

**SIMONDAVIS ASSET MANAGEMENT, INC.**

**SUB-ADVISORY (TAM) AGREEMENT**

**THIS SUB-ADVISORY AGREEMENT (“Agreement”)** is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_ (hereinafter referred to as the “**Managing Advisor**”), and **SimonDavis Asset Management, Inc.**, an investment advisor registered with the US Securities and Exchange Commission (hereinafter referred to as the “**Sub-Advisor**”).

**R E C I T A L S**

**WHEREAS**, Managing Advisor is an investment advisor registered with the US Securities and Exchange Commission and, in that capacity, provides investment advisory services to clients (each, a “Client”) who have entered into an investment advisory agreement (each, a “Client Agreement”);

**WHEREAS**, Clients have agreed that Managing Advisor may engage other SEC or state registered investment advisors to manage some or all of Clients’ funds;

**WHEREAS**, Managing Advisor desires to retain Sub-Advisor to provide investment advisory services, in connection with the management of some of the Managing Advisor Client accounts, as are designated from time to time by Managing Advisor, and Sub-Advisor is willing to render such investment advisory services; and

**NOW, THEREFORE**, the parties hereto agree as follows:

**Section 1. Designation as Sub-Advisor/Investment Manager.**

Managing Advisor hereby designates Sub-Advisor as a non-exclusive investment manager with respect to each of the Client accounts as Managing Advisor may designate in writing from time to time in its sole discretion (each, a “Client Account”). Subject to the terms of this Agreement, Sub-Advisor hereby agrees to act as an investment manager with respect to the Client Accounts on a discretionary basis, unless otherwise indicated by Managing Advisor. Nothing contained herein shall prevent Managing Advisor from entering into investment management agreements or sub-investment management agreements with any other party for some or all of any Client’s assets under management.

**Section 2. Acceptance of Designation; Non-Solicitation.**

Upon Sub-Advisor accepting in writing its designation as an investment manager to a particular Client Account (which Sub-Advisor may refuse to do for any reason), Sub-Advisor agrees to use its best professional judgment to make investment decisions for each Client Account in accordance with Sub-Advisor’s customary investment management policies and obligations. Upon receipt from Managing Advisor of the applicable provisions of each Client’s Client Agreement, Sub-Advisor will use best efforts to perform consistently with those provisions. Sub-Advisor understands that its designation as investment manager with respect to the Client Accounts may be revoked in writing by Managing Advisor at any time. During the term of this Agreement and for a period of two (2) years thereafter, each of Managing Advisor and Sub-Advisor agrees that it will not intentionally or knowingly

solicit a client of the other to become a client, except that the performance of the services imposed on Sub-Advisor pursuant to this Agreement and the Client Agreements, if any, shall not constitute solicitation activities (the “Non-Solicitation Clause”).

### **Section 3. Duties of Sub-Advisor.**

Subject to the terms of this Agreement, Sub-Advisor will manage Client Accounts in accordance with its investment management philosophy and policies and pursuant to any written instructions from Managing Advisor and subject to the following:

A. Sub-Advisor will use best efforts to act in conformity with Client Agreements delivered by Managing Advisor to Sub-Advisor, and with the written instructions and directions of Managing Advisor, and will conform to and comply with the requirements of the Investment Advisors Act of 1940 and rules thereunder (the “Advisors Act”), Rule 3a-4 under the Investment Company Act of 1940 (the “1940 Act”), to the extent applicable, the Internal Revenue Code (the “Code”), and all other applicable federal and state laws and regulations, as each is amended from time to time.

B. Sub-Advisor will maintain all licenses, permits, and registrations and make all filings that are required under federal and state laws in connection with the performance of its duties hereunder.

C. Sub-Advisor will provide Managing Advisor with adequate copies of Sub-Advisor’s Form ADV and other disclosure materials that may be necessary or appropriate for provision to Clients and consult with Managing Advisor regarding any materials prepared to be sent or distributed to a Client. Sub-Advisor represents to Managing Advisor that such materials are, and at all times will be, true and correct in all material respects and do not and will not omit anything necessary to make the statements made therein materially true and correct.

D. Sub-Advisor will provide Managing Advisor with all information Managing Advisor may reasonably request regarding Sub-Advisor’s compliance with applicable laws and regulations and make appropriate persons available for the purpose of reviewing with representatives of Managing Advisor on a regular basis at reasonable times the management of each Client’s Account. Sub-Advisor or its designee will provide to Managing Advisor on request information relating to all transactions concerning the assets in the Clients’ Accounts which are being managed by Sub-Advisor.

E. Sub-Advisor will manage each Client's Account in light of Client's particular objectives, investment restrictions and other information set forth in Client's written response to any questionnaire or other request that solicited information concerning Client's financial situation, investment objectives and risk tolerance when Client opened its account with Managing Advisor (together, the “Questionnaire”), provided that such Questionnaire has been provided to Sub-Advisor. In addition, Sub-Advisor will be reasonably available to Client and Managing Advisor for joint consultation regarding the management of Client's Account and the individual Client's financial situation and investment needs, provided that Managing Advisor acknowledges that communication with and reporting to Clients shall be the primary responsibility of Managing Advisor.

F. In accordance with each Client's investment objectives, instructions and any other information set forth in the Questionnaire, Sub-Advisor will provide supervision of the investments for each Client's Account, and will determine from time to time what securities, certificates, investments or other products (collectively, the “Investments”), will be purchased, retained or sold with respect to each Client's Account and what portion of

Client's Account will be invested in the Investments or held uninvested in cash. Sub-Advisor will not, without the prior approval of Client, relayed by Client to Sub-Advisor through Managing Advisor, effect any transactions, which are not in accordance with such objectives or instructions.

G. Sub-Advisor will not have authority and discretion to select brokers and dealers to execute transactions initiated by Sub-Advisor, but will engage such brokers as Managing Advisor shall direct. Accordingly, unless Sub-Advisor (or an affiliate) acts as broker-dealer for Clients, Managing Advisor and not Sub-Advisor, will be responsible for "best execution" obligations as they relate to the selection of executing brokers for Client transactions as contemplated under the Advisors Act.

H. Sub-Advisor will promptly notify Managing Advisor of any financial condition that is likely to impair Sub-Advisor's ability to fulfill its commitment under this Agreement.

I. Services to be furnished by Sub-Advisor under this Agreement may be furnished through the medium of any of Sub-Advisor's partners, officers or employees.

#### **Section 4. Duties of Managing Advisor.**

A. Managing Advisor will act as the principal investment advisor for Clients and will continue to have responsibility for all services, communication and reporting to be provided to Clients pursuant to the Advisors Act and the Client Agreement or otherwise and will oversee and review Sub-Advisor's performance of its duties under this Agreement; provided, however, that nothing herein will be construed to relieve Sub-Advisor of responsibility for compliance with the investment objectives, policies and restrictions as provided in Sections 2 and 3 hereunder. Managing Advisor shall comply with, and shall be designated as principal sponsor under, Rule 3a-4 of the 1940 Act.

B. Managing Advisor will deliver to Sub-Advisor a true and complete copy of the Questionnaire it receives concerning each Client's Account at the time the Account is established. Managing Advisor also will deliver to Sub-Advisor revised Questionnaires it receives from Clients and such other documents governing the investment of Client Accounts and other information as may reasonably be requested by Sub-Advisor that is necessary for Sub-Advisor to carry out its obligations under the Agreement and applicable laws.

C. Managing Advisor will contact each Client at least annually to determine whether there have been any changes in Client's financial situation or investment objectives, and whether Client wishes to impose any reasonable restrictions on the management of Client's Account or reasonably modify existing restrictions.

D. Managing Advisor will maintain, keep current and preserve on behalf of Client Accounts, all records required by the Advisors Act.

E. Managing Advisor will arrange for Sub-Advisor to receive duplicate confirmations and statements or an electronic download of transaction history from the custodian, clearing firm or broker-dealer selected by Managing Advisor (unless Sub-Advisor (or an affiliate) is the broker-dealer). Managing Advisor shall provide such information about Clients as Sub-Advisor reasonably requests in order to meet any and all legal requirements applicable to Sub-Advisor in connection with the performance of its duties hereunder, relating to the financial condition of the Client, including without limitation information relating to desired asset allocation, net worth, income, investment experience, risk tolerance, and investment objectives; provided that it shall be the

