

# SAMPLE DISCRETIONARY INVESTMENT ADVISORY AGREEMENT: NON-ERISA

This Investment Advisory Agreement is entered into this [DAY] day of [MONTH], [YEAR], by and between [FINANCIAL ADVISOR] (hereafter known as "Manager") and [CLIENT NAME] (hereafter known as "Client").

WHEREAS, Client wishes to retain Manager to manage certain assets of the [NAME OF TRUST] (the "Trust") and Manager wishes to accept such retention in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, Client and Manager hereby agree as follows:

## ARTICLE I APPOINTMENT OF FIDUCIARY

1. Client hereby designates and appoints Manager as investment manager for the investment and reinvestment of certain assets of the Trust, as shall be designated by Client from time to time. Such assets, together with all investments and reinvestments and income earned thereon, less distributions and withdrawals, are hereinafter collectively referred to as the "Account." Client represents that it has the authority to appoint an investment manager to manage, including the power to acquire and dispose of, the assets of the Account, and that Manager has been duly appointed by Client pursuant to the terms of the Trust.
2. Manager hereby accepts appointment as investment manager of the Account pursuant to the terms of this Agreement, acknowledges that it is a fiduciary, as defined in Section 4975(e)(3) of the Internal Revenue Code, with respect to those assets of the Trust at any time constituting the Account, and represents that it is registered as an investment advisor under the Investment Advisers Act of 1940, as amended (the "Advisers Act").
3. Upon the establishment of the Account, Client will provide Manager with Investment Guidelines setting forth the investment policy, objectives, risk tolerance, and any restrictions governing the Account. Such Investment Guidelines are attached as Exhibit A. Client agrees to notify Manager in writing of any changes or modifications to the Investment Guidelines or any other matters affecting the Account which are material to Manager in carrying out its duties hereunder. Manager shall be entitled to rely upon such Investment Guidelines until Client notifies Manager of any changes or modifications in writing. Manager will have complete discretion regarding the investment and reinvestment of the assets in the Account with full power and authority to direct such purchases and sales as it may deem appropriate, subject to the Investment Guidelines.

ADVISOR LOGO

4. The physical possession of the Account shall at all times be held, controlled and administered by a bank or other entity designated by Client ("Custodian") (except when securities are held by a seller pending delivery to or in the hands of a transfer agent). All such assets, securities, funds and other property shall be held on the books and records of Custodian in a manner so as to clearly establish that they are held as part of the Account. Client shall direct Custodian to act in accordance with the instructions of Manager as they relate to the Account. Manager shall under no circumstances act as custodian for the Account or otherwise have physical custody or control of the Account.

## **ARTICLE II IMPARTIAL CONDUCT STANDARDS**

1. Manager shall use the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent investor acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of Client, without regard to the financial or other interests of Manager, any affiliate or related entity of Manager, or any other party.
2. Manager, its affiliates and related entities, shall receive no more than reasonable compensation for its services.
3. Statements made by Manager to Client regarding recommended transactions, fees and compensation, material conflicts of interest and any other matters relevant to Client's decisions shall not be materially misleading when made.

## **ARTICLE III MANAGER'S POWERS AND DUTIES**

1. During the term of this Agreement, and subject to its fiduciary obligations under applicable law, and in a manner that is consistent with the Investment Guidelines, Manager shall, in its sole and absolute discretion, have the power to:
  - (a) invest and reinvest the Account, without distinction between principal and interest, in such cash, equity and fixed income securities with full power and authority to effect such purchases, sales, exchanges, conversions and otherwise trade in any and all cash or securities as Manager may deem prudent and appropriate and in the best interest of Client;
  - (b) vote all proxies in the best interests of each Account for Investments held in the Account in its sole discretion; however, Client may expressly retain the right and obligation to vote any proxies or take action relating to specified securities held in the Account as set forth in the Investment Guidelines, or may advise Manager, with timely written notice, that it has delegated responsibility for proxy voting to a third party;

