



## **401K GPS™ TERMS AND CONDITIONS OF USE**

(Last revised April, 2016)

401K GPS, LLC, which does business under the name 401K GPS, (“we”, “us”, or “our”) provides retirement investment advisory Services. 401K GPS, LLC is registered as an investment adviser with the U.S. Securities and Exchange Commission (the “SEC”) under the Investment Advisers Act of 1940 (the “Advisers Act”).

Please read this Terms of Use and Services Subscription Agreement (the “Agreement”) carefully as it contains the legally binding terms and conditions that you are subject to. By accessing [www.401kgps.com](http://www.401kgps.com) (“our website”), you agree to be bound by the terms of this Agreement.

### **1. Investment Advisor Relationship**

A. By selecting the 401K GPS Service, you agree that you are entering into a non-discretionary investment advisory relationship with us as more fully described in the Agreement.

B. You acknowledge that you have received our:

- i. Form ADV Parts 2A and 2B
- ii. Privacy Notice
- iii. Solicitor’s Disclosure Statement (as defined in Section 11D)

### **2. Description of the Service**

A. Our Service:

The 401K GPS Service includes the following features, among others:

#### Subscriber Dashboard

- You receive secure website access to your 401(k), 403(b) or 457 retirement plan fund recommendations, quarterly updates and alerts, personal account information, FAQs and other retirement educational resources.
- You can update your personal information (email, password, funds, employer, payment details, risk profile, etc.), contact your Advisor via email and contact 401K GPS support from your Dashboard.
- You have the option to include a link to your plan provider's website as a convenience to help you implement your 401K GPS recommendations. (NOTE: This link does not include your log-in credentials to your retirement plan provider site, nor does it access your retirement plan account in any way.)
- You will receive a variety of routine correspondence from 401K GPS, including initial retirement plan recommendations, quarterly updates, intra-quarter alerts and account management notifications.



i. We provide retirement investment recommendations to you through our website using information supplied by you when subscribing to 401K GPS (as more fully described below in Section 5, "Client Information"). Depending on your input, the retirement investment advice generated may cover portfolio and asset allocation, and recommended funds in which to invest. We will also provide email updates and periodic informative materials. Other than customer service administrative assistance with account servicing, 401K GPS does not provide personal advice or contact, whether telephonic, face-to-face, or by any other means. We will not, and do not have the power or authority to, direct the investment of securities and cash in any investment account held with any custodian.

ii. The recommendations we provide and other information that appears on our website may be time sensitive, especially during times of significant market volatility. Thus, our recommendations and other information on our website may be subject to different interpretations as market conditions and other factors change. You agree to take into account the time sensitivity of recommendations and information.

In particular, we may issue Intra-Quarter Alerts if we determine that market conditions demand immediate investment allocation adjustments for our clients. Although infrequent, these Intra-Quarter Alerts include recommendations intended to either limit substantial loss of capital in an unfavorable investing environment or take advantage of market advances as appropriate.

NOTE: In these instances, your retirement plan may have certain trade restrictions or other limitations that prevent you from implementing these updated allocations. You must contact your plan provider and/or your financial advisor regarding any fees or other penalties that may result before implementing these Intra-Quarter allocation changes.

iii. The retirement investment recommendations may include, but may not be limited to, recommendations to buy, sell, hold or otherwise gain exposure to equity securities that are exchange traded or that are offered by foreign issuers, commercial paper, mutual fund shares, ETFs, and U.S. Government securities, and related advisory information.

B. You understand and agree that:

(1) we are providing you with the 401K GPS Service for your own individual and personal use and not for any other purpose;



(2) you acknowledge that the usefulness of Services provided by 401K GPS is dependent upon the quality of the information provided by you, as well as its accuracy and timeliness.

(3) you further acknowledge that information regarding specific issues not revealed to or analyzed by 401K GPS may have a direct impact on the suitability or accuracy of specific recommendations given by us to you pursuant to this Agreement.

(4) neither you or we intend for this Agreement to benefit any third party not expressly named as a third-party beneficiary under this Agreement;

(5) we will not place any transactions on your behalf;

(6) we do not provide ongoing supervision of your assets;

(7) you will determine whether to implement the recommendations made through 401K GPS and/or otherwise rely on information that appears on our website;

(8) you understand and accept any transaction fees included in the specific terms and conditions of your retirement plan should you decide to implement the recommendations made through 401K GPS and/or otherwise rely on information that appears on our website; and

(9) you are fully responsible for making your own retirement investment decisions.