responsibility of Managing Advisor to verify Client suitability and the foregoing information and to complete the foregoing analysis and to comply with anti-money laundering (and similar) legislation, and it shall be Sub-Advisor's responsibility to perform consistently with such information and analysis. Managing Advisor shall provide Sub-Advisor with copies of the Client's Client Agreement, trading authorization and such other Client/Managing Advisor account agreements as Sub-Advisor shall reasonably request to verify that Sub-Advisor and Managing Advisor are authorized by Client to render the investment advisory services to Client on a discretionary basis as contemplated by this Agreement and to verify that Client has acknowledged the existence of possible sub-management relationships such as that contemplated by this Agreement and the sharing of Client information with Sub-Advisor as contemplated by this Agreement. Managing Advisor shall provide access to Sub-Advisor to execute trades on behalf of Clients in Client Accounts held at the custodian.

F. Managing Advisor shall deliver to each Client a copy of Sub-Advisor's Privacy Policy, Anti-money Laundering Notification, Form ADV, Part II, and, if requested by Sub-Advisor, shall make each Client aware of the existence, and a general summary of the material terms, of this Agreement by arranging for Client to execute and deliver to Sub-Advisor an acknowledgment in a form reasonably acceptable to Sub-Advisor.

#### **Section 5. Transactions Procedures.**

Client Accounts will be maintained by a custodian selected by Managing Advisor, or by an independent custodian selected by the Client (the "**Custodian**"). All transactions will be consummated by payment to or delivery by Custodian of all cash and/or Investments due to or from Client Accounts or by on-line access. Neither Sub-Advisor nor Managing Advisor will have possession or custody thereof or any responsibility or liability for such custody.

#### **Section 6. Section 13(f) Compliance.**

If applicable, Sub-Advisor and Managing Advisor agree that Sub-Advisor will exercise "investment discretion" with respect to Client Accounts within the meaning of Section 13(f) of the Securities Exchange Act of 1934, and that Sub-Advisor will be responsible for filing any required reports with the SEC pursuant to such section and rules thereunder, copies of which shall be promptly delivered to Managing Advisor.

#### **Section 7. Compensation to Sub-Advisor.**

A. Managing Advisor understands that Clients will compensate Sub-Advisor for the services to be rendered to them pursuant to the investment advisory services of Sub-Advisor contracted for hereunder. Managing Advisor understands that Sub-Advisor generally calculates and bills or debits fees to Clients [**in advance, on a quarterly basis**], with respect to the services. As compensation for Sub-Advisor's services to be rendered hereunder, Client shall pay and shall allow each custodian to deduct and pay to Advisor from each Client account, the advisory fee. This advisory fee shall be based on the market value of the assets held in each account and shall be calculated at 0.95% of all account assets per annum for New Frontier Series SMA account and at 1.25% of all account assets per annum for all Accelerated Growth SMA and Monument SMA accounts.

B. Notwithstanding this advisory fee, in no event shall the quarterly account fee be less than \$25 for any account. Unless otherwise agreed upon in writing, fees will be charged on all assets held in each account including, but not limited to, cash, all marketable securities, options, and restricted stock. One quarter of the applicable annual advisor fee identified above will be deducted quarterly of the total assets under management.

C. Client may terminate the Investment Advisory Agreement without penalty within five (5) business days after the execution of the contract by notifying Sub-Advisor via Managing Advisor. Fees incurred from trading activities in the account (including trading fees to purchase initial account holdings and fees to liquidate those holdings upon account termination) will not be reimbursed. Any account appreciation or depreciation during the five day period will be borne or received by Client. If Client terminates an account before the end of a calendar quarter that has already been billed, Client will not receive a refund for any prepaid, unused fees. Subsequently, this Investment Advisory Agreement may be terminated at any time by either party (if Sub-Advisor informs Client or Client informs Sub-Advisor via Managing Advisor).

### **Section 8. Limitation of Liability.**

A. Managing Advisor will not be liable to Sub-Advisor for any error of judgment or for any loss suffered by Sub-Advisor in connection with the performance of its obligations under this Agreement, except a loss resulting from breach of this Agreement, or a loss resulting from willful misfeasance, bad faith or gross negligence on Managing Advisor's part in the performance of its duties or from reckless disregard of its obligations and duties under this Agreement, except as may otherwise be provided under provisions of applicable state law which cannot be waived or modified hereby.

B. Sub-Advisor will not be liable to Managing Advisor for any error of judgment or for any loss suffered by Managing Advisor in connection with the performance of its obligations under this Agreement, except a loss resulting from breach of this Agreement, or a loss resulting from willful misfeasance, bad faith or gross negligence on Sub-Advisor's part in the performance of its duties or from reckless disregard of its obligations and duties under this Agreement, except as may otherwise be provided under provisions of applicable state law which cannot be waived or modified hereby.

### **Section 9. Other Investment Activities of Sub-Advisor.**

It is understood that Sub-Advisor or one or more of its affiliates has investment responsibilities, renders investment advice to and performs other investment advisory services for other individuals or entities ("**Other Accounts**"), and that Sub-Advisor, its affiliates or any of its or their directors, officers, agents or employees may buy, sell or trade in any securities for their respective accounts ("**Affiliated Accounts**"). Subject to the provisions of Sections 2 and 3 hereof, Managing Advisor, on behalf of Client Accounts, agrees that Sub-Advisor or its affiliates may give advice or exercise management responsibility and take such other action for Other Accounts and Affiliated Accounts which may differ from the advice given or the time or nature of action taken for Client Accounts, provided that Sub-Advisor acts in good faith, and provided further that it is Sub-Advisor's policy to allocate, within its reasonable discretion, investment opportunities to Client Accounts over a period of time on a fair and equitable basis relative to the Other Accounts and the Affiliated Accounts, taking into account the cash position and the investment objectives and policies of each Client's Account and any specific restrictions that may be applicable. Subject to the provisions of Sections 2 and 13, nothing herein shall prevent Sub-Advisor from entering into investment management agreements or sub-investment management agreements with other parties.

### **Section 10. Indemnification.**

A. Sub-Advisor agrees to release, covenant not to sue, indemnify and hold harmless Managing Advisor and each person, if any, who controls Managing Advisor, its members, managers, employees, affiliates and agents against

any and all loss, liability, claim, damage and expense, including but not limited to attorneys' fees, as incurred, arising out of or based upon the breach of any provision of this Agreement by Sub-Advisor, the inaccuracy of any of the representations made by Sub-Advisor under this Agreement, any material inaccurate or incomplete statement contained in Sub-Advisor's Form ADV and/or brochure, any failure on the part of Sub-Advisor to carry out its duties under this Agreement, any third party claim resulting from actions or omissions of Sub-Advisor or its members, employees, affiliates or agents, and any termination of this Agreement by Managing Advisor permitted by the terms of this Agreement.

B. Managing Advisor will give prompt notice to Sub-Advisor of any action commenced against it in respect of which indemnity may be sought hereunder.

C. Managing Advisor agrees to release, covenant not to sue, indemnify and hold harmless Sub-Advisor and each person, if any, who controls Sub-Advisor, its shareholders, directors, employees, affiliates and agents against any and all loss, liability, claim, damage and expense, including but not limited to attorneys' fees, as incurred, arising out of or based upon the breach of any provision of this Agreement by Managing Advisor, the inaccuracy of any of the representations made by Managing Advisor under this Agreement, any material inaccurate or incomplete statement contained in Managing Advisor's Form ADV and/or brochure, any failure on the part of Managing Advisor to carry out its duties under this Agreement, including, without limitation, the failure by Managing Advisor to provide to Sub-Advisor information, guidance or direction received by it from Client as required under this Agreement, any third party claim resulting from actions or omissions of Managing Advisor or its shareholders, employees, affiliates, directors or agents, including in connection with engaging or rendering services to Clients, and any termination of this Agreement by Sub-Advisor permitted by the terms of this Agreement.

D. Sub-Advisor will give prompt notice to Managing Advisor of any action commenced against it in respect of which indemnity may be sought hereunder.

### **Section 11. Confidentiality.**

Subject to the duty of Sub-Advisor and Managing Advisor to comply with the applicable law, including any demand of any regulatory or taxing authority having jurisdiction, the parties hereto will treat as confidential all information pertaining to Client Accounts and the actions of Sub-Advisor in respect thereof. If Managing Advisor prepares standard written materials for public distribution that describes its services or programs and mentions Sub-Advisor, Managing Advisor will provide Sub-Advisor with copies of such materials for Sub-Advisor's approval (which shall not be unreasonably withheld) prior to their use. Managing Advisor agrees that it will not, without Sub-Advisor's prior consent, give any information or make any representations concerning Sub-Advisor or in connection with the sale of Sub-Advisor's investment advisory services, other than those contained in any written, audio or audio-visual materials prepared or approved by Sub-Advisor for use in connection with the sale of services.

