

## **Brinker Capital Investments, LLC**

### **Instructions for the Solicitor Agreement**

(For use with REGISTERED INVESTMENT ADVISERS)

**The attached Solicitor Agreement is for use with Registered Investment Advisers ("RIA").  
Some general guidelines are set forth below.**

Page 7 is the only page where information is required.

**RIA** – Enter the legal name of your RIA Firm

**RIA's IRS EIN #** – Enter the Tax ID number for the RIA Firm

**Name of Licensing Contact** – Enter the name and email address of an individual or email group that Brinker may contact to verify the registration status of representatives or address other licensing questions.

**BD/RIA Designation Boxes** – Check the box for RIA, as well as B/D if the firm is also registered as a broker-dealer.

Schedule A is used for any special restrictions that you wish to place on Brinker referred business.

**If you need assistance completing the Solicitor Agreement please contact Brinker at (888) 455-4244.**

# SOLICITOR AGREEMENT

(For use with REGISTERED INVESTMENT ADVISERS)

**THIS AGREEMENT** is made and entered into by and between BRINKER CAPITAL INVESTMENTS, LLC ("Brinker") and the undersigned registered Investment Adviser, if applicable (the "Solicitor Firm" or "RIA").

**WHEREAS**, Brinker is engaged in the business of rendering investment advice to clients for a fee and is registered as an investment adviser under the Investment Adviser's Act of 1940, as amended (the "1940 Act"), and under applicable state laws, rules and regulations; and

**WHEREAS**, Solicitor Firm is registered as an Investment Adviser under applicable federal and state laws, rules and regulations; or exempt from registration as an Investment Adviser under applicable federal and state laws, rules and regulations; and

**WHEREAS**, Solicitor Firm, through its representatives, desires to refer clients to Brinker for investment advisory services and Brinker is willing to pay Solicitor Firm a fee for such referrals on the terms and conditions set forth herein and subject to applicable federal and state laws, rules and regulations.

**NOW THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements herein contained, Brinker and Solicitor agree as follows:

## SECTION 1. SCOPE OF SOLICITOR FIRM'S ACTIVITIES.

- (A) Solicitor Firm agrees, and may authorize designated representatives, as designated in writing (including email) from time to time to Brinker, to recommend Brinker's investment advisory services to potential clients and to solicit for and refer investment advisory clients to Brinker. Each designated representative of Solicitor Firm shall be required to enter into a solicitor agreement directly with Brinker containing similar terms as this Agreement. Solicitor Firm's authorization of designated representatives to Brinker prior to this Agreement shall continue in effect under this Agreement. Solicitor Firm shall use its best efforts to solicit and refer as clients to Brinker those individuals and entities it believes are suitable and appropriate for the investment management services offered by Brinker. Solicitor Firm shall also make periodic contact with referred clients, at least annually, to assist referred clients in understanding the investment advisory services of Brinker and to obtain and/or to update client information and forward the same to Brinker. All solicitation activities shall be limited to a description, explanation and selection of Brinker's services and applicable fee schedule and the gathering of certain client financial information. Solicitor Firm is not authorized to and shall not make any investment recommendations on behalf of Brinker, give any investment advice on behalf of Brinker, nor accept any client on behalf of Brinker. **Solicitor Firm shall be responsible for the conduct and proper supervision of its representatives.** Solicitor Firm shall determine for itself the time, place and manner of solicitation of such clients consistent with the terms of this Agreement, instructions given by Brinker, the 1940 Act, and all applicable federal and state laws, rules and regulations. It is agreed that Solicitor Firm is an independent contractor hereunder and that nothing contained in this Agreement shall be construed to create a relationship of employer-employee, agency, representative, partnership, joint venture or any other relationship other than that of an independent contractor. Solicitor Firm understands that the investment management services offered by Brinker and made available to Solicitor Firm, its representatives and clients are set forth in Brinker's ADV Part 2A or similar disclosure document. Any restrictions to this Agreement requested by Solicitor Firm are set forth on **Schedule A**.
- (B) Solicitor Firm understands that Brinker's investment management services provide proprietary asset allocation services for clients based on such factors as financial circumstances, time horizon, risk tolerance, return objective, and any reasonable restrictions that the client may place on Brinker's asset allocation determination. Brinker provides these services to clients on a discretionary basis in accordance with the client's direction based on the information provided to Brinker by Solicitor Firm from clients and on the client's completed Client Profile or similar risk tolerance questionnaire that is acceptable to Brinker. For accounts subject to the Employee Retirement Income Act of 1974

