

**Client Name  
and  
MMC SECURITIES CORP.  
ADVISORY SERVICES AGREEMENT**

This Advisory Services Agreement ("Agreement"), dated as of DATE, 2009, is by and between CLIENT NAME ("Plan Sponsor", "you" or "your") and MMC Securities Corp. ("MMCSC"), a federally registered broker-dealer and investment adviser.

Certain members in the DC Advisors group ("DC Advisors") are broker-dealer registered representatives and/or registered investment adviser representatives of MMCSC (MMCSC is referred to hereinafter as "we", "us" or "our"). Plan Sponsor hereby engages the services of MMCSC to provide consulting services for Plan Sponsor's retirement, pension and/or 401(k) plan(s) ("Plan").

It is agreed as follows:

**I. Statements of Services**

We will perform services on your behalf as set forth in a Statement of Services (the "Services") in substantially the form attached to this Agreement as Exhibit A and as agreed from time to time. Each Statement of Services will be documented specifying: (1) the Services to be performed; (2) the information and data we need in order to undertake such Services; (3) the timeframe within which our Services will be performed (assuming no unforeseen circumstances and our receipt of the necessary data and other information by the specified start date); (4) the planned staffing; (5) the compensation for such Services; and (6) such other terms as may be mutually agreed between you and us.

**II. Terms and Conditions Governing Agreement**

The Services we provide pursuant to this Agreement and any applicable Statement of Services executed by the parties hereto incorporating or incorporated into this Agreement shall be subject to the following terms:

**1. Payment Terms**

(a) We will perform the Services in consideration of your payment of our compensation. Our compensation for the Services, such as professional fees, commissions or other consideration payable to MMCSC ("Compensation") is set forth below. If applicable, you will be responsible for any sales, value added taxes or similar taxes including those assessed by tax authorities subsequent to payment for the Services.

(b) You shall pay or cause to be paid all amounts set forth in an invoice, if any, within thirty (30) days of the date of the invoice. If any invoice is not timely paid, we may exercise our right to claim interest for late payment as permitted by applicable law. If any invoice remains unpaid for longer than ninety (90) days from the date of the invoice, we may either suspend the provision of the Services until payment is received, or terminate this Agreement and/or any Services with immediate effect. Our failure to exercise any remedy set forth above shall not prevent us from doing so with respect to any future unpaid invoice or taking any other actions available to us under law.

(c) If we become involved (whether or not as a party) with a dispute (including audits or investigations) between you and a third party, or, if we are asked to preserve documents (including electronic records), relating to the Services or this Agreement beyond the scope of Services described in the Statement of Services, such additional services will be documented in an amended or additional Statement of Services, or if no agreement is reached on such additional services, you will pay us at our then current standard rates, for all our time spent, and will reimburse all reasonable expenses incurred by us, in connection with such dispute or documentation preservation request. MMCSC will reimburse such payments in the event such dispute is finally determined to have resulted primarily from our gross negligence or willful misconduct.

## **2. Prior Relationships - Commitments of Vendors**

If we have taken over any existing program or plans implemented by another broker or consultant, we do not assume any responsibility for the adequacy or effectiveness of those programs or plans or any actions or omissions occurring prior to our retention. We do not speak for any vendor, are not bound to utilize any particular vendor, and do not have the authority to make binding commitments on behalf of any vendor.

## **3. Plan Sponsor Responsibilities; Information to be Provided**

(a) Plan Sponsor will retain all decision making authority with respect to the management and administration of the Plan, including appointment and termination of vendors and final decisions regarding investment policy. We shall have neither discretionary authority nor discretionary control respecting management of any funds or the operation of the Plan. We shall not have independent authority nor exercise any control respecting management, administration or disposition of the assets of Plan Sponsor's retirement plan(s).

(b) You will provide all necessary direction and cooperation to enable us to provide the Services, and any direction (whether verbal or written) shall be effective if contained expressly in the Statement of Services or if otherwise received from a person known to us and reasonably believed by us to be authorized to act on your behalf. It is understood that we will not independently verify or authenticate the accuracy or completeness of any information provided by or on behalf of Plan Sponsor or the Plan that is used by MMCS to prepare submissions and other documents required or otherwise relied upon by vendors, and Plan Sponsor shall be solely responsible for the accuracy and completeness of such information and other documents furnished to us and/or vendors. We will not be responsible for any delays arising from missing, delayed, incomplete, inaccurate or outdated information and data, or if you do not provide adequate access to your employees and other persons, and you agree this may result in additional charges as mutually agreed. Such additional services will be documented in an amended or additional Statement of Services, or if no agreement is reached on such additional services, you will pay us at our then current standard rates, for all our time spent, and will reimburse all reasonable expenses incurred by us, in connection with such dispute or documentation preservation request. Plan Sponsor shall sign any application, contract documents, service agreements or other documentation required by vendor(s).

(c) To the extent Plan Sponsor's Plan includes company stock issued by Plan Sponsor or its affiliates as an investment option, you agree and understand that we do not review, analyze, evaluate nor make any recommendations concerning the inclusion of such stock within the Plan.

## **4. Confidential Information - Data**

(a) Each party is likely to disclose information to the other party from time to time in the course of the provision of the Services, which is marked or designated as confidential or proprietary at or prior to disclosure or which would appear to a reasonably prudent person to be confidential and/or proprietary in nature ("Confidential Information"). The party receiving the information ("Receiving Party") will not divulge or communicate it to any person other than in connection with the provision of the Services or as otherwise provided for in this Agreement. This restriction does not apply to information which (i) the Receiving Party must by law or legal process disclose, (ii) is either already in the public domain or enters the public domain through no fault of the Receiving Party, (iii) is available to the Receiving Party from a third party who, to the Receiving Party's knowledge, is not under any non-disclosure obligation to the disclosing party, or (iv) is independently developed by or for the Receiving Party without reference to any confidential information of the disclosing party.

(b) You agree that we will be entitled to disclose information relating to the Services or you to regulators and otherwise as required by law. You also agree that, notwithstanding any other provision hereof, we may disclose the identities of those persons identified by you as contact persons for you and your affiliates and information about the terms of this Agreement, the Services and the Compensation to our affiliates anywhere in the world. For purposes of this Agreement, "affiliates" means, with respect to either party, any entity directly or indirectly controlling, controlled by or under common control with such party.

(c) You hereby grant us a perpetual, non-exclusive, royalty-free license to copy, modify and use any information and data supplied by you or supplied on your behalf for the purpose of creating analytical trend data (in anonymous, but otherwise in whatever form) both for our internal use and in the course of provision of services to our clients. The data will be incorporated into our databases and utilized to produce aggregated statistics and analyses for various reports, including custom analyses. You also agree that we may use data and other information provided by you and our other clients to build databases and intellectual capital for use by our staff for the benefit of all clients by improving the quality of our advice. We will not disclose the data in a manner which allows particular clients or individuals to be identified. Notwithstanding the foregoing, the Plan Sponsor agrees that their name may appear in a list of participating organizations for these reports.

(d) The obligations of both parties under Section 4 shall survive for a period of five (5) years from the date of termination of this Agreement or for such longer period as is required by law.

## **5. Ownership and Use of Work - Intellectual Property**

(a) All materials prepared by us specifically and exclusively for you pursuant to this Agreement and set forth in the Statement of Services (the "Work") shall be owned exclusively by you. Notwithstanding the foregoing or anything to the contrary set forth herein, we will retain all copyright, patent and other intellectual property rights in the methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience owned or possessed by us before the commencement of, or developed or acquired by us during or after, the performance of the Services, including without limitation, all systems, software, specifications, documentation and other materials created, owned or licensed and used by us or our affiliates or subcontractors in the course of providing the Services, (the "Intellectual Property") and the foregoing shall not be deemed Work and we shall not be restricted in any way with respect thereto. To the extent any Work incorporates any Intellectual Property, we each hereby grant you a non-exclusive, non-transferable right to use such Intellectual Property solely for purposes of utilizing the Work internally in accordance with the terms of this Agreement and the applicable Services.

