

**Public Employees' Retirement Board  
June 11, 2015**

**Topic: Contract with Advised Assets Group for provision of online investment guidance, online investment advice, and managed account services**

**Staff Recommendation:**

Staff respectfully requests permission to finalize a contract with AAG for the provision of online investment guidance, online investment advice, and managed account service, provided the final agreed-upon contract is not materially different from the draft agreement presented to the Board.

Negotiations remain on-going but we are optimistic that the contract will become final in the near future. State Procurement has approved the draft contract and Exhibit 1 with the changes identified.

**Board Motion:**

Uphold Staff Recommendation

Other.

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Moved by

\_\_\_\_\_  
Seconded by

\_\_\_\_\_  
Vote

## 1. PARTIES

**THIS CONTRACT** is entered into by and between the State of Montana Public Employees' Retirement Board, (Plan Sponsor or State), whose address and phone number are 100 N Park STE 200, P. O. Box 200131, Helena MT 59620-0131; (406) 444-3154 and Advised Assets Group, LLC, (Contractor or AAG), whose address and phone number are 8515 East Orchard Road, Greenwood Village, Colorado 80111 and **(insert phone number)**.

## 2. EFFECTIVE DATE, DURATION, AND RENEWAL

**2.1 Contract Term.** The contract's initial term is July 1, 2015, **(or upon contract execution if later)**, through June 30, 2019 unless terminated earlier as provided in this contract. In no event is this contract binding on the State unless the Plan Sponsor's authorized representative has signed it. The legal counsel signature approving legal content of the contract and the procurement officer signature approving the form of the contract do not constitute an authorized signature.

**2.2 CONTRACT RENEWAL.** The Plan Sponsor may renew this contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 3) in **one (1)** year intervals, or any interval that is advantageous to the Plan Sponsor. This contract, including any renewals, may not exceed a total of **seven (7)** years.

## 3. SERVICES AND/OR SUPPLIES

Contractor shall provide the Plan Sponsor and Plan participants who so choose, Online Investment Guidance, Online Investment Advice and Manage Account Service as described in Exhibit 1 to this Contract. .

## 4. ACCESS AND RETENTION OF RECORDS

**4.1 Access to Records.** Contractor shall provide the Plan Sponsor, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. The Plan Sponsor may terminate this contract under section 18, without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

**4.2 Retention Period.** Contractor shall create and retain all records supporting the RECORD KEEPING SERVICES for a period of eight years after either the completion date of this contract or termination of the contract.

## 5. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor may not assign, transfer, or subcontract any portion of this contract without the Plan Sponsor's prior written consent. (18-4-141, MCA.) Contractor is responsible to the Plan Sponsor for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and the Plan Sponsor under this contract.

## 6. REQUIRED INSURANCE

**6.1 Specific Requirements for Professional Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$25,000,000 per occurrence and \$25,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors. Note: If "occurrence" coverage is unavailable or cost prohibitive, Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of this contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three-year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

**6.2 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**6.3 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

## 7. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the Plan Sponsor or State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire contract term and any renewal. Upon expiration, a renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

## 8. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by Contractor subjects subcontractors to the same provision. In accordance with 49-3-207, MCA, Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

**9. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED**

Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (18-5-603, MCA.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

**10. REGISTRATION WITH THE SECRETARY OF STATE AND STATE AUDITOR**

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

**CONTRACTOR IS FURTHER REQUIRED TO REGISTER WITH THE MONTANA STATE AUDITOR AS REQUIRED BY SIMILAR COMPANIES OFFERING SIMILAR INVESTMENT RELATED SERVICES.**

**11. CONFORMANCE WITH CONTRACT**

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the State Procurement Bureau's prior written consent. Product or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

**12. LIAISONS AND SERVICE OF NOTICES**

**12.1 Contract Liaisons.** All project management and coordination on the Plan Sponsor's behalf must be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this contract must be coordinated between the State's liaison and Contractor's liaison.

PATRICIA DAVIS IS PLAN SPONSOR'S LIAISON.  
100 N PARK  
HELENA MT 59601  
(406) 444-5449  
CELL PHONE:  
(406) 444-5428  
E-MAIL: PJDAVIS@MT.GOV

\_\_\_\_\_ IS CONTRACTOR'S LIAISON.

(ADDRESS):

(CITY, STATE, ZIP):

TELEPHONE:

CELL PHONE:

FAX:

E-MAIL:

**12.2 Notifications.** The Plan Sponsor's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

**12.3 Identification/Substitution of Personnel.** The personnel identified or described in Contractor's proposal shall perform the services provided for the Plan Sponsor under this contract. Contractor agrees that any personnel substituted during the term of this contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The Plan Sponsor reserves the right to approve Contractor personnel assigned to work under this contract and any changes or substitutions to such personnel. The Plan Sponsor's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve Contractor to perform and be responsible for its obligations under this contract. The Plan Sponsor reserves the right to require Contractor personnel replacement. If Contractor personnel become unavailable, Contractor shall provide an equally qualified replacement in time to avoid delays to the work plan.

### **13. MEETINGS - TECHNICAL OR CONTRACTUAL PROBLEMS**

Contractor shall meet with the Plan Sponsor's personnel, or designated representatives, to resolve technical or contractual problems occurring during the contract term or to discuss the progress made by Contractor and the Plan Sponsor in the performance of their respective obligations, at no additional cost to the Plan Sponsor. The Plan Sponsor may request the meetings as problems arise and will be coordinated by the Plan Sponsor. The Plan Sponsor shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the contract.

### **14. CHOICE OF LAW AND VENUE**

Montana law governs this contract. The parties agree that any litigation concerning this bid, proposal, or this contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (18-1-401, MCA.)

**15. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT**

**15.1 Contract.** This contract consists of **(insert number)** numbered pages, any Attachments as required, Solicitation #14-2742V, as amended, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

**15.2 Entire Agreement.** These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

**16. WAIVER**

The State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

**17. EXECUTION**

The parties through their authorized agents have executed this contract on the dates set out below.

**STATE OF MONTANA**  
**(INSERT AGENCY NAME)**  
**(INSERT ADDRESS)**  
**(INSERT CITY, STATE, ZIP)**

**(INSERT CONTRACTOR'S NAME)**  
**(INSERT ADDRESS)**  
**(INSERT CITY, STATE, ZIP)**  
**FEDERAL ID #**

BY: \_\_\_\_\_ BY: \_\_\_\_\_  
(NAME/TITLE) (NAME/TITLE)

\_\_\_\_\_  
(SIGNATURE) (SIGNATURE)

DATE: \_\_\_\_\_ DATE: \_\_\_\_\_

APPROVED AS TO LEGAL CONTENT:

\_\_\_\_\_  
LEGAL COUNSEL (D.

APPROVED AS TO FORM:

\_\_\_\_\_  
PROCUREMENT OFFICER (D  
STATE PROCUREMENT BUREAU

**REALITY INVESTING® ADVISORY SERVICES AGREEMENT**  
**EXHIBIT 1**

This Reality Investing® Advisory Services Agreement (this "Agreement") is entered into as of the 1st day of July, 2015 by the Montana Public Employees' Retirement Board (the "Plan Sponsor") and Advised Assets Group, LLC ("AAG"), located at 8515 East Orchard Road, Greenwood Village, Colorado 80111.

**RECITALS**

Whereas, the Plan Sponsor has established an IRC 401(a) defined contribution plans and an IRC 457(b) deferred compensation plan under the Internal Revenue Code (the "Plans"); and

Whereas, the Plan Sponsor has selected Great-West Life & Annuity Insurance Company or First Great-West Life & Annuity Insurance Company (individually or collectively "Great-West"), to provide administrative, recordkeeping, and other services to the Plans as set forth in the service agreement between the Plan Sponsor and Great-West ("Service Agreement"); and

Whereas, AAG, a wholly owned subsidiary of Great-West, makes available investment guidance, advisory, and discretionary managed account services ("Reality Investing®") to defined contribution and deferred compensation plan participants; and

Whereas, AAG has selected an Independent Financial Expert ("IFE"), Ibbotson Associates, Inc., pursuant to Department of Labor Advisory Opinion 2001-09A issued on December 14, 2001 to provide such services to AAG for use under Reality Investing; and

Whereas, the IFE has developed a methodology and proprietary software and technology used to provide participant level investment advice and discretionary managed account services; including personalized Internet-based guidance, investment advisory services, and discretionary managed account services with respect to investment choices held within defined contribution and deferred compensation plans; and

Whereas, the Plan Sponsor desires to make Reality Investing available to participants ("Participants") in the Plans pursuant to the terms outlined in Appendix A, attached hereto and incorporated herein; ~~and~~

Now therefore, the parties hereto, in consideration of the mutual covenants and representations herein contained, do hereby agree as follows:

**TERMS**

**Article 1**  
**Selection**

Plan Sponsor hereby agrees to retain AAG as investment adviser to the Plans to provide the services selected on Appendix A, as described in Article 2. By utilizing the Reality Investing services described herein, the Plan Sponsor agrees to be bound by the terms and conditions of this Agreement.

Plan Sponsor Initials: \_\_\_\_\_

## Article 2 Services

2.1 AAG will make available Reality Investing to Participants in accordance with Appendix A. Reality Investing includes Online Investment Guidance, Online Investment Advice, and Managed Account Service as described in Appendix A.

Under Reality Investing, AAG does not provide advice for, recommend allocations of, or provide management services for individual stocks, self-directed brokerage accounts, guaranteed certificate funds, or employer-directed monies. A Participant's balance in employer-directed monies or transfer-restricted funds may be liquidated or transferred. AAG may not recognize certain types of transfer restrictions as applicable to adviser-initiated transfers. Participants may be required to liquidate the above-referenced funds prior to or as a condition of enrolling in Managed Accounts, subject to Plan and/or investment provider restrictions.

Comment [MAS1]: None of these apply – can we delete?

The Plan must select and at all times maintain Core Investment Options that cover the following broad asset categories in order to utilize the Online Investment Advice and the Managed Account Service under Reality Investing: Fixed Income/Cash, Bond, Large Cap, Small/Mid Cap, and International. The asset classes and Core Investment Options must meet the requirements of the IFE which may be amended from time to time. Should the requirements of the IFE not be met, AAG and the IFE have the right to suspend Reality Investing until the requirements of the IFE are satisfied. The IFE is solely responsible for determining the adequacy of exposure to the aforementioned asset classes and for determining the core asset class exposures needed for the provision of Online Investment Advice and the Managed Accounts Service.

AAG will on an ongoing basis review the methodology and services of the IFE and integrate the Plan's Core Investment Options into Reality Investing. AAG may make available to the Plan Sponsor certain periodic written reports related to Reality Investing.

Plan Sponsor agrees to ~~provide or to~~ assist AAG in obtaining, with the consent of the participant interested in AAG's services, all participant data that is necessary for AAG to perform its duties under this Agreement, including but not limited to: date of birth, income, gender, and state of residence.

2.2 Plan Sponsor hereby authorizes AAG to make Reality Investing available to Participants in accordance with Appendix A, using Participant information provided to AAG by Participants, the Plan Sponsor or its agents, ~~and/or AAG's affiliates~~. Plan Sponsor acknowledges and agrees that Reality Investing will be provided by AAG based on the methodology and proprietary software provided by the IFE.

2.3 ~~If the~~ Plan Sponsor has a 457(b) deferred compensation plan and a 401(a) defined contribution plan with similar but not multiple plans with identical investment options.~~;~~ ~~The~~ Plan Sponsor understands, acknowledges and agrees that, unless otherwise specified, the Plan Sponsor's election under this agreement to offer the Reality Investing services applies to both the 457(b) deferred compensation plan and the 401(a) defined contribution plan, on one Plan will be considered by AAG to apply to all Plans with identical investment option lineups, such that the Reality Investing services will be offered across both all of these plans. ~~Additionally~~ However, participant-level enrollment elections into the Managed Account services for one plan will apply to that plan only. Should the participant choose to elect into the Managed Account services for both plans, separate elections must be completed for each plan across all plans and may supersede past or future participant investment elections on other plans sponsored by Plan Sponsor.

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2.4 Plan Participants shall pay all AAG fees, in accordance with the terms outlined in Appendix A, for the respective services utilized. Upon notice to the participant, Plan Sponsor authorizes Great-West to collect these fees on behalf of AAG and to deduct fees from Plan Participant accounts that enroll in Reality Investing and become actual users, in accordance with Appendix A. AAG agrees to provide Plan Sponsor with a quarterly report and an annual summary report of the number of participants in each plan and the fee paid for AAG's services.

2.5 AAG has authorized GWFS Equities, Inc. ("GWFS") and its licensed agents and registered representatives who are Great-West employees (collectively referred to as "Solicitors") to solicit, refer and market AAG's Reality Investing advisory services to potential and current investment advisory clients. GWFS is a Broker/Dealer, registered with the SEC and is an affiliate of AAG. The registered representatives of GWFS are employees of Great-West. AAG and GWFS, are wholly-owned subsidiaries of Great-West. ~~In addition to their salary,~~ Solicitors registered with GWFS and employed by Great-West, may not earn additional bonus compensation for soliciting, referring and marketing AAG's advisory ~~services,~~ to Participants in either Plan Sponsor's 457(b) deferred compensation plan or Plan Sponsor's 401(a) defined contribution plan. Their services must be salary-based only.

