



# ERISA 3(21) Agreement

Account Number

Rep ID

Instructions: Complete all sections of this ERISA 3(21) Agreement ("Agreement") and email to DAMA@hiptpartners.com.

## 1. Client Information

Plan Name

Street Address, City, State, Zip Code

Email Address – By providing an email address, you consent to electronic delivery, as described in Section 25 of the attached disclosure document.

## 2. Investment Advisor Information

Investment Advisor Representative(s)

## 3. Fiduciary Services Provided (Select all that apply)

- Investment Policy Statement
- Ongoing Investment Recommendations
- Qualified Default Investment Alternative Assistance
- Performance Reports
- Service Provider Liaison
- Non-Discretionary Model Portfolios
- Education Services to Plan Committee
- Participant Enrollment
- Participant Education
- Plan Search Support/Vendor Analysis
- Benchmarking Services
- Assistance Identifying Plan Fees

## 4. Fee Information (See Section 3 of the Disclosures for a more detailed description of fee calculations.)

- Annual Flat Fee of \$\_\_\_\_\_
- Fee for Service. Based on percentage of plan assets: \_\_\_ Basis Points (bps) per annum
- Hourly Rate of \$\_\_\_\_\_ Estimated number of hours Annually \_\_\_\_\_

**5. Acknowledgment and Completion.** By signing below, I acknowledge that I have received, read, understand, and agree to the terms of this Agreement. I also understand and acknowledge receipt of the HPAG Privacy Notice, Form ADV Part 2A, and Brochure Supplement for the Investment Advisor Representative providing the services under this Agreement. Section 14 describes arbitration provisions that may be enforced by both parties.

\_\_\_\_\_  
Trustee/Authorized Officer Signature

\_\_\_\_\_  
Trustee/Authorized Officer Name (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Trustee/Authorized Officer Signature

\_\_\_\_\_  
Trustee/Authorized Officer Name (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Investment Advisor Representative Signature

\_\_\_\_\_  
Investment Advisor Representative Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Investment Advisor Representative Signature

\_\_\_\_\_  
Investment Advisor Representative Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
HPAG Authorized Signature

\_\_\_\_\_  
HPAG Authorized Name (print)

\_\_\_\_\_  
Date

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**1. Investment Advisory Services.** Subject to the terms and conditions of this Agreement, we shall provide you with co-fiduciary services (the “Services”) with respect to certain Plan assets and accounts (the “Assets” or the “Account”) and in accordance with Plan investment needs, goals and objectives as communicated to us. Additional details of the Services and related fees are set forth herein.

**2. Scope of Engagement.** When performing the Services, we are not acting as your attorney or your accountant and none of the Services should be interpreted as legal, accounting or tax advice. You acknowledge that you will seek the advice of a qualified attorney, accountant, or other qualified advisor as you deem appropriate. We are not acting as your Custodian or Plan Sponsor.

You hereby authorize us to serve as your investment fiduciary by making recommendations to the Plan sponsor. We do not have the authority to add or remove investments directly from the Plan or the underlying accounts of Plan participants. The Plan sponsor ultimately has the discretion and liability for accepting or rejecting these recommendations.

**3. Fees.** Our fee(s) for the Services listed in this Agreement shall be charged in one of three ways:

Annual Flat Fee as agreed upon in Section Four on Page One of this agreement. This fee is payable annually during the scope of this Agreement.

Asset Based Fee as agreed upon in Section Four of Page One of this Agreement. This fee will be calculated as a percentage of the market value of the Assets (the “Asset Based Fee”).

Hourly Rate as agreed upon in Section Four of Page One of this agreement. This fee will be paid annually and will be calculated based on an hourly rate (not to exceed \$300/hour) times the number of hours worked.

The Asset Based Fee shall be prorated and paid quarterly, in advance, based upon the market value of the Assets, including cash, on the last day of the previous quarter as valued by the Custodian. The Asset Based Fee for the initial quarter shall be calculated on a pro rata basis commencing on the day the Assets are initially designated to us for the Services under this Agreement. No portion of the Asset Based Fee is calculated on the performance of the Account. No increase in the Asset Based Fee shall be effective without prior written notification to you.

You hereby direct and authorize us to invoice the Custodian for the Asset Based Fee (the “Fee Statement”) and direct and authorize the Custodian to deduct the amount stated in the Fee Statement from one or more of your Accounts. You also direct and authorize us to instruct the Custodian to send you a statement, at least quarterly, indicating all amounts disbursed

from your Account including the Asset Based Fee paid from a particular Account. You acknowledge that it is your responsibility to verify the accuracy of the calculation of the Asset Based Fee and that the Custodian will not determine whether the Asset Based Fee is accurate or properly calculated. You may make additions to and withdrawals from the Account at any time, subject to our right to terminate an Account. If Assets are deposited into or withdrawn from an Account after the inception of a quarter the Asset Based Fee payable with respect to the Assets will not be prorated based on the number of days remaining in the quarter. You may withdraw Assets by providing us with notice. All withdrawals are subject to customary securities settlement procedures.

In addition to the Asset Based Fee, you may also incur certain charges imposed by unaffiliated third parties. Such charges may include, but are not limited to, custodial fees, brokerage commissions, transaction fees, charges imposed directly by a mutual fund, index fund, or exchange traded fund purchased for the Account (including, but not limited to, fund management fees and other fund expenses), certain deferred sales charges, odd-lot differentials, transfer taxes, wire transfer and electronic fund fees, and other fees and taxes on brokerage accounts and securities transactions.

**4. Custodian.** We shall not maintain physical custody of your Assets; rather your Assets will be held in the custody of a Custodian meeting the requirements of a “qualified custodian” pursuant to Rule 206(4)-2 of the Investment Advisers Act of 1940 (the “Advisers Act”). You authorize us to give instructions to the Custodian with respect to all investment decisions regarding the Assets, and the Custodian is authorized and directed to effect transactions, deliver securities, make payments and otherwise take such actions as we shall direct in connection with the performance of our obligations with respect to the Assets. The fees charged to you by the Custodian are exclusive of, and in addition to, the Asset Management Fee and other charges, as provided herein.

**5. Risk Acknowledgement.** Our investment decisions and recommendations are based upon our professional judgment. We do not guarantee the results of any of our investment decisions or recommendations, the future performance of Plan Assets or Accounts, any specific level of performance, the success of any third party manager (“Independent Manager”), investment decision, strategy or recommendation made by an Independent Manager, or the overall success of the Account. You understand that our investment recommendations, as well as the investment recommendations of any Independent Manager are subject to various market, currency, economic,



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political and business risks, and that such investment decisions and recommendations will not always be profitable.

**6. Adviser Liability.** Except as otherwise provided by law, neither we nor any of our employees, affiliates, representatives and or agents shall be liable for (a) any loss that you may suffer by reason of any decision made or other action taken or omitted in good faith by us with that degree of care, skill, prudence, and diligence under the circumstances that a person acting in a fiduciary capacity would use, (b) any loss arising from our adherence to your written or oral instructions, (c) any act or failure to act by the Custodian, any Broker-Dealer to which transactions for the Account are directed, or by any non-party, or (d) any loss that you may suffer by reason of any decision made or other action taken by any Independent Manager. The federal and state securities laws impose liabilities under certain circumstances on persons who act in good faith, and therefore nothing in this Agreement will waive or limit any rights that you may have under those laws.

**7. Proxies.** Unless otherwise agreed in writing, we will not be required to take any action, or render any advice, with respect to the voting of proxies for securities held by you. For any Account that is part of a pension or other employee benefit plan (a "Plan") governed by the Employee Retirement Income Security Act of 1974, as amended, the Plan fiduciary acknowledges that such fiduciary has affirmatively determined to not delegate proxy voting authority to us, and has retained such authority, and that we are precluded from exercising proxy voting authority.

**8. Reports.** You will receive confirmations of each transaction executed for the Account and a brokerage statement no less than quarterly directly from the Custodian.