### **Section 12. Non-Solicitation.**

In addition to the Non-Solicitation Clause contained above in Section 2 hereof, Sub-Advisor agrees that it will not, during the term of this Agreement and for a period of two years thereafter, hire, employ or contract with any former employee or independent contractor, including without limitation, those providing support, investment

management or client solicitation services on behalf of Managing Advisor for a period of one year after the employee ceases their employment or the independent contractor's agreement has been canceled or been terminated with Managing Advisor. In addition to the Non-Solicitation Clause contained above in Section 2 hereof, Managing Advisor agrees that it will not, during the term of this Agreement and for a period of two years thereafter, hire, employ or contract with any former employee or independent contractor, including without limitation, those providing support, investment management or client solicitation services on behalf of Sub-Advisor for a period of one year after the employee ceases their employment or the independent contractor's agreement has been canceled or been terminated with Sub-Advisor.

### **Section 13. Protection of Proprietary Interests.**

Sub-Advisor and Managing Advisor each recognize and acknowledge that each party has made substantial effort and investment in developing its business and client relationships; that as a result of this contract each party will be in a position to obtain valuable information about the character of the other's business and its requirements for products and services, and that it is a legitimate business interest of each party to protect said investment and the confidentiality of information pertaining to its business; and that each party is being adequately compensated for its services through the provisions of the Agreement. Sub-Advisor and Managing Advisor also recognize and acknowledge that access to such information may enable Sub-Advisor or Managing Advisor to gain an unfair advantage over the other should such party subsequently engage in a competing business and utilize such information, which would result in substantial damage to Managing Advisor or Sub-Advisor, thereby requiring and justifying the conditions and covenants set forth herein.

A. Sub-Advisor and Managing Advisor each agree that they will hold all Confidential Information (as defined below) in a fiduciary capacity and will not at any time (whether during or after the term of this Agreement):

(i) Disclose, directly or indirectly, in any manner to any person, corporation, or business entity, any Confidential Information, without the prior written consent of the party who deems such information as Confidential Information, or

(ii) Utilize any such Confidential Information for the gain, advantage or profit of anyone other than as intended by this Agreement.

B. Sub-Advisor and Managing Advisor further agree to exercise the highest degree of care in safeguarding the Confidential Information against loss, theft or other inadvertent disclosure and agree to generally take all steps necessary to maintain the confidentiality thereof. Nothing herein shall be construed as prohibiting Managing Advisor or Sub-Advisor from pursuing any other remedies available to them for such breach or threatened breach, including recovery of damages from the breaching party.

C. All documents, records, computer software, computer data, notes, notebooks, memoranda and similar repositories of Confidential Information made or compiled by Sub-Advisor or Managing Advisor at any time, or made available to the other party, including any and all copies thereof, shall be deemed the exclusive property of the party originating the information, regardless of who actually acquired, prepared or assembled such records, books, files or data. All such documents, records, computer software, computer data, notes, notebooks, work papers, records or notes, or other records containing names and addresses of Clients served by Managing Advisor, including any and all copies thereof, shall, at the request of Managing Advisor, be delivered to Managing Advisor

by Sub-Advisor promptly following the termination of this Agreement, unless Sub-Advisor is required to retain such by applicable law or order.

D. “Confidential Information”, as used herein, means any and all information disclosed to Sub-Advisor or Managing Advisor as a consequence of or through the relationship contemplated by this Agreement, not generally known to the relevant trade or industry, about the Clients of Managing Advisor and any and all information concerning Sub-Advisor's or Managing Advisor's methods of conducting or obtaining business; the products, processes and services used, developed, investigated or considered by Managing Advisor or Sub-Advisor; and information regarding Sub-Advisor's or Managing Advisor's finances, legal affairs, financial history or projections.

#### **Section 14. Representations of Managing Advisor.**

A. Managing Advisor represents that it is registered as an investment advisor under the Advisors Act and applicable state laws, and is not prohibited by such Act, laws or the rules thereunder from acting as contemplated by this Agreement.

B. In the performance of its duties and obligations under this Agreement, Managing Advisor represents that it will act in conformity with Client Agreements and any Client instructions, and will conform to and comply with the requirements of the Advisors Act, Rule 3a-4 under the 1940 Act, the Code, and all other applicable federal and state laws and regulations, as each is amended from time to time.

C. Managing Advisor will promptly advise Sub-Advisor of any event or occurrence, which would render Managing Advisor's disclosure document describing its services materially inaccurate.

D. Managing Advisor has the financial resources, personnel, properties and assets adequate for the performance of its obligations under this Agreement and will notify Sub-Advisor promptly of any developments in its financial situation, which materially adversely impact its ability to perform its obligations hereunder for Client Accounts.

E. This Agreement has been duly authorized, executed and delivered by Managing Advisor, and neither the execution nor delivery of this Agreement nor the performance by Managing Advisor of its obligations hereunder will conflict with, or result in a breach of, any other terms or provisions of, or constitute, with or without giving notice or lapse of time or both, a default under, any agreement or instrument to which it is a party or by which it is bound, or any law, order, rule, or regulation applicable to it of any jurisdiction, court, federal or state regulatory body, administrative agency or other governmental body, stock exchange or securities association having jurisdiction over it or its property or operations.

F. Managing Advisor represents that it will be qualified under the applicable securities laws of the states and other jurisdictions of the United States to act as an investment advisor to all Client Accounts whose appointment Sub-Advisor accepts pursuant to this Agreement, and will maintain such qualifications for the duration of this Agreement. Managing Advisor will promptly notify Sub-Advisor of any change in such status.

G. Except to the extent disclosed to Sub-Advisor, there is no action, suit or proceeding before any court or governmental agency or body, domestic or foreign, now pending or, to the knowledge of Managing Advisor, threatened against or affecting Managing Advisor which might result in any material adverse change in the condition, financial or otherwise, business or prospects of Managing Advisor, or might materially and adversely

affect its properties or assets. Managing Advisor agrees to use commercially reasonable efforts to inform Sub-Advisor of any proceeding that would be disclosable under this provision as soon as reasonably practicable and consistent with any negotiations or discussions with any such court or governmental agency or body relating to such proceeding.

H. Managing Advisor, its officers and directors have not been the subject at any time to an order of the SEC under Section 203(f) of the Advisors Act.

I. Managing Advisor, its officers and directors have not been convicted within the past ten (10) years of any felony or misdemeanor involving conduct described in Section 203(e)(2)(A) through (D) of the Advisors Act.

J. Managing Advisor, its officers and directors have not been found at any time by the SEC to have engaged, or been convicted at any time of engaging, in any of the conduct specified in paragraphs (1), (4) or (5) of Section 203(e) of the Advisors Act.

K. Managing Advisor, its officers and directors have not been subject to an order, judgment or decree described in Section 203(e)(3) of the Advisors Act.

#### **Section 15. Representations of Sub-Advisor.**

A. Sub-Advisor represents that it is registered as an investment advisor under the Advisors Act and applicable state laws, and is not prohibited by such Act, laws or the rules thereunder from acting as contemplated by this Agreement.

B. In the performance of its duties and obligations under this Agreement, Sub-Advisor represents that it will act in conformity with the Client Agreements and any written Client instructions delivered to it, and will conform to and comply with the requirements of the Advisors Act, Rule 3a-4 under the 1940 Act, to the extent applicable, the Code, and all other applicable federal and state laws and regulations, as each is amended from time to time.

C. Sub-Advisor understands that Client Accounts may be owned by investors who are residents in various states of the United States and that under such circumstances its performance of its obligations hereunder may be subject to the securities and other applicable laws of the various states. Sub-Advisor represents that it will be qualified under the applicable securities laws of the states and other jurisdictions of the United States to act as an investment advisor to all Client Accounts whose appointment it accepts pursuant to this Agreement, and will maintain such qualifications for the duration of this Agreement. Sub-Advisor will promptly notify Managing Advisor of any change in such status.

D. The information provided by Sub-Advisor for use in any disclosure document describing the services provided hereunder are true and correct as of the date hereof, and Sub-Advisor acknowledges and consents to the reliance by Managing Advisor and Clients on the truth and accuracy of such information. All other information regarding Sub-Advisor provided directly or indirectly to Managing Advisor in connection with the services rendered on behalf of Client Accounts is or will be true and correct as of the dates furnished.