- (c) select broker-dealers to effectuate acquisitions or dispositions of securities held in the Account and the terms and conditions on which such acquisitions or dispositions shall be made, except as may otherwise be provided by this Agreement or as instructed by Client. Manager's selection of broker-dealers shall be made strictly in accordance with the Adviser's Act and any applicable securities laws, rules and regulations. If Manager itself (or its affiliate) is used as a broker-dealer for the Account:
    - (i) such transactions must ensure the achievement of best execution and must be effectuated at a rate that is reasonable and does not exceed the rate that the broker-dealer charges comparable accounts for the effectuation of comparable transactions; and
    - (ii) there must be a written agreement to this effect between Manager and Client.
  - (d) make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other documents and instruments that may be necessary or appropriate to carry out the powers granted to it under this Agreement;
  - (e) compromise or settle any claim, debt or obligation relating to the Trust where immediate action is necessary to prevent a loss to the Account; and
  - (f) exercise any and all other ancillary rights or duties in connection with the Account necessary to implement any of the powers contained herein or as otherwise required in order to effectuate the provisions of this Agreement.
2. Manager will render to Client periodic statements summarizing all security transaction(s) within the stated period and such other information as Client may reasonably request. In computing the value of any asset in the Account for the purposes of this Agreement, such values shall be determined by Manager in accordance with generally accepted accounting practices and methods consistently followed and uniformly applied and in accordance with applicable laws, rules, and regulations.
3. Manager has no duty to prepare or file any tax return or to pay any tax due in connection with assets held in the Account and the income therefrom, except as may be required by law.

#### **ARTICLE IV MANAGER'S LIABILITY**

1. Manager's recommendations are based upon its professional judgment. Manager does not represent or guarantee the results of any investment recommendation made on behalf of the Account. Manager, if 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 selected on behalf of or recommended to Client by Manager, including a broker-dealer and/or custodian. If the Account contains only a portion of Client's total assets, Manager shall only be responsible for those assets that Client has designated to be the subject of Manager's investment management services under this Agreement without consideration to those additional assets not a part of the Account. Nothing herein shall constitute a waiver or limitation of any rights which Client may have under any federal securities laws. This Section shall survive termination of this Agreement.

## **ARTICLE V MANAGER'S COMPENSATION**

1. Manager will receive compensation based on the market value of the Account as of the last business day of the billing quarter at an annual rate of \_\_\_\_%. Fees will be paid quarterly in arrears. The fee schedule can be changed only by written request with minimum advance notice of sixty (60) business days. Manager's Fee Schedule is attached as Exhibit B.
2. Manager's quarterly advisory fee shall be deducted from the Account or billed directly to Client as agreed.
3. [Manager may receive indirect compensation for the services it provides under this Agreement as outlined in Exhibit B.] **OR** [Manager shall receive no indirect compensation for the services it provides under this Agreement.]

## **ARTICLE VI CONFIDENTIALITY**

1. Manager acknowledges that all information and documents disclosed by Client to Manager, or which come to Manager's attention during the course of its performance of services under the Agreement, constitute valuable assets of and are proprietary to Client. Manager agrees not to disclose, either directly or indirectly, to any person, firm, or corporation any confidential information unless the information is already in the public domain or unless such disclosure is necessary in the operation of its duties under this Agreement or is required to be disclosed by applicable law. This provision shall survive the termination of this Agreement. Client acknowledges receipt of the Manager's Privacy Statement, which is attached as Exhibit C.

**ARTICLE VII  
NOTICE**

1. Either party may terminate this Agreement by giving thirty (30) days' prior written notice to the other at any time during the term of this Agreement. Any such notices shall not affect any obligation incurred prior to the termination.
2. All notices or other communications shall be in writing and shall be delivered personally or by fax, or sent by registered mail, return receipt requested. Notices intended for Manager shall be addressed to:

[FINANCIAL ADVISOR]  
[ADDRESS]  
[PHONE NUMBER]

Notices intended for Client shall be sent to the address provided by Client. Manager may rely upon any notice (written or oral) from any person that Manager reasonably believes to be genuine and authorized.

**ARTICLE VIII  
GENERAL PROVISIONS**

1. This Agreement may not be assigned, nor may any obligations hereunder be transferred or delegated, by either party without the prior written consent of the other, except as provided under Article III(1)(c).
2. Except as otherwise expressly provided herein, this Agreement shall not be amended, nor shall any provision of this Agreement be considered modified or waived, unless evidenced by a writing signed by the party to be charged with such amendment, waiver, or modification.
3. This Agreement shall be governed by and construed in accordance with the laws of [STATE] and cannot be changed or terminated orally, and shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assigns. The captions appearing in this Agreement are inserted as a matter of convenience and for reference only and shall not define, limit, or describe the scope and intent of this Agreement or any of the provisions thereof.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[FINANCIAL ADVISOR]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[CLIENT]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Note - attach:  
Exhibit A: Investment Guidelines  
Exhibit B: Manager's Fee Schedule  
Exhibit C: Manager's Privacy Statement*