**9. Non-Exclusivity.** You acknowledge and understand that we shall be free to render the Services to others and that we do not make the Services available exclusively to you. We may have or take the same or similar positions in specific investments for our own accounts, or for the accounts of other clients, as we do for you. Nothing in this Agreement shall put us under any obligation to purchase or sell, or to recommend for purchase or sale for the Account, any security which we may purchase or sell for our own accounts or for the account of any other client, unless in our sole determination, such investment would be in the best interest of the Account.

**10. Notices.** Any notice or correspondence required in connection with this Agreement will be deemed effective upon receipt if delivered to either party at their address listed below unless either party has notified the other party of another address in writing. Except for decisions regarding the purchase or sale of specific investments, all of your directions to us (including notices, instructions, and directions relating to changes in your investment objectives) shall be in writing. We may rely upon any such direction, notice, or instruction from

you unless and until we have been advised in writing of changes thereto.

HighPoint Advisor Group, LLC  
2651 Warrenville Road, Suite 200  
Downers Grove, IL 60515

**11. Assignment.** Neither party may assign this Agreement without the consent of the other party. An assignment may be effected upon terms and conditions consistent with rules, regulations or interpretations of the Securities and Exchange Commission, or other applicable regulatory authority.

**12. Confidentiality.** Except as required by applicable law, rule or regulation, or in order to implement your investment objectives or perform the services contemplated by this Agreement, both parties agree to treat information provided in connection with this Agreement as confidential.

**13. Receipt of Disclosures.** You hereby acknowledge receipt of our Privacy Notice and a copy of our written disclosure statement on Part 2 of Form ADV or a Brochure otherwise meeting the requirements of Rule 204-3 of the Advisers Act.

**14. Arbitration.** Subject to the conditions and exceptions noted below and to the extent not inconsistent with applicable law, in the event of any controversy, dispute or claim arising out of or relating to this Agreement, both parties agree to submit the dispute to arbitration before a single arbitrator in accordance with the Commercial Rules of the American Arbitration Association then in effect.

You understand that this Agreement to arbitrate does not constitute a waiver of your right to seek a judicial forum where such waiver would be void under federal or applicable state securities laws.

**15. Death or Disability.** If you are a natural person, your death, incapacity, disability or incompetence will not terminate or change the terms of this Agreement. However, your executor, guardian, attorney-in-fact or other authorized representative may terminate this Agreement by giving us proper written notice.

**16. Client Representations and Warranties.** You represent that you have the full legal power and authority to enter into this Agreement and that the terms of this Agreement do not violate any obligation or duty to which you are bound, whether arising out of contract, operation of law, or otherwise. If you are an entity (e.g., corporation, partnership, limited liability company, or trust), this Agreement has been duly authorized by the appropriate corporate or other action and when so executed and delivered shall be binding in accordance with its terms. You agree to promptly deliver such corporate resolution or other



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action authorizing this Agreement at our request. You agree to execute any other agreements with broker-dealers, custodians, or other service providers we deem necessary in connection with this Agreement in a timely manner. You also agree to provide us with any other information and/or documentation that we may request in furtherance of this Agreement or related to your investment needs, goals, objectives, and risk tolerance for the Account, either directly from you or through your designated attorney, accountant, or other professional advisers. You acknowledge that we are authorized to rely upon any information received from such attorney, accountant, or other professional adviser and are not required to verify the accuracy of the information.

**17. Retirement or Employee Benefit Plan Accounts.** This section applies to Accounts that are part of a pension or other employee benefit plan (a “Plan”) governed by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).

If any of your Assets are in held in an Account identified as a “Qualified Account” and we accept appointment to provide Services to such Qualified Account, we acknowledge that we shall be a “fiduciary” under ERISA (but only with respect to the provision of Services with respect to Qualified Accounts). We represent that we are registered as an investment adviser and duly qualified to manage or provide advisory services to Plan assets under applicable regulations.