E. Sub-Advisor will promptly advise Managing Advisor of any event or occurrence that would render Sub-Advisor's disclosure document describing itself or its services materially inaccurate.

F. Sub-Advisor has the financial resources, personnel, properties and assets adequate for the performance of its obligations under this Agreement and will notify Managing Advisor promptly of any developments in its financial situation, which materially adversely impact its ability to perform its obligations hereunder for Client Accounts.

G. Except to the extent disclosed to Managing Advisor, there is no action, suit or proceeding before any court or governmental agency or body, domestic or foreign, now pending or, to the knowledge of Sub-Advisor, threatened against or affecting Sub-Advisor which might result in any material adverse change in the condition, financial or otherwise, business or prospects of Sub-Advisor, or might materially and adversely affect its properties or assets. Sub-Advisor agrees to use commercially reasonable efforts to inform Managing Advisor of any proceeding that would be disclosable under this provision as soon as reasonably practicable and consistent with any negotiations or discussions with any such court or governmental agency or body relating to such proceeding.

H. This Agreement has been duly authorized, executed and delivered by Sub-Advisor, and neither the execution nor delivery of this Agreement nor the performance by Sub-Advisor of its obligations hereunder will conflict with, or result in a breach of, any other terms or provisions of, or constitute, with or without giving notice or lapse of time or both, a default under, any agreement or instrument to which it is a party or by which it is bound, or any law, order, rule, or regulation applicable to it of any jurisdiction, court, federal or state regulatory body, administrative agency or other governmental body, stock exchange or securities association having jurisdiction over it or its property or operations.

I. Sub-Advisor, its officers and directors have not been the subject at any time to an order of the SEC under Section 203(f) of the Advisors Act.

J. Sub-Advisor, its officers and directors have not been convicted within the past ten (10) years of any felony or misdemeanor involving conduct described in Section 203(e)(2)(A) through (D) of the Advisors Act.

K. Sub-Advisor, its officers and directors have not been found at any time by the SEC to have engaged, or been convicted at any time of engaging, in any of the conduct specified in paragraphs (1), (4) or (5) of Section 203(e) of the Advisors Act.

L. Sub-Advisor, its officers and directors have not been subject to an order, judgment or decree described in Section 203(e)(3) of the Advisors Act.

M. With respect to any prospective or solicited Client that is a retirement plan subject to ERISA or a tax qualified retirement plan or IRA under the Internal Revenue Code, Sub-Advisor and its officers, employees, agents or affiliates are not and will not be trustees or administrators for any such plan.

N. With respect to any prospective or solicited Client that is a state, municipality, or other political entity, agency or subdivision, Sub-Advisor, any of its officers, employees, agents or affiliates, are not and will not be associated in any way with such entity or have been an elected official, employee or person providing professional services to such entity within the last two (2) years.

#### **Section 16. Amendment.**

This Agreement may be amended at any time, but only by written agreement between Managing Advisor and Sub-Advisor.

### **Section 17. Effective Date.**

The Agreement will become effective on the date set forth on the first page of this Agreement.

### **Section 18. Termination.**

This Agreement may be terminated by Managing Advisor, without a penalty, upon not less than thirty (30) days written notice to Sub-Advisor. The Agreement may be terminated by Sub-Advisor, without a penalty, upon not less than thirty (30) days written notice to Managing Advisor. In addition to the foregoing, either party may terminate this Agreement if the other party or any of its affiliates files a petition (or has a petition filed against it) for bankruptcy, seeks to have a receiver appointed, is or becomes insolvent, or otherwise ceases to do business or seeks to liquidate its business. In addition to the foregoing, this Agreement may be terminated at any time with respect to a specific Client Account or Client Accounts upon written notice by either party to the other and termination will become effective with respect to such Account or Accounts upon receipt of such notice; provided, however, that such termination will not affect any Client Account for which no termination has occurred or liabilities or obligations of the parties incurred, or arising from transactions initiated, under this Agreement prior to termination. In the event of a breach of any provision hereof by a party, this Agreement may be terminated immediately upon written notice to the other party. Any termination of this Agreement will not affect the status, obligations or liabilities of any party hereto to the other party which either arose prior to termination or which by its nature or the terms hereof, survive termination.

### **Section 19. Governing Law.**

This Agreement will be governed by the internal laws of the State of Colorado without regard to conflict of law principles, provided, however, that nothing herein shall be construed as inconsistent with the Advisors Act.