(b) We each reserve the right to determine, in our sole and reasonable discretion, the manner (e.g., manual or computerized) in which the data and other information supplied by or on behalf of you hereunder is held, which in all instances shall be in compliance with applicable law. Accordingly, you agree that we may destroy paper copies of any correspondence and documents, and retain only digital images thereof.

(c) Unless we provide prior written consent, you will not use or disclose to any third party other than your attorneys, accountants and financial advisors with a need to know, any advice given to you or other material or work product supplied by us under this Agreement other than as mutually contemplated when first retained to provide such material or work product and you shall be responsible for, and we shall have no liability with respect to, modifications made by you or your representatives to our Work, Intellectual Property, or other MMCSC work product. You will indemnify, reimburse and hold harmless MMCSC in respect of any Loss (as defined below), incurred by us as a result of your breach of this obligation or modifications made to our Work, Intellectual Property, or other MMCSC work product. You will not copy, transfer, sell, distribute, assign, display or otherwise make available the Intellectual Property to third parties. For purposes of this Agreement, "Loss" means damages, claims, liabilities, losses, costs and expenses, including reasonable attorneys' fees. For the avoidance of doubt, multiple claims arising out of or based upon the same act, error or omission, or series of continuous, interrelated or repeated acts, errors or omissions shall be considered a single Loss hereunder.

## **6. Dispute Resolution**

(a) Before commencing any action or proceeding the parties each first shall attempt to settle such dispute through consultation and negotiation in good faith and in a spirit of mutual cooperation. Any such dispute will be submitted in writing to a panel of one (1) of each of the party's senior executives, who will promptly meet and confer in an effort to resolve such dispute. Each party's executive will be identified by notice to the other party, and may be changed at any time thereafter by notice to the other. Any mutually agreed decisions of the executives will be final and binding on both parties. In the event the executives



are unable to resolve any dispute within thirty (30) days after submission to them, either party may then refer such dispute to mediation by a mutually acceptable mediator to be chosen by both parties within forty-five (45) days after written notice by either party demanding mediation. Neither party may unreasonably withhold consent to the selection of a mediator. All communications and discussions in furtherance of this paragraph shall be treated as confidential settlement negotiations, which are not subject to disclosure to any third party. The costs of the mediator shall be shared equally, but each of us shall pay our own attorneys' fees.

(b) Any dispute which cannot be resolved through negotiation, mediation or other form of alternative dispute resolution within six (6) months of the date of the initial demand for mediation by one of the parties may then be submitted to a court of competent jurisdiction. To facilitate an expeditious and economical judicial resolution of such dispute, each party agrees to waive and not to demand a trial by jury and each party agrees not to include any employee, officer, director or trustee of the other as a party, in any action, proceeding or counterclaim relating to such dispute. Nothing in this Section will prevent either of us from resorting to judicial proceedings if interim relief from a court is necessary to prevent serious and irreparable injury or damage to that party or to others. Except to the extent prohibited under applicable law, any claim, action or proceeding against us or any of our affiliates will be barred unless you initiate the dispute resolution procedures outlined above within one (1) year of first discovering the act, error or omission that is the basis for such claim.

## **7. Liability of MMCSC**

In connection with the performance of the services hereunder, we will not be liable for any (i) Losses or expenses incurred as a result of any act or omission by any investment manager, custodian or other third party, (ii) inaccuracy or incompleteness of the data provided by the Plan Sponsor or the Plan or their respective agents and representatives, including any investment managers, custodian, recordkeeper and other service providers, (iii) act taken, or omission or recommendation made, or for any error in judgment, in the absence of gross negligence or willful misconduct, or (iv) indirect, special, punitive, consequential or incidental damages including, without limitation, loss of profits. Notwithstanding the foregoing, we may be liable for acts of good faith and nothing contained herein will in any way constitute a waiver or limitation of any rights that the Plan Sponsor or Plan may have under applicable federal and state laws. The parties each acknowledge that the fees for the Services to be provided under this Agreement and the applicable Statement of Services reflect the allocation of risk set forth in this Section 7.

## **8. Unforeseen Events**

Neither party shall be liable for delays or failures in performance under this Agreement, other than failure to make payments hereunder when due, resulting from events beyond its reasonable control, including without limitation "acts of God", fire, flood, riots, new laws which prevent the carrying out of the Services, the results of terrorist activity, failures of third party suppliers, and electronic and other power failures.

## **9. Duration and Termination of this Agreement**

This Agreement will begin on the effective date hereof and will continue until terminated as provided herein. This Agreement and, except as may be provided otherwise in a Statement of Services, any Services hereunder may be terminated (i) by either party giving to the other party ninety (90) days' prior written notice of its election to terminate, (ii) by either party upon material breach by the other party which breach is not cured within thirty (30) days after receipt of written notice thereof, or (iii) immediately by us for non-payment of invoices by you as provided for under Section 1 hereof. After the termination of this Agreement, Sections 5, 6, 7, and 9 through and including 18 of Section II hereof will continue in full force and effect. Any termination of this Agreement shall not relieve you of your obligations to pay for Services rendered and expenses incurred by us or our affiliates up to and including the effective date of such termination and such termination may require you to pay termination fees to the extent provided in a Statement of Services. Notwithstanding the foregoing, to the extent that each party agrees that we shall continue to provide Services after the effective date of termination of this Agreement or any Statement of Services, the terms and conditions of this Agreement and/or the applicable Statement of Services shall survive until such Services are completed or the parties agree that the Services shall no longer be provided.

#### **10. No Third Party Beneficiaries**

Neither this Agreement nor the provision of the Services is intended to confer any rights or benefit on any third party.

#### **11. No Publicity**

You agree not to refer to us or attribute any information to us in the press, for advertising or promotional purposes, or for the purpose of informing or influencing any other party, including the investment community, without our prior written consent. We agree not to refer to you in the press or for promotional purposes without your prior written consent; provided that we may include your name in our representative client listing.

#### **12. Waiver**

The failure by either party to insist upon strict performance of any of the provisions of this Agreement shall in no way constitute a waiver of rights under this Agreement, at law or in equity.

#### **13. Warranties of MMCSC**

Except as expressly set forth in this Agreement, we expressly disclaim any warranty, express or implied, including but not limited to any implied warranty of merchantability and fitness for a particular purpose.

#### **14. Entire Agreement, Amendment, Assignment**

This Agreement (including any Statement of Services) sets out the entire agreement between the parties relating to its subject matter, and supersedes and replaces any existing agreement between the parties relating thereto. Except with respect to a change in address for notices as provided in the Statement of Services, this Agreement shall not be amended except by a written document executed by both of us. Neither of us may assign this Agreement (as interpreted under the Investment Advisers Act of 1940, as amended) without the prior written consent of the other.

#### **15. Governing Law and Jurisdiction**

This Agreement and all Statements of Services issued hereunder will be governed by, and interpreted in accordance with, the law of the State of New York, not including the conflicts of law provisions thereof, and will be subject to the exclusive jurisdiction of the courts located in the State of New York.

#### **16. Severability**

If any provision of this Agreement (or any portion thereof) is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected by such determination and shall be binding upon the parties and shall be enforceable as though the invalid or unenforceable provision (or portion thereof) were not contained in this Agreement.

#### **17. Delivery of Form ADV**

Plan Sponsor acknowledges receipt of the Form ADV, Part II of MMCSC, at least 48 hours prior to its execution of this Agreement. Plan Sponsor also agrees that future offers to provide, or the provision of, Form ADV, Part II or other information required by applicable regulation may be sent to Plan Sponsor electronically, at the email address provided to MMCSC prior to such time.

#### **18. Miscellaneous**

MMCSC is not engaged in the practice of law, and the Services provided hereunder are not intended as a substitute for legal advice. Accordingly, MMCSC recommends that the Plan Sponsor secure the advice of competent legal counsel with respect to any legal matters related to the Services.

## 19. Fiduciary Status

MMCSC acknowledges that it is a fiduciary under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") with respect to the investment advice it provides to the Plan Sponsor to the extent that such advice is considered to be fiduciary in nature under ERISA and applicable Department of Labor regulations. MMCSC's acceptance of such fiduciary status is solely with respect to its role under this Agreement. The Services consisting of investment advice will be provided by MMCSC with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person 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.

**MMCSC:**

\_\_\_\_\_

\_\_\_\_\_  
Print Name/Title

\_\_\_\_\_  
Date

**PLAN SPONSOR:**

\_\_\_\_\_

\_\_\_\_\_  
Print Name/Title

\_\_\_\_\_  
Date

## EXHIBIT A

### STATEMENT OF SERVICES

This Statement of Services is subject to the provisions of the agreement between MMC Securities Corp. ("MMCSC") and Client Name ("Plan Sponsor") dated Date, 2009 (the "Agreement"). All terms used herein, which are defined in the Agreement, shall have the same meaning herein as in the Agreement, unless the context clearly indicates otherwise. In the event of any inconsistency between the terms of this Statement of Services and those in the Agreement, the provisions contained in this Statement of Services shall prevail. The Plan Sponsor acknowledges and agrees that, except to the extent MMCSC has expressly undertaken a specific compliance responsibility under this Agreement or a Statement of Services, the Plan Sponsor is responsible for the continued compliance of the Plan Sponsor and/or its benefit and pension plans with any and all applicable law.

#### 1. Description of Project Work and Ongoing Services:

The fees set out herein cover the work and services listed below.

The following services will be provided on an ongoing basis:

#### **SERVICES DESCRIBED AS AGREED UPON**

#### 2. Compensation

MMCSC will deliver the Services outlined in this Statement of Services for an annual fee ("Fee") as described in this section.

As appropriate and upon request by Plan Sponsor, the parties may agree that MMCSC will receive commissions ("Commissions") from a vendor of Plan Sponsor's choice. In the case of a flat dollar fee or asset-based percentage fee, Commissions may be used to offset the Fee on a dollar-for-dollar basis. The Commission rates paid by any vendor to MMCSC and/or MIIC are stated in Exhibit I, attached hereto.

The agreed upon Fee is as follows:

#### **AS DETERMINED THROUGH OUR DISCUSSION**

Since MMCSC is not an insurance agency, all Commissions generated in connection with the sale of variable insurance and annuity products ("Insurance Commissions") are paid to MMCSC's affiliated insurance agency, MIIC. In no event shall the aggregate value of Commissions, including Insurance Commissions, received by MMCSC and/or MIIC, as applicable, from vendors selected by the Plan Sponsor exceed the amount of the Fee payable hereunder under this Agreement in any annual period under this Agreement.

Plan Sponsor understands and acknowledges that compensation in the form of commissions may vary from vendor to vendor and MMCSC cannot make any such placement without the Plan Sponsor's prior written consent to the Commission or Insurance Commission payable. MMCSC will disclose to Plan Sponsor any Commissions or Insurance Commissions received by MMCSC and/or MIIC. MMCSC shall not accept any further Commissions or Insurance Commissions once it has received the total Fee under this Agreement for any annual period.

Plan Sponsor understands and acknowledges that it is under no obligation to accept any MMCSC recommendation or choose any proposed vendor service provider; moreover, if Plan Sponsor elects not to act on MMCSC's recommendations, Plan Sponsor is free to choose its own vendor service provider.

In the event of a significant change in Plan Sponsor's operations affecting the nature and scope of the Plan, both parties agree to renegotiate compensation or the Services offered, as appropriate.

### 3. Notices

Any notice which is to be given by one to the other under this Statement of Services will be given in writing and delivered to the applicable address set out in this Agreement or any other address specified subsequently in writing. A notice will be effective upon receipt.

MMSC:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Plan Sponsor

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### 4. Modifications

No modification to this Statement of Services shall be binding unless in writing and signed by a duly authorized representative of each party.

MMSC:

\_\_\_\_\_

\_\_\_\_\_  
Date

Print Name/Title

PLAN SPONSOR:

\_\_\_\_\_

\_\_\_\_\_  
Date

Print Name/Title



**EXHIBIT I**

**COMMISSION RATES**

The rate(s) of commissions charged for initial deposits and trails is/are:

VENDOR NAME	PRODUCT NAME	COMMISSION RATE(S)	
		[PERCENTAGE IN BASIS POINTS] %	[PERCENTAGE IN BASIS POINTS] %

SAMPLE