You represent that (i) our appointment and the Services are consistent with the Plan documents, (ii) you have furnished us true and complete copies of all documents establishing and governing the Plan and evidencing your authority to retain us, (iii) you agree to provide us with a list of persons or entities which are considered a “disqualified person,” as that term is defined in Section 4975 of the Internal Revenue Code, as amended, or a “party in interest,” as that term is defined in Section 3(14) of ERISA, and (iv) if you have directed us to use a directed broker, we are unable to seek best execution for transactions in the Qualified Account and you may pay higher brokerage fees than if we were authorized to direct transactions to another broker-dealer that could provide best execution. You further represent that you will promptly furnish us with any amendments to the Plan, and you agree that, if any amendment affects our rights or obligations, such amendment will be binding on us only with our prior written consent. If the Qualified Account contains only a part of the Plan assets, you understand that we will have no responsibility for the diversification of all the Plan’s investments, and we will have no duty, responsibility or liability for your Plan assets that are not in the Qualified Account. If ERISA or other applicable law requires bonding with respect to the assets in the Account, you

will obtain and maintain at your expense bonding that satisfies this requirement and covers us and any of our affiliates.

**For 3(21) Qualified Plans:**

The following services will be provided to the extent they are indicated in Section 3.

Investment Policy Statement. We will assist the Plan in the preparation or review of an investment policy statement (“IPS”) for the Plan based upon consultation with you.

Ongoing Investment Recommendations. We will recommend, for your consideration and selection, specific investments to be held by the Plan or, in the case of a participant-directed defined contribution plan, to be made available as investment options under the Plan. We will recommend for your consideration and selection, investment replacements if you determine an existing investment is no longer suitable as an investment option.

Ongoing Investment Monitoring. We will perform ongoing monitoring of investments options in relation to the criteria you provided to us.

Qualified Default Investment Alternative Assistance. We may assist you in identifying an investment product or model portfolio in connection with the definition of a “Qualified Default Investment Alternative” (“QDIA”) under ERISA (for Plans subject to ERISA).

Non-Discretionary Model Portfolios. We will recommend, for your consideration and approval, (i) asset allocation target-date or risk-based model portfolios for the Plan to make available to Plan participants, and (ii) funds from the line-up of investment options you chose to include in such model portfolios.

Performance Reports. We will prepare periodic reports reviewing the performance of all Plan investment options, as well as comparing the performance thereof to benchmarks with you. The information used to generate the reports will be derived directly from information such as statements provided by you, investment providers and/or third parties.

Service Provider Liaison. We will assist the plan by acting as a liaison between the plan and service providers, product sponsors and or vendors. In such cases we shall act only in accordance with instructions from Plan administrator and will not exercise judgement or discretion.





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Education Services to Plan Committee. We will provide education, training and or guidance for the members of the plan committee with regard to plan features, retirement readiness matters or the duties and responsibilities of the plan committee, including education with respect to fiduciary responsibilities.

Participant Enrollment. We will assist the client in enrolling Plan Participants in the plan including conducting an agreed upon number of enrollment meetings. As part of such meetings, IAR will provide participants with information about the plan which may include information on the benefits of plan participation, the benefits of increasing contributions, the impact of preretirement withdrawals, the terms of the plan and the operation of the plan.

Participant Education. We will assist with participant education, which may include preparation of education materials and or conducting investment education seminars and meetings for plan participants. Such meetings may be on a group or individual basis and may include information about the investment options under the plan including: investment objectives, risk/return and historical performance, investment concepts, diversification, asset classes, risk/return, and how to determine investment time horizon and assess risk tolerance. Such meeting will not include specific investment advice about the investment options under the plan as being appropriate for an individual participant but may include use of educational investment models.

Plan Search Support/Vendor Analysis. We will assist with the preparation, distribution, and evaluation of Request for Proposals, finalist interviews, and conversion support.

Benchmarking Services. We will provide client with comparisons of plan data (fees, services participant enrollment and contribution) to date from the plan’s prior years or a benchmark group of similar plans.

Assistance Identifying Plan Fees. We will assist in identifying the fees and other costs borne by the plan for, as specified by the client investment management, recordkeeping, participant education, participant communication and or other services provided with respect to plan.

**18. Entire Agreement.** This Agreement and any Exhibits annexed hereto, which Exhibits are incorporated herein by reference and made a part hereof, constitute the entire Agreement between the parties and supersedes all understandings, agreements (oral and written), or representations with respect to the subject matter hereof. This Agreement may only be amended, revised or modified with our written consent. Each party acknowledges that no

representation, inducement or condition not set forth herein has been made or relied upon by either party.

**19. Waiver.** No failure by us to exercise any right, power, or privilege that we may have under this Agreement shall operate as a waiver thereof. Further, no waiver of any deviation from, or breach of, this Agreement by you shall be deemed to be a waiver of any subsequent deviation or breach.

**20. Severability.** If any provision of this Agreement is deemed to be invalid or unenforceable or is prohibited by the laws of the state or jurisdiction where it is to be performed, this Agreement shall be considered divisible as to such provision and such provision shall be inoperative in such state or jurisdiction. The remaining provisions of this Agreement shall be valid and binding and of full force and effect as though such provision was not included.

**21. Terms of Agreement and Termination.** By entering into this Agreement you agree to comply with the terms and conditions contained herein, and agree and acknowledge that we have the right to modify this Agreement at any time. We will provide you with notice of any such modifications and such modification shall thereafter become effective unless you provide us with notice of your intention to terminate the Agreement. You further agree to abide by any rules, procedures, standards, requirements or other conditions that we may establish in connection with your Account or this Agreement. This Agreement shall have an initial term of one-year, unless terminated by either party in writing as provided below. On the one-year anniversary date, and thereafter, this Agreement shall renew automatically without action by either party unless terminated pursuant to this Section 21.

You shall have five (5) business days from the date of execution of this Agreement to terminate our services without penalty. This Agreement will continue in effect from the date set forth above and may be terminated at any time upon receipt of written notice to terminate by either party to the other, which written notice must be manually signed by the terminating party. Termination of this Agreement will not affect (i) the validity of any action previously taken by us under this Agreement; (ii) liabilities or obligations of the parties from transactions initiated before termination of this Agreement; or (iii) your obligation to pay us fees that have already been earned under this Agreement. Upon the termination of this Agreement, we will not have any continuing obligation to take any action. If you terminate this Agreement after the commencement of a calendar quarter billing period, the unearned portion of the Asset-Based Fee will be promptly refunded.

**22. Governing Law, Venue, and Jurisdiction.** To the extent not inconsistent with applicable federal law, this Agreement



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and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein, or performance shall be governed or interpreted according to the laws of the State of Illinois without regard to choice of law considerations except for the Section entitled Arbitration, which shall be governed by the Federal Arbitration Act. Subject to the Section entitled "Arbitration" which shall control, any action, suit or proceeding arising out of, under, or in connection with this Agreement seeking an injunction or not otherwise submitted to arbitration pursuant to this Agreement shall be brought and determined in the appropriate federal or state court in the State of Illinois and in no other forum. The parties hereby irrevocably and unconditionally submit to the personal jurisdiction of such courts and agree to take any and all future action necessary to submit to the jurisdiction of such courts in any such suit, action or proceeding arising out of or relating to this Agreement.

**23. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original

but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile signature.

**24. Section or Paragraph Headings.** Section headings herein have been inserted for reference only and shall not be deemed to limit or otherwise affect, in any matter, or be deemed to interpret in whole or in part any of the terms or provisions of this Agreement.

**25. Consent to Electronic Delivery.** We may deliver any notices or information required to be given to you by this Agreement or applicable regulation by electronic means, including but not limited to electronic mail, internet site, computer network, or third-party document-communication services.

We reserve the right to monitor and retain e-mail messages to and from our systems as permitted by applicable law. If you have any doubts about the authenticity of an e-mail purportedly sent by us, you should contact us immediately.