### **3. Scope of the Service and Risk Factors**

#### **A. Scope of the 401K GPS Service:**

The 401K GPS Service is meant as an aid to assist you in your selection of retirement investment tools and related Services. It is not intended to provide legal, tax or financial planning advice. You agree that you are responsible for your own retirement investment research and investment decisions, that the 401K GPS Service is only one tool that you may use as part of a comprehensive retirement investment analysis process, that you should not rely solely on the 401K GPS Service and, except as otherwise provided for herein, that we will not be liable for decisions/actions that you take or authorize third parties to take on your behalf based on information you receive from the 401K GPS Service or information you otherwise see on our website.

#### **B. Risk Factors for the 401K GPS Service:**

In addition to the other important disclosures included throughout this Agreement, this subsection B contains some of the key risk factors that you must consider when determining whether to become a 401K GPS client. The following list does not purport to be an exhaustive list and cannot be a complete list of all possible risk factors:



- i. Investing in securities involves risk, including the risk that you could lose your entire investment.
- ii. While our recommendation methodology is designed to meet the stated investment objectives of the 401K GPS Service, there is no certainty that such investment objectives will be met through implementation of the recommendations.
- iii. Past performance is no guarantee of future results.
- iv. Our recommendations are highly reliant on the accuracy of the information provided to us by our clients. If a client were to provide us with inaccurate information, this could materially impact the quality and applicability of our recommendations.
- v. Our recommendations are highly reliant on the accurate performance of our research, analysis and recommendation methodology and the technology that generates these recommendations. A malfunction or failure in either could cause you to experience losses, some or all of which could be significant.
- vi. Our research, analysis and recommendation methodology employs a number of quantitative models that involve assumptions based upon a limited number of variables that may be extracted from complex financial markets or instruments that they intend to replicate. Any one or all of these assumptions, whether or not supported by past experience, could prove over time to be incorrect, which could result in major losses.
- vii. The recommendations we provide and other information that appears on our website may be time sensitive, especially during times of significant market volatility and when there are time limits on the availability of a particular investment product. Thus, our recommendations and other information on our website may be subject to different interpretations as market conditions and other factors change.
- viii. Neither 401K GPS nor its representatives are qualified to render legal or accounting advice or to prepare any legal documents for the implementation of any recommendations provided by 401K GPS. Your personal attorney shall be solely responsible for the rendering and/or preparation of all of the following: (i) legal advice, (ii) legal opinions, (iii) legal determinations, and (iv) legal documents. Your personal tax advisor and/or accountant shall be responsible for any tax or accounting work performed in the implementation of any recommendations provided by 401K GPS.
- ix. We rely on third parties – often to a material extent – for the provision of market statistics, fund details, performance and related information. Although we believe these third party Service providers are generally reliable, there could be errors that are beyond our control in the information and/or Services they provide and such errors could compromise the quality of our recommendations and otherwise compromise our



ability to perform under this Agreement. Further, some or all of these agreements may allow the third party Service provider to terminate the agreement for any reason or no reason at all without any advance notice to us. In such instances, our ability to perform under this Agreement could be materially compromised.

#### **4. Cost of the Service**

A. The 401K GPS Service is offered as an individual annual subscription service. The annual cost for our service is a flat fee negotiated per our selling agreement with your investment advisor (“Advisor”) or your employer. Other charges (including referral fees, if applicable) are determined under guidelines and policies established by your Advisor and are disclosed to you by your Advisor in the 401K GPS Solicitors Disclosure Statement (as described in Section 11D).

In addition to the annual fee paid for 401K GPS services at the time you enter into this Agreement, you agree to pay all federal, state or local taxes, if any, applicable to your use of these services.

B. Subscription payment options are established by your Advisor and may include credit card/debit card, ACH withdrawal, or included as part of your annual financial planning fee to your Advisor. We directly process credit card/debit card and ACH withdrawal transactions at the time you sign-up for 401K GPS on our website. We do not manage or provide transaction support for fees paid as part of any individual financial planning agreements you may have with your Advisor.

C. Fees are paid in advance of services provided. Your subscription will automatically renew annually, and can be paid either annually or quarterly using the payment method established when you signed-up for the 401K GPS service, unless and until you notify us of termination within thirty (30) days before the end of a term. Your subscription can be canceled at any time upon receipt of thirty (30) days written notice. Any prepaid, unearned fees will be promptly refunded using a prorated reimbursement for the number of days remaining in the subscription period.

#### **5. Your Information**

A. The information you provide us is the “Client Information”.

B. You agree to provide us with the information that is requested during the Sign-Up Process at [www.401kgps.com](http://www.401kgps.com) in order to use the 401K GPS Service. We use some of this Client Information when creating your retirement fund allocation recommendations on our website.

C. You also agree that, for as long as you are a client of 401K GPS, you will ensure we have a valid e-mail address for you.



D. You understand and agree that you are responsible for monitoring and updating your Client Information in the event of material changes (such as the addition of a new funds in your retirement plan, a change to your e-mail address, a life-change event, such as a change to your retirement horizon, change in employer, etc.). You agree to promptly provide us with these updates by either updating your Client Information on our website, by e-mailing us your updates at [support@401kgps.com](mailto:support@401kgps.com), or through your financial Advisor.

E. You understand and agree that we base and rely on the completeness and accuracy of your Client Information in providing recommendations to you in connection with the 401K GPS Service. We recommend you update your information periodically.

## **6. Your Account Information**

A. By subscribing to the 401K GPS Service, you authorize us to access certain read-only information including your User ID, Password and other login information and credentials ("Access Information") necessary to access your Account Information. As a result you grant to us express permission to use the Access Information to access your Account in connection with the 401K GPS Service. You represent and warrant that in providing us with your Access Information you are not violating any agreement or terms that you are subject to.

NOTE: Our use of this Access Information is only to assist in proper management of your Account while using the 401K GPS Service, including client support, and does not give us access to your retirement plan account in any way.

## **7. Updates and Alerts**

A. As part of the 401K GPS Service, you are automatically signed up for various types of e-mail updates and alerts as provided for in Section 8 of this Agreement. We may, in our sole discretion, modify the updates and alerts that are available or stop providing them.

B. Our updates and alerts are delivered to you using the email address used to subscribe to 401K GPS. Because these updates and alerts are not encrypted, anyone with access to your email will be able to view the content of these alerts.

C. You understand that updates and alerts may be delayed or prevented by a variety of factors. We will endeavor to provide alerts in a timely manner but we do not guarantee the delivery or accuracy of any alert. You agree that we will not be liable for any delays in delivery or failure to deliver any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance on or in response to an alert.

D. In addition to quarterly market updates, 401K GPS may from time to time provide additional information or guidance based on then existing market conditions. Such additional information or guidance, if any, will be sent at the sole discretion of 401K GPS, and 401K GPS undertakes no obligation to update any such information or guidance or to send any future information or



guidance regarding market conditions. You are encouraged to check the Website regularly for the most up-to-date market information.

## **8. Communications and Notices**

Electronic Delivery of Information: You consent to electronic delivery of all correspondence from 401K GPS at the e-mail address provided including but not limited to agreements and agreement revisions, deliveries and offers of Form ADV Part 2, Terms of Service updates, Privacy Notice deliveries, and other reports and disclosures, as required by the SEC or others. By providing your e-mail address, you agree that you will accept all electronic communications from us at your e-mail address. You agree to notify us promptly if your e-mail address changes. You agree that you will not make any claims against 401K GPS if you do not receive any communications we send to your e-mail address. 401K GPS may still choose to send any correspondence in hard copy format at its discretion.

A. If we have a notice or communication that is specific to you, we will e-mail you at the e-mail address you provided us (and have agreed to keep current) under the terms of this Agreement.

B. If we have a notice or communication that is not specific to you we will post this notice or communication at the top of the page after you sign in at [www.401kgps.com](http://www.401kgps.com). You agree that you are responsible for checking for any notices we may post on our website.

C. If you have a notification for us or need to contact us for any other reason, you agree to contact us at [support@401kgps.com](mailto:support@401kgps.com).

## **9. Privacy Policy**

A copy of our privacy policy is available at <https://www.401kgps.com/PrivacyPolicy.aspx>. We encourage you to read this privacy policy whenever you use our website and services to understand how your personal information is used.

## **10. Other Clients**

A. You understand and agree that we act as an investment adviser for other clients and will continue to do so. Since we are engaged in the business of providing investment advice and recommendations, we and our personnel may make recommendations and take action for other clients and their accounts that may differ from the recommendations we give to you or the action we take on your behalf.

B. In addition, our personnel may take actions for their own accounts that differ from the recommendations we give you or actions we take on your behalf.

## **11. Your General Representations and Warranties**

A. You represent and warrant to us that:



i. *Your Client Information:* you have reported full and accurate Client Information on 401kgps.com, or, as applicable, in any other communications you have with us. You understand and agree that you are solely responsible for providing true and accurate Client Information to us, whether reported directly or through a third party who you authorize to do so.

ii. *Decision to Use Our Services:* you have made an independent assessment of the Services we offer and have determined that the Services are appropriate for you based on your Client Information.

B. Further, you acknowledge and agree that if you provide us with false or materially inaccurate information then the investment recommendations we provide pursuant to the 401K GPS Service may not meet your needs.

C. And you further represent and warrant that your use of the 401K GPS Service, or 401kgps.com does not violate any applicable law or regulation.

i. *Use of the 401K GPS Service and Our Website:* You will not use the 401K GPS Service or any other feature on 401kgps.com for any purpose that is prohibited by this Agreement.

ii. *No Availability to a Third Party:* You will not directly or indirectly sublicense, resell, rent, lease, transfer, assign, time share or otherwise make the 401K GPS Service available to any third party in violation of this Agreement.

iii. *Changed Circumstances:* you will notify us promptly regarding any changes in your Client Information that could affect the recommendations we provide to you or our ability to communicate with you.

iv. *Eighteen Years of Age:* you are a natural person who is at least 18 years old and that your use of the 401K GPS Service does not violate any applicable law or regulation.

v. *Our Intellectual Property:* you will not, directly or indirectly: (i) decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or research, analysis and recommendation methodology s of any part of the 401K GPS Service, except to the limited extent applicable laws specifically prohibit such restriction, (ii) modify, translate, or otherwise create derivative works of any part of the 401K GPS Service or any other aspect of our website, (iii) copy, distribute, or otherwise transfer any or all of the rights that you receive under this Agreement, or (iv) use or access the 401K GPS Service or our website in order to build a competitive product or Service. You represent and warrant that you will abide by all applicable local, state, national and international laws and regulations when using the 401K GPS Service and our website.





D. If you were referred to 401K GPS by a third-party solicitor, such as an investment advisor representative or broker-dealer, you acknowledge that you have received from the solicitor a copy of 401K GPS's Form ADV Part 2 and Privacy Policy, and the solicitor's written disclosure document that contains the following information:

- i. The name of the solicitor;
- ii. The name of 401K GPS;
- iii. The nature of the relationship, including any affiliation, between the solicitor and 401K GPS;
- iv. A statement that the solicitor will be compensated for his solicitation Services by 401K GPS;
- v. The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and
- vi. The amount of the fee you are paying for the 401K GPS service.

## **12. Authorizations**

- A. Upon reasonable request, you agree to sign all documentation that is necessary for us to carry out our responsibilities under this Agreement; and
- B. You agree not to use another person's account with us unless you have their express authorization to do so.

## **13. Protection of Your Account**

A. 401K GPS Service: You understand and agree that you are solely responsible for the activity that occurs in the account you create for purposes of the 401K GPS Service ("Your 401K GPS Account") and you are responsible for maintaining the confidentiality of the password you select for your 401K GPS Account. You further agree to notify us of any unauthorized use of your 401K GPS Account or any other security breach related to your use of the 401K GPS Service or 401kgps.com of which you are aware.

## **14. Termination and Refusal**

- A. You may terminate your access to our Service and to any other password-protected portions of 401kgps.com at any time simply by sending us an e-mail specifying that you wish to terminate your access. The termination will take effect promptly upon our receipt of your e-mail.
- B. We may, in our sole discretion, for any reason or no reason at all:



i. refuse your application to subscribe to the 401K GPS Service or otherwise access 401kgps.com; or

ii. terminate your access to the 401K GPS Service and/or 401kgps.com:

(1) by giving you not less than five days' written notice if you are not in breach of this Agreement; and

(2) immediately if you are in breach of this Agreement.

D. You agree that all provisions of this Agreement which by their nature should survive termination shall survive termination.

### **15. Modifications**

A. Except with respect to the termination provisions described in Section 11.A., above, and as otherwise provided for in this Agreement, we may, in our sole discretion, take any of the following actions after giving not less than five days' notice:

i. modify or replace any terms of this Agreement;

ii. change, suspend or discontinue the 401K GPS Service (including without limitation, the availability of any feature, database, or content); and,

iii. impose limits on certain features or restrict your access to parts of the 401K GPS Service.

B. We may also, in our sole discretion and for any reason or no reason at all, remove from 401kgps.com any "Content," which, for purposes of this Agreement, includes but is not limited to recommendations (but excludes the specific investment recommendations that are generated based on your individual Client Information), suggestions, blogs or forum comments, links, information, data, text, photographs, software, scripts, graphics, and interactive features generated, provided or otherwise made accessible by us or by others who are outside our control.

### **16. Links to Third Party Sites**

As a convenience to you, you may be able to link to other websites or resources on the Internet, and other websites or resources may contain links to www.401kgps.com. When you access third party websites, you do so at your own risk. These other websites are not under our control, and you acknowledge that we are not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any such link does not imply endorsement by us or any association with the linked third party site, its sponsor, or any of the policies, activities, products, or Services offered on the third party site or by any advertiser on the third party site.



## **17. Disclaimers**

A. We make no representations concerning any Content contained in or accessed through our website, and we will not be responsible or liable for the reliability, timeliness, quality, suitability, availability, accuracy, completeness, copyright compliance, legality or decency of any Content. You should independently verify all Content and other information that you access through our website. By accessing [www.401kgps.com](http://www.401kgps.com), you agree that we shall not be responsible for (1) any Content, (2) any person's reliance on any such Content, whether or not correct, current and complete, or (3) the consequences of any action that you or any other person takes or fails to take based on any Content. Your use of or reliance on any Content is at your own risk.

B. Content is provided "As Is" and "As Available" and is without warranty of any kind, express or implied, including, but not limited to, the implied warranties of title, non-infringement, merchantability and fitness for a particular purpose, and any warranties implied by any course of performance or usage of trade, all of which are expressly disclaimed.

C. We and our directors, employees, agents, suppliers, partners and content providers do not represent and/or warrant that: (i) the 401K GPS Service and/or Content will be secure or available at any particular time or location; (ii) the use of the 401K GPS Service and/or Content will be secure, timely, uninterrupted or error-free, or operate in a combination with any other hardware, software, system or data; (iii) any defects or errors will be corrected; (iv) any Content or software available at or through [401kgps.com](http://401kgps.com) is free of viruses or other harmful components; or (v) the results of using the 401K GPS Service or [www.401kgps.com](http://www.401kgps.com) will meet your requirements or expectations. Your use of the 401K GPS Service and/or Content is solely at your own risk. The 401K GPS Service and/or the Content may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications, and we are not responsible for any delays, delivery failures, or other damage resulting from such problems.

D. The foregoing warranty disclaimers will apply to the extent allowed by applicable law. Electronic Communications Privacy Act Notice (18 USC 2701-2711): Except as provided for in the Privacy Notice referenced in Section 1 of this Agreement: (i) we make no guarantee of confidentiality or privacy of any communication or information transmitted on [www.401kgps.com](http://www.401kgps.com) or any other sites referenced to in or linked to this Agreement; and (ii) we will not be liable for the privacy of email addresses, registration and identification information, disk space, communications, confidential or trade-secret information, or any other Content stored on our equipment, transmitted over networks accessed by our website, or otherwise connected with your use of the 401K GPS Service, and/or Content.

## **18. Risk Acknowledgement, Limitation of Liability and Indemnification**

A. We will exercise good faith and diligence in the execution of our duties to you under this Agreement and will give you the benefit of our best judgment and efforts in making recommendations to you with respect to the 401K GPS Service. However, we make no



guarantees regarding performance of your portfolios. There may be loss or depreciation of the value of any investment due to the fluctuation of market values or other numerous factors. In addition, we make no guarantee or representation that your investment objectives will be achieved and you agree, absent gross negligence or violation of applicable law on our part, we are not responsible and/or liable for any failure to achieve such investment objectives.

B. We shall not be responsible or liable for any loss or damages incurred due to any act or omission of any custodian, broker-dealer, or other investment advisor not under our supervision.

C. To the extent allowed by applicable law and except as otherwise provided for in 18.C. of this Agreement, neither we nor our affiliates and each of our, and our affiliates' employees, contractors, directors, suppliers and representatives (each of the foregoing, including but not limited to 401K GPS, being the "Affiliated Parties") are liable:

- i. for any action performed as well as any error in judgment and/or for any investment losses you incur; or
- ii. under contract, tort, strict liability, negligence or any other legal or equitable theory with respect to the 401K GPS Service and/or Content: (A) for any lost profits, data loss, cost of procurement of substitute goods or Services, or special, indirect, incidental, punitive, or consequential damages or any kind whatsoever (however arising); or (B) for any damages or losses of any kind whatsoever arising from or in connection with any bugs, viruses, Trojan horses, or the like (regardless of the source).

E. You shall defend, indemnify, and hold harmless the Affiliated Parties from all liabilities, claims, and expenses, including, without limitation, judgments, fines, amounts paid or to be paid in settlements, and reasonable attorneys' fees incurred or suffered by an Affiliated Party (i) in connection with the good faith performance of such Affiliated Party's responsibilities to you under this Agreement; (ii) that arise from or relate to your use or misuse of, or access to, our website, the 401K GPS Service, or otherwise from any content that you post to our website; (iii) that arise from or relate to your violation of this Agreement; or (iv) that arise from or relate to infringement by you, or any third party using the your account, of any intellectual property or other right of any person or entity. Notwithstanding the foregoing, an Affiliated Party will not be indemnified for losses resulting from his, her, or its gross negligence or violation of applicable laws. We reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will assist and cooperate with us in asserting any available defenses. An Affiliated Party will, upon request and to the extent legally permissible, be advanced amounts in connection with your indemnification obligation; provided however, that if it is later determined that such party was not entitled to indemnification, then such party will promptly reimburse you for all advanced amounts.

## 19. International Use



We make no representation that the 401K GPS Service or the Content is appropriate or available for use in locations outside of United States, or that accessing our website is legally permitted in countries or territories where the 401K GPS Service, and such Content may be illegal. If you access our website from other locations, you do so at your own risk and are responsible for compliance with local laws.

## **20. Dispute Resolution**

A. A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. You and we agree that any cause of action arising out of or related to the 401K GPS Service or your use of our website must commence within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred.

B. These Terms of Use are governed and interpreted pursuant to the laws of Michigan, United States of America, notwithstanding any principles of conflicts of law. You specifically consent to personal jurisdiction in Michigan in connection with any dispute between you and 401K GPS that arises out of these Terms of Use or pertains to the subject matter hereof. The parties to these Terms of Use each agree that the exclusive venue for any dispute between the parties arising out of these Terms of Use or pertaining to the subject matter of these Terms of Use will be in the state and federal courts in Michigan. If any part of these Terms of Use is unlawful, void or unenforceable, that part will be deemed severable and will not affect the validity and enforceability of any remaining provisions. These Terms of Use constitute the entire agreement among the parties relating to this subject matter. Notwithstanding the foregoing, any additional terms and conditions on this Website will govern the items to which they pertain.

Use of our website is not authorized in any jurisdiction that does not give effect to all provisions of this Agreement, including without limitation, this section.

C. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to seek to recover costs and attorneys' fees.

D. Notwithstanding anything in this Agreement to the contrary, you acknowledge and agree that under no circumstances will we be obligated to remunerate or pay you for any liability and/or costs of any kind whatsoever beyond the amount of the Subscription Fees you have paid to us during the 12 months preceding the date on which such determination is made. Our entire liability to you, whether in contract, tort, or otherwise, will be capped at said amount of fees.

## **21. Integration and Severability**



A. This Agreement is the entire agreement between you and us with respect to the 401K GPS Service, and your use of our website, and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between you and us. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder.

## **22. Assignment**

A. This Agreement is personal to you, and is not assignable, transferable or sublicensable by you except with our prior written consent.

B. We will not assign this Agreement, as the term “assign” has the meaning given the term “assignment” in Section 202(a)(1) of the Advisers Act and Rule 202(a)(1)-1 thereunder, without your consent. If, after 30 days of receiving notice of an assignment from us you do not terminate your 401K GPS Service as provided for in Section 14, above, you will be deemed to have consented to our assignment of this Agreement.

## **23. 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.

## **24. Miscellaneous**

A. We shall not be liable for any failure to perform our obligations under this Agreement where such failure results from any cause beyond our reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation (including “line-noise” interference).

B. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect.

C. All notices under this Agreement will be in writing and will be deemed to have been duly given when either posted on our website or sent to you via your e-mail address.

D. Throughout this Agreement, the use of “or” and “and/or” shall be deemed to be accurate unless the content suggests otherwise.

## **25. Copyright and Trademark Notices**

Unless otherwise indicated, the Terms of Use and all Content provided by Company are copyright © 2015, 401K GPS, LLC. All rights reserved.