

TMD & Associates, Inc.

Discretionary Investment Advisory Agreement

This Agreement (the Agreement) is made this _____ day of _____, 2010, by and between TMD & Associates, Inc. (TMD), an investment advisor duly registered with the Securities and Exchange Commission and _____ (the Client).

WHEREAS, TMD is engaged in the business of providing various types of investment advisory services, including asset management services to Clients, and TMD has provided to Client information which TMD and Client believe to be necessary for Client to determine if it should retain TMD to provide such investment services for Client, and

WHEREAS, Client desires to retain TMD to provide advisory services described herein, and

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and conditions herein contained, the parties agree as follows:

- 1. Discretionary Investment Authority.** On a continuing basis, TMD will have exclusive authority to manage the investment of the Account(s). TMD, as agent and attorney-in-fact with respect to the Account(s), when it deems appropriate, without prior consultation with Client, may, (a) buy, sell, exchange, convert and otherwise trade in any U.S. and foreign stocks, bonds, options, short sales, mutual funds, closed-end funds, exchange traded funds, real state investment trusts, American Depository Receipts, Foreign Ordinary Shares and other securities, and (b) place orders for the execution of such securities transactions with or through such broker-dealers Client may select. In addition, TMD will have authority to take any action necessary to open and maintain the Account(s) and to complete and pay for transactions in the Account. TMD shall provide Client with ongoing investment portfolio management. TMD shall not take possession of any securities or other assets of Client. Client hereby agrees to furnish TMD with all current material and information relative to his financial and investment situation, and all investment recommendations shall be made by TMD in accordance therewith. All information given to TMD and all recommendations and advice furnished to Client shall be regarded by each as confidential.
- 2. Allocation of Brokerage.** Client hereby directs TMD to use _____ (“Broker/Custodian”) as broker. TMD may pay broker’s commissions and trading fees out of TMD’s compensation if TMD has so indicated under Compensation below. If TMD has not so indicated, it is understood that: in the case of a Client-directed broker, TMD’s ability to negotiate commissions may be limited along with his ability to obtain volume discounts; commission rates whether negotiated by Client or TMD, may not be the lowest commission rates obtainable; due to Client’s directing of brokerage, there may be a disparity in commission charges among Clients; by directing the broker to be used when TMD places orders for the purchase or sale of portfolio securities for the Account(s), although he will use reasonable efforts in seeking the best combination of price and execution, his ability to do so may be limited; and, any brokerage firm selected by either Client or TMD may be a source of future referrals to TMD of other advisory clients. TMD typically considers the fact that a broker or dealer has furnished, or has agreed to furnish in the future, statistical research or other information or services which may enhance TMD’s investment research and portfolio management capability generally. It is understood that certain of such information or services may be available to TMD on a cash payment basis.
- 3. Applicable Investment Guidelines.** TMD’s understanding of Client’s current investment objectives, financial situation, tax status, time horizon, and risk tolerance is based on information provided by Client. It will be Client’s responsibility to provide the information requested therein and to notify TMD of any changes or modifications therein. TMD will rely upon this information in managing Client Account(s) and it is important that it be kept up to date. Client confirms that answers are accurate and complete. Client Restrictions must be provided to TMD by the Client in writing. TMD will seek to adhere to restrictions on a reasonable basis. Accounts with investment restrictions may perform differently from accounts without restrictions and performance may be lower.

4. **Compensation.** TMD shall be paid Advisory Fees for its investment management services at an annual rate listed on Schedule A.

Advisory Fees are payable quarterly in arrears based on the gross market value of the assets under management at the end of the billing cycle. Client authorizes TMD to deduct the quarterly management fee from the account(s), when permitted by the Broker/ Custodian. Client will receive an account statement at least quarterly from its broker/custodian (a "Qualified Custodian"). There are, however, nominal transaction charges for the execution of trades, which are paid to the Broker/ Custodian. Client acknowledges that TMD's compensation hereunder may not and will not be based on a share of capital gains or capital appreciation of the funds of Client in a manner prohibited by the Investment Advisors Act of 1940 (Advisors Act).

5. **Valuations.** Each security listed on any national securities exchange, for which recent market quotations are readily available, shall be valued at the last reported sale price on the principal exchange on which such security is traded. If there have been no recently reported sales, the security will be valued at the last reported bid price. Where market quotations are not readily available, unlisted securities shall be valued at the current bid price. Any other security or asset shall be valued in a manner determined in good faith by TMD to reflect its fair market value.
6. **Services of TMD.** By execution of this Agreement, TMD accepts the appointment as investment advisor and agrees to supervise and direct (or make recommendations with respect to) the investment of the Account(s) in accordance with the investment objectives of Client as communicated to TMD. In addition, Client will receive periodic confirmations (unless waived) and statements from Broker / Custodian, hereinafter referred to as Broker / Custodian. It is agreed that TMD, in the maintenance of its records, does not assume responsibility for the accuracy of information furnished by Client or any other party.
7. **Custody.** All transactions will be consummated by payment to, or delivery by Broker / Custodian, as custodian of all cash and/or securities due to or from the Account(s). TMD shall not act as custodian for the Account(s), but may issue such instructions to the Custodian as may be appropriate in connection with the settlement of transactions initiated by TMD pursuant to Paragraph 1 hereof. TMD shall not be responsible for any loss incurred by reason of any act or omissions of any broker or dealer or any other fiduciary provided, however, that TMD will make reasonable efforts to require that brokers and dealers selected by TMD perform their obligations with respect to the Account(s). Instructions of TMD to Custodian shall be made orally or electronically; and TMD shall instruct all brokers and dealers executing orders on behalf of the Account(s) to forward to Client and Broker / Custodian copies of all confirmations promptly after execution of transactions unless confirmations are waived herein.
8. **Proxy Voting.** TMD shall not be responsible for voting proxies solicited by issuers of securities held in the Account. TMD neither votes proxies for clients, nor provides advice to Clients about how to vote proxies. The custodian sends proxies directly to Clients for voting.
9. **Taxpayer Identification.** The undersigned Client hereby certifies, under penalties of perjury, to TMD and any transfer agent or broker-dealer, that the social security or taxpayer identifications number shown below is correct and is not subject to backup withholding.
10. **Service to Other Clients.** It is understood that TMD performs investment advisory services for various clients. Client agrees that TMD may give advice and take action with respect to any of its other clients which may differ from advice given or the timing or nature of action taken with respect to the Account(s), so long as it is TMD's policy, to the extent practicable, to allocate investment opportunities among clients over a period of time on a fair and equitable basis. It is understood that TMD shall not have any obligation to purchase or sell, or to recommend for purchase or sale, for the Account(s) any security which TMD, its principals, affiliates or employees may purchase or sell for its or their own accounts or for the account of any other client, if in the opinion of TMD such transaction or investment appears unsuitable, impractical or undesirable for the Account(s).
11. **No Legal or Accounting Relationship.** It is expressly understood and agreed between the parties hereto that TMD is not qualified to prepare any accounting or legal documents for the implementation of Client's financial plans which includes but is not limited to legal advice, legal opinions, legal determinations, legal documents, tax returns and accounting documents.

- 12. Inside Information.** TMD shall have no obligation to seek or obtain any material non-public (inside) information about any issuer of securities, or to purchase or sell, or to recommend for purchase or sale, for the Account(s) the securities of any issuer on the basis of any such information as may come into its possession. Client agrees that TMD may, but shall not be required to, render investment advice with respect to any such company and that TMD may, in its discretion, withhold any such knowledge or information or refuse to advise with respect to such company, if in TMD's judgment, the disclosure of such knowledge or information or the rendering of investment advice on the basis thereof would be unfair, inequitable, a breach of any fiduciary obligation of TMD to some other person, or unlawful. For the same reasons, TMD may, in its discretion, exclude securities and other property from the Accounts.
- 13. Form ADV.** Pursuant to the Advisors Act Client hereby acknowledges receipt of Form ADV Part II or a brochure containing all information therein at least forty-eight (48) hours in advance of execution of this agreement, or, if the appropriate disclosure statement was not delivered to Client at least 48 hours prior to Client entering into any written or oral advisory contract with TMD, then Client has the right to terminate the contract without penalty within five business days after entering into the contract. TMD will annually offer to deliver Form ADV Part II (including any material revisions thereto) each calendar year.
- 14. Privacy, Confidential Relationship.** All information and advice furnished by either TMD or Client to the other hereunder, including their respective agents and employees, shall be treated as confidential and shall not be disclosed to third parties except as required by law or by any regulation, ruling or order issued pursuant to law. TMD may share nonpublic personal information with service providers in conjunction with the administration and servicing of the account(s), which may include attorneys, accountants, auditors and other professionals. Client hereby acknowledges receipt of TMD's Privacy Notice.
- 15. Authority to Contract.** If the Client is not an individual (i.e., a corporation, partnership, trust or retirement plan), the party executing on behalf of the Client (hereinafter referred to as the Authorized Person) represents that he or she is fully authorized to execute this Agreement with TMD and to act on behalf of the Client in connection with the services to be provided to the Client by TMD under this Agreement. The Client and the Authorized Person agree to provide to TMD, upon the request, any and all additional documentation and agreements necessary to establish the authority of the Authorized Person to act on behalf of the Client.
- 16. Governing Law.** This Agreement is entered into and accepted by TMD in State of Arizona and it shall be governed by the laws of the State of Arizona and such federal statutes, rules and regulations as may be applicable hereto.
- 17. Dispute Resolution Effort.** If either party believes it has a complaint, claim, or dispute with the other, said party shall put in writing to the other a detailed explanation of the dispute at least 90 days prior to initiating any regulatory complaint, legal action or arbitration, and both parties shall make a good faith effort to reach an amicable resolution without litigation.
- 18. Liability and Indemnification.** Client does hereby agree to render full cooperation to TMD and to supply TMD with complete, truthful and timely information relating to Client's financial goal. If in the event that Client refuses the advice of TMD and implements a financial plan according to Client's own discretion, Client agrees to indemnify and hold harmless TMD, its officers, shareholders, agent and employees from any and all liability that may be incurred by TMD as a result of its rendering advice or management services to Client pursuant to the terms of the Agreement and shall reimburse TMD for reasonable attorney's fees or costs resulting from any claim or litigation.
- 19. Arbitration.** All controversies concerning (a) any transaction, (b) the construction, performance or breach of this Agreement, or (c) any other matter which may arise between Client and TMD or its agents, which are not resolved by the dispute resolution effort provided above shall be determined by arbitration conducted pursuant to the Federal Arbitration Act and the laws of the State of California before the American Arbitration Association. Client understands that this arbitration clause does not constitute a waiver of the right to seek a judicial forum where such waiver is void under federal securities laws. Client understands that, unless otherwise provided above: Arbitration is final and binding on the parties; the parties are waiving their rights to seek remedies in court, including their right to a jury trial; pre-arbitration discovery is generally more limited than and different from court proceedings; the arbitrators' award is not required to include factual findings or legal reasoning, and

any party's right to appeal or seek modification of rulings by the arbitrators is strictly limited; and the panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities or advisory industry. In any litigation, should plaintiff not prevail plaintiff shall pay all of defendant's legal expenses, including attorney's fees.

20. **Term, Termination.** The term of this Agreement shall be ongoing beginning on the date first above written. Notwithstanding anything to the contrary in the Agreement, Client and/or TMD may terminate this Agreement without penalty at any time upon written notice given in writing to the other party hereto. Upon expiration or other termination of the Agreement, all sums which may be owed by either party shall be paid including pro-ration of any pre-paid advisory compensation.
21. **Assignment, Waiver.** In accordance with the provisions of Advisors Act, TMD shall not make any assignment of this Agreement without the written consent of Client. Except as otherwise provided for herein, no provision of the Agreement shall be waived, altered, modified or amended except in writing signed by the party against whom such waiver, alteration, modification or amendment is sought to be enforced.
22. **Notices.** Any notice, request, instruction, or other document to be given hereunder shall be in writing and delivered personally or sent by first class mail, postage prepaid, addressed, if to TMD, to the following:

**TMD & Associates, Inc.
3800 N. Central Avenue, Suite 860
Phoenix, AZ 85012**

And, if to the Client, to the address set out below.

23. **Severability.** The parties hereby agree that if any term, provision, duty, obligation or undertaking herein contained is held to be unenforceable or in conflict with applicable state or Federal law, the validity of the emerging portions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if such invalid or unenforceable provision was not contained herein.
24. **Modification or Amendment.** TMD may modify or amend this Agreement, the fee schedule or nature of the services to be provided hereunder by providing the Client with 30 days advance written notice of such change, modification or amendment.
25. **Entire Agreement / Headings.** This Agreement represents the entire agreement between the parties with respect to the subject matter contained herein. The heading of the sections hereof are inserted for convenience only and shall not constitute a part hereof.

26. Signatures. By signing below Client asserts and affirms the following statement: **“I have read this entire Agreement, I have been given ample opportunity to review and to ask TMD questions about this Agreement, I have asked all the questions I wish to, and I am satisfied with and fully accept this Agreement in its entirety.”**

Client:

(Print name)

(Tax ID #)

(Signature) (Date)

TMD & Associates, Inc.

Todd M. Douma

President and Chief Compliance Officer

By: (Signature)

(Date)

Client:

(Print name)

(Tax ID #)

(Signature) (Date)

Client:

(Print name)

(Tax ID #)

(Signature) (Date)

Client Address:

TMD & Associates, Inc.
Discretionary Investment Advisory Agreement
Exhibit A

Client will compensate TMD for the investment advisory services on an annual fee basis as follows:

<u>Assets Under Management (AUM)</u>	<u>Annualized Rate</u>
First \$500,000 of AUM	1.00%
Next \$500,000 of AUM	.85%
\$1 million to \$2 million in AUM	.75%
\$2 million and over	Negotiable

The minimum billable fee for advisory services is \$3,000 annually
Fees will be billed quarterly in arrears.

Accounts Included under Discretionary Investment Advisory Agreement:

<u>Account Name (if known)</u>	<u>Account Number (if known)</u>
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Acknowledgement of Information in Exhibit A:

Client Initials here:

