



# Practice Management Procedures

**2012**  
by

Katherine A. A. Zupan



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## **1. Preamble**

Katherine A. A. Zupan is an independent financial advisor of extreme probity and discretion offering advisory, and trust services to clients in northern Virginia who wish to retain full control over their assets. We serve private individuals and their families on either a fee-only or retained basis; and businesses on a retained basis. Our only obligation is to our clients. We have no affiliation with any broker-dealer, financial company, investment company, or insurance company. With us, it is all about you.

## 2. Client Procedures

- A. Suitability: Every client is worthy but not everyone who may wish to become a client will be suitable for our practice nor will they understand the way we do business. The advisory is set up to assist independent clients by providing them with the information they need to most suitably handle their own financial affairs and nothing more. Those prospective clients who wish to open discretionary accounts or who wish the advisor to take custody of their assets will be referred elsewhere.
- B. Form Completion: The Patriot Act New Account form must be completed in its entirety for every client. This means photocopying their driver's license or other official picture bearing identification card and attaching it to the form where indicated. This also means that full documentation of each asset and each liability will be required. This documentation may be copies of statements etc. but will not be client generated materials such as spreadsheets. Any other forms needed will be handled just as carefully and will be reviewed for errors prior to filing. All signatures MUST be in BLUE ink.
- C. Required Disclosures: All clients will sign various disclosure documents indicating their understanding of how we do business, how we are compensated, their particular service or retainer agreement, delivery receipts and so on as required and do so before a witness. Since all of the advisory employees are salaried and their compensation does not rely upon the client doing business, the employees of the advisory may act as witnesses.

- D. Execution Procedures: Every prospective individual client will be interviewed using the Advisory Brochure, the current ADV Part II, and the 5 Questions material, see Attachments 1, 2, and 3. If the prospective client chooses to hire us, the New Account form and the most suitable Agreement form, see Attachments 4 and 5, will be completed. An imprinted check in US dollars drawn on a US bank for at least \$250.00 will be required to secure the contract. The next appointment will be scheduled prior to leaving this appointment. For business or agency clients a separate contract will need to be drawn specifying precisely what services will be required for what kind of remuneration and what procedures will be followed. A quarterly retainer in full and in advance will be required to secure the contract.
- E. Safeguarding Client Information: Only the Advisor or the Executive Assistant is permitted to handle the client files. All others must go through either of them if they wish to review a file or input new information. All filing will be done by the Executive Assistant. No files are to remain outside of the cabinets over night. No client information will be stored on a computer accessible by the Internet. No one other than advisory personnel is permitted to be alone in the office at any time. Employees will not release any information to anyone without first checking with the advisor. A signed release will be required from the client should they wish us to give their information to anyone other than themselves. These rules do not apply to any regulatory agencies to which we are legally bound.

### **3. Due Diligence**

- A. Every practical effort will be made to verify information as required by the Patriot Act and other applicable rules and regulations.
- B. As a small advisory, we are not equipped to conduct on-site visits, et al, and must rely solely on public information freely available from public sources. We do not have proprietary investment products.
- C. Every effort will be made to ensure our clients are suitably invested according to the client's goals, resources, acumen, experience, and risk tolerance. No client will be invested in anything they do not understand nor will they be invested beyond their means. Disclosures will be signed by the client if necessary.
- D. While we rely to some extent upon our affiliates, every product received from them will be reviewed to make certain it is as required.
- E. Once a particular piece of work has been completed, it will be reviewed to make sure that we have met the client's needs prior to being released from our contract and the information permanently filed.

### **4. Research**

- A. We will rely solely upon public sources for our investment information. No privately acquired information will ever be used.
- B. Sources such as the Internet, trade and industry journals, annual reports and other filings, and such statistical data available from various

public sources will be used when considering investment suitability.

- C. Sources used will be documented as appropriate for the media type. If a particular investment is being considered for a client, copies of the documentation will be included in that client's file and a bibliography added to that client's final plan.

### **5. Statements & Advertisements**

- A. The advisory does not ever offer a guarantee of any kind.
- B. All public statements must adhere to the rules and requirements of the regulatory agencies.
- C. All advertisements must be sent for prior review to the NASD.
- D. Copies will be kept along with notes of when and where used.
- E. This also applies to mass client communications such as Christmas cards.

## 6. General Office Procedures

### A. Schedule –

- a. Office hours are Monday through Friday, from 9 am to 3 pm.
- b. Appointments may be made outside of office hours at the advisor's discretion.
- c. Maximum time in office allowed to Executive Secretary is 20 hrs per week. Maximum time in office for the Paraplanner is 20 hrs per week.
- d. Holidays – the office is closed all federal holidays
- e. Vacations – two weeks per year with advance notice

### B. Daily schedule –

- a. Although subject to modification, the general plan of the day begins with appointment reviews, email review, filing, and mail sorting.
- b. All client information gathered during the day will be kept secure until it can be properly filed in the office.

### C. Monthly tasks include filing withholding taxes and reconciliation of accounts.

### D. Quarterly tasks include client contact management, getting the newsletter online, filing taxes, and filing received statements.

- E. Annual tasks include maintaining client files, assisting the annual filing of the ADV, filing received statements, filing taxes, and databasing information.
- F. Wages are paid bi-weekly and taxes will be withheld.
- G. There are no other benefits with this position
- H. Although the office must be orderly at all times, cleaning will not be required.
- I. Office Management

- A. Files –

- 1 Each client file will have a new account form, a signed binding arbitration agreement, and a letter of agreement detailing the work to be done. This is the minimum. A copy of whatever is produced for the client, along with its delivery receipt, will also be saved.
    - 2 Each separate piece of business requires its own section within the client's file.
    - 3 Copies of client documentation of assets, liabilities, and other information will also be kept.
    - 4 All correspondence received from the client, notes of conversations with the client, and emails both to and from the client will be kept, unless it is a written complaint. For

complaint procedures, see the Compliance section.

- 5 All such documentation is to be kept readily available for a period of three years. After this, the documentation may be moved to a storage facility for another 7 years. The SEC, and the NASD, has not yet approved record preservation via cd-rom. The secretary is to decide upon the filing system used.
- 6 There are clients who receive statement from their various investments. These statements are filed but only the first statement and the annual statements are kept. Once an annual statement has been received for that investment, the previous quarterly statement for that particular investment are removed and destroyed.
- 7 Files will be reviewed semi-annually to make sure everything required is there and to remove everything unnecessary.

B. Mail –

- 1 Mail is received after regular office hours and is therefore sorted by the advisor. All mail will be opened and properly

acted upon. Personal mail will be kept separate from business mail at all times. All bills are considered to be business mail and are the responsibility of the advisor.

- 2 All outgoing mail will have a copy kept to which a list of recipients will be attached. This will be kept in the correspondence files.
- 3 Mail received from clients will be placed into that client's file, after being acted upon, unless it is a written complaint. For written complaints, see the Compliance section.

#### C. Payments -

- 1 All checks addressed to this office will be endorsed by stamp and promptly deposited after being logged into the check log and compared against the client's account with us. All checks received that are addressed otherwise, or do not match up correctly with the client's account with us, will be returned to the client. Checks returned to us from the bank will result in that client's account being frozen, all work on their behalf will stop and will not resume until full payment, including any charges

for the returned check, has been received.

- 2 Only preprinted checks in US funds and drawn on a US bank can be accepted. Cash is never accepted. Accounts delinquent by 90 days will go into collection.

D. Databasing –

- 1 Basic client information necessary for contact management and correspondence will be entered into a database and contact management software. The data is to be reviewed annually and updated as required. Since the computer is on the Internet, this data will be stored onto cd-roms. This is the executive assistant's responsibility. Design of the database is the executive assistant's decision.
- 2 Equipment and software decisions will be jointly decided by both the executive assistant and the advisor.

E. Telephone procedures –

- 1 The telephone will go to voice mail immediately after the second ring, it is therefore important that all calls be promptly answered.
- 2 Unlicensed persons are not permitted to discuss or disclose

any client information even to the client him/herself. All such inquiries must be referred to the advisor or a message taken so the advisor may return the call.

- 3 Oral complaints will be noted but not debated. The advisor will return these calls after suitable time for research. We regard justified oral complaints as opportunities to improve our process and client service.
- 4 All telephone calls will be comprehensively noted as to time, date, names of speakers, and content and any details. If the call is an oral complaint, the details become especially important. Any actions taken regarding the call will also be noted and the entire memo placed into the client's file in addition to the telephone log.
- 5 The standard greeting is "Katherine Zupan's office."

## F. Client Management

- 1 Client Inquiries –
  - 1 Comprehensive notes are required if inquiries are to be correctly dealt with. Supporting documents may be faxed to us at 703-730-1787. All

inquiries are to be answered as quickly as is possible based upon the complexity of the problem.

- 2 While only licensed advisors are permitted to speak on financial matters with the client, the executive assistant may be asked to perform research and other functions in support of the advisor.

- 2 Providing Oversight –

- 1 The executive assistant is expected to review the advisor's work and vice versa in an effort to minimize errors and oversights. Collaboration is encouraged within the office but the advisor remains responsible for all decisions taken.

- 3 Appointments-

- 1 Not all clients will be able or will desire to come to the office. Appointments during the day are preferred but some evenings may be possible. The secretary is responsible for arranging

the advisor's appointments keeping in mind travel times and conditions, and for providing all necessary documents and information required by the client and the business to be done. No appointments will be made after 9 pm and on Sunday.

## **7. Accounting**

- A. Receipts, bills, etc. will be noted as soon as they are received or sent. Accounts will be reviewed weekly for accuracy.
  - a. Accounts Payable are those where WE PAY money.
  - b. Accounts Receivable are those where WE RECEIVE money.
- B. Bi-Weekly Tasks
  - a. Pay checks are written
  - b. Pay stubs are printed
- C. Monthly Accounting Tasks
  - a. Pay withholding taxes
  - b. Profitability Reviews
  - c. Accounts reconciled with the bank
- D. Quarterly Tasks
  - a. Estimated Taxes paid
  - b. Retainer Accounts Reviewed
  - c. Unpaid balances collected
  - d. Accounts reconciled with the contract(s)
- E. Annual Tasks
  - a. Accounts reviewed and sent to CPA

- b. Probation and Apprenticeships Reviewed.

## **8. Education & Training**

- A. Administrative and clerical staff positions
  - a. Administrative positions
    - i. Unlicensed
    - ii. Some college preferred
    - iii. Supervisory
  - b. Clerical
    - i. Unlicensed
    - ii. High school only
    - iii. Non-supervisory
- B. Para-Planner
  - a. RP Designated position
    - i. Licensed
    - ii. Some college preferred
  - b. Continuing Education required
  - c. Supervisory only on a pro-temp basis
- C. Planner/Advisor
  - a. College degree required
  - b. NASD Series 7 and 65 required
    - i. Licensed
  - c. Continuing Education Required
  - d. Supervisory
- D. Continuing Education will be done annually and is considered a joint employer and employee responsibility with any fees being equally split between the employer and the employee.
- E. Additional licensing courses and exams will be paid by the employer. If the employee is unsuccessful, the employee will reimburse the employer.

## 9. Correspondence

- A. Other than short handwritten personal notes to a specific client, all correspondence of any kind will be reviewed by the Compliance officer prior to its being sent.
- B. All emails from clients will be saved onto a cd-rom kept for that purpose and a printed copy kept in that client's file.
- C. All emails originating from this office will have a disclosure statement as part of its body text.
- D. Official correspondence is to be handled and kept separately from all other correspondence.
- E. Correspondence from the IRS will also be handled and kept separately.
  - a. Copies of this may need to be sent to the CPA.
  - b. If there is a question for the CPA, attach replies or rulings, etc. to the original document before filing.
  - c. Tax returns will be kept separately from tax correspondence.
- F. Prospectuses, Annual Reports, etc received from companies if not required for a specific client, will be kept on a magazine basis that is to say kept until read then disposed of. If they are required for a specific client, then the item will be retained in that client's file.
- G. Mass mailings will be reviewed prior to being sent; only the one copy will be retained with a list of recipients attached. If a delivery receipt is required then that receipt will be kept in that client's file.

- H. Incoming mail sent to the office will, regardless to whom the letter is addressed, go to the advisor first.
- I. For written complaints, see the Compliance section.

## **10. Compliance**

- A. The advisor is also the compliance officer. The advisor will consult with FA Legal on all compliance issues.
  - a. Issues re: Unlicensed persons -
    - i. Unlicensed persons are not permitted to enter into any financial or business discussions with clients whatsoever.
    - ii. Unlicensed persons are to be under the direct supervision of a licensed advisor and are considered to be acting under the direction of the licensed advisor.
  - b. All client information and office business is confidential.
- B. In accordance with the provisions of the Patriot Act, every client's identity and sources of income will be reviewed prior to accepting them as a client. Proper documentation will be required.
- C. Written Complaints –
  - a. These are to be copied and immediately sent to FA Legal, securities lawyers, for their judgment and to begin the resolution process. The copy of the written complaint will be placed in to the client's file and all communication with that client will cease.
  - b. We will cooperate with FA Legal and all regulatory agencies.

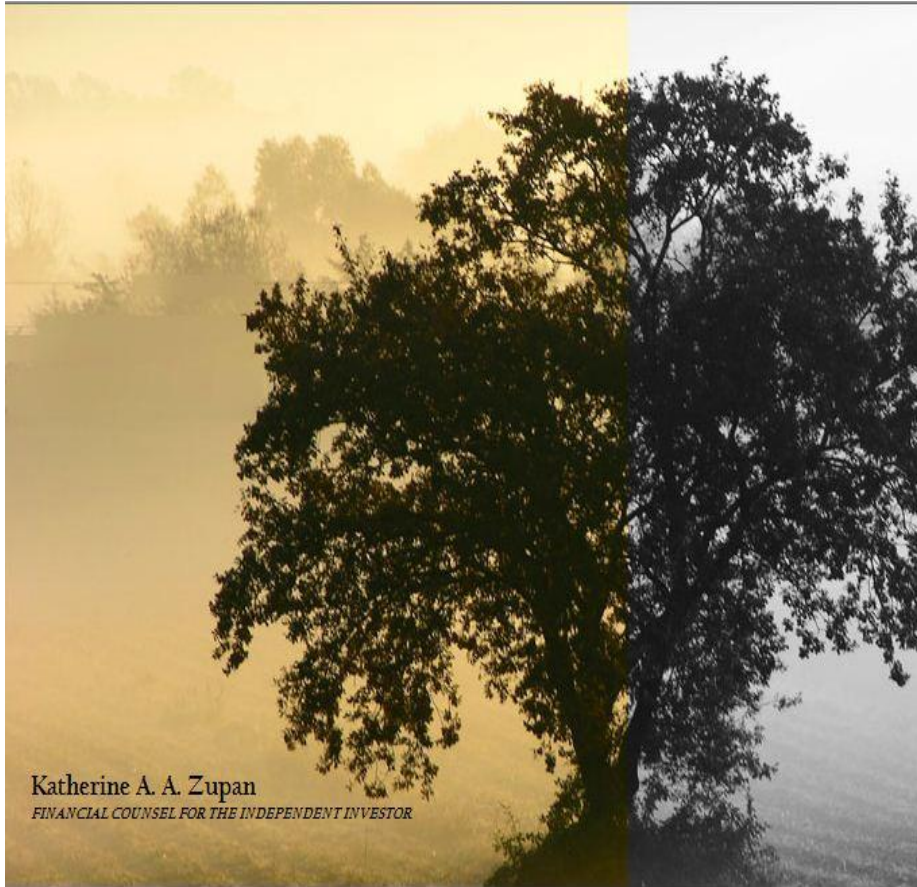
- i. All communication with any party regarding this matter will be through FA Legal only

D. Confidentiality Agreement –

- a. You will be required to sign a comprehensive confidentiality agreement. A copy is attached for your consideration.

## **List of attachments**

1. Form ADV Part II current
2. Client Service Agreement - sample
3. Client Retainer Agreement - sample
4. Privacy Policy
5. Client Brochure
6. Employee Contracts - sample



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This brochure provides information about the qualifications and business practices of Katherine A. A. Zupan. If you have any questions about the contents of this brochure, please contact us at [info@zupan.us](mailto:info@zupan.us). The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority. Additional information about Katherine A. A. Zupan also is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

January 2012

## Material Changes

There have been no material changes made.

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## Advisory Business

Katherine A. A. Zupan is an independent fee-only non-transactional, non-custodial financial advisory of extreme probity and discretion providing financial counseling and trust services to individuals, businesses, and their personnel on either an hourly or a retained basis.

We offer comprehensive financial plan counseling and development. It is our purpose to assist you build a coherent and effective plan and then to guide you in the management of that program. Here it is all about you. When you are ready to take control over your financial future, we are here to help you do just that.

People's lives are often entangled and there are many issues involved in their financial affairs. We will work with your current brokers, accountants, lawyers and insurance people or we will refer you to a suitable professional as appropriate. We receive no remuneration from these referrals.

Katherine A. A. Zupan is unaffiliated with any investment or insurance company. We are obligated to you and only to you.

Clients receive personal attention regardless of the size of their account. We do not have a minimum account limit here. We also do not discriminate. You will never be treated with anything less than respect.

### THE ADVISOR

Mrs. Katherine A. A. Zupan holds degrees from The Pennsylvania State University and from Webster University. Retired from service in the United States Air Force, she has been a professional financial

advisor since 1998. She began her career at Independent Capital Management, Inc. and SunAmerica Securities. In 2001, she moved to the private investment bank Lloyd, Scott & Valenti, Ltd. and Bear Sterns. Mrs. Zupan became an independent fee-based financial advisor in 2004. She is a fully licensed advisor in the Commonwealth of Virginia and a Certified Estate Planner.

## Fees and Compensation

### Individuals-

Our fees are based upon an hourly rate of \$150.00 per consulting hour.

Financial plans begin at \$500.00 and increase from there based upon complexity.

Trusts begin at \$1700.00 for a complete trust package.

Our retainer is \$200.00 per quarter, payable in advance.

### Businesses-

Companies wishing to retain us for their employees are charged \$100.00 per employee per quarter in advance. This represents a cost savings of \$200.00 per employee per year\*

Companies wishing to consult us regarding the benefits they offer or plan to offer their employees are charged \$150.00 per consulting hour.

### Exclusive Client Benefits-

Clients receive access to our website, email, and our toll-free number.

Clients, who refer us to others who then become clients, receive a 10% reduction in subsequent fees.

We also invite clients to several hospitality events during the summer.

## Performance-Based Fees and Side-By-Side Management

We do not accept any performance-based fees whatsoever nor do we manage clients' accounts. We offer advice and the development and monitoring of investment programs only.

### Types of Clients

Our clients include individuals, families and businesses.

### Methods of Analysis, Investment Strategies and Risk of Loss

We use fundamental analysis, portfolio and asset diversification and financial plan testing giving our clients the best chance to meet their goals. We prefer avoiding undue risk yet losses generally can and will occur in any investment program. At times these losses could be substantial. No investment is entirely without risk of loss.

### Disciplinary Information

Our record is clean.

### Code of Ethics, Participation or Interest in Client Transactions and Personal Trading

We wholeheartedly adhere to the strictest code of ethics and fiduciary standards. We have no participation or interest in our clients' transactions at all. If we have personal investments that may from time to time overlap those of our clients, as can happen, we say so.

## Brokerage Practices

Since we do not do transactions or directly manage clients' accounts, and we are not affiliated with any broker-dealers, we do not strictly speaking have any brokerage practices. Since our clients may not have a broker-dealer either, we may recommend an online broker for certain transactions without naming a specific company and for other transactions recommend the client use a more traditional broker-dealer. These recommendations are based upon what would be best for the client. We receive nothing from any broker-dealer of any kind.

## Review of Accounts

Clients whose investment programs we monitor may request an account review whenever they want one. We generally recommend annual reviews. We can only offer account reviews to those clients who have us monitoring their investment programs.

## Client Referrals and Other Compensation

We encourage our clients to refer us but from time to time we may refer our clients to other professionals, for example lawyers. We are never compensated for this in any way. We also do not participate in 'contests' nor do we accept gifts of any kind.

## Custody

All of our clients retain full custody. We are a non-custodial advisory.

## Investment Discretion

All of our clients retain full and complete control of their investments. We only advise and have no hand in our client's accounts.

## Voting Client Securities

Since we do not have custody of clients' securities, we cannot vote said securities.

## Requirements for State-Registered Advisers

We do not meet the threshold for providing financial information nor are we required to submit a balance sheet. The educational and business background of the advisor is detailed in the Advisory Business Description portion of this brochure.

## Privacy Policy

In order to do our best for our clients, we must collect certain personal and financial information, including the source of any income, all of this information is kept confidential. We will honor your privacy however, please be aware that we may be obligated to disclose information to duly appointed authorities as required by law.

**Katherine A. A. Zupan**

*financial counsel for the independent investor*

**PRIVACY POLICY**

In order to provide you with the best possible service, we collect all personal and financial information about you that we can. We understand that this information is extremely sensitive and must be safeguarded. To this end, we have taken the following steps to protect your information.

1. We must have written and notarized permission from you before we disclose any information to anyone other than yourself and the regulatory agencies who perform audits of this company, as we are required to do by law.
2. Your information is not stored on vulnerable computer systems.
3. The public does not have access to our office.
4. Information is only given to third party affiliates with your express written permission.
5. Information is handled, stored, and destroyed as permitted by law by the most secure methods possible.

Your information is not sold to any third parties. Our client list is not made available to anyone unless it is required by law.

## Retainer Agreement

THIS AGREEMENT entered in this \_\_\_\_\_  
day of \_\_\_\_\_, 200\_\_ by and between  
Katherine A. A. Zupan, whose office is located at 5353  
Box Turtle Court, Woodbridge, VA 22193-5800  
(hereinafter referred to as the "Advisor"), and \_\_\_\_\_  
\_\_\_\_\_ (hereinafter individually and/or  
jointly referred to as the 'Client').

WITNESS:

WHEREAS, the Advisor is in the business of providing  
financial services and investment advice; and  
WHEREAS, the Client desires the Advisor to provide  
financial services and investment advice, NOW,  
THEREFORE, in consideration of the premises and  
mutual promises contained in this Agreement, the  
parties agree as follows:

### 1. SERVICES OF THE ADVISOR

The Advisor shall provide the following service(s) to  
the Client (initial desired services):

- (a) Review the Client's present financial  
situation and issue a comprehensive  
financial plan. The work will include  
preparation of a written review, analysis,  
findings, and recommendations to the  
Client. Recommendations will include a  
statement of investment objectives.
- (b) Provide financial advice and consultation  
on an hourly basis as requested by the

Client in those areas not covered by other services being performed.

- (c) Provide Financial Plan Testing upon request of individual client for a separate fee.
- (d) Provide ongoing financial counsel and assistance to retained clients.

The Advisor will not initiate any investment action. The Advisor will not have custody or possession of the Client's funds or securities.

The Advisor will continue to be available *to* advise regarding implementation of the Client's financial plan for the next twelve months with respect to each of the services selected above. The advice and recommendations given by the Advisor to the Client will be based upon the professional judgment of the Advisor using their best efforts. The Advisor cannot, however, guarantee the results of their advice or recommendations. The Client acknowledges that he/she has sole authority to accept, reject, or implement any advice or recommendation from the Advisor.

## 2. RESPONSIBILITIES OF THE CLIENT

The Client agrees to provide information regarding income, investments, and other pertinent matters as requested by the Advisor from time to time. The Client also agrees to discuss needs, goals, and projected future needs candidly with the Advisor and to keep the Advisor informed of changes in the Client's situation,

needs, and goals. The Client acknowledges that the Advisor cannot adequately perform its services on the Client's behalf unless the Client performs such responsibilities on his/her part and that the Advisor's analysis and recommendations are based on the information provided by the Client.

Client further agrees to immediately provide Advisor copies of all monthly or annual statements provided by Third Parties that Advisor has no access to. This would include, but not be limited to: 401k; TSA; 403(b); Pension; Profit Sharing; and ESOP Statements.

The Client agrees to permit the Advisor to consult with and obtain information about the Client from the Client's accountant, attorney, and other advisors, as applicable. The Advisor shall not be required to verify any information obtained from the Client, Client's attorney, accountant, or other advisors and is expressly authorized to rely on such information.

### 3. CONFIDENTIALITY

All information, including the Advisor's investment advice, furnished by either party to the other, including their agents and employees, shall be treated as confidential and not disclosed to third parties except as agreed upon in writing or required by law.

### 4. BASIS OF ADVICE

The Client acknowledges that the Advisor obtains information from a wide variety of publicly available sources and that the Advisor has no sources, and does not claim to have sources, of inside or private information. The recommendations developed by the

Advisor are based upon the professional judgment of the Advisor.

## 5. IMPLEMENTATION

The Client is free to obtain legal, accounting, brokerage, and other services from any professional source to implement the recommendation of the Advisor. The Advisor shall cooperate with any attorney, accountant, or broker so chosen. The Client will retain absolute discretion over all investments and implementation of decisions.

## 6. REPRESENTATION FOR THE CLIENT

The Client understands that individuals employed by the Advisor are not also registered representatives or other financial professionals. These individuals may not discuss or disclose any information even if requested by the Client.

## 7. LEGAL AND ACCOUNTING SERVICES

It is understood and agreed that the Advisor and its employees will not render any legal or accounting advice nor prepare any legal or accounting documents. The Client agrees that his personal attorney and/or accountant shall be solely responsible for rendering and/or preparation of the following: (i) all legal and accounting advice, (ii) all legal and accounting opinions and determinations, and (iii) all legal and accounting documents.

## 8 DATA COLLECTIONS

The person or persons who perform the function of collecting confidential financial data for analysis from

the Client with Client's permission may not necessarily be the Advisor, but may be affiliated with the Advisor.

#### 9. FEES TO THE ADVISOR

In consideration of the services rendered by the Advisor, the Client shall pay to the Advisor the following fees:

|    |   |  |  |
|----|---|--|--|
| a. | For services described in Section 1 (a), an initial fee will be determined according to complexity of the case. This fee will be quoted prior to contract signature. This fee will be due and payable upon receipt of financial analysis by the Client.                   |  |  |
| b. | For services described in Section 1 (b), an hourly charge will be billed based upon the time spent performing such services. The Advisor's various hourly rates are shown on Exhibit A, which is attached to this Agreement. This fee is due at the time of consultation. |  |  |
| c. | For services described in Section 1 (c), a separate fee will be collected and paid to <a href="http://financeware.com">financeware.com</a> at the time of consultation.   |  |  |
| d. | For services described in Section 1 (d), a quarterly supervisory fee will be due prior to the commencement of each quarter.   |  |  |

#### 10. TERMINATION

The Client may terminate this Agreement at any time during the five business days following the date shown above without penalty or obligation. The Client may do so by giving written notice to the Advisor at the address shown above. Thereafter, either party may terminate this Agreement upon thirty days written notice to the other by certified or registered mail to the addresses shown above. No refunds will, however, be made after the first five business days.

Because of all the preliminary research and analysis having gone into the making of the original recommendation and allocation, client agrees that if they terminate this contract within the first 6 months, that Advisor is entitled to a fee equal to a minimum of 6 months of this contract, which is due at termination date.

Fees equivalent to the unused whole months of a retainer agreement will be refunded back to the client upon termination of a retainer agreement.

## 11. REQUIRED DISCLOSURES

The Advisor is an investment advisor registered with the Commonwealth of Virginia. The Advisor's services and fees are described on Part II of Form ADV which has been filed with the Securities and Exchange Commission and the Commonwealth of Virginia. The Client acknowledges receipt of Part II of Form ADV by signing this Agreement.

## 12. ARBITRATION

- a. Arbitration is final and binding on the parties.

- b. The parties are waiving their right to seek remedies in court, including the right to jury trial.
- c. Pre-arbitration discovery is generally more limited than and different from court proceedings.
- d. The arbitrator's award is not required to include factual findings or legal reasoning and any party's right to appeal or seek modification of rulings by the arbitrators is strictly limited.
- e. The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

It is understood that the following agreement to arbitrate does not constitute a waiver of the rights to seek a judicial forum to the extent that such a waiver would be void under applicable state law.

The Client and the Advisor each agree that, except as inconsistent with the preceding sentence, ALL CLAIMS OR CONTROVERSIES, and any related issues, which may arise at any time between us (including the Advisor's representatives, directors, officers, employees and agents) concerning any investment or planning advice or recommendation with respect to any subject matter; any transaction or order; the conduct of the Advisor or its representatives, directors, officers, employees, and agents; the construction, performance, or breach of this or any other agreement between us, whether entered into prior to, on, or subsequent to the date hereof; the breach of any common law or statutory duty; or the violation of

any federal or state securities law, the Racketeer Influenced and Corrupt Organization Act (RICO), or any other federal or state law of any nature SHALL BE RESOLVED BY ARBITRATION rather than by lawsuit in any court of law or equity.

Any arbitration pursuant to this agreement shall be in accordance with, and governed by, a mutually agreeable arbitration forum, but, in the absence of such agreement, then the Code of Arbitration Procedure of the National Association of Securities Dealer, Inc. (NASD), as then in effect, if the NASD accepts jurisdiction, and, if not, then the American Arbitration Association. The award of the arbitrators, or of the majority of them, shall be final and binding, and judgment upon the award rendered may be entered in any federal or state court having jurisdiction. Any arbitration must be commenced by delivery to the other party of a written demand for arbitration or a written notice of intention to arbitrate setting forth in detail the claim or controversy to be arbitrated.

### 13. MISCELLANEOUS

- a. Neither party to this Agreement may assign, convey, or otherwise transfer any of its rights, obligations, or interest in this Agreement without the prior express written consent of the other party.
- b. Subject to the provisions regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, legal representatives, successors, and assigns of the respective parties.
- c. This Agreement represents the complete agreement and understanding of the parties with

regard to the subject matter of this Agreement. This Agreement supersedes any prior understanding or agreements, oral or written.

- d. This Agreement may be amended or revised only in writing signed by the Client and by an officer of the Advisor.
- e. No provision of this Agreement or any breach thereof may be waived except in writing signed by both parties. No waiver of any breach in one instance shall be in any way construed to be a waiver of any future or subsequent breach unless expressly stated otherwise.
- f. Any provision of this Agreement which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating any other provision of this Agreement.
- g. The validity, construction, and interpretation of this Agreement, as well as the rights and duties of the parties, shall be governed by the laws of the Commonwealth of Virginia.
- h. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the Advisor and the Client each duly executed this Agreement on the day and year shown above.

|   |                           |
|---|---------------------------|
| _____<br>Katherine A. A. Zupan<br>_____<br>(date) | Clients<br>_____<br>_____ |
|---|---------------------------|

## **Service Agreement**

THIS AGREEMENT entered in this \_\_\_\_\_  
day of \_\_\_\_\_, 200\_\_ by and between  
Katherine A. A. Zupan, whose office is located at 5353  
Box Turtle Court, Woodbridge, VA 22193-5800  
(hereinafter referred to as the "Advisor"), and \_\_\_\_\_

\_\_\_\_\_ (hereinafter individually and/or  
jointly referred to as the 'Client').

WITNESS:

WHEREAS, the Advisor is in the business of providing financial services and investment advice; and WHEREAS, the Client desires the Advisor to provide financial services and investment advice, NOW, THEREFORE, in consideration of the premises and mutual promises contained in this Agreement, the parties agree as follows:

### **1. SERVICES OF THE ADVISOR**

The Advisor shall provide the following service(s) to the Client (initial desired services):

- (a) Review the Client's present financial situation and issue a comprehensive financial plan. The work will include preparation of a written review, analysis, findings, and recommendations to the Client. Recommendations will include a statement of investment objectives.
- (b) Provide financial advice and consultation on an hourly basis as requested by the

Client in those areas not covered by other services being performed.

- (c) Provide Financial Plan Testing upon request of individual client for a separate fee.

The Advisor will not initiate any investment action. The Advisor will NOT have custody or possession of the Client's funds or securities.

The Advisor will continue to be available *to* advise regarding implementation of the Client's financial plan for the next twelve months with respect to each of the services selected above. The advice and recommendations given by the Advisor to the Client will be based upon the professional judgment of the Advisor using their best efforts. The Advisor cannot, however, guarantee the results of their advice or recommendations. The Client acknowledges that he/she has sole authority to accept, reject, or implement any advice or recommendation from the Advisor.

## 2. RESPONSIBILITIES OF THE CLIENT

The Client agrees to provide information regarding income, investments, and other pertinent matters as requested by the Advisor from time to time. The Client also agrees to discuss needs and goals and projected future needs candidly with the Advisor and to keep the Advisor informed of changes in the Client's situation, needs, and goals. The Client acknowledges that the Advisor cannot adequately perform its services on the

Client's behalf unless the Client performs such responsibilities on his/her part and that the Advisor's analysis and recommendations are based on the information provided by the Client.

Client further agrees to immediately provide Advisor copies of all monthly or annual statements provided by Third Parties that Advisor has no access to. This would include, but not be limited to: 401k; TSA; 403(b); Pension; Profit Sharing; and ESOP Statements.

The Client agrees to permit the Advisor to consult with and obtain information about the Client from the Client's accountant, attorney, and other advisors, as applicable. The Advisor shall not be required to verify any information obtained from the Client, Client's attorney, accountant, or other advisors and is expressly authorized to rely on such information.

### 3. CONFIDENTIALITY

All information, including the Advisor's investment advice, furnished by either party to the other, including their agents and employees, shall be treated as confidential and not disclosed to third parties except as agreed upon in writing or required by law.

### 4. BASIS OF ADVICE

The Client acknowledges that the Advisor obtains information from a wide variety of publicly available sources and that the Advisor has no sources, and does not claim to have sources, of inside or private information. The recommendations developed by the Advisor are based upon the professional judgment of the Advisor.

## 5. IMPLEMENTATION

The Client is free to obtain legal, accounting, brokerage, and other services from any professional source to implement the recommendation of the Advisor. The Advisor shall cooperate with any attorney, accountant, or broker so chosen. The Client will retain absolute discretion over all investments and implementation of decisions.

## 6. REPRESENTATION FOR THE CLIENT

The Client understands that individuals employed by the Advisor are not also registered representatives or other financial professionals. These individuals may not discuss or disclose any information even if requested by the Client.

## 7. LEGAL AND ACCOUNTING SERVICES

It is understood and agreed that the Advisor and its employees will not render any legal or accounting advice nor prepare any legal or accounting documents. The Client agrees that his personal attorney and/or accountant shall be solely responsible for rendering and/or preparation of the following: (i) all legal and accounting advice, (ii) all legal and accounting opinions and determinations, and (iii) all legal and accounting documents.

## 8 DATA COLLECTIONS

The person or persons who perform the function of collecting confidential financial data for analysis from the Client with Client's permission may not necessarily be the Advisor, but may be affiliated with the Advisor.

## 9. FEES TO THE ADVISOR

In consideration of the services rendered by the Advisor, the Client shall pay to the Advisor the following fees:

|    |   |  |  |
|----|---|--|--|
| a. | For services described in Section 1 (a), an initial fee will be determined according to complexity of the case. This fee will be quoted prior to contract signature. This fee will be due and payable upon receipt of financial analysis by the Client.                   |  |  |
| b. | For services described in Section 1 (b), an hourly charge will be billed based upon the time spent performing such services. The Advisor's various hourly rates are shown on Exhibit A, which is attached to this Agreement. This fee is due at the time of consultation. |  |  |
| c. | For services described in Section 1 (c), a separate fee will be collected and paid to <a href="http://financeware.com">financeware.com</a> at the time of consultation.   |  |  |

## 10. TERMINATION

The Client may terminate this Agreement at any time during the five business days following the date shown above without penalty or obligation. The Client may do so by giving written notice to the Advisor at the address shown above. Thereafter, either party may terminate this Agreement upon thirty days written notice to the other by certified or registered mail to the addresses

shown above. No refunds will, however, be made after the first five business days.

Because of all the preliminary research and analysis having gone into the making of the original recommendation and allocation, client agrees that if they terminate this contract within the first 6 months, that Advisor is entitled to a fee equal to a minimum of 6 months of this contract, which is due at termination date.

## 11. REQUIRED DISCLOSURES

The Advisor is an investment advisor registered with the Commonwealth of Virginia. The Advisor's services and fees are described on Part II of Form ADV which has been filed with the Securities and Exchange Commission and the Commonwealth of Virginia. The Client acknowledges receipt of Part II of Form ADV by signing this Agreement.

## 12. ARBITRATION

- a. Arbitration is final and binding on the parties.
- b. The parties are waiving their right to seek remedies in court, including the right to jury trial.
- c. Pre-arbitration discovery is generally more limited than and different from court proceedings.
- d. The arbitrator's award is not required to include factual findings or legal reasoning and any party's right to appeal or seek modification of rulings by the arbitrators is strictly limited.

- e. The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

It is understood that the following agreement to arbitrate does not constitute a waiver of the rights to seek a judicial forum to the extent that such a waiver would be void under applicable state law.

The Client and the Advisor each agree that, except as inconsistent with the preceding sentence, ALL CLAIMS OR CONTROVERSIES, and any related issues, which may arise at any time between us (including the Advisor's representatives, directors, officers, employees and agents) concerning any investment or planning advice or recommendation with respect to any subject matter; any transaction or order; the conduct of the Advisor or its representatives, directors, officers, employees, and agents; the construction, performance, or breach of this or any other agreement between us, whether entered into prior to, on, or subsequent to the date hereof; the breach of any common law or statutory duty; or the violation of any federal or state securities law, the Racketeer Influenced and Corrupt Organization Act (RICO), or any other federal or state law of any nature SHALL BE RESOLVED BY ARBITRATION rather than by lawsuit in any court of law or equity.

Any arbitration pursuant to this agreement shall be in accordance with, and governed by, a mutually agreeable arbitration forum, but, in the absence of such agreement, then the Code of Arbitration Procedure of the National Association of Securities Dealer, Inc. (NASD), as then in effect, if the NASD accepts jurisdiction, and, if not, then the American Arbitration Association. The award of the arbitrators, or of the

majority of them, shall be final and binding, and judgment upon the award rendered may be entered in any federal or state court having jurisdiction. Any arbitration must be commenced by delivery to the other party of a written demand for arbitration or a written notice of intention to arbitrate setting forth in detail the claim or controversy to be arbitrated.

### 13. MISCELLANEOUS

- a. Neither party to this Agreement may assign, convey, or otherwise transfer any of its rights, obligations, or interest in this Agreement without the prior express written consent of the other party.
- b. Subject to the provisions regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, legal representatives, successors, and assigns of the respective parties.
- c. This Agreement represents the complete agreement and understanding of the parties with regard to the subject matter of this Agreement. This Agreement supersedes any prior understanding or agreements, oral or written.
- d. This Agreement may be amended or revised only in writing signed by the Client and by an officer of the Advisor.
- e. No provision of this Agreement or any breach thereof may be waived except in writing signed by both parties. No waiver of any breach in one instance shall be in any way construed to be a waiver of any future or subsequent breach unless expressly stated otherwise.

- f. Any provision of this Agreement which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating any other provision of this Agreement.
- g. The validity, construction, and interpretation of this Agreement, as well as the rights and duties of the parties, shall be governed by the laws of the Commonwealth of Virginia.
- h. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the Advisor and the Client each duly executed this Agreement on the day and year shown above.

\_\_\_\_\_  
Katherine A. A. Zupan  
\_\_\_\_\_(date)

Clients  
\_\_\_\_\_  
\_\_\_\_\_

**Katherine A. A. Zupan**  
**Client Brochure**

Katherine A. A. Zupan is an independent fee-only financial advisory of extreme trustworthiness and discretion providing financial counsel to private clients, their families, and to businesses on a retainer basis.

What does money mean to you?

What do you hope to achieve?

We offer comprehensive financial plan counseling and development to those who wish to retain control over their assets. Our purpose is to assist you in developing a coherent and effective plan, guide you in the management of your program, and help you meet your goals. It is all about you.

We also offer trusts and trust services, counseling on employee benefit packages, health insurance programs and life insurance counseling.

We recognize that people's lives are often entangled and that there are often many issues involved in financial affairs. We will work with your current brokers, accountants, lawyers, and insurance people or refer you to a suitable professional as appropriate.

Counseling is all we offer. The client retains full control over all assets. We neither buy nor sell. Monitoring can be arranged if desired. We are obligated only to you.

FEES-

## INDIVIDUALS

Private clients' financial plans begin at \$500 and increase from there depending upon complexity. Trusts begin at \$1700. Our hourly fee is set at \$150.00.

If we refer you to another professional, they will charge for their service themselves. We do not receive any remuneration for referrals.

## BUSINESSES

Companies wishing to retain our services as a benefit to their employees will be asked to pay \$100 per employee per quarter in advance. This fee represents a cost savings of \$200 per employee per year.

Companies wishing to consult us with regards to their offered benefit programs are invoiced an hourly fee of \$150.

## FINANCIAL PLAN TESTING

Offered using Financeware.com, the testing uses a suite of tools that simulates a client's financial goals over his or her life and uses those forecasts to calculate the likelihood that a financial strategy will be successful. This software uses three separate methods of calculating the probability that a client will meet his or her goals including:

A Historical Audit that evaluates client finances using historical market returns in the order in which they occurred.

A WealthSimulator® that compares financial data to randomly ordered historical data.

A Monte Carlo Simulator that uses statistical data about a client's assets to randomly generate thousands of lifetimes for comparative purposes.

Working with the client, his or her financial plan can be tested and refined to increase the probability of success. While this process does not guarantee success, it can help the client more fully understand his program by involving him or her in its development. This testing is offered as an option, mainly to those clients with more extensive or more complex programs. A separate fee will be charged for this service.

#### OFFICE HOURS-

Monday through Thursday from 9 to 3 and by appointment.

Clients are also given a toll-free number, which they may call at any time.

## **Katherine A. A. Zupan**

financial counsel for the independent investor

### **PRIVACY POLICY**

In order to provide you with the best possible service, we collect all personal and financial information about you that we can. We understand that this information is extremely sensitive and must be safeguarded. To this end we have taken the following steps to protect your information.

- We must have written and notarized permission from you before we disclose any information to anyone other than yourself and the regulatory agencies who perform audits of this company as we are required to do by law.
- Your information is not stored on vulnerable computer systems.
- The public does not have access to our office.
- Information is only given to third party affiliates with your express written permission.
- Information is handled, stored and destroyed as permitted by law by the most secure methods possible.

Your information is not sold to any third parties. Our client list is not made available to anyone unless it is required by law.

Employee Contract- sample

**Dewey C. Howe**

**Paraplanner**

**Job Description:**

Advise clients on financial plans utilizing knowledge of tax and investment strategies, securities, insurance, pension plans, and real estate. Duties include assessing clients' assets, liabilities, cash flow, insurance coverage, tax status, and financial objectives to establish investment strategies.

**Duties:**

1. Successful completion of the Paraplanner Professional Designation Program from the College for Financial Planning in its entirety within the 6 month probationary period.
2. Assist the advisor as directed.
3. Further duties as assigned.

**Compliance:**

Unlicensed persons are severely restricted in their dealings with clients. Adhering to these guidelines is mandatory. Until the training has been completed, you will be limited to taking messages, investigating financial products online, and seeking out possible investment opportunities as well as studying and directly assisting the advisor.

**Office hours:**

Monday through Friday from 9 am to 3 pm but no more than 20 hrs per week.

The office is closed all federal holidays  
Vacation is two weeks with advance notice.

## **Employment Agreement**

**THIS EMPLOYMENT AGREEMENT dated this  
17th day of April, 2006.**

### **BETWEEN:**

Katherine Zupan of 5353 Box Turtle Court,  
Woodbridge, VA, 22193  
(the "Employer")

**OF THE FIRST PART**

**- AND -**

Dewey C. Howe of 11916 Hunting Ridge  
Drive, Fredericksburg, VA, 22407  
(the "Employee")

**OF THE SECOND PART**

### **BACKGROUND:**

- A. The Employer is of the opinion that the Employee has the necessary qualifications, experience and abilities to assist and benefit the Employer in its business.
- B. The Employer desires to employ the Employee and the Employee has agreed to accept and enter such employment upon the terms and conditions set out in this Agreement.

**IN CONSIDERATION OF** the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the parties to this Agreement agree as follows:

**Commencement Date and Term**

1. The Employee will commence part-time employment with the Employer on April 17, 2006. (the 'Commencement Date').
2. The Employee must successfully complete a probationary period of six months ( the 'Probationary Period') from the Commencement Date. At any time during the Probationary Period, the Employer will have the right to terminate employment without any notice or compensation to the Employee other than wages owed for hours of work already completed.
3. Subject to the Probationary Period and subject to termination as provided in this Agreement, the term of this Agreement will be for a period of three years, commencing on the Commencement Date. At the expiration date of this Agreement, this Agreement will be considered renewed for regular periods of one year, provided neither party submits a notice of termination. The parties acknowledge that various provisions of this Agreement survive past termination of employment.

**Position and Duties**

4. The Employer agrees to employ the Employee as a Executive Secretary to Responsible for the day to day operations of the advisory office.,

and the Employee agrees to be employed on the terms and conditions set out in this Agreement. The Employee agrees to be subject to the general supervision of and act pursuant to the orders, advice and direction of the Employer.

5. The Employee will perform any and all duties now and later assigned to the Employee by the Employer. The Employee will also perform such other duties as are customarily performed by one holding such a position in other, same or similar businesses or enterprises as that engaged in by the Employer.
6. The Employee agrees to abide by the Employer's rules, regulations, and practices, including those concerning work schedules, vacation and sick leave, as they may from time to time be adopted or modified.

**Employee Compensation**

7. For the services rendered by the Employee as required by this Agreement, the Employer will pay to the Employee a salary of \$30,000.00 per year. This compensation will be payable every two weeks while this Agreement is in force. The Employer is entitled to deduct from the Employee's compensation any applicable deductions and remittances as required by law.
8. The Employee understands that the Employee's compensation as provided in this Agreement will constitute the full and exclusive monetary consideration and compensation for all services performed by the Employee and for the

performance of all the Employee's promises and obligations in this Agreement.

9. The Employee understands and agrees that any additional compensation to the Employee (whether a bonus or other form of additional compensation) will rest in the sole discretion of the Employer and that the Employee will not earn or accrue any right to additional compensation by reason of the Employee's employment.
10. The Employer will reimburse the Employee for all necessary expenses incurred by the Employee while traveling pursuant to the Employer's directions.
11. The Employer agrees to permit a reasonable degree of flexibility in work hours. In cases where extra time is worked in a day or a week, the employee waives any right to overtime pay or to equivalent time off in place of overtime pay.

**Employee Benefits**

12. The Employee will be entitled to only those additional benefits that are currently in place for the Employer's employees as set out in the Employer's booklets and manuals.
13. All benefits provided by the Employer are in the Employer's sole discretion and are subject to change, without compensation, upon the Employer providing the Employee with 60 days written notice of such change to the benefits.

14. The Employee will be entitled in each year to such vacations as are stipulated by the Employer's policies.

**Avoiding Conflict of Opportunities**

15. It is understood and agreed that any business opportunity relating to or similar to the Employer's current or anticipated business opportunities (with the exception of personal investments in less than 5% of the equity of a business, investments in established family businesses, real estate, or investments in stocks and bonds traded on public stock exchanges) coming to the attention of the Employee during the Employee's employment is an opportunity belonging to the Employer. Therefore, the Employee will advise the Employer of the opportunity and cannot pursue the opportunity, directly or indirectly, without the written consent of the Employer.
16. Without the written consent of the Employer, the Employee further agrees not to:
  - a. solely or jointly with others undertake or join any planning for or organization of any business activity competitive with the current or anticipated business activities of the Employer for a period three years; and
  - b. directly or indirectly, engage or participate in any other business activities that the Employer, in its reasonable discretion, determines to be in conflict with the best interests of the Employer for a period of three years.

### **Inability to Contract for Employer**

17. In spite of anything contained in this Agreement to the contrary, the Employee will not have the right to make any contracts or commitments for or on the behalf of the Employer without first obtaining the express written consent of the Employer.

### **Insurance**

18. The Employee is a valued and integral part of the Employer and the loss of his services to the Employer would cause a severe hardship and economic loss to the Employer. The Parties agree that the Employee will:
  - a. permit the Employer, at any time and from time to time, at its option, and at its cost, to insure his life under a policy or policies of life insurance issued by a life insurance company or companies selected by the Employer;
  - b. name the Employer as sole beneficiary in the insurance policy;
  - c. do any and all acts and things, and execute and deliver all or any instruments, paper and documents, which will be reasonably demanded by the Employer or the insurer for the purpose of applying for, obtaining, maintaining, canceling, converting, reinstating, or liquidating such insurance policy or policies, or collecting the proceeds from such insurance policy or policies including but not limited to, such as will be necessary to vest in the

Employer and any and all rights, powers, privileges, options or benefits to and under such insurance policies;

- d. submit to all necessary physical or other examinations required to effect such policies of insurance.

19. The Employer will use its best efforts when dealing with potential insurers to require such insurers to treat all information provided to it by the Employee as confidential.

**Confidential Information and Assignment of Inventions**

20. The Employee acknowledges in any position the Employee may hold, in and as a result of the Employee's employment by the Employer, the Employee will, or may, be making use of, acquiring or adding to information about certain matters and things which are confidential to the Employer and which information is the exclusive property of the Employer, including, without limitation:
  - a. 'Confidential Information' means all data and information relating to the business and management of Employer, including proprietary and trade secret technology and accounting records to which access is obtained by the Employee, including Work Product, Computer Software, Other Proprietary Data, Business Operations, Marketing and Development Operations, and Customers. Confidential Information will also include any

information that has been disclosed by a third party to the Employer and governed by a non-disclosure agreement entered into between the third party and the Employer. Confidential Information will not include information that:

- i. is generally known in the industry of the Employer;
  - ii. is now or subsequently becomes generally available to the public through no wrongful act of the Employee;
  - iii. the Employee rightfully had in its possession prior to the disclosure to Employee by the Employer;
  - iv. is independently created by the Employee without direct or indirect use of the Confidential Information; or
  - v. the Employee rightfully obtains from a third party who has the right to transfer or disclose it.
- b. 'Work Product' means work product resulting from or related to work or projects performed or to be performed for the Employer or for clients of the Employer, of any type or form in any stage of actual or anticipated research and development;
- c. 'Computer Software' which means computer software resulting from or related to work or projects performed or to be performed for the Employer or for clients of the Employer, of any type or form in any stage of actual or anticipated research and development, including but

not limited to programs and program modules, routines and subroutines, processes, algorithms, design concepts, design specifications (design notes, annotations, documentation, flowcharts, coding sheets, and the like), source code, object code and load modules, programming, program patches and system designs;

- d. 'Other Proprietary Data' means information relating to the Employer's proprietary rights prior to any public disclosure of such information, including but not limited to the nature of the proprietary rights, production data, technical and engineering data, test data and test results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights and trade secrets);
- e. 'Business Operations' means internal personnel and financial information, vendor names and other vendor information (including vendor characteristics, services and agreements), purchasing and internal cost information, internal services and operational manuals, and the manner and methods of conducting the Employer's business;
- f. 'Marketing and Development Operations' means marketing and development plans, price and cost data, price and fee amounts, pricing and billing policies,

quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of the Employer which have been or are being discussed; and

- g. 'Customers' means names of customers and their representatives, contracts and their contents and parties, customer services, data provided by customers and the type, quantity and specifications of products and services purchased, leased, licensed or received by clients of the Employer.

### **Confidential Obligations**

- 21. The Employee agrees that a material term of the Employee's contract with the Employer is to keep all Confidential Information absolutely confidential and protect its release from the public. The Employee agrees not to divulge, reveal, report or use, for any purpose, any of the Confidential Information which the Employee has obtained or which was disclosed to the Employee by the Employer as a result of the Employee's employment by the Employer. The Employee agrees that if there is any question as to such disclosure then the Employee will seek out senior management of the Employer prior to making any disclosure of the Employer's information that may be covered by this Agreement.

22. The obligations to ensure and protect the confidentiality of the Confidential Information imposed on the Employee in this Agreement and any obligations to provide notice under this Agreement will survive the expiration or termination, as the case may be, of this Agreement.
23. The Employee may disclose any of the Confidential Information:
  - a. to a third party where Employer has consented in writing to such disclosure; and
  - b. to the extent required by law or by the request or requirement of any judicial, legislative, administrative or other governmental body, however, the Employee will first have given prompt notice to the Employer of any possible or prospective order (or proceeding pursuant to which any order may result), and the Employer will have been afforded a reasonable opportunity to prevent or limit any disclosure.

### **Ownership and Title**

24. The Employee acknowledges and agrees that all rights, title and interest in any Confidential Information will remain the exclusive property of the Employer. Accordingly, the Employee specifically agrees and acknowledges that he will have no interest in the Confidential Information, including, without limitation, no interest in know-how, copyright, trade-marks or

trade names, notwithstanding the fact that he may have created or contributed to the creation of the same.

25. The Employee does hereby waive any moral rights that he may have with respect to the Confidential Information.
  
26. This Agreement will not apply in respect of any intellectual property, process, design, development, creation, research, invention, know-how, trade names, trade-marks or copyrights for which:
  - a. no equipment, supplies, facility or Confidential Information of the Employer was used,
  - b. was developed entirely on the Employee's own time, and
  - c. does not:
    - i. relate to the business of the Employer,
    - ii. relate to the Employee's actual or demonstrably anticipated processes, research or development or
    - iii. result from any work performed by the Employee for the Employer.
  
27. The Employee agrees to immediately disclose to the Employer all Confidential Information developed in whole or in part by the Employee during the term of the Employee's employment with the Employer and to assign to the

Employer any right, title or interest the Employee may have in the Confidential Information. The Employee agrees to execute any instruments and to do all other things reasonably requested by the Employer (both during and after the Employee's employment with the Employer) in order to vest more fully in the Employer all ownership rights in those items transferred by the Employee to the Employer.

### **Return of Confidential Information**

28. The Employee agrees that, upon request of the Employer or upon termination or expiration, as the case may be, of employment, the Employee will turn over to the Employer all documents, disks or other computer media, or other material in the possession or control of the Employee that:
  - a. may contain or be derived from ideas, concepts, creations, or trade secrets and other proprietary and Confidential Information as defined in this Agreement; or
  - b. connected with or derived from the Employee's services to the Employer.

### **Termination Due to Discontinuance of Business**

29. In spite of anything contained in this Agreement to the contrary, in the event that the Employer will discontinue operating its business at the location where the Employee is employed, then, at the Employer's sole option, this Agreement

will terminate as of the last day of the month in which the Employer ceases operations at such location with the same force and effect as if such last day of the month were originally set as the termination date of this Agreement.

**Termination of Employment**

30. Where the Employee has breached any of the terms of this Agreement or where there is just cause for termination, the Employer may terminate the Employee's employment without notice.
31. The Employee and the Employer agree that reasonable and sufficient notice of termination of employment by the Employer is the greater of two weeks and any notice required under any relevant employment legislation.
32. If the Employee wishes to terminate his employment with the Employer, the Employee will provide the Employer with two weeks' notice. As an alternative, if the Employee cooperates with the training and development of a replacement, then sufficient notice is given if it is sufficient notice to allow the Employer to find and train the replacement.
33. Should the Employee terminate his employment pursuant to this Agreement, and there is no constructive dismissal, the Employee agrees to be reasonably available as a consultant for the purposes of maintaining any projects or developments created while employed by the Employer. The Employee agrees to negotiate the terms of the consulting work in good faith.

In his capacity as a consultant for the Employer pursuant to this paragraph, the Employee agrees to provide his present residential address and telephone number as well as his business address and telephone number.

34. The time specified in the notice by either the Employee or the Employer may expire on any day of the month and upon the date of termination the Employer will forthwith pay to the Employee any outstanding portion of the wage, accrued vacation and banked time, if any, calculated to the date of termination. Notwithstanding the date of termination, the Employee acknowledges and agrees to diligently execute and complete his employment responsibilities to the Employer at the reasonable direction of the Employer. Failure of the Employee to responsibly execute his obligations to the Employer during the notice period will be considered to be an abandonment of his obligations and will be sufficient cause for immediate termination of the Employee without compensation or notice.

**Remedies**

35. The Employee agrees and acknowledges that the Confidential Information is of a proprietary and confidential nature and that any disclosure of the Confidential Information to a third party in breach of this Agreement cannot be reasonably or adequately compensated for in money damages, would cause irreparable injury to Employer, would gravely affect the effective and successful conduct of the Employer's

business and goodwill, and would be a material breach of this Agreement.

36. In the event of a breach or threatened breach by the Employee of any of the provisions of this Agreement, the Employee agrees that the Employer is entitled to, in addition to and not in limitation of any other rights and remedies available to the Employer at law or in equity, to a permanent injunction in order to prevent or restrain any such breach by the Employee or by the Employee's partners, agents, representatives, servants, employees, and/or any and all persons directly or indirectly acting for or with the Employee.
37. The Employee agrees to co-operate with the Employer following termination by providing documentation and other information to permit the Employer to evaluate whether the Employee is honoring his post-employment obligations set out in this Agreement.

**Severability**

38. Employer and Employee acknowledge that this Agreement is reasonable, valid and enforceable. However, if a court of competent jurisdiction finds any of the provisions of this Agreement to be too broad to be enforceable, it is the parties' intent that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable, bearing in mind that it is the Employee's intention to give the Employer the broadest possible protection against disclosure of the Confidential Information.

39. In the event that any of the provisions of this Agreement will be held to be invalid or unenforceable in whole or in part, those provisions to the extent enforceable and all other provisions will nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included in this Agreement and the remaining provisions had been executed by both parties subsequent to the expungement of the invalid provision.

**Notices**

40. If Employee loses or makes unauthorized disclosure of any of the Confidential Information, the Employee will immediately notify the Employer and take all reasonable steps necessary to retrieve the lost or improperly disclosed Confidential Information.
41. All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing and either served personally or sent by facsimile or e-mail. The address for any notice to be delivered to any of the parties to this Agreement is as follows:
- a. Katherine Zupan: 5353 Box Turtle Court, Woodbridge, VA, 22193  
Fax #: 703-730-1787  
Email: info@zupan.us
  - b. William deWindt: 110 Thomas Circle, Farmville, VA 23901  
Fax #: 434-223-6379  
Email: wdewindt@hsc.edu

or to such other address as to which any Party may from time to time notify the other.

### **Modification of Agreement**

42. Any amendment or modification of this Agreement or additional obligation assumed by either party in connection with this Agreement will only be binding if evidenced in writing signed by each party or an authorized representative of each party.

### **Governing Law**

43. It is the intention of the parties to this Agreement that this Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the Commonwealth of Virginia, without regard to the jurisdiction in which any action or special proceeding may be instituted.

### **General Provisions**