### **Section 20. Severability/Successors.**

Should any part of this Agreement be held invalid by a court decision, statute, rule or otherwise, the remainder of this Agreement will not be affected thereby. This Agreement shall be binding upon and will inure to the benefit of the parties hereto and their respective successors.

### **Section 21. Notice.**

Any notice, advice or report to be given pursuant to this Agreement will be deemed sufficient if delivered or mailed by registered, certified or overnight mail, postage prepaid addressed by the party giving notice to the other party at the last address furnished by the other party.

### **Section 22. Arbitration.**

A. Sub-Advisor and Managing Advisor understand and agree that, to the extent permitted by law, all claims arising out of this Agreement (a "Dispute") will be resolved through final and binding arbitration pursuant to the terms hereof. No provision of, nor the exercise of any rights under this arbitration clause shall limit the right of any party to obtain provisional or ancillary remedies such as injunctive relief from a court having jurisdiction. The institution and maintenance of an action as described above shall not constitute a waiver of the right of any party, including the plaintiff, to submit the Dispute to arbitration, nor render inapplicable the compulsory arbitration

provisions hereof. Sub-Advisor and Managing Advisor each acknowledge and agree that: (i) such arbitration will be final and binding on the parties; (ii) the parties are hereby waiving their rights to seek remedies in court, including the right to a jury trial; (iii) pre-arbitration discovery is generally more limited than and different from discovery conducted in connection with litigation; (iv) the arbitrator's award is not required to include factual findings or legal reasoning; and (v) a party's right to appeal or seek modification of rulings by the arbitrator will be strictly limited.

B. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration in Denver, Colorado, before FINRA, in accordance with the FINRA Code of Arbitration Procedure. The arbitration shall be administered by FINRA pursuant to its arbitration rules and procedures then in effect, before a panel of industry arbitrators. Judgment on the award may be entered in any court having jurisdiction.

C. This arbitration provision shall be enforced and interpreted exclusively in accordance with applicable Federal law, including the Federal Arbitration Act. Any costs, fees, or taxes involved in enforcing the award shall be fully assessed against and paid by the party resisting enforcement of said award. The prevailing party shall also be entitled to an award of reasonable attorneys' fees and costs incurred in connection with the enforcement of this Agreement.

### **Section 23. Entire Agreement.**

This Agreement embodies the entire agreement and understanding between the parties hereto, and supersedes all prior agreements and understandings relating to this Agreement's subject matter. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but such counterparts will, together, constitute only one instrument.

Where the effect of a requirement of the Advisors Act reflected in any provision of this Agreement is altered by a rule, regulation or order of the SEC, whether of special or general application, such provision will be deemed to incorporate the effect of such rule, regulation or order.

### **Section 24. Relationship of Parties.**

Sub-Advisor shall for all purposes herein be deemed to be an independent contractor of Managing Advisor. It is expressly agreed to by the parties hereto that the relationship created by this Agreement does not create a partnership or joint venture between Sub-Advisor and Managing Advisor. Except as specifically set forth herein with respect to Sub-Advisor's authority to make trading decisions and give orders to broker-dealers for trading the Client's Accounts, neither party shall have any authority to bind the other nor shall either party represent to third parties that it has such authority.

### **Section 25. Assignment.**

Neither party, without written consent of the other, may assign any of the rights or obligations hereunder.

### **Section 26. Survival.**

The provisions of the Non-Solicitation Clause in Section 2, Section 8 (Limitation of Liability), Section 10 (Indemnification), Section 11 (Confidentiality), Section 12 (Non-Solicitation), Section 13 (Protection of Proprietary Interests), Section 18 (Termination), Section 19 (Governing Law), and Section 22 (ARBITRATION) shall survive the termination or expiration of this Agreement.

**MANAGING ADVISOR FIRM CONTACT INFORMATION:**

**Firm Name:** \_\_\_\_\_ **Firm CRD#:** \_\_\_\_\_

**Firm Home Office Address:** \_\_\_\_\_

**Firm Home Office Telephone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Chief Compliance Officer Name:** \_\_\_\_\_

**Chief Compliance Officer Email:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their officers designated below as of the day and year first written above.

**MANGING ADVISOR FIRM**

**SIMONDAVIS ASSET MANAGEMENT, INC.**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_