**Comment [MAS2]:** Solicitation bonuses are not allowed in the Services Agreement and cannot be allowed in this instance, either. This was a very important RFP requirement that cannot now be compromised without running the risk of a challenge by other proposers to the recordkeeper RFP.

2.6 AAG may provide additional services pursuant to instruction or direction from the Plan Sponsor. Any fees for such additional services will be agreed upon by AAG and the Plan Sponsor prior to the provision of additional services.

### Article 3 Representations and Warranties

3.1 Both Parties. Each party hereto represents, warrants and consents that (a) it is authorized to enter into and perform its obligations under this Agreement; (b) any actions by, or filings with, any governmental body required for the party to enter into and perform its obligations under this Agreement have been taken or made or will be taken or made when required, including full and complete regulatory disclosures as required by the SEC; (c) entering into and performing its obligations under this Agreement does not violate any applicable law, rule or regulation or its organizational documents or any other binding instrument; (d) this Agreement has been duly executed and delivered; and (e) it will perform its obligations in compliance with all applicable laws, rules and regulations.

#### 3.2. AAG

(a) AAG represents that it is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). AAG acknowledges and agrees that it acts as a fiduciary of the Plan(s) under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), ~~if applicable,~~ to the extent it provides fee-based investment advice or management to Participants under Reality Investing.

**Comment [MAS3]:** Fiduciary responsibility is required.

(b) AAG represents that the IFE is not affiliated with AAG or Great-West and that AAG has entered into an agreement with the IFE. AAG's agreement with the IFE, and this Agreement with Plan Sponsor, includes representations that the IFE: (a) is registered as an investment adviser under the Advisers Act, and (b) will maintain the required federal or state investment advisory registrations that permit it to perform its obligations under its agreement with AAG, and (c) will act, at all times in providing the methodology and software for AAG's suite of advisory services (the "Program") in conformity with the requirements imposed upon an IFE as described in the Advisory

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Opinion 2001-09A issued on December 14, 2001 by the U.S. Department of Labor (the "DOL") and any modifications or amendments thereto, to the extent that the Advisory Opinion is applicable to the operation of the Program.

3.3 Plan Sponsor. Plan Sponsor represents that it is the Plan fiduciary with the authority to execute this Agreement on behalf of the Plans and ~~its~~ their Participants and commit to the terms of this Agreement. Plan Sponsor, by itself and on behalf of the Plans, represents and acknowledges that it has received and read AAG's Form ADV Part II (or equivalent), consistent with Rule 204-3 of the Advisers Act. Plan Sponsor acknowledges that the Core Investment Options offered through the Plan(s) were chosen by the Plan Sponsor and not by AAG, Great-West, or the IFE.

#### **Article 4 Term, Termination & Substitution of IFE**

4.1 Term and Termination of this Agreement. This Agreement shall be effective as of the date stated above (the "Effective Date") and continue in force for three years from the Effective Date ("Initial Term"). This Agreement shall renew automatically for successive one (1) year terms ("Renewal Term(s)") unless one party provides the other party with written notice of its intent not to renew the Agreement no less than ninety (90) days prior to the end of the Initial Term or any subsequent Renewal Term. This Agreement may be terminated prior to the end of the Initial Term or any Renewal Term in the following circumstances:

(a) Plan Sponsor may terminate this Agreement upon written notice to AAG if Plan Sponsor determines in good faith that the Agreement is not consistent with its fiduciary duties under ERISA, if applicable, or applicable state law;

(b) In the event that Plan Sponsor terminates its Service Agreement with Great-West, or the Service Agreement expires pursuant to its own terms, this Agreement shall automatically terminate, effective on the same date the Service Agreement between Plan Sponsor and Great-West terminates or expires; ~~or~~

(c) AAG may terminate this Agreement under the conditions set forth in Section 4.2; ~~or~~

(d) Either may terminate this Agreement without cause upon sixty (60) days written notice to other party; ~~or and~~

Upon termination of this Agreement for any reason, all Actual Users, as defined in Appendix A, will be immediately restricted from using Reality Investing.

4.2 Substitution of the IFE. During the term of this Agreement, AAG reserves the right to replace the IFE in its sole discretion. AAG will promptly notify the Plan Sponsor of any such change. In such event, a replacement Appendix A will be provided to Plan Sponsor, if, in AAG's sole discretion, a replacement Appendix A is deemed necessary. In the event Plan Sponsor does not approve of the replacement IFE, this Agreement will automatically terminate upon written notice to AAG. In the event AAG is unable to contract with a suitable replacement IFE, this Agreement shall automatically terminate upon written notice to the Plan Sponsor.

#### **Article 5 Confidentiality**

5.1 AAG and the IFE's Confidential Information. Plan Sponsor acknowledges that information regarding AAG, the IFE, and Reality Investing including, without limitation, the

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databases, hardware, software, programs, engine, ~~protocols, models, displays and manuals~~, including, without limitation, the selection, coordination, and arrangement of the contents thereof are intellectual property and trade secrets, proprietary to AAG and/or the IFE, as applicable, and constitute "Confidential Information." **Plan Sponsor acknowledges that all nonpublic information regarding the business and affairs of AAG and the IFE including, but not limited to, business plans, agreements with third parties, fees, services, customers, and finances, constitute Confidential Information.**

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**Comment [MAS4]:** We cannot agree to this broad sweeping allegation of trade secrets and confidential information. Under Montana law (30-14-401(4), MCA) trade secrets are limited to:

(4) "Trade secret" means information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that:  
(a) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and  
(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

**Comment [MAS5]:** Not certain what this is getting at?

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**Comment [MAS6]:** Plan provider?

**Comment [MAS7]:** AAG can't get participant information from GWRS or any of its affiliates.

5.2 Plan Sponsor's Confidential Information. All nonpublic information regarding the Plan, the business and affairs of the Plan Sponsor, all Plan Sponsor intellectual property and all personal information of Participants including, but not limited to, the names, addresses, social security numbers, financial information and compensation data of the Participants, learned by AAG or the IFE in the performance of this Agreement constitutes Confidential Information of the Plan Sponsor. Notwithstanding the foregoing, AAG may provide nonpublic information it learns about Participants to the Plan Sponsor ~~and the plan provider for~~ reporting purposes.

5.3 Non-Confidential Information. Anything in this Agreement to the contrary notwithstanding, except with regard to personal information of Participants, the term "Confidential Information" does not include information regarding a party which ~~(i) was, is or becomes generally available to the public other than as a result of a disclosure by the receiving party or any of its affiliates, agents or advisors, (ii) was or becomes available to a party or its affiliates from a source other than the disclosing party or its affiliates or advisors, provided that such source is not bound by a confidentiality agreement for the benefit of the disclosing party, (iii) was within a party's possession prior to being furnished by or on behalf of the other party provided that the sources of such information were not covered by a confidentiality agreement in favor of the party owning the confidential information, provided such confidentiality agreement was known to the receiving party at the time the information is obtained.~~

**Comment [MAS8]:** Requires discussion

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5.4 Treatment of Confidential Information. Confidential Information will be used by a party in connection with the performance of its obligations under this Agreement. Each party will receive the Confidential Information in confidence and not disclose it to any third party except **as may be necessary to perform its obligations under this Agreement**, to review or evaluate the services provided or as required by law or as agreed to in writing by the other party. Each party further agrees to take or cause to be taken all reasonable precautions to maintain the secrecy and confidentiality of the Confidential Information. Neither party may disclose, and shall make reasonable efforts to prevent the disclosure of, any part of the Confidential Information to another person except as permitted by this Article 5. Confidential Information may be disclosed to a party's directors, officers, employees, consultants, representatives, and the Plan's recordkeeper (each a "Representative") who need to know in order to further the purposes and intent of this Agreement. Disclosure of Confidential Information may be made to such Representative only after the Representative has been informed of the confidential nature of such information and has agreed to be bound by the terms of this Agreement's confidentiality provisions ~~and upon consent to the disclosure by the - non-disclosing party to this Agreement.~~

## Article 6 Miscellaneous

6.1 Notwithstanding anything else contained herein, this Agreement may be amended, supplemented or restated only with the written consent of both parties. The parties agree that they will amend, supplement or restate this Agreement as necessary to comply with

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changes to applicable law, as amended from time to time. For the purposes of this Section 6.1, "written consent of both parties" shall be deemed to include electronic mail transmissions only if such transmissions include PDF or other facsimile transmissions clearly reproducing the manual signature of an officer of each party who is authorized to execute an amendment of this Agreement and specifically referencing this Section of this Agreement.

6.2 This Agreement and its Appendices constitute the entire agreement between the parties relating to the subject matter hereof.

6.3 This Agreement will be governed by, and interpreted according to, Colorado law without regard to its conflict of law principles, except to the extent it may be preempted by federal law.

6.4 Plan Sponsor acknowledges that neither AAG nor Great-West makes any representation concerning the tax treatment regarding an election by a Plan Sponsor to pay (or have the Plan or Participant pay) for Reality Investing.

6.5 Neither AAG nor Plan Sponsor is ~~not~~ liable for any losses a Participant may incur if the value of his or her account should decrease related to the Participant's use of any component of Reality Investing and/or the Participant's investment decisions in following, or not following, any investment advice produced through Reality Investing except as provided in Section 6.7.

6.6 Plan Sponsor or its designee, including any third parties retained by Plan Sponsor, shall provide ~~all any~~ data and information ~~not provided by the Participant but~~ necessary for AAG's performance of the Reality Investing services in a manner and format acceptable to AAG. Plan Sponsor agrees that AAG shall be entitled to fully rely upon the accuracy and completeness of data and information submitted by the Plan Sponsor to AAG, and that AAG will have no duty or responsibility to verify such data or information. AAG is not liable for any losses or claims to a Participant's account that are a result of inaccurate data provided from the Plan Sponsor to AAG.

6.7 Neither party shall be liable for any delay or failure to perform its obligations (other than a failure to comply with payment obligations) hereunder if such delay or failure is caused by an unforeseeable event beyond the reasonable control of a party, including without limitation: act of God; fire; flood; earthquake; labor strike; sabotage; fiber cut; embargoes; power failure, e.g., rolling blackouts, electrical surges or current fluctuations; lightning; supplier's failures; act or omissions of telecommunications common carriers; material shortages or unavailability or other delay in delivery; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder, or act of terrorism.

6.8 Indemnity and Limitation of Liability.

(a) AAG agrees to indemnify the Plan Sponsor and the Plan, hold each of them harmless and defend each of them from any Liability (as defined below) directly resulting from either of the following: (i) any breach of fiduciary duty by AAG; (ii) AAG's ~~material~~ nonperformance of its obligations under this Agreement or (iii) negligence or willful misconduct by AAG or the IFE, to the extent that such Liability is not caused by the Plan Sponsor's breach of this Agreement, or caused by or attributable to an act or omission, negligence or willful misconduct of the Plan Sponsor or a Participant user.

**Comment [MAS9]:** Under Montana law and consistent with the RFP, numerous provisions must be added to this Agreement. We are open to the correct structure, but will need to have those provisions become part of the Agreement.

**Comment [MAS10]:** Montana law governs per the RFP. Any enforcement action must occur in the 1<sup>st</sup> Judicial District Court of Montana, County of Lewis and Clark.

**Comment [MAS11]:** This needs to be tweaked since we are asking that most of the information be provided by the Participant, not the Plan Sponsor. -

**Comment [MAS12]:** This indemnity clause is significantly different from that generally required by the state Is it subject to discussion?

**Comment [MAS13]:** We propose deleting "material" with respect to both of us – any nonperformance of a duty under this contract is material.

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(b) The Plan Sponsor agrees to indemnify AAG and its Representatives, hold them harmless and defend them from any Liability directly resulting from either or both of the following: (i) any breach of fiduciary duty by the Plan Sponsor; or (ii) the Plan Sponsor's ~~material performance or nonperformance~~ of its obligations under this Agreement.

Comment [MAS14]: We propose deleting "material" with respect to both of us – any performance under this contract is material.

For purposes of this Section 6.8, "Liability" means liability, damages, losses, and expenses, including reasonable attorneys' fees.

Neither party will be responsible to the other party for any Liability attributable to an act or omission of a Participant user, the other party, or a third party. ~~NO PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES, EVEN IN THE EVENT OF A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.~~

Comment [MAS15]: This language is too inclusive. We would be willing to negotiate but can't agree to limit our rights in the event of willful misconduct.

Each party's indemnity extends to the other party's fiduciaries, agents, directors, officers, trustees, custodians and employees. Either party's indemnity obligations will be reduced to the extent that its ability to manage the claim is materially harmed by any failure of the other to give reasonably prompt notice of the claim, complete information and reasonable assistance to defend or settle the claim. The indemnity does not cover any Liability for which the indemnified party actually receives reimbursement or indemnification from another person, ~~including under a liability insurance policy. Any finding that any aspect of this indemnification provision is unenforceable by operation of law will not affect any other portion of this provision. If any provision contained within this section is, for any reason, held to be invalid or unenforceable, the other provisions of this section will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.~~

Comment [MAS16]: Do you have a specific timeframe in mind, or is it incident-related?

Comment [MAS17]: Suggested language that seems a little clearer than language above.

6.9 If any provision of this Agreement is invalid or unenforceable, the remainder of the Agreement will remain in effect.

6.10 Except as specifically provided herein, neither party may assign any of its rights or obligations under this Agreement without the written consent of the other party, which will not be unreasonably withheld or delayed. This Agreement will bind and inure to the benefit of the parties as well as their permitted successors and assigns.

6.11 The failure of a party to enforce any provision or obligation of this Agreement will not constitute a waiver of the provision or obligation or of any future obligation. A party's delay or failure in performance resulting from causes or conditions beyond its reasonable control will not constitute a breach or default.

6.12 Notices will be in writing and sent to the address specified in this Agreement or to any new address the party has supplied.

6.13 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original instrument, but all of which counterparts together shall constitute one and the same instrument. Transmission by facsimile of an executed counterpart signature page hereof by a party hereto shall constitute due execution and delivery of this Agreement by such party.

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6.14 AAG currently maintains an Errors and Omission Liability Insurance policy in the amount of \$5,000,000 in the aggregate.

Comment [MAS18]: RFP requires \$25 m. Should apply here, too.

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IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the date stated above.

\_\_\_\_\_  
By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Advised Assets Group, LLC**

By: \_\_\_\_\_  
Print Name: David McLeod  
Title: Managing Director  
Address: 8515 East Orchard Road, 10T2  
Greenwood Village, CO 80111  
(Fax) 303-737-6544

Plan Sponsor Initials: \_\_\_\_\_

**APPENDIX A – REALITY INVESTING TERM SHEET**

**Plan Sponsor:** \_\_\_\_\_

**Plan(s):** \_\_\_\_\_

**Initial Term:** **Three years from the Effective Date.**

**A. Participant Fees.**

Participant means an employee who is enrolled in and has established an account in the Plan. Participants that enroll in any of the below services become actual users (“Actual Users”).

Online Investment Guidance – AAG’s online investment guidance tool (the “Guidance Service”) is geared toward Participants who wish to manage their own retirement accounts. It is an online tool that provides personalized asset allocation assistance without recommending any one specific fund. There is no fee for using Online Investment Guidance.

Online Investment Advice – AAG’s online investment advice service (the “Advice Service”) is geared toward Participants who wish to manage their own retirement accounts while taking advantage of on-line guidance and investment advice. Participants are provided on-line guidance and investment advice for a personalized recommended investment portfolio. This is an online tool that provides personalized investment option specific recommendations based upon a participant’s financial situation. Each enrolled Participant receives a personalized investment portfolio that reflects the Plan Core Investment Options and the Participant’s retirement timeframe, life stages, risk tolerance, and overall financial picture, including assets held outside the Plan (if the Participant elects to provide this information), which may be taken into consideration when determining the allocation of assets in the Participant’s Plan account (AAG does not provide advice for, recommend allocations of, or manage a Participant’s outside or non-Core Investment Option assets). Core Investment Options are those investment options selected for use in the Plan by Plan Sponsor that provide investment choice under the following asset categories: Fixed Income/Cash, Bond, Large Cap, Small/Mid Cap, and International. Core Investment Options do not include any employer stock alternatives or self-directed brokerage option alternatives. The Participant then implements the recommended investment portfolio and manages his or her retirement account on-line. The Advice service is a one time event and the participant will monitor his own account.

~~There is no fee for the Advice Service is \$25.00 per participant user per year, or \$6.25 per participant user a quarter. The fee will be paid to AAG through the amounts otherwise paid by the Plan and Plan Sponsor to Great West for services, like the Administrative Fee paid to Great West by Plan Sponsor each quarter. AAG will not assess an additional or separate fee to the Plan Sponsor, Plan, or its participants for the Advice Service.~~

**Comment [MAS19]:** Per rfp and board presentation.

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**Managed Account Service** – AAG’s discretionary managed accounts (Managed Account”) is geared toward Participants who wish to have a qualified financial expert select among the Plan’s available Core Investment Options and manage their retirement accounts for them. The Participant receives a personalized investment portfolio that reflects the Plan Core Investment Options and the Participant’s retirement timeframe, life stages, risk tolerance and overall financial picture, including assets held outside the Plan (if the Participant elects to provide this information), which may be taken into consideration when determining the allocation of assets in the Participant’s Plan account (AAG does not provide advice for, recommend allocations of, or manage a Participant’s outside or non-Plan assets). Under Managed Account, AAG has discretionary authority over allocating among the available Core Investment Options, without prior Participant approval of each transaction.

Managed Account assets in the Plan’s Core Investment Options will be automatically monitored, rebalanced, and reallocated every quarter by AAG based on data resulting from the methodologies and software employed by the IFE to respond to market performance and to ensure optimal account performance over time. Participants will receive an account update and forecast statement annually and can update personal information at any time by calling AAG at the Plan’s toll-free customer service number, or visiting the Plan’s web site.

The tiered pricing described in the table below applies to Managed Account Service. Actual Users will be charged a quarterly fee based on their account balance that AAG manages on the day the fee is debited. The fee will generally be debited from the Actual User’s account within the last five (5) to seven (7) business days of each quarter. If the Actual User cancels participation in the Managed Account Service, the fee will be based on the Actual User’s account balance on the date of cancellation and will be debited from the Actual User’s account within five (5) to seven (7) business days prior to the end of that quarter. As well, if the Plan terminates its Service Agreement with Great-West, the fee will be debited upon such termination. The fee for an Actual User is depicted below.

Managed Accounts Participant Annual **Fee**

<b>Participant Account Balance</b>	<b>Managed Account Annual Fee</b>
First \$100,000 of account balance	0.45 %
Next \$150,000, up to \$250,000 account balance	0.35 %
Next \$150,000, up to \$400,000 account balance	0.25 %
Amounts greater than \$400,000	0.15 %

**Comment [MAS20]:** If they are in both plans and choose to include both, is the fee based on the total assets in both plans?

For example, if an Actual User’s account balance subject to Managed Account Service is \$50,000, the fee is 0.45% of the account balance. If the account balance subject to Managed Account Service is \$500,000, the first \$100,000 will be subject to a fee of 0.45%, the next \$150,000 will be subject to a fee of 0.35%, the next \$150,000 will be subject to a fee of 0.25%, and amounts over \$400,000 will be subject to a fee of 0.15%.

Plan Sponsor agrees the Managed Account Service fee will be paid for by a Plan Participant, as described above, ~~unless the following box is checked.~~

~~Plan Sponsor Pay~~

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AAG reserves the right to offer certain plan discounted fees or other promotional pricing.

Comment [MAS21]: To participants?

Actual Users must allocate all of their account balance in either or both Plans, depending on the participant's decision whether to seek services for one or both Plans, to the Managed Account Service. Partial management of the account whereby Actual Users can invest in other Core Investment Options while also participating in the Managed Account Service is not an option. Once enrolled in the Managed Account Service, Actual Users will no longer be able to make allocation changes to their accounts online, via paper, or through the Plan's existing toll-free customer service number. In addition, Actual Users will not be able to make fund-to-fund transfers, change fund allocations, or utilization of dollar cost averaging and/or rebalancer. Actual Users may still request and be approved for loans, take a distribution, and retain full inquiry access to their account, as permitted by the Plans. All of the aforementioned functionality will be restored to the Actual User's account no later than the next business day markets are open after they cancel their participation in the Managed Account Service.

Actual Users may cancel their participation in Managed Account Service at any time by completing the cancellation form available online through the Plan web site or by calling AAG at the Plan's existing toll-free customer service number.

Comment [MAS22]: Do they get a prorated return of fees?

**B. Communication and Ongoing Maintenance Fee:** Included. The communication and ongoing maintenance fee includes monitoring the use of Reality Investing, and integrating Reality Investing communications into the Plan's overall communications campaign, including enrollment materials, forms, web site, and group meetings.

Comment [MAS23]: Need to discuss as not certain what this is.

As part of a participant's enrollment in the Managed Account service, the participant will receive the Managed Account Welcome Kit shortly after enrollment. The participant will receive an Annual Kit shortly after their birthday. Each kit provides the participant an update on their account and reaching their retirement goals. Standard materials may include a discussion of Reality Investing in enrollment/education materials, on the web site, and/or in personalized Participant materials. Additional or custom Participant communications materials may be used by AAG and may be paid for by AAG, Great-West or the Plan Sponsor. Such additional or custom communications may include targeted marketing techniques based upon participant demographical and/or account data (including but not limited to age, income, deferral rates, current investment elections) to identify participants who may benefit from participation in the Managed Account Service.

Comment [MAS24]: Clarification needed. We don't want to pay for this and if AAG is separate, why would Great West.

**C. Addition of New Plans:** Tax-deferred plans not listed at the top of this Appendix A that are added to Plan Sponsor's program after the Effective Date will not be included in this Agreement, and will be subject to additional fees.

**D.** Reality Investing will have limited capabilities for purposes of enrollment, rebalancing or reforecasting for approximately up to ten (10) business days following changes to the investment option lineup. Other functionality will be available during this time. AAG and the IFE need to conduct a new analysis of the available investment option array to accommodate these changes. This analysis will take approximately 10 business days, during which time, the Online Investment Guidance, Online Investment Advice, and Managed Account services will not be available for participant use. Once

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the analysis is complete, the Online Investment Guidance, Online Investment Advice, and Managed Account services will once again be available.