- (“ERISA”), Brinker will also adhere to any guidance set forth in an investment policy statement adopted by the client.
- (C) Solicitor Firm is responsible for any recommendations it makes concerning its referral of client for Brinker’s services; provided, that Solicitor Firm will refer to Brinker’s most recent Part 2A of Form ADV for the current description of Brinker’s available investment strategies when determining the most appropriate Brinker strategy for the client’s account. Accordingly, Solicitor Firm agrees that recommendations to a client regarding Brinker’s investment management services will be based on such client’s investment objectives, risk tolerance, financial circumstances, reasonable restrictions, and other client information communicated to Solicitor Firm, as documented in the client’s respective Client Profile and/or investment policy statement provided by Solicitor Firm to Brinker on behalf of the client. If Solicitor Firm makes any recommendation with respect to any “rollover” of a client’s retirement account, Solicitor Firm agrees it will ensure such recommendation is in the client’s best interest and that the reasoning for such recommendation has been fully documented and communicated to the client. For the avoidance of doubt, Solicitor Firm acknowledges that Brinker makes no recommendations concerning “rollovers” of a client’s retirement account.

**SECTION 2. DOCUMENT DELIVERY OBLIGATIONS.** Pursuant to the 1940 Act, at the time of any solicitation activities hereunder, Solicitor Firm or its representatives shall provide each client with current copies of the following: (i) the Solicitor Firm’s disclosure document required by the 1940 Act under Rule 206(4)-3, (ii) Part 2A of Brinker’s Form ADV as the same may be amended from time to time (or such other written disclosure statement meeting the requirements of Rule 204-3 as Brinker may designate from time to time), and (iii) such other disclosures as may be required by applicable federal or state laws, rules and regulations. Solicitor Firm or its representatives shall obtain each such client’s signed and dated acknowledgment of receipt of the foregoing documents and shall promptly forward a copy of the same to Brinker.

**SECTION 3. SOLICITOR FIRM COMPENSATION.** In consideration for client referrals and other requested or required Solicitor Firm activities, Brinker shall pay a referral fee as full compensation for services provided hereunder. Such payment shall be made in accordance with any applicable federal or state laws, rules or regulations to which Brinker and Solicitor Firm are subject. The referral fee shall be in an amount equal to the “referral percentage rate” then in effect for the investment management service selected by the client, which fee shall be due and payable within thirty (30) days after Brinker receives the client advisory fee. Brinker reserves the right to change the referral fee percentages and payment frequency at any time and agrees to provide Solicitor Firm with written notice of change no less than 10 days prior to the implementation of such change. For purposes of this Section, “referral percentage rate” shall mean the portion of the total client advisory fee authorized by Brinker for payment to solicitors. All referral fees will continue to be paid to Solicitor Firm, as long as the client remains with Brinker and the Solicitor Firm remains solicitor of record on the account and eligible and qualified to receive such fees. Notwithstanding any provision of this Agreement to the contrary, Brinker will not be obligated to pay Solicitor Firm any referral fee if, in the opinion of Brinker’s legal counsel, such payment would violate any law, rule or regulation to which Brinker is subject.

**SECTION 4. ACCEPTANCE/REFUNDS.** All referrals are subject to acceptance by Brinker. No compensation will be paid to Solicitor Firm on any client rejected by Brinker for any reason, or with respect to which client fees have been refunded by Brinker for any reason, or with respect to any fees not collected by Brinker for any reason. Solicitor Firm agrees to refund to Brinker within thirty (30) days of receipt of written notice, any fee paid to Solicitor Firm with respect to which advisory fees have been refunded to any client. Notwithstanding the foregoing, Brinker may offset any such amounts owed by Solicitor Firm or its representatives to Brinker against future compensation owed by Brinker to Solicitor Firm or its representatives. Brinker shall continue to be entitled to manage the account of any client referred to Brinker by a representative of Solicitor Firm, and Solicitor Firm shall continue to be entitled to receive compensation with respect thereto notwithstanding the resignation or death of the representative who referred such client to Brinker or the termination of the representative’s agreement by Brinker or such representative; provided, however that the Solicitor Firm shall not be entitled to receive any compensation with respect to such client if: (i) the Solicitor Firm’s disclosure document required by the 1940 Act under Rule 206(4)-3 is no longer accurate, or (ii) Brinker terminated such representative’s agreement for cause. Cause shall exist if: (i) representative has breached any material term of the representative’s agreement, or (ii) any material representation or warranty made by representative is no longer true.

**SECTION 5. ADVERTISING.** Solicitor Firm agrees that neither it nor its representatives may publish advertisements, distribute sales or promotional literature, or engage in any communication describing Brinker’s investment management services without obtaining the prior written approval from Brinker of the content of such materials or communication. Solicitor Firm agrees to use only such advertising materials, promotional materials and forms as have been approved by Brinker in writing.

**SECTION 6. SOLICITOR FIRM REPRESENTATIONS, WARRANTIES, AND COVENANTS.** Solicitor Firm represents and warrants that it and its representatives are properly registered or licensed under applicable federal and state laws, rules and regulations and is qualified to act as representatives under the 1940 Act. Solicitor Firm warrants and agrees that such registrations, licenses and qualifications shall be maintained throughout the term of this Agreement and that Solicitor Firm and its representatives will comply with all applicable regulations of the Securities and Exchange Commission ("SEC"), the Financial Industry Regulatory Authority, Inc. ("FINRA") and any other applicable federal, state or local laws, rules and regulations. Solicitor Firm hereby undertakes to perform its duties hereunder in a manner consistent with the provisions of the 1940 Act, ERISA, the rules and regulations promulgated thereunder, all applicable state laws, rules and regulations and the terms of this Agreement. Solicitor Firm hereby represents and warrants to Brinker that Solicitor Firm and each of its representatives who solicit and refer clients to Brinker pursuant to this Agreement is qualified under Rule 206(4)-3(a)(1)(ii) under the 1940 Act and such state laws, rules and regulations as may be applicable. Specifically, Solicitor Firm hereby represents and warrants that neither Solicitor Firm nor any of its representatives: (i) is subject to any SEC order issued under Section 203(f) of the 1940 Act, or (ii) has been convicted within the previous ten years of any felony or misdemeanor involving conduct described in Section 203(e)(2)(A) through (D) of the 1940 Act, or (iii) has been found by the SEC to have engaged, or has been convicted of engaging, in any of the conduct specified in paragraphs (1), (5) or (6) of Section 203(e) of the 1940 Act, or (iv) is subject to an order, judgment or decree described in Section 203(e)(4) of the 1940 Act. Solicitor Firm represents that it and its representatives are familiar with the investment management services offered by Brinker as set forth in Brinker's ADV Part 2A and other applicable Brinker brochures and marketing literature.

With respect to any prospective client that is a state or municipal entity, Solicitor Firm: (i) has not within the past 2 years, been a civil servant or an elected official of such entity or has been retained to provide professional services to such entity, or (ii) will not share any part of the referral fee paid pursuant to this Agreement with any person who is, or within the past 2 years has been, a civil servant or an elected official of such entity or a person who has been retained to provide professional services to such entity. With respect to any prospective client that is a Retirement Plan (as defined below), Solicitor Firm is eligible to make recommendations regarding Brinker's services to such Retirement Plan. For purposes of this Agreement, "Retirement Plan" means any pension plan (including 401(k) plan) or other employee benefit plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), an account for a tax-qualified retirement plan (including a Keogh plan) under Section 401(a) of the Internal Revenue Code of 1986 (the "Code") and not covered by ERISA, or any plan covered under Section 4975(e)(1) of the Code, including an individual retirement account under Section 408 of the Code. Solicitor Firm shall promptly notify Brinker if any of the representations or warranties of this paragraph ceases to be true and correct with respect to itself or any of its representatives. Solicitor Firm agrees to make available to Brinker all such registrations, licenses and other documents as may be reasonably requested by Brinker from time to time during the term hereof in order to verify the foregoing representations and warranties.

