the Account and a brokerage statement(s) no less than quarterly directly from the Custodian. Adviser may provide periodic reports to Client as deemed necessary by Adviser.

**11. Termination.** This Agreement will continue in effect until terminated by either party on Written notice to the other party (email notice will not suffice), which written notice must be signed by the terminating party. Termination of this Agreement will not affect (i) the validity of any action previously taken by Adviser under this Agreement; (ii) liabilities or obligations of the parties from transactions initiated before termination of this Agreement; or (iii) Client's obligation to pay advisory fees (prorated through the date of termination). Upon the termination of this Agreement, Adviser will have no obligation to recommend or take any action with regard to the securities, cash or other investments in the Account. If this Agreement is terminated, Adviser's fee will be prorated for the quarter that the termination notice is given, and any unearned fees will be returned to Client.

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

Unless expressly stated otherwise, no provision of this Agreement or any of the documents referred to herein may be amended, modified, supplemented, changed, waived, discharged or terminated, except by a writing signed by each party hereto. No failure by Adviser or Client to exercise any right, power, or privilege that Adviser or Client may have under this Agreement shall operate as a waiver thereof.

**13. Non-Exclusive Management.** Adviser, its officers, employees, and agents, may have or take the same or similar positions in specific investments for their own accounts, or for the accounts of other clients, as Adviser does for the Account. Client expressly acknowledges and understands that Adviser shall be free to render investment advice to others and that Adviser does not make its portfolio management services available exclusively to Client. Nothing in this Agreement shall impose upon Adviser any obligation to purchase or sell, or to recommend for purchase or sale, for the Account any security which Adviser, its principals, affiliates or employees, may purchase or sell for their own accounts or for the account of any other Client, if in the reasonable opinion of Adviser such investment would be unsuitable for the Account or if Adviser determines in the best interest of the Account it would be impractical or undesirable.

**14. Death or Disability.** The death or incapacity of the Client shall not terminate the authority of our firm granted herein until we shall receive actual notice of such death or incapacity. Upon such notice, your executor, guardian, attorney-in-fact or other authorized representative must engage our firm in order for us to continue to service you accounts.

**15. Receipt of Disclosures.** Client acknowledges receipt of Part 2 of Form ADV; a disclosure statement containing the equivalent information; or a disclosure statement containing at least the information required by Part 2A Appendix 1 of Form ADV, if the client is entering into a wrap fee program sponsored by the investment adviser. If the appropriate disclosure statement was not delivered to the client at least 48 hours prior to the client entering into any written or oral advisory contract with this investment adviser, then the client has the right to terminate the contract without penalty within five business days after entering into the contract. For the purposes of this provision, a contract is considered entered into when all parties to the contract have signed the contract, or, in the case of an oral contract, otherwise signified their acceptance, any other provisions of this contract notwithstanding.

Client further acknowledges receipt of Adviser's Privacy Policy Notice.

**Client initial** \_\_\_\_\_ **Date ADV and Privacy Notice received** \_\_\_\_\_

**16. Electronic Delivery.** Client hereby consents to the receipt of disclosure information, including, but not limited to, Adviser's Form ADV and privacy policy disclosures, and other forms of communication electronically. Client asserts that Client is capable of receiving such disclosures electronically, and understands that non-public personal information may be sent via e-mail or other electronic media, and that electronic media (including e-mail) may not be as reliable or secure as other forms of communication. Client may withdraw this consent at any time by providing written notice to Adviser in accordance with Paragraph 7 herein.

Unless Adviser has reason to believe that delivery of any electronic communications was not effective (such as a returned e-mail), Adviser is entitled to rely on the information Client provides as evidence of delivery and Adviser is not required to obtain delivery confirmation or a "read receipt." If Client's e-mail address changes or if Client no longer has the ability to access e-mail or access any related client web portal, Client must promptly notify Adviser in writing and provide updated information, or withdraw this consent of electronic delivery.

**Client initial** \_\_\_\_\_ **Client email address:** \_\_\_\_\_

**17. Trade Errors.** All Account trades are placed electronically or telephonically by Adviser. Adviser assumes responsibility for any Account losses for trading errors directly resulting from Adviser's failure to follow Adviser's trading procedures or from a lapse in Adviser's internal communications. In such instances, the Account(s) will be compensated for any such corresponding losses. However, Client acknowledges that Adviser cannot and will not be responsible for Account errors and/or losses that occur where Adviser has used its best efforts (without direct failure on the part of Adviser) to execute trades in a timely and efficient manner. If a trade or some portion of a trade is not effected or an electronic "glitch" occurs which results in the Account not being traded at the same time or at the same price as others, and such occurrence is not a result of Adviser's failure to execute or follow its trade procedures, the resulting loss will not be considered a trading error for which Adviser is responsible. In addition, virtually all mutual funds, as disclosed in their prospectuses, reserve the right to refuse to execute trades if, in a fund's sole judgment, the trade(s) would jeopardize the value of the fund. Adviser has no authority to change, alter, amend, or negotiate any provision set forth in a mutual fund prospectus. Client further acknowledges that Adviser cannot and will not be responsible for trades that are not properly executed by any clearing firm, custodian, mutual fund, or insurance company, when an order has been properly submitted by Adviser. Finally, Adviser cannot be responsible for a unilateral adverse decision by a mutual fund or insurance company to restrict and/or prohibit mutual fund portfolio management programs.

**18. Severability.** Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms or provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

**19. Client Conflicts.** If this Agreement is between Adviser and related Clients (i.e. married couple), Adviser's services shall be based upon the joint goals communicated to Adviser. Adviser shall be permitted to rely upon instructions from either party with respect to disposition of the Assets, unless and until such reliance is revoked in writing to the Adviser. The Adviser shall not be responsible for any claims or damages resulting from such reliance or from any change in the status of the relationship between the Clients.

**20. Applicable Law.** To the extent not inconsistent with applicable law, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

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

**22. Arbitration.** Subject to the conditions and exceptions noted below, and to the extent not inconsistent with applicable law, in the event of any dispute pertaining to Adviser's services under this Agreement, both Adviser and Client agree to submit the dispute to arbitration in accordance with the auspices and rules of the American Arbitration Association ("AAA"), provided that the AAA accepts jurisdiction. Adviser and Client understand that such arbitration shall be final and binding, and that by agreeing to arbitration, both Adviser and Client are waiving their respective rights to seek remedies in court, including the right to a jury trial. Client acknowledges and agrees that in the specific event of non-payment of any portion of Adviser Compensation pursuant to Item 2 of this Agreement, Adviser, in addition to the aforementioned arbitration remedy, shall be free to pursue all other legal remedies available to it under law, and shall be entitled to reimbursement of reasonable attorneys fees and other costs of collection.

Client understands that this Agreement to arbitrate does not constitute a waiver of Client's right to seek a judicial forum where such waiver would be void under federal or applicable state securities laws.

**THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.**

**[SIGNATURE PAGE FOLLOWS]**

**SIGNATURE PAGE FOR DISCRETIONARY PORTFOLIO MANAGEMENT AGREEMENT**

IN WITNESS WHEREOF, Client and Adviser have each executed this Agreement on the day, month and year first above written. By each party executing this Agreement they acknowledge and accept their respective rights, duties, and responsibilities hereunder.

Client Name  
(print): \_\_\_\_\_

Joint Owner Name  
(print): \_\_\_\_\_

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

Joint Owner Signature: \_\_\_\_\_

Client Address: \_\_\_\_\_  
\_\_\_\_\_

Joint Owner Address: \_\_\_\_\_  
\_\_\_\_\_

**BayRock Financial, L.L.C.**

Signature for Adviser: \_\_\_\_\_

Name of Signatory  
(print name): James R. Munchbach, CFP®, CLU®, ChFC®, CPCU®

Adviser Address:  
5000 Gulf Freeway  
Houston, TX 77023

**Exhibit A**  
**Annual Fee Schedule**

<b>Assets Under Management</b>	<b>Annual Fee</b>
<b>Under \$500,000</b>	<b>1.5%</b>
<b>\$500,001 to \$2,000,000</b>	<b>1.25%</b>
<b>\$2,000,001 to \$5,000,000</b>	<b>1.0%</b>
<b>Over \$5,000,000</b>	<b>0.75%</b>

This annual fee is prorated for the initial quarter, our annual portfolio management fee is billed and payable, quarterly in arrears, based upon the balance at the end of the billing period of Client's account(s). Our advisory fee is negotiable, depending on individual client circumstances. **For clients with assets under management in excess of \$500,000, BayRock will offer to provide complimentary financial planning services as part of our ongoing portfolio management.**

**Adviser's negotiated fee for the services provided under this Agreement shall be \_\_\_\_\_%.**

If this Agreement is terminated, Adviser's fee will be prorated for the quarter that the termination notice is given, and any unearned fees will be returned to Client.

**SIGNATURE FOR EXHIBIT A (Annual Fee Schedule)**

Client Name  
(print): \_\_\_\_\_

Joint Owner Name  
(print): \_\_\_\_\_

**Client Signature:** \_\_\_\_\_

**Joint Owner  
Signature:** \_\_\_\_\_



**BayRock Financial, L.L.C.**

Adviser Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Signatory  
(print name): James R. Munchbach, CFP®, CLU®, ChFC®, CPCU®

5000 Gulf Freeway  
Houston, Texas 77023