

## SAMPLE LETTER OF AGREEMENT

[Date]

[Name]

[Title]

[Company]

[Address]

[City, State Zip Code]

**RE: [Client/Plan Name] Letter of Agreement**

Dear [Click here and type name]:

This letter will serve as the letter of agreement ("Agreement") between NEPC, LLC. ("NEPC") and [Client/Plan Name] (the "Client") for consulting services provided by NEPC.

1. Services provided by NEPC shall include:

- a. the establishment or refinement of an investment policy and its periodic review thereafter;
- b. liability-based asset allocation studies every three to five years (the length of a typical planning cycle), presented in the format normally utilized by NEPC for its other clients or in any other format agreed upon by the parties;
- c. asset-based asset allocation studies, as reasonably requested, presented in the format normally utilized by NEPC for its other clients or in any other format mutually agreed upon by the parties;
- d. manager and custodian searches, as reasonably requested;
- e. consulting to alternative strategies, defined as hedge fund-of-funds, private equity fund-of-funds, and real estate funds (but not direct investment in hedge funds or private equity funds). Services provided include quarterly reporting, due diligence reviews, monitoring and manager searches (it being understood that for funds-of-funds, analysis is conducted at the fund-of-funds level and will not generally include a direct review of underlying funds);
- f. the ongoing provision of quarterly Investment Performance Analysis ("IPA") Reports, presented in the format normally utilized by NEPC for its other clients or in any other format mutually agreed upon by the parties; and
- g. attendance at investment committee meetings, as reasonably requested by the Client, in person or via teleconference as determined in NEPC's discretion, by such NEPC personnel as designated by NEPC; provided that such attendance will not be required more frequently than once a quarter, unless otherwise agreed by NEPC.

NEPC has no responsibility to manage or in any way direct the investment of any assets of the Client. NEPC shall have no authority to enter into any agreement with any investment manager on behalf of, or otherwise bind, the Client. Nothing contained herein shall require the Client to engage any investment managers recommended by NEPC or to follow any advice provided by NEPC. NEPC has no responsibility for voting any proxies solicited by or with respect to issuers of securities in which the assets of the Client may be invested from time to time.

2. The Client acknowledges receipt of NEPC's disclosure statement on Form ADV Part II, more than 48 hours prior to the date of the execution of this Agreement.
3. The annual fee will be \$250,000 (equivalent for billing purposes to \$62,500 per quarter). Beginning January 1, 2011, the quarterly fee of \$62,500 will be adjusted based on the CPI rate of inflation based on the prior (6) month period. Thereafter, the inflation adjustment will occur every January 1 based on the prior 12 month CPI rate of inflation.

Fees for alternative asset services (as described in section 1) are included in this fee.

4. Travel, postage, and related expenses will be billed at cost.
5. Fees will be billable quarterly, in arrears.
6. This Agreement shall be effective on Month X, 200X.
7. NEPC has no responsibility for the selection of brokers or dealers to effect transactions in the Client's account.
8. All work and activities conducted by NEPC for the Client shall be strictly confidential, and NEPC shall in no instance discuss the Client's account with the press or any other unaffiliated party, unless expressly authorized by the Client, provided that NEPC reserves the right to identify the Client as an NEPC client and to disclose the Client's information to the extent required by law or for regulatory compliance purposes. The Client acknowledges that certain of the services NEPC offers and/or provides to the Client and other clients require the use and anonymous disclosure of client data, including portfolio performance and trading data ("Client Data"), in connection with the pooling of Client Data of clients of the members of the Independent Consultants Cooperative to form a performance universe (the "Performance Universe"). The Performance Universe is made available to clients of the members of the Independent Consultants Cooperative. The Client agrees that NEPC shall be deemed the owner of any Client Data relating to the Client that is pooled, or prepared by NEPC for pooling, in the Performance Universe.
9. The Client acknowledges and agrees that studies, analyses, reports and other materials and information provided by NEPC pursuant to this Agreement constitute proprietary data of NEPC and are being provided exclusively for use by the Client. The Client shall not disseminate or disclose any such materials or information, except as required by law or for regulatory compliance purposes or to the Client's custodians, auditors, counsel, other authorized representatives or underlying participants and beneficiaries.
10. The Client acknowledges and agrees that:

- a. NEPC has not and cannot make any promise, guarantee or other statement or representation regarding the future investment performance of the Client's account;
- b. the past performance of the accounts of other clients of NEPC is not necessarily indicative of the future performance of the Client's account;
- c. in the performance of its services under this Agreement, NEPC shall be entitled to rely on information furnished by investment managers, it being understood that NEPC shall have no liability for the accuracy or completeness of any information furnished or representation made by the investment managers, provided NEPC conducted due diligence and evaluation of such investment managers with reasonable care;
- d. anything in this Agreement to the contrary notwithstanding, NEPC shall not be liable as a fiduciary for any activities not deemed to be fiduciary activities under applicable law;
- e. to the extent permitted by applicable law, NEPC will not be liable for any losses or expenses incurred as a result of any action or omission by an investment manager, custodian or unrelated third party; and
- f. for all purposes of this Agreement, NEPC shall be deemed to be an independent contractor and shall have no authority to act for or represent the Client in any way except as set forth expressly herein and shall not otherwise be deemed to be an agent of the Client. Nothing in this Agreement may be interpreted or construed to create any employment, partnership, joint venture or other relationship among NEPC and the Client.

