



## *Choice SMA Program*

### **CLIENT SERVICES AGREEMENT FOR SEPARATELY MANAGED ACCOUNT(S)**

This Kovack Advisors Choice Advisor Client Services Agreement (“Agreement”), is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and among Kovack Advisors, Inc., a U.S. Securities and Exchange Commission (“SEC”) Registered Investment Advisor, its servicing Investment Advisor Representative identified herein (collectively identified as “Kovack Advisors”) and \_\_\_\_\_ (“Client”). By this Agreement, Client retains Kovack Advisors to provide investment management services on the following terms:

#### **1. *Scope of Engagement***

- a) The Client hereby appoints Kovack Advisors as an Investment Advisor to perform the services hereinafter described, on a non-discretionary basis. Kovack Advisors shall be responsible for the review of the Client’s present financial situation and shall provide Client with advice in respect thereof, including advice in respect of the investment and reinvestment of those assets of the Client designated by the Client to be subject to Kovack Advisors’ management (the “Assets” or “Account”).
- b) The Client agrees to provide information and/or documentation requested by Kovack Advisors in furtherance of this Agreement as pertains to the Client’s investment objectives, needs and goals, and to keep Kovack Advisors informed of any changes regarding same. The Client acknowledges that Kovack Advisors cannot adequately perform its services for the Client unless the Client diligently provides financial information obtained from the Client, Client’s attorney, accountant or other professionals, and is expressly authorized to rely thereon. The Client is free at all times to accept or reject any recommendation from Kovack Advisors, and the Client acknowledges that they have the sole authority with regard to the implementation, acceptance, or rejection of any recommendation or advice from Kovack Advisors.
- c) The Client acknowledges that it is Kovack Advisors’ intent to recommend that the Client designate the active discretionary management of the Assets by and/or among certain independent investment managers (“Independent Managers”) to be recommended by Kovack Advisors, based upon the investment objectives of the Client, and in accordance with the terms and conditions of this Kovack Advisors Choice SMA Account (the “Program”) through Kovack Advisors.

Each Independent Manager designated by the Client shall be set forth on the annexed “Exhibit A”, which may be amended from time-to-time. The specific terms and conditions pertaining to the Program are set forth in Kovack Advisors’ wrap fee disclosure brochure (the “Brochure”) which should be read by the Client (together with Kovack Advisors’ Disclosure Statement – see Paragraph 15 herein) prior to engaging Kovack Advisors to provide investment advisory services in accordance with the terms and conditions of the Program.

Under the Program, the Client shall receive both investment advisory services and the execution of securities brokerage transactions for a single specified program fee pursuant to paragraph 4 below.

- d) By execution of this Agreement in the space provided below, the Client delegates to the Independent Manager(s) all of it’s power with respect to the investment and reinvestment of the Assets and appoints the designated Independent Manager(s) as the Client’s attorney and agent in fact with full authority to buy, sell or otherwise effect investment transactions involving the Assets in the Client’s name for the account. As such, the designated Independent Manager(s) is/are authorized to buy, sell and trade in stocks, bonds, mutual funds, and other securities and /or contracts relating to the same, on margin (only if written margin authorization has

been granted) or otherwise, and to give instruction in furtherance of such authority to the registered broker-dealer and/or the custodian for the Account.

- e) Kovack Advisors' recommendations are based upon its professional judgment. Kovack Advisors cannot guarantee the results of any of its recommendations.
- f) Client acknowledges and understands that the service to be provided by Kovack Advisors under this Agreement are limited to the management of the Assets and does not include financial planning-related services, the specific nature of the services required shall be set forth in a separate written Financial Planning Agreement between Kovack Advisors and the Client for which services Kovack Advisors shall be paid a separate and additional fee.
- g) As set forth in the Brochure, Kovack Advisors' services are limited to Independent Manager(s) research and monitoring, program administration, and reporting services. The Client acknowledges and understands that Kovack Advisors will not provide any investment Advisory or consulting services to the Client. Rather, the Client acknowledges and understands that Kovack Advisors is responsible for providing the Client with ongoing investment advisory services under the program (i.e., assistance in independent investment manager(s) recommendations and review of the participant's investment objectives, account performance, etc. - see discussion as set forth in the Brochure).

Unless otherwise expressly prohibited by applicable federal or state securities laws, the Client acknowledges, understands, and agrees that Kovack Advisors does not have any responsibility for any Account losses, and are correspondingly released and hold harmless by the Client for any act and/or omission of Kovack Advisors and/or any Account losses. The Client acknowledges, understands and agrees Kovack Advisors, and its affiliates, are intended third party beneficiaries of this Agreement relative to this release and hold harmless provision.

## 2. *Investment Objectives*

Client's financial circumstances, investment objectives and any special instructions or limits that Client wishes Kovack Advisors to follow in managing the account(s) shall be provided within the Brokerage New Account Form and Investor Profile Questionnaire. Client agrees to notify Kovack Advisors promptly of any significant change in the information provided by the Client or any significant change in Client's financial circumstances or investment objective that might affect the manner in which Client's account(s) should be managed. Client also agrees to provide Kovack Advisors with such additional information as Kovack Advisors may request from time-to-time to assist in the management of the account(s).

## 3. *Custodial Arrangements*

Custody of Client's assets will be maintained on a fully disclosed basis through KSI at an independent custodian established by the Client. At no time will KSI or Kovack Advisors have custody of any of Client's assets. Client shall continue to have complete, free and clear ownership at all times of all securities, cash properly carried in their account(s), unless specifically directed otherwise by the Client in writing. Client is solely responsible for paying all fees or charges of the custodian. Client authorizes Kovack Advisors to give KSI instructions for the purchase, sale, conversion, redemption, exchange or retention of any security, cash or cash equivalent or other investment for Client's account(s). Client shall receive monthly account statements directly from the custodian showing all transactions occurring in the account(s) and funds, securities, and other property in the account(s) at the end of the period.

On a quarterly basis, statements detailing the current status of the account(s) will be provided to the Client. Client authorizes KSI to provide Kovack Advisors with copies of all periodic statements, confirms and other reports for the Client account(s) sent by the custodian. In addition, upon selecting the option within the signature section of this Agreement, Client authorizes the custodian to send on a monthly or quarterly basis all trade confirmations within a single batch.

#### 4. **Program Fees**

The annual fee for participation in the Program (the “Program Fee”) shall be a percentage (%) of the market value of the Assets under management in accordance with the fee schedule set forth in “Exhibit A”. The Program Fee shall be prorated and paid quarterly, in advance, based upon the market value of the Assets on the last business day of the previous calendar quarter. All market values are calculated by the independent custodian. No increase in the Program Fee shall be effective without prior written notification by the Client.

Client hereby authorizes Kovack Advisors and the independent custodian of the assets to charge the account for the amount of the Program Fee and to remit such fee to the applicable securities broker/dealer (Kovack Securities, Inc., etc.) if necessary, in accordance with required SEC procedures. Specifically, the fee will be payable in advance on January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup>, & October 1<sup>st</sup> in any calendar year. Fees shall be paid via automatic withdraw from the Client’s account(s). In any partial calendar quarter, the fee will be prorated based on the number of days that the account was open during the quarter.

The account fee will be determined by the custodian by valuing the securities in your account(s) that are listed on a national securities exchange or on NASDAQ at the closing price, on the valuation date, on the principal market where the securities are traded. Other securities or investments in the account(s) will be valued in a manner determined in good faith by the account custodian to reflect fair market value. Interest on any margin debt incurred by Client is in addition to the account(s) fee.

Kovack Advisors will not receive any performance bonuses. However, Client understands that account assets may be invested in shares of mutual funds which may be subject to additional fees and expenses as identified within the fund prospectus.

Payment of the fee will be reflected on Client’s statement(s). Accounts that belong to the same household may be grouped for the purpose of determining account fees. Account Fees do not include any fees for products and services that are not part of the account(s). To the extent that Client utilizes such products or services, Kovack Advisors, KSI, its affiliates, and its employees may receive additional compensation.

#### 5. **Proxy**

Unless the Client directs otherwise in writing, the designated Independent Manager(s) shall be responsible for: (1) directing the manner in which proxies solicited by issuers of securities beneficially owned by the Client shall be voted; and (2) making all elections relative to any mergers, acquisitions, tender offers, bankruptcy proceedings or other type events pertaining to the Assets. Kovack Advisors is authorized to, and hereby instructs the Custodian to forward to the designated Independent Manager(s) copies of all proxies and shareholder communications relating to the Assets.

#### 6. **Tax Considerations**

Client recognizes that dividends, capital gains, transfers and sales of mutual funds may create a taxable event for them unless their account is a qualified retirement account. Kovack Advisors does not offer legal or tax advice and it is the Client’s responsibility to consult with a legal or tax advisor as the Client sees fit.

**7. *Account Transactions***

Unless otherwise determined and/or permitted, all securities brokerage transactions directed by the designated Investment Manager(s) for the Program shall be effected through the applicable Account Custodian. Account commissions and/or transaction fees for securities transactions directed by the designated Independent Manager(s) under the Program are inclusive of the Program Fee as defined in paragraph 2 hereof.

**8. *Risk Acknowledgement***

Kovack Advisors does not guarantee the future performance of the Account or any specific level of performance, the success of any investment recommendation or strategy that Kovack Advisors may recommend, or the success of the designated Independent Manager(s) overall management of the account. Client understands that investment recommendations and/or decisions for the Account are subject to various market, currency, economic, political and business risks, and that those investment recommendations and/or decisions will not always be profitable.

**9. *Directions to Kovack Advisors***

Except for the decisions regarding the purchase and/or sale of specific investment, all directions by the Client to Kovack Advisors (including notices, instructions, and directions relating to changes in the Client's investment objectives) shall be in writing. Kovack Advisors shall be fully protected in relying upon any such direction, notice, or instruction until it has been duly advised in writing of changes therein. Kovack Advisors shall endeavor to process all Account instructions in a timely manner, but does not warrant or represent that any such instructions, including termination of this Agreement, shall be effected on the same day as requested.

**10. *Kovack Advisors Liability***

Except as otherwise provided by federal or state securities laws, Kovack Advisors, acting in good faith, shall not be liable for any actions, 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 recommended to the Client by Kovack Advisors, including a broker-dealer and/or custodian. If the Account contains only a portion of the Client's total assets, Kovack Advisors shall only be responsible for those assets that the Client has designated to be the subject of Kovack Advisors' investment management services under this Agreement without consideration to those additional assets not so designated by the Client.

**11. *Reports***

On behalf of Kovack Advisors, the Account Custodian shall provide the Client with periodic Account statements and reports.

**12. *Termination***

This Agreement will continue in effect until termination by either party by written notice to the other (e-mail notice will not suffice), which written notice must be signed by the terminating party. Termination of this Agreement will not affect; **(i)** the validity of any action previously taken by Kovack Advisors under this Agreement; **(ii)** liabilities or obligations of the parties from transactions initiated before termination of this Agreement; or **(iii)** Client's obligation to pay the Program Fee (prorated through the date of termination). Upon the termination of the Agreement, Kovack Advisors will have no obligation to recommend or take any action with regard to the securities, cash or other investments in the Account.

**13. *Assignment***

This Agreement may not be assigned (within the meaning of the Investment Advisors Act of 1940) by the Client without the prior written consent of Kovack Advisors. The Client acknowledges and agrees that

transactions that do not result in a change of actual control or management of Kovack Advisors shall not be considered an assignment pursuant to Rule 202(a)(1)-1 under the Advisors Act. This Agreement cannot be assigned or transferred in any manner by any party without consent by all parties receiving or rendering services under the Agreement.

#### **14. *Non-Exclusive Management***

Kovack Advisors, its principals, employees, and agents may recommend or take the same or similar positions in specific investments for their own accounts, or for the accounts of other Clients, as Kovack Advisors recommends for the Assets.

Client expressly acknowledges and understands that Kovack Advisors shall be free to render investment advice to others and that Kovack Advisors does not make its investment advisory services available exclusively to Client. Nothing in this Agreement shall impose upon Kovack Advisors any obligation to purchase or sell, or to recommend for purchase or sale, for the Account any security which Kovack Advisors, its principals, employees or agents may purchase or sell for their own accounts or for the account of any other Client.

#### **15. *Death or Disability***

The death, disability or incompetence of Client will not terminate or change the terms of this Agreement. However, Client's executor, guardian, attorney-in-fact or other authorized representative may terminate this Agreement by giving written notice to Kovack Advisors.

#### **16. *Arbitration***

This Agreement contains a pre-dispute arbitration clause. By signing and agreeing to this arbitration agreement, the parties hereby agree as follows:

- a. All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.
- b. Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.
- c. The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.
- d. The arbitrators do not have to explain the reason(s) for their award.
- e. The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.
- f. The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.
- g. The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.

All controversies that may arise between us (including, but not limited to controversies concerning any account, order or transaction, or the continuation, performance, interpretation or breach of this or any other agreement between us, whether entered into or arising before, on or after the date this account is opened) shall be determined by arbitration in accordance with the rules then prevailing of the Financial Industry Regulatory Authority (FINRA). Client(s) understand(s) that judgment upon any arbitration award may be entered in any court of competent jurisdiction.

**17. *Disclosure Statement***

The Client hereby acknowledges receipt of a copy of the written Disclosure Statement of Kovack Advisors and Part II of Form ADV (Uniform Application for Investment Advisor Registration), together with a copy of the corresponding Schedule “H” to Form ADV which discusses important information pertaining to the terms and conditions of the Program.

Client further acknowledges that he/she/it has had a reasonable opportunity to review and discuss said Disclosure Statement, Form ADV Part II and Schedule “H” with professionals of choosing, prior to the execution of this Agreement. Any Client who has not received a copy of Kovack Advisors’ Disclosure Statement has at least 48 hours prior to execution of this Agreement shall have 5 business days from the date of execution of the Agreement to terminate Kovack Advisors’ services without penalty.

**18. *Severability***

Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms or provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

**19. *Client Conflicts***

If this Agreement is between Kovack Advisors and related Clients (i.e. husband and wife, etc.), Kovack Advisors’ services shall be based upon the joint goals communicated to Kovack Advisors. Kovack Advisors shall be permitted to rely upon instructions from either party with respect to disposition of the Assets or the Account, unless and until such reliance is revoked in writing to Kovack Advisors.

Kovack Advisors shall not be responsible for any claims or damages resulting from such reliance or from any change in the status of the relationship between the Clients.

**20. *Referral Fees***

If the Client was introduced to Kovack Advisors through a Solicitor, Kovack Advisors may pay that Solicitor a referral fee in accordance with Rule 206(4)-3 of the Investment Advisors Act of 1940. The referral fee shall be paid solely from Kovack Advisors Compensation as defined in this Agreement, and shall not result in any additional charge to the Client.

**21. *Applicable Law***

This Agreement supersedes and replaces, in its entirety, all previous investment advisory agreement(s) between the Parties. To the extent not inconsistent with applicable law, this Agreement shall be governed by and construed in accordance with the law of the State of Florida in which Kovack Advisors maintains its executive offices.

## “Exhibit A”

**1. Designation of an Independent Manager(s), Fee Schedule and Related Accounts**

The designation of the Independent Manager will occur within a reasonable time after proper receipt of these instructions. The Independent Manager’s trading authorizations will be the same as set forth in the Agreement and/or related documents. Your account fees may change if you change your Independent Manager. Please consult your Investment Advisor Representative for more information.

Client Name(s)	Firm Name	Firm Discipline
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

Client Name(s)	Fee Schedule Election (Tiered or Flat)				
	Tiered			Flat	
1. _____	First \$500,000	_____ %	Thereafter	_____ %	_____ %
	Next \$500,000	_____ %			
2. _____	First \$500,000	_____ %	Thereafter	_____ %	_____ %
	Next \$500,000	_____ %			
3. _____	First \$500,000	_____ %	Thereafter	_____ %	_____ %
	Next \$500,000	_____ %			
4. _____	First \$500,000	_____ %	Thereafter	_____ %	_____ %
	Next \$500,000	_____ %			
5. _____	First \$500,000	_____ %	Thereafter	_____ %	_____ %
	Next \$500,000	_____ %			

Account Number(s) for Household performance reporting purposes:	
1. _____	4. _____
2. _____	5. _____
3. _____	



**CLIENT HEREBY ACCEPTS THE TERMS AND CONDITIONS OF THIS AGREEMENT AND UNDERSTANDS THAT THIS AGREEMENT CONTAINS A PRE-DISPUTE ARBITRATION CLAUSE (PARAGRAPH 16) AND A CHOICE OF LAW PROVISION (PARAGRAPH 21).**

Client Name(s) (from pg.1):

\_\_\_\_\_  
(Print)

By: (Print Name)

By: (Print Name of Joint Client (if any))

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date:

\_\_\_\_\_  
(Signature of Joint Client (if any))

\_\_\_\_\_  
Date:

\_\_\_\_\_  
(If Fiduciary, Title)

\_\_\_\_\_  
(If Fiduciary, Title)

*For Investment Advisor Representative and Kovack Advisors Home Office Use Only*

\_\_\_\_\_  
Investment Advisor Representative  
(Print Name)

\_\_\_\_\_  
Rep Number

\_\_\_\_\_  
OSJ/Branch Supervisor  
(Print Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Investment Advisor Representative  
(Print Name)

\_\_\_\_\_  
Kovack Advisors Principal  
(Print Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date: