SAMPLE INSURANCE BROKER SERVICE AGREEMENT

(For Use By Insurance Brokers in Preparing Service Agreements for Clients Whose 401(k) Plans Are Funded by John Hancock Group Annuity Contracts or, With Respect to Recordkeeping Agreements and Group Annuity Contracts Issued in New York, by John Hancock Life Insurance Company of New York)

John Hancock Life Insurance Company (U.S.A.) and John Hancock Life Insurance Company of New York herein collectively referred to as "John Hancock".

John Hancock and Drinker Biddle & Reath LLP are not affiliated and neither are responsible for the liabilities of the other. The views expressed are those of Drinker Biddle & Reath LLP. John Hancock does not warrant and is not responsible for errors or omissions in this content.

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OVERVIEW OF SAMPLE AGREEMENT

ERISA’s Prohibited Transaction Provisions and The Purpose Of The Sample Agreement

The following Sample Agreement was prepared by Drinker Biddle & Reath L.L.P. It is designed to assist insurance brokers (“Brokers”) and their counsel in preparing service agreements that document reasonable arrangements under §408(b)(2) of the Employee Retirement Income Security Act of 1974 (“ERISA”) between Brokers and 401(k) Plans. The Sample Agreement is appropriate only for use with plans funded by group annuity contracts issued by John Hancock Life Insurance Company or, with respect to group annuity contracts issued in New York, by John Hancock Life Insurance Company of New York. The disclosures suggested by the Sample Agreement are consistent with – and are intended to assist Brokers in complying with -- the provisions of the Final Regulation issued February 3, 2012 (the “regulation”) by the United States Department of Labor (“DOL”), which appears at 77 Fed. Reg. 5632, et seq.

Section 406(a) of ERISA generally prohibits transactions between covered plans and “parties in interest,” including service providers. ERISA §408(b)(2) excepts from this general rule “[c]ontracting or making reasonable arrangements with a party in interest for … legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefore.” Compliance with the conditions in the regulation is critical because service providers who engage in prohibited transactions may be required to refund their compensation to the plan and be liable for interest, penalties and taxes.

The regulation sets forth conditions that “covered service providers” must meet in order to demonstrate that their contracts or arrangements with covered plans constitute “reasonable arrangements” within the meaning of §408(b)(2).

Although the document has been tailored for use by Brokers with respect to clients who sponsor 401(k) plans, the Sample Agreement could be modified for use in dealing with sponsors of other types of qualified plans.

The Regulation

The regulation is a final regulation. This Sample Agreement is based on the language of the regulation as issued February 3, 2012.
The preamble to the regulation states that, in the near future, the DOL intends to issue a separate proposal that would require a guide or summary requirement. Although no such guide or summary is required by the regulation at this time, service providers may ultimately be required to provide a guide or other summary. The regulation attaches, as an appendix, a “Sample Guide to Initial Disclosures.” Although it is not likely that any such summary or guide requirement will be in effect as of the July 1, 2012 effective date of the regulation, service providers may subsequently be required to comply with a summary or guide requirement, and therefore, to modify their disclosure documents accordingly.

“Covered Service Providers”

The regulation applies to “covered service providers” that reasonably expect to receive $1,000 or more in direct or indirect compensation and that provide “covered services.” Brokers will be considered “covered service providers” if either of two situations applies. Those two situations are (1) when a Broker provides brokerage services to an individual account plan (such as a 401(k), profit sharing or ERISA-governed 403(b) plan) that offers at least one designated investment alternative in connection with the brokerage services and (2) when a Broker reasonably expects to receive indirect compensation for providing consulting services (relating to the development or implementation of investment policies or objectives, or the selection or monitoring of service providers or plan investments), or investment brokerage services. “Indirect” compensation is compensation received from any source other than the covered plan, the plan sponsor, the covered service provider, an affiliate, or a subcontractor. Brokers should consult with counsel to determine which situations are subject to the regulation.

“Covered Plans”

The disclosures required by the regulation must be made to “covered plans,” which include “employee pension benefit plans” or “pension plans” as defined by ERISA §3(2)(A), but do not include SEP-IRAs, SIMPLE IRAs, IRAs and individual retirement annuities. Plans not governed by ERISA (e.g., government plans) are not “covered plans.” However, some private sector 403(b) plans are covered by ERISA and therefore, Brokers who provide covered services for those plans are subject to the regulation. Annuity contracts and custodial accounts in 403(b) plans that were issued to a current or former employee before January 1, 2009 where no additional contributions have been made and the contract is fully vested and enforceable by the employee are not “covered plans.”

As pointed out in the preamble to the regulation, “... some contracts or arrangements will fall outside the scope of the regulation because they do not involve a ‘covered plan’ and a ‘covered service provider.’ ERISA nonetheless requires such contracts or arrangements to be ‘reasonable’ in order to satisfy the
The Required Disclosures

Under the regulation, covered service providers must provide written disclosures to a “responsible plan fiduciary” (defined as a fiduciary with the power to cause the plan to enter into, extend or renew the contract or arrangement) of:

(1) the services provided;

(2) fiduciary status or status as a registered investment adviser under the Investment Advisers Act of 1940 or any State law; and

(3) all direct and indirect compensation received by covered service providers (and their affiliates and subcontractors).

“Compensation,” for purposes of the regulation, means anything of monetary value (for example, money, gifts, awards, and trips), but does not include non-monetary compensation valued at $250 or less, in the aggregate, during the term of the contract or arrangement. The description may include a reasonable and good faith estimate if the covered service provider cannot otherwise readily describe compensation or cost. In that case, the covered service provider must explain the methodology and assumptions used to prepare the estimate.

The regulation also requires additional disclosures of amounts paid to affiliates or subcontractors if the compensation (1) is set on a transaction basis (e.g., commissions, soft dollars, finder’s fees or other similar incentive compensation based on business placed or retained) or (2) is charged directly against the covered plan’s investment and reflected in the net value of the investment (e.g., Rule 12b-1 fees).

The regulation also requires that a covered service provider disclose the “manner of receipt” of the compensation, such as whether the covered plan will be billed or the compensation will be deducted directly from the covered plan’s account(s) or investments. Additionally the regulation requires a description of the arrangement between the payer and the covered service provider, an affiliate, or a subcontractor as applicable pursuant to which the indirect compensation is paid. According to the preamble to the regulation, the covered service provider “… must disclose its arrangement with the payer of indirect compensation so that the responsible plan fiduciary can analyze why the payer, generally an unrelated third party, is compensating the covered service provider in connection with the covered service provider’s contract or arrangement with the covered plan.”

The description of the compensation paid must also identify (1) the services for which the compensation will be paid and (2) the payers and recipients of the
compensation, including the status of a payer or recipient as an affiliate or a subcontractor.

The regulation defines “affiliate” as follows: “[a] person’s or entity’s ‘affiliate’ directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control with such person or entity; or is an officer, director, or employee of, or partner in, such person or entity.” For purposes of the Sample Agreement, it is assumed that the Broker has no “affiliates.”

“Subcontractor” is defined as “… any person or entity (or an affiliate or such person or entity) that is not an affiliate of the covered service provider and that, pursuant to a contract or arrangement with the covered service provider or an affiliate, reasonably expects to receive $1,000 or more in compensation for performing one or more [covered services].”

Since §408(b)(2) is an exception to the general rule prohibiting transactions between covered plans and service providers, the burden rests with covered service providers to demonstrate that the arrangement is reasonable. Covered service providers should therefore err on the side of providing greater, rather than less, detail in their descriptions of services and compensation. The proposed description of services and compensation set forth in the Sample Agreement therefore should be viewed as representing a “starting point.” This Sample Agreement is not designed to accurately describe the compensation or services of any particular Broker or to ensure compliance with the regulatory conditions. As a result, it will need to be modified and should be reviewed by the Broker’s legal counsel before use.

**When The Required Disclosures Must Be Made**

The regulation takes effect July 1, 2012. Brokers will need to be in compliance with the regulation with respect to all “transition” clients with whom they have already entered into a contract or arrangement before that effective date. It is recommended that Brokers come into compliance, as to those then-existing clients, prior to the regulation’s effective date.

With respect to new clients (i.e., clients who enter into contracts or arrangements with the Broker on and after July 1, 2012), Brokers will need to provide the disclosures required by the regulation “reasonably in advance” of entering into the contract or arrangement. The regulation does not specify a time period to satisfy “reasonably in advance.” However, the disclosures need to be provided prior to the responsible plan fiduciary being committed to engage the Broker.

**The Method of Disclosure**

The regulation does not require a written agreement with the covered plan. However, we believe that a written, signed agreement with the plan client is preferable to a disclosure without a signed agreement since, among other things, the signature by the client’s representative is evidence that a responsible plan fiduciary...
received the required disclosures. Moreover, written agreements reflecting the scope of a Broker’s services are helpful in managing risk and limiting liability. However, for transition clients, many Brokers may opt to satisfy the new requirements by disclosure notices because of the practical issues involved in converting hundreds or even thousands of plan clients to the new system within a limited period of time.

Brokers can make the required disclosures either through written disclosure notices (which may be delivered via electronic means) or by having their clients sign updated service agreements that incorporate the disclosures. Brokers may opt to use one form of written disclosure for their “transition” clients and another form of disclosure for new clients who are signed up after the effective date of the regulation. For example, as to “transition” clients with whom the Broker has an existing service agreement, the Broker may wish to use a more abbreviated “disclosure” document describing the indirect compensation it receives. A separate Sample Insurance Broker Compensation Disclosure describing only the indirect compensation expected to be received from John Hancock (i.e., commissions) will be made available to assist Brokers in complying with the regulation with respect to those transition clients. For new client relationships entered into after the effective date of the regulation, the Broker may wish to use a more comprehensive service agreement.

**Information to Be Provided Upon Request, Changes In the Information To Be Disclosed And Correction Of Errors in Information Disclosed**

The regulation requires that, upon the written request of the responsible plan fiduciary, or covered plan administrator, covered service providers must furnish any other information relating to the compensation received in connection with the contract or arrangement that is required to comply with the reporting and disclosure requirements of Title I of ERISA and the regulations, forms and schedules issued thereunder. This disclosure must be made reasonably in advance of the date when the responsible plan fiduciary or plan administrator states that it must comply with its reporting and disclosure obligation. If disclosing the requested information is precluded due to extraordinary circumstances beyond the covered service provider’s control, the information must be disclosed as soon as practicable.

Under the regulation, covered service providers – including Brokers -- must disclose any change in the information required to be disclosed no later than 60 days from the date the service provider is informed of the change. There is an exception if disclosure is precluded due to extraordinary circumstances beyond the service provider’s control, in which case the change of information must be disclosed as soon as practicable. Changes to investment related information must be disclosed annually.

The regulation includes provisions requiring covered service providers to correct errors or omissions in the disclosed information. Specifically, the regulation provides that no contract or arrangement will fail to be reasonable solely because
the covered service provider, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the information required to be provided, so long as the covered service provider discloses the correct information to the responsible plan fiduciary as soon as practicable, but not later than 30 days from the date on which the covered service provider knows of the error or omission.

Brokers are not obligated to include these requirements in their service agreements or disclosure documents. However, these obligations have been included in the draft Sample Agreement as reminders of the Broker’s obligations.

**Disclaimers**

This Sample Agreement and the Sample Insurance Broker Compensation Disclosure are not appropriate for use in connection with covered plans that use investment products other than group annuity contracts issued by John Hancock Life Insurance Company (U.S.A.) or John Hancock Life Insurance Company of New York.

If the Broker is also a registered representative of a Broker-Dealer, the Broker should use the Sample Service Agreement prepared for use by Broker-Dealers, rather than this Sample Service Agreement, in preparing its Service Agreements with clients.

This Sample Agreement and the Sample Insurance Broker Compensation Disclosure assume that the Broker has no “affiliates.” The regulation states that “[a] person’s or entity’s ‘affiliate’ directly or indirectly (through one or more intermediaries), controls, is controlled by, or under common control with such person or entity; or is an officer, director, or employee of, or partner in, such person or entity.” This is a critical assumption, since as set forth above, covered service providers are required to disclose certain compensation paid to “affiliates” and “subcontractors.”

The Sample Agreement and the Sample Insurance Broker Compensation Disclosure are not appropriate for use by Brokers who intend to serve the covered plan as an investment adviser under either the Investment Advisers Act of 1940 or the law of any State. Nor are they appropriate for use by Brokers who exercise control over plan assets, provide fiduciary investment advice, have discretionary authority or control over administration of 401(k) plans, or otherwise perform functions that may cause them to be considered a “fiduciary” to covered plans or their participants or beneficiaries as that term is defined by ERISA §3(21).

This document and the Sample Insurance Broker Compensation Disclosure are based on information available and relevant DOL guidance issued as of February 27, 2012, and do not incorporate any changes or revisions to the law or applicable regulation that may arise after that date.

This Sample Agreement and the Sample Insurance Broker Compensation Disclosure are not appropriate for use in connection with covered plans that use investment products other than group annuity contracts issued by John Hancock Life Insurance Company (U.S.A.) or John Hancock Life Insurance Company of New York.
Disclosure have been prepared without regard to the law of any state or to any federal laws other than ERISA. Brokers should consult with their own attorneys before incorporating any of the provisions set forth in this Sample Agreement into their own service agreement with its clients, or adopting or otherwise relying upon these Sample materials for use in the Broker’s own practice.
INSURANCE BROKER
SERVICE AGREEMENT

Presented by: _______________________________
[Insurance Broker]
SAMPLE INSURANCE BROKER
SERVICE AGREEMENT

I. PARTIES

THIS SERVICE AGREEMENT (“Agreement”) is between [insert name of Broker] (“Broker”) and [insert name of Plan Sponsor] (“Plan Sponsor”) and [insert name of Plan] (“Plan”) and [Insert name of Responsible Plan Fiduciary] (“Fiduciary”). Plan Sponsor, Plan and Fiduciary are sometimes collectively referred to as “Client.” The Fiduciary has the authority to cause the Plan to enter into, extend or renew this Agreement. Client acknowledges that the disclosures made by Broker in this Agreement were provided to Fiduciary reasonably in advance of this Agreement being entered into.

The disclosures required by the regulation must be made to a “responsible plan fiduciary,” defined as a fiduciary with the authority to cause the covered plan “to enter into, extend or renew a contract or arrangement with a “covered service provider.” The Agreement should be signed by (or on behalf of) the Plan Sponsor and the Plan, a Responsible Plan Fiduciary and the Broker. If the Plan already exists and/or if a Trustee has already been appointed when the Agreement is entered into, it is also advisable to have the Trustee sign the Agreement on behalf of the Plan trust in order to indicate the Plan’s approval of the compensation called for under the Agreement.

II. RECITALS

This Agreement is entered into effective [insert date] with reference to the following:

A. Plan Sponsor has adopted a 401(k) Plan (the “Plan”) that is qualified under section 401(a) of the Internal Revenue Code of 1986 (the “Code”). Assets of the Plan are to be invested in a group annuity contract issued by The John Hancock Life Insurance Company (“John Hancock”). Client has the power and authority to designate and direct the Plan’s investment alternatives and to enter into contractual arrangements with third parties to assist in the discharge of these and related duties.

In the event the arrangement involves a group annuity contract, administrative services agreement or recordkeeping agreement issued in New York, the reference above to “John Hancock Life Insurance Company (U.S.A.)” should be modified to read “John Hancock Life Insurance Company of New York.”

B. Client wishes to engage Broker to provide to the Plan the services described in this Agreement.

III. SERVICES TO BE PROVIDED BY BROKER

The regulation requires service providers to disclose in writing to a “responsible plan fiduciary” (i.e., a fiduciary with authority to cause the employee benefit plan to enter into, extend or renew the contract or arrangement), a description of the services to be provided
to the plan pursuant to the contract or arrangement.

In the following section, the Broker should describe the services to be provided under the terms of the Agreement. The list of services set forth in this Sample Agreement is for illustrative purposes only, and is a non-exhaustive list of the types of services often provided for 401(k) plans by Brokers. The Broker should carefully review this Sample Agreement, add any services not described that Broker intends to perform, and omit any services the Broker does not intend to provide.

A. Services

The Broker, through its authorized representatives, will provide the following services to the Plan:

Some Brokers may prefer to describe a limited set of services, while others may offer a broader range of services. In either case, the services must be described in sufficient detail to satisfy the requirements of the regulation. Furthermore, the services must be sufficient to satisfy the amount of compensation (e.g., commissions) paid in the initial and subsequent years.

Alternative descriptions are offered below for illustrative purposes.

**ALTERNATIVE ONE:**

Brokerage services for the Plan’s purchase of a John Hancock group annuity contract for investment of Plan assets and ongoing support and services for the brokerage and related servicing.

**ALTERNATIVE TWO:**

1. Brokerage services for the Plan’s purchase of a John Hancock group annuity contract for investment of Plan assets.

2. Meet, as mutually agreed, with the Plan fiduciaries to review the investments and operations of the Plan, educate Plan Sponsor on the investment alternatives available under the John Hancock group annuity contract and provide general guidelines, information and education concerning investment options for 401(k) Plans.

3. Conduct enrollment meetings for Plan participants and assist in the education of the participants in the Plan about the investment alternatives available under the Plan and general investment principles.

4. Make on-site visits (of such duration and location as mutually agreed to by the Parties in advance) for the purpose of meeting with participants in the Plan for educational services about investments and retirement planning.

5. Other services:
The Broker may wish to include a section describing services that it and/or its representatives will not perform. Examples might be that the Broker will not provide any services related to Plan investments in company stock, real estate, or other illiquid holdings.

**B. Compensation or Fees to Be Received by Broker:**

This section contemplates that the Broker will attach an Exhibit to the Agreement that describes all compensation that the Client and the Broker have agreed that the Broker will be paid in connection with its services under the Agreement. In that Exhibit, the Broker should specifically describe all compensation, direct and indirect, to be received for its services.

“Indirect” compensation is compensation received from a source other than the covered plan or the plan sponsor, and includes commissions and revenue sharing payments. With respect to the indirect compensation expected to be received, the regulation requires “identification of the services for which the indirect compensation will be received and identification of the payer of the indirect compensation.” The manner in which the compensation is received (for example, paid as commissions by John Hancock) must also be disclosed. Additionally the regulation requires a description of the arrangement between the payer and the covered services provider, an affiliate, or a subcontractor as applicable pursuant to which the indirect compensation is paid. According to the preamble to the regulation, the covered service provider “… must disclose its arrangement with the payer of indirect compensation so that the responsible plan fiduciary can analyze why the payer, generally an unrelated third party, is compensating the covered service provider in connection with the covered service provider’s contract or arrangement with the covered plan.” To the extent the Broker reasonably expects to receive any payments from John Hancock due partially or entirely to a Plan’s investment in the group annuity contract acquired by the Plan, that information should be disclosed.

“Compensation,” for purposes of the regulation, means anything of monetary value (for example, money, gifts, awards, and trips), but does not include non-monetary compensation valued at $250 or less, in the aggregate, during the term of the contract or arrangement.

According to the regulation, the compensation to be received may be expressed in terms of a monetary amount, formula, percentage of the covered plan’s assets, or per capita charge for each participant or beneficiary of the plan or, if the compensation cannot reasonably be expressed in such terms, by any other reasonable method. The description may include a reasonable and good faith estimate if the covered service provider cannot otherwise readily describe compensation or cost. In that case, the covered service provider must explain the methodology and assumptions used to prepare the estimate.
Pursuant to the regulation, “[a]ny description or estimate must contain sufficient information to permit evaluation of the reasonableness of the compensation.”

John Hancock describes its payments to Brokers as commissions. From ERISA’s perspective, while the Broker may request a specific level of compensation, only the Fiduciary can determine the compensation to be paid to a service provider (e.g., the Broker). The Broker may request, and a responsible plan fiduciary may agree, that the Broker will receive payments from John Hancock at varying times and in varying amounts as set forth in the commission schedules provided by John Hancock. In Exhibit A, the Broker should indicate the manner in which the compensation it expects to receive from John Hancock will be calculated. The execution of the Agreement by the Client and Fiduciary will then confirm the Fiduciary’s approval for that level and manner of compensation.

John Hancock may also pay “Price Credit” compensation to the Broker. A description of Price Credit compensation and suggested language disclosing Price Credit compensation are set forth in Exhibit A.

The regulation also requires covered service providers to disclose “… any compensation that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with termination of the contract or arrangement, and how any prepaid amounts will be calculated and refunded upon such termination.” The Sample Agreement assumes that no such termination compensation will be received by the Broker. The Broker should carefully review its arrangement and disclose any such termination compensation it may receive.

The compensation to be received by Broker for the services provided to the Plan under this Agreement is described in Exhibit A.

C. Compensation to Subcontractors.

The regulation generally does not require covered service providers to describe any compensation that will be paid among the covered service provider, an affiliate, or a subcontractor, in connection with the services. However, there must be additional disclosures of amounts paid to affiliates or subcontractors if the compensation (1) is set on a transaction basis (e.g., commissions, soft dollars, finder’s fees or other similar incentive compensation based on business placed or retained) or (2) is charged directly against the covered plan’s investment and reflected in the net value of the investment (e.g., Rule 12b-1 fees).

The description of the compensation paid must also identify (1) the services for which the compensation will be paid and (2) the payers and recipients of the compensation, including the status of a payer or recipient as an affiliate or a subcontractor.

The regulation defines “affiliate” as follows: “[a] person’s or entity’s ‘affiliate’ directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control with such person or entity; or is an officer, director, or employee of, or partner in, such person or entity.” For purposes of the Sample Agreement, it is assumed that the Broker has no “affiliates.”
“Subcontractor” is defined as “... any person or entity (or an affiliate or such person or entity) that is not an affiliate of the covered service provider and that, pursuant to a contract or arrangement with the covered service provider or an affiliate, reasonably expects to receive $1,000 or more in compensation for performing one or more [covered services].”

Covered service providers are not obligated to separately disclose compensation paid to their own employees in connection with covered services.

The regulation appears to mean that a person who is in an independent contractor relationship with a Broker and who expect to receive $1,000 or more in compensation in connection with covered services to a plan would be a “subcontractor.” Consequently, Brokers should disclose the compensation that they pay to any independent contractor/subcontractors to the extent it is the type of compensation referred to in the regulation. (This may be done by describing a formula or schedule.) The language below is to be used by Brokers who pay such compensation to independent contractors. It should be omitted if the Broker does not intend to pay any such compensation to any independent contractors. Additionally, language has been included in Exhibit A of the Sample Agreement to assist the Broker in disclosing the name of the subcontractor and the formula used in determining the amount of compensation the Broker expects to pay the subcontractor.

The language below, as well as the corresponding language in Exhibit A, is not required with respect to compensation paid to an employee of the Broker.

Broker anticipates paying a portion of the compensation to ______________ (“Representative”), an independent contractor of Broker who, along with Broker, is responsible for providing the services described in this Agreement. Broker anticipates paying Representative a percentage of the commissions received by Broker for the services rendered for the Plan as more fully described in Exhibit A.

IV. RELIANCE ON INFORMATION PROVIDED BY CLIENT

In connection with the Services provided to Client, Client acknowledges that Broker is entitled to rely upon all information provided by Client to Broker, whether financial or otherwise. Client represents that all such financial and other information provided to Broker is and shall be true, correct and complete in all material respects. Client agrees to promptly notify Broker in writing of any material change in the financial and other information provided to Broker and to promptly provide any such additional information as may be reasonably requested by Broker.

V. GENERAL PROVISIONS AND AGREEMENT TO ARBITRATE DISPUTES

In this section, the Broker should list any additional provisions that it and its attorney may choose.
The regulation requires that, upon the written request of the responsible plan fiduciary or covered plan administrator, the covered service provider must disclose information relating to the compensation received in connection with the contract or arrangement that is required by the covered plan to comply with ERISA’s reporting and disclosure requirements reasonably in advance of the date upon which the responsible plan fiduciary or covered plan administrator states that it must comply with the reporting or disclosure requirement, unless such disclosure is precluded due to extraordinary circumstances beyond the service provider’s control, in which case the information must be disclosed as soon as practicable.

The regulation also requires covered service providers to correct errors or omissions regarding the information disclosed not later than 30 days from the date on which the Broker knows of the error or omission.

The Broker is also obligated to disclose any change regarding the services to be provided, whether the service provider is a fiduciary, and the compensation expected to be received, no later than 60 days from the date the service provider is informed of the change unless disclosure is precluded due to extraordinary circumstances beyond the service provider’s control, in which case the change of information must be disclosed as soon as practicable. Changes regarding investment related information must be disclosed at least annually.

Although the regulation does not require Brokers to disclose these obligations, language is included in sections A-C, below that is intended to be consistent with those provisions of the regulation. Including these provisions in the Agreement may help the Broker incorporate into its business practices the obligations imposed by the regulation.

The Broker and its counsel should include a provision imposing an obligation to arbitrate any disputes that may arise out of or relate to the services to be provided under the Agreement. The Broker should consult with its counsel in formulating the general provisions to be included in the contract. Counsel should also review the Agreement for compliance with any applicable state and Federal securities laws. The following general provisions are included for illustrative purposes only.

A. **Response to Requests By Responsible Plan Fiduciary for Certain Information.**

Responsible plan fiduciary or plan administrator may request, in writing, information relating to the compensation received in connection with this Agreement that is required for the Plan to comply with the reporting and disclosure requirements of Title I of ERISA and the regulations, forms and schedules issued thereunder. Provided a timely written request is made, Broker will respond to that written request reasonably in advance of when the plan administrator states that it must comply with its reporting or disclosure obligation. If disclosure of this information is precluded due to extraordinary circumstances beyond Broker’s control, the information will be disclosed as soon as practicable.

B. **Correction of Errors or Omissions in Information Disclosed In Agreement.**

As soon as practicable, but not later than 30 days of learning of any error or omission by Broker regarding (i) the services or compensation to be provided by Broker under this Agreement or (ii) any information furnished by Broker upon request of the responsible plan
fiduciary that is required by the plan to comply with the reporting and disclosure requirements of Title I of ERISA and the regulations thereunder, Broker will be able to correct any such error or omission in writing.

C. **Changes to Services Provided and Compensation.**

Broker shall disclose any change regarding the services to be provided and the compensation expected to be received under this Agreement no later than 60 days from the date the service provider is informed of the change. If disclosure of the change is precluded due to extraordinary circumstances beyond Broker’s control, the change of information will be disclosed as soon as practicable.

D. **Modification.**

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

E. **Severability.**

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

F. **Entire Understanding.**

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

G. **Arbitration of Disputes.**

The Broker may wish to include a provision requiring arbitration of disputes. Broker should work with its counsel to assessing whether there are any limits imposed by the law of any State that has issued an insurance license to the Broker, and to prepare a provision that properly invokes arbitration and selects the location at which the arbitration is to take place.

H. **Fiduciary and Client Authority.**

Plan Sponsor represents and warrants that, unless otherwise specified, it is the Fiduciary with authority to enter into (or extend or renew) this Agreement on behalf of the Plan. Plan Sponsor represents and warrants that the person signing this Agreement on its behalf has been duly authorized to do so by Plan Sponsor. Fiduciary warrants and represents that the person signing this Agreement on behalf of Fiduciary (if Fiduciary is not an individual) has been duly authorized to do so by Fiduciary. Fiduciary warrants and represents that Fiduciary is independent of and unrelated to Broker.

I. **No Fiduciary Services.**
The regulation requires persons who provide services as a fiduciary or as an investment adviser registered under the Investment Advisers Act of 1940, or any State law, to so state. The regulation does not, however, require persons who do not anticipate acting in such a capacity to so state. Nevertheless, Brokers who do not intend to provide fiduciary services and who do not intend to render services as a registered investment adviser may wish to affirmatively state as such as a matter of sound risk management practice. The following language is suggested as a means of disclosing the Broker’s proposed non-fiduciary status.

Broker will not provide any services to the Plan as a fiduciary as defined by section 3(21) of ERISA, nor shall Broker act for the Plan as an investment adviser registered under the Investment Advisers Act of 1940 or any State law. Broker’s services related to the Plan’s investments and investment management are not individualized to the needs of the Plan, a Plan fiduciary, or any participant or beneficiary. Broker will provide general financial information and data to assist the responsible Plan fiduciary in the selection and monitoring of investment alternatives, and Broker is not undertaking to provide impartial investment advice.

J. Termination.

Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party. Such termination will not, however, affect the liabilities or obligations of the parties arising from transactions initiated prior to such termination, and such liabilities and obligations shall survive any expiration or termination of this Agreement. Upon the effective date of termination, Consultant will have no further obligation to deliver any services to Client under this Agreement. Client and Broker will be mutually responsible for notifying John Hancock of the termination of this Agreement immediately upon the effective date of the termination.

In many cases, the responsible plan fiduciary is also the Plan Sponsor (such as in those cases where the Plan defines the “Administrator” of the Plan as the Plan Sponsor unless stated otherwise). In those circumstances, the Agreement should be signed by the Plan Sponsor, both in its capacity as Plan Sponsor and as responsible plan fiduciary. If the responsible plan fiduciary is someone other than the Plan Sponsor (e.g., an administrative committee), the Agreement should be separately signed by or on behalf of the responsible plan fiduciary. While the regulation does not require a signed agreement, the Broker should consider requiring the responsible plan fiduciary to sign the Agreement, as evidence that the disclosures were in fact made to a responsible plan fiduciary, as required by the regulation. As indicated above, if the Plan already exists and/or if a Trustee has already been appointed when the Agreement is entered into, it is also advisable to have the Trustee sign the Agreement on behalf of the Plan trust in order to approve the payment of the compensation called for under the Agreement.

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

Executed on [insert date]
EXHIBIT A

In this Exhibit A, the Broker should describe all compensation that the Broker (or an affiliate of subcontractor) may receive in connection with the services described in the Agreement. One form of compensation that the Broker will receive is commissions.

All commissions are calculated with reference to the concept of “basis points.”
Accordingly, the Agreement should explain the concept of “basis points.” Language explaining that concept is set forth below for illustrative purposes.

Depending upon the arrangement between the Broker and its client, the Broker may receive “asset based” commissions, “deposit based” commissions, or a combination of the two. Asset based commissions are calculated as a percentage of assets under management. Deposit based commissions are calculated (1) as a percentage of the amount of assets transferred to the John Hancock group annuity contract in the first year of the contract, (2) as a percentage of recurring contributions made in the first year of the contract, and (3) as a percentage of recurring contributions made in the renewal years following the first year of the contract. The language below assumes that the Broker may receive commissions in all of these forms. However, that assumption will not apply to all Brokers. The Broker should tailor the Agreement to reflect the specific types of compensation it expects to receive and should omit those types of compensation that it does not expect to receive.

Commissions are paid by John Hancock from its general assets. Asset based commissions are calculated and paid monthly. Deposit based commissions are calculated and paid weekly.

Exhibit A also includes language designed for use in disclosing compensation paid to any “subcontractor” that is in an independent contractor relationship with the Broker, relative to providing covered services to the covered plan. That language should be modified to reflect the formula used for compensating any such subcontractor. If the Broker does not intend to pay any compensation to a subcontractor, that language should be omitted.

COMMISSIONS

Broker will receive commissions in connection with the services provided pursuant to the terms of this Agreement. John Hancock pays those commissions from its general assets. The formula for determining the amount of those commissions and the manner of payment are described below, which is based upon an agreement between the responsible plan fiduciary and the Broker. All commissions are calculated with reference to “basis points” (or “bps”). One basis point is equal to .01% of the amount at issue. Thus, for example, 50 basis points is equal to .50%.

Broker expects to receive the following compensation:

Deposit-based compensation

- An amount equal to ___% of amounts transferred to John Hancock group annuity contract in the first year of the contract;
- An amount equal to ___% of recurring contributions made in the first year of the John Hancock group annuity contract;
- An amount equal to ___% of recurring contributions made in renewal years (after the first year) of the John Hancock group annuity contract.

Deposit based commissions are calculated and paid weekly.

Asset-based compensation

- An amount equal to ___% of the assets invested in the John Hancock group annuity contract during the first year of the contract;
An amount equal to ___% of the assets invested in the John Hancock group annuity contract during the renewal years (following the first year) of the contract. Asset based commissions are calculated on the last Friday of each calendar month and paid monthly.

If Fiduciary approves and accepts the terms of this Agreement and this Exhibit A, Fiduciary shall have approved of the compensation to be paid to Broker.

**Compensation Paid to Subcontractor**

Broker anticipates paying a portion of the compensation received from John Hancock to ______________ (“Representative”), an independent contractor of Broker who, along with Broker, is responsible for providing the services described in this Agreement. Broker anticipates paying Representative ___% of the commissions received by Broker from John Hancock in connection with services for the Plan as described in this Agreement.
OTHER COMPENSATION

In some cases, the Broker may be entitled to “price credit” compensation. John Hancock anticipates that the Broker will be aware, at the time of a formal proposal to the Client, of the rate of price credit compensation to which it may be entitled. It is calculated monthly based on the plan assets as of the last business day of the prior month and paid quarterly out of John Hancock’s general assets. At the end of the first contract year, John Hancock reviews the plan to determine whether the assumptions upon which the rate of price credit compensation was based have been met. If so, the rate of price credit compensation to be paid to the Broker will remain intact during all years in which the Client’s contract with John Hancock is in place. (If, at any point, there is a change in the Broker’s compensation — including an increase or decrease in price credit compensation — the Broker should comply with the 60-day change notice provision required by the regulation.) Moreover, if the Broker’s compensation is increased without first obtaining the express approval of a responsible plan fiduciary, the Broker could be at risk of being found to be a fiduciary of the plan for the purpose of setting its own compensation (which could implicate ERISA’s prohibited transaction rules). Accordingly, the Broker should obtain the approval of a responsible plan fiduciary before increasing any compensation paid to it. The formula by which any price credit compensation that the Broker receives is calculated and the timing of payment of any price credit compensation should be disclosed in this section.

In addition, to the extent anticipated price credit compensation will offset any commission compensation that the Broker may receive, the Broker would benefit from disclosing that offset. Sample language to disclose the manner in which price credit compensation may offset other compensation is included below for illustrative purposes. The Broker should omit or modify the proposed language if price credit compensation will not offset other compensation or if the manner in which price credit compensation will offset other compensation will be different than as described below.

The Broker should also disclose in this section any other compensation (including, for example, the monetary value of trips to attend products training and education meetings, conferences and seminars or any additional compensation offered to Brokers pursuant to any type of incentive program that may be offered from time to time by John Hancock) that it may directly or indirectly receive in connection with the services to be provided under the Agreement (that is, where the eligibility or amount of the payments are based, partially or entirely, on the Plan or the combined plans or assets placed with John Hancock). In this regard, the preamble to the regulation discusses a fact pattern in which financial institutions subsidized the cost of attendance at a conference that a service provider offered for its clients. The preamble states the view of the Department of Labor that “… when a covered service provider is engaged to provide consulting services to a covered plan (or plans) and receives subsidies or other remuneration from financial institutions or other parties with respect to whom the service provider may be making recommendations to attending plan sponsors or representatives, such subsidies or remuneration would be compensation received ‘in connection with’ the service provider’s contract or arrangement with the covered plan.” Accordingly, the service provider should disclose any such subsidies that it reasonable expects to receive. If the Broker anticipates
In addition to the commissions described above, Broker anticipates that it will receive “price credit” compensation from John Hancock. Price credit compensation is paid out of John Hancock’s general assets and not from the group annuity contract held by the Plan. It is determined on the basis of Plan assets, calculated monthly as of the last business day of the month preceding the calculation and paid quarterly to Broker. The rate of the price credit compensation to be received by Broker is ____%. [Any price credit compensation that Broker receives will offset commissions that Broker will receive on a dollar for dollar basis.]

In addition, Broker anticipates receiving the following additional compensation [SET FORTH ANY ADDITIONAL COMPENSATION REASONABLY EXPECTED TO BE RECEIVED IN CONNECTION WITH THE SERVICES TO BE PROVIDED TO THE PLAN HERE]

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______________________________________________________________________________
______________________________________________________________________________