11. The Client represents and warrants to NEPC that:

- a. The Client is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation. The Client has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
- b. This Agreement has been duly authorized, executed and delivered by the Client and constitutes its valid and binding obligation, enforceable in accordance with its terms, except that the enforceability thereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).
- c. No consent, approval, authorization or order of, or declaration or filing with, any government, governmental instrumentality or court or other person is required for the performance by the Client of its duties hereunder, except such as have been duly made or obtained.
- d. Neither the execution and delivery of this Agreement, nor fulfillment of the terms hereof, will violate or result in a default under the Client's constituent documents, or any other contract or agreement to which it is a party or by which it or its assets may be bound, or any statute or any rule, regulation or order of any government agency or body.

- e. The Client is not in material violation of any federal or state securities law or regulation promulgated thereunder.
- f. No funds in the Client's accounts are, directly or indirectly, derived from activities that contravene U.S. federal and/or state laws and regulations, including anti-money laundering laws, or the anti-money laundering laws of any other jurisdiction. The Client acknowledges that NEPC may request such additional information and/or documentation from the Client as is deemed necessary, in the sole discretion of NEPC, in order to comply with U.S. or other applicable anti-money laundering law. Should the Client refuse or fail to submit and verify all requested identifying information and/or documentation, NEPC may terminate this Agreement upon notice to the Client. The Client acknowledges and agrees that NEPC may disclose the Client's identity to the extent required by applicable anti-money laundering laws and regulations or orders of any government agency or body.

The representations and warranties set forth in this Section 11 shall be continuing during the term of this Agreement and if at any time any event shall occur that could make any of the foregoing representations or warranties incomplete or inaccurate, the Client shall promptly notify NEPC of the occurrence of the event causing such incompleteness or inaccuracy.

- 12. The Client recognizes that its bank accounts may not constitute all of the assets of the Client and, therefore, NEPC cannot be and is not responsible for diversifying any of the investments of the Client that NEPC does not see or is otherwise unaware of. The Client agrees that the only responsibility that NEPC shall have with respect to advisory services shall be to diversify the Client's account as required by any investment guidelines communicated to NEPC by the Client, without regard to, or consideration of, any other assets which may be held by the Client.
- 13. To the extent permitted by applicable law, NEPC, its officers, directors, employees and shareholders shall not be liable to the Client, its trustees, or the Client's underlying participants or beneficiaries for any losses, costs or damages that arise in connection with this agreement, including without limitation losses due to willful misconduct, negligence or fraud of third parties, except for losses directly resulting from a material breach by NEPC of its obligations and responsibilities under this Agreement or from NEPC's willful misconduct, gross negligence or bad faith.
- 14. The Client shall indemnify, defend and hold harmless NEPC, its officers, directors, employees and shareholders from and against any and all losses, claims, damages, liabilities, costs and expenses (including any investigatory, legal and other expenses incurred in connection with, and any amounts paid in, any settlement; provided that the Client shall have approved the terms of such settlement) resulting from a demand, claim, lawsuit, action or proceeding relating to any of such persons' actions or omissions pursuant to this Agreement; provided that the conduct of such person which was the subject of the demand, claim, lawsuit, action or proceeding did not constitute gross negligence, willful misconduct or a material breach of this Agreement and was done in good faith.
- 15. NEPC may act as investment consultant or advisor for others, and nothing in this Agreement shall in any way be deemed to restrict the right of NEPC to perform investment advisory, consulting or other services for any other person or entity, and

the performance of such services for others shall not be deemed to violate or give rise to any duty or obligation to the Client or its trustees.

NEPC shall be permitted to give advice and take action with respect to the Client which differs from the advice made or recommended or actions taken with respect to such other accounts and clients even though the investment objectives may be the same or similar. NEPC shall not be obligated to give the Client treatment more favorable than or preferential to that provided to such other accounts and clients.

Nothing in this Agreement shall limit or restrict NEPC or any of its shareholders, officers, affiliates or employees from buying, selling, or trading in any securities for their own account or accounts. The Client acknowledges that NEPC and its shareholders, officers, affiliates and employees, and its other clients, may at any time have, acquire, increase, decrease, or dispose of positions in investments which are at the same time being acquired or disposed of for the account of the Client.

16. Except as provided in Section 11(f), this Agreement may be terminated at will by either party upon 30 days prior written notice. Fees and services will be prorated accordingly.
17. The following Sections survive termination or expiration of this Agreement: 8, 9, 10, 13, 14, 15, 17 and 20. Any termination or expiration of this Agreement shall not represent a waiver of any rights or remedies previously accrued.
18. This Agreement represents the entire agreement among the parties, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors. Neither party shall assign this Agreement within the meaning of the Investment Advisers Act of 1940 (the "Act"), without the consent of the other party. The Client hereby acknowledges that NEPC expects that its current and future employees will, over time, increase their ownership stakes in NEPC pursuant to equity incentive arrangements adopted by NEPC. This future change in ownership may be deemed to constitute an assignment of this Agreement for purposes of the Act; however, by executing this Agreement, the Client hereby consents to any such assignment by NEPC.
19. 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.
20. The provisions of this Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts (without giving effect to the choice of law provisions thereof). The parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of The Commonwealth of Massachusetts and to the non-exclusive jurisdiction of any Federal court of the United States located in the District of Massachusetts for the purpose of any suit, action or other proceeding arising out of this Agreement or any of the transactions contemplated hereby.

- NEPC, LLC.

Acknowledged and agreed as of the date first written above:

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