**SECTION 7. NO GUARANTEE.** Solicitor Firm understands that Brinker cannot guarantee the accuracy or profitability of investment advice it renders to any client and that there can be no assurance that Brinker's services will not result in losses.

**SECTION 8. TERMINATION.** This Agreement shall remain in full force and effect until terminated by either party upon thirty (30) days prior written notice to the other party.

**SECTION 9. NOTICES.** All notices required to be delivered under this Agreement will be delivered in person or by U.S. mail, overnight courier or facsimile (with a hard copy in the U.S. mail), in each case prepaid and addressed to a party as set forth below, or at such different address as a party may designate in writing to the other party. In lieu of receiving documents in paper format, you agree, to the fullest extent permitted by law, to accept electronic delivery of any documents that may be required to be delivered to you. Electronic delivery may be via electronic mail system.

**SECTION 10. CONFIDENTIALITY.** Solicitor Firm agrees to keep confidential all ideas, techniques and materials supplied by Brinker and shall not reproduce or distribute the same to any other person at any time, or use the same after termination of the Agreement except by express written consent of Brinker. Both Brinker and Solicitor Firm agree to comply with all applicable federal and state laws, rules and regulations pertaining to the confidentiality of client information.

**SECTION 11. WAIVER.** No waiver by either party to this Agreement at any time of any breach of the other party of or compliance by the other party with any condition or provision of this Agreement to be performed by the other party shall be deemed to be a waiver of similar or dissimilar provisions or conditions at the same or any prior or subsequent time.

**SECTION 12. SEVERABILITY.** If any provision of this Agreement shall be held or deemed to be illegal, inoperative or unenforceable by any court of competent jurisdiction, the same shall not affect any other provisions herein contained or render the same invalid, inoperative or unenforceable.

**SECTION 13. ASSIGNMENT.** This Agreement shall inure to the benefit and be binding upon the parties hereto and their respective successors and assigns. Solicitor Firm may not assign or otherwise transfer this Agreement or any right or interest hereunder without Brinker's prior written consent.

**SECTION 14. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, superseding any prior agreement, understanding, arrangement, warranty or representation, oral or written, express or implied, with respect to such subject matter. This Agreement may not be amended except with the consent by the parties hereto. This Agreement may be executed by facsimile or email which shall be deemed an original valid and binding agreement.

**SECTION 15. GOVERNING LAW.** This Agreement shall be construed and governed in accordance with the laws of the State of Nebraska.

**SECTION 16. INDEMNIFICATION OF BRINKER.** Solicitor Firm shall defend and indemnify Brinker against and hold Brinker harmless from any and all claims, actions, proceedings, costs, expenses, damages and liabilities including reasonable attorney's fees, arising out of or connected with any recommendation made to a client or any of Solicitor Firm's or its representatives' or employees' failure to comply with this Agreement or to comply with applicable provisions of federal or state securities laws.

**SECTION 17. ARBITRATION** Any dispute relating to the validity, enforcement or interpretation of this Agreement shall be determined by final and binding arbitration. Such arbitration shall be conducted in Omaha, Nebraska according to the Securities Arbitration Rules then in effect of the American Arbitration Association. Both parties acknowledge 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. Judgment upon arbitration awards may be entered in any court, state or federal, having jurisdiction. The prevailing party in any arbitration and other legal proceeding authorized by this Paragraph will be entitled to its reasonable attorney's fees and other reasonable legal costs and expenses.

**SECTION 18. INDEMNIFICATION OF SOLICITOR FIRM.** Brinker shall defend and indemnify Solicitor Firm against and hold Solicitor Firm harmless from any and all claims, actions, proceedings, costs, expenses, damages and liabilities including attorney's fees arising out of or connected with the failure of Brinker or any of its officers or employees to comply with this Agreement or to comply with applicable provisions of federal or state securities laws.

**SECTION 19. REPRESENTATIVE CONFIDENTIALITY.** It is agreed that the identity of, and information concerning, the representatives' of Solicitor Firm is confidential and a valuable business asset of Solicitor Firm. During the term of this Agreement and after its termination Brinker shall not provide or allow any other person or entity to access information in Brinker's possession concerning the representatives provided by Solicitor Firm or otherwise obtained by Brinker during activities related to this Agreement, except as required by law, rule, regulation or judicial authority or as required by Brinker's accountants or legal counsel. Notwithstanding the foregoing, upon the request of a representative, Brinker may refer other service providers, including its own affiliated companies.

**SECTION 20. HEADINGS.** Section and paragraph headings in this Agreement are included for convenience only and are not to be used to construe or interpret this Agreement.

**SECTION 21. ANTI-MONEY LAUNDERING PROGRAM.** Both Solicitor Firm and Brinker agree to comply with all

applicable anti-money laundering laws, regulations, rules and government guidance, including the reporting, record keeping and compliance requirements of the Bank Secrecy Act ("BSA"), as amended by The International Money Laundering Abatement and Financial Anti-Terrorism Act of 2002, Title III of the USA PATRIOT Act ("the Act"), its implementing regulations, and related rules promulgated by the SEC and other self regulatory organizations. These requirements include requirements to identify and report currency transactions and suspicious activity, to verify customer identity, to conduct customer due diligence, and to implement anti-money laundering compliance programs. As required by the Act, each party hereby certifies that it has a comprehensive anti-money laundering compliance program that includes policies, procedures and internal controls for complying with the BSA; policies, procedures and internal controls for identifying, evaluating and reporting suspicious activity; a designated compliance officer or officers; training for appropriate employees; and an independent audit function.

Further, the parties agree to comply with the economic sanctions programs administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"). The parties certify that they have an OFAC compliance program in place which includes procedures for checking customer names and the names of persons with signature authority over accounts against the OFAC lists of sanctioned governments and specially-designated nationals, terrorists and traffickers; the screening of wire transfers and other payments against the OFAC lists; a designated compliance officer; an internal communication network; training of appropriate personnel; and an independent audit function.

The parties agree to promptly notify the other whenever questionable activity or potential indications of suspicious activity or OFAC matches are detected. The parties further agree to investigate any potentially suspicious activity and to take appropriate action, including the blocking of accounts, the filing of Suspicious Activity Reports and the reporting of matches to OFAC.

**SECTION 22. COMMUNICATIONS BETWEEN BRINKER AND SOLICITOR FIRM.** Solicitor Firm agrees and consents to receive correspondence and information regarding Brinker's services via a nationally recognized mail courier, electronic mail, telephone, or facsimile. Solicitor Firm may elect at any time not to receive correspondence from Brinker via electronic mail or facsimile by notifying Brinker in writing.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the parties have executed this Agreement effective on the date accepted by Brinker as indicated below.

**RIA:** \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Email Address (for Notice): \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

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

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

RIA's IRS EIN #: \_\_\_\_\_

Name of Licensing Contact: \_\_\_\_\_

Licensing Contact e-mail address: \_\_\_\_\_

Solicitor Firm is a: ☐ Broker/Dealer ☐ Registered Investment Adviser

**Solicitor Compensation**

All Solicitor Compensation will be made payable to the registered Investment Adviser Solicitor at the address identified herein. Should you wish to change payment information, please provide Brinker written instructions on your firm's stationery.



**DO NOT WRITE BELOW THIS LINE**

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**Accepted By:**

**BRINKER CAPITAL INVESTMENTS, LLC**

17605 Wright Street  
Omaha, NE 68130  
(402) 493-3313

By: \_\_\_\_\_  
(Signature)

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

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

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

## **SCHEDULE A**

### **Solicitor Firm Restrictions**

Solicitor Firm hereby requests the following restrictions on Brinker referred business: