

# SAMPLE KISC REGISTERED INVESTMENT ADVISER SERVICE AGREEMENT

## I. PARTIES

THIS SERVICE AGREEMENT (“Agreement”) is among KISC, LLC (“KISC” hereinafter refers to KISC, LLC), [insert name of Plan Sponsor] (“Plan Sponsor”), [insert name of Plan] (“Plan”) and [Insert name of Fiduciary] (“Fiduciary”). Fiduciary has the authority to cause the Plan to enter into this Agreement.

## II. FORM ADV PART 2A and B ACKNOWLEDGEMENT

Fiduciary acknowledges, through initialing following this paragraph that the Form ADV Part 2A and B regarding KISC has been provided to Fiduciary before or at the time this Agreement is entered into. Further, Fiduciary acknowledges receipt of KISC’s privacy policy.

\_\_\_\_\_

Initials

\_\_\_\_\_

Date

Fiduciary also understands that upon entering into this agreement, it has five days within which to rescind this agreement without penalty or fee.

## III. RECITALS

This Agreement is entered into on [insert date] with KISC services to begin on [insert date] in reference to the following:

A. Plan Sponsor has adopted a 401(k) Plan (the “Plan”) that is qualified under section 401(a) of the Internal Revenue Code of 1986 (the “Code”). Fiduciary has the power and authority to designate and direct the Plan’s investment alternatives and to enter into contractual arrangements with third parties to assist in the discharge of these and related duties.

B. Fiduciary wishes to engage KISC to provide to the Plan, Plan Trustees, and Plan Sponsor the services described in this Agreement.

## IV. SERVICES TO BE PROVIDED BY KISC

KISC serves the Plan and the Plan Sponsor. KISC, as a Co-Fiduciary bears a high level of responsibility. It has the duty to:

- Operate only in the interest of participants and beneficiaries, for the sole purpose of providing benefits and paying Plan expenses
- Act "prudently," meaning how a professional would perform under similar circumstances
- Diversify the Plan's investments in order to minimize the risk of large losses
- Follow the terms of Plan documents
- Avoid conflicts of interest with the Plan

**A. Investment Manager Fiduciary Services – ERISA 3(38)**

KISC will advise the Plan regarding the monitoring, selection, retention, and removal of mutual funds. KISC will advise the Plan on the investment manager Fiduciary Responsibilities described in ERISA 3(38).

**B. Administrative Fiduciary Services – ERISA 3(21)**

KISC will advise the Plan regarding the monitoring, selection, retention, and removal of Custodian, Record Keeper, and other administrative services. KISC will advise the Plan on the administrative Fiduciary Responsibilities described in ERISA 3(21).

**C. Plan Retained Fiduciary Responsibilities**

The Plan and Plan Sponsor have Fiduciary Responsibilities. They cannot lawfully transfer their Fiduciary responsibilities. They retain the responsibility to maintain records and make timely contributions – both employer contributions and the contributions withheld in response to employee elections. They must also make business decisions with respect to the Plan.

**D. Limitations on Services Provided by KISC**

KISC provides neither legal nor tax advice.

Investments are subject to various market, political, currency, economic and business risks. Investments are subject to losses including permanent loss of capital. KISC does not and cannot guarantee any results and past performance is not a guarantee of future results.

**V. Plan Services Elected**

The Plan elects KISC to perform the services as indicated on Schedule A.

**VI. REPRESENTATIONS AND DUTIES OF FIDUCIARY**

Fiduciary represents and warrants as follows:

- A. Signatory is the “Fiduciary” for the control or management of the assets of the Plan, and for the selection and monitoring of service providers for the Plan.

B. The person signing the Agreement on behalf of Plan and Plan Sponsor has all necessary authority to do so.

C. The Plan authorizes payment of KISC fees from Plan assets. Fiduciary has determined the fees charged by KISC are reasonable and are the obligation of the Plan.

D. KISC relies upon all information provided to KISC, whether financial or otherwise, by Plan, Plan Sponsor, their representatives or their third-party service providers without independent verification. Fiduciary agrees to promptly notify KISC in writing of any material change in the financial and other information provided to KISC and to promptly provide any such additional information as may be reasonably requested by KISC.

E. Fiduciary undertakes to review and consider the disclosures made by KISC (including in this Agreement and the Form ADV Part 2), in particular the portions related to services, compensation, and potential conflicts of interest, as well as the remainder of the disclosures.

## **VII. COMPENSATION TO BE RECEIVED BY KISC**

KISC is an asset based “fee-only” adviser. The Firm receives no compensation whatsoever from any source other than our Plan asset based fees paid through the custodian.

Fees for the Firm’s services are negotiable and are paid quarterly based on the End Of Quarter Plan Assets and one quarter of the Base Annual Fee. The Base Annual Fee is [**Insert Base Annual Fee**] BPS. A BPS, or basis point, is equal to 1/100th of 1%.

Base Annual Fee rate is applied to participants’ accounts by the custodian. The custodian is authorized in writing, by the Plan, to pay KISC from direct deduction to participants’ accounts. The Custodian provides a statement to the Plan of the fees deducted. KISC provides the Plan a corresponding quarterly invoice. Such invoices reflect all fee withdrawals and payments made to KISC on the Plan’s behalf.

KISC receives no compensation for its services other than the asset based compensation described above.

## **VIII. GENERAL PROVISIONS**

### **A. Response to Requests By Fiduciary for Certain Information.**

Fiduciary may request, in writing, information relating to the compensation received in connection with this Agreement that is required for the Plan to comply with the reporting and disclosure requirements of Title I of ERISA and the regulations, forms and schedules issued there under. KISC will respond to that written request reasonably in advance of when the plan administrator states that it must comply with its reporting or disclosure obligation. If

disclosure of this information is precluded due to extraordinary circumstances beyond KISC's control, the information will be disclosed as soon as practicable.

**B. Modification.**

This Agreement can be amended or modified only by the written consent of the Parties.

**C. Severability.**

If any one or more of the provisions of this Agreement shall, for any reason, be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be enforced as if such illegal or invalid provision had not been contained herein.

**D. Entire Understanding.**

This Agreement constitutes and contains the entire understanding between the parties and supersedes all prior oral or written statements dealing with the subject matter herein.

**E. Non-Assignability.**

This Agreement is not assignable by either Party hereto without the prior written consent of the other Party.

**F. Binding Effect.**

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, successors, survivors, administrators and assigns.

**G. Headings.**

All headings used herein are for ease of reference only and in no way shall be construed as interpreting, decreasing or enlarging the provisions of this Agreement.

**H. Applicable Law.**

To the extent this Agreement is not governed by and subject to federal law including, without limitation, the Employee Retirement Income Security Act of 1974, the laws of the State of Colorado shall govern this Agreement in all respects, including but not limited to the construction and enforcement thereof.

**I. Fiduciary Authority.**

Fiduciary represents and warrants that, unless otherwise specified, it is the Fiduciary with authority to enter into this Agreement on behalf of the Plan. Plan and Plan Sponsor represent and warrant that the person signing this Agreement on its behalf has been duly authorized to do so by Plan Sponsor. Fiduciary warrants and represents that the person signing this

Agreement has been duly authorized to do so by Fiduciary. It warrants and represents that Fiduciary is independent of, and unrelated to, KISC.

**J. Termination.**

Either party may terminate this Agreement upon 30 days prior written notice to the other party.

The Plan may terminate this Agreement within 5 days of its execution with no penalty or fee.

Such termination will not, however, affect the rights, duties, liabilities or obligations of the Parties arising from transactions initiated prior to such termination, and such liabilities and obligations shall survive any expiration or termination of this Agreement. Upon termination, KISC will have no further obligation under this Agreement to act or advise Plan and Plan Sponsor in any respect.

**K. Indemnity.**

KISC agrees to indemnify and hold Client harmless from any and all liabilities and claims, including but not limited to damages, court costs, reasonable legal fees and costs of investigation, which arise directly (or indirectly) from KISC's misconduct or negligence (or in violation of fiduciary duty) with respect to the Services hereunder; provided, however, except as otherwise required by ERISA, in no event shall KISC be liable for any indirect, special consequential or exemplary damage with respect to its Services.

With regard to services provided by KISC under this Agreement, Plan and Plan Sponsor agree to indemnify and hold KISC harmless from any and all liabilities and claims, including, but not limited to, damages, court costs, reasonable legal fees and costs of investigation which directly or indirectly are related to the Plan, its investments, expenses or other operations and administration provided that such losses or damages are not directly caused by KISC's misconduct or negligence (or in violation of fiduciary duty).

Additionally, if KISC is required to respond to any subpoena for production of documents, or to testify as a witness in any legal proceedings relating to KISC's work for the Plan in connection with any lawsuit against the Plan and Plan Sponsor, Plan and Plan Sponsor shall be responsible to pay to KISC (1) any and all costs, including reasonable attorney fees, incurred by KISC and (2) a reasonable hourly fee for KISC's time.

This document provides the disclosures of compensation, services and status required by Department of Labor Regulation 29 C.F.R. §408b-2(c).

Entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

For services beginning \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”).

*PLAN SPONSOR*

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Print or Type Name Title

FIDUCIARY

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Print or Type Name Title

KISC

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Print or Type Name Title

## **EXHIBIT A**

The following Services are provided unless the Plan elects to decline the Service.

<b>Service</b>	<b>Annual Fee</b>	<b>Plan Acceptance</b>
ERISA 3 (38) Fiduciary	Included in Base	
Evaluate and Monitor Custodian	Included in Base	
Recommend Custodian	Included in Base	
Evaluate and Monitor Investment Manager(s)	Included in Base	
Recommend Investment Manager(s)	Included in Base	
Evaluate and Monitor Participant Investment Options	Included in Base	
Recommend Participant Investment Options	Included in Base	
Evaluate and Monitor Plan Administrator	Included in Base	
Recommend Plan Administrator	Included in Base	
Evaluate and Monitor Investment Policy	Included in Base	
Recommend Investment Policy	Included in Base	
Measure Performance and Quarterly Reporting	Included in Base	
Assess and Mitigate Compliance Risks	Included in Base	
Review Portfolio Accounting	Included in Base	
Educate Trustees Regarding Fiduciary Responsibilities	Included in Base	
Recommend Plan Operation and Administration Efficiencies	Included in Base	
Assess Plan Competitiveness And Recommend Changes	Included in Base	
Calculate and Report Investment-Specific Performance, Manager-Specific Performance, And Overall Plan Performance	Included in Base	
Evaluate all Plan Fees (Managers, Funds, Administrators, etc.)	Included in Base	
Review Plan transparency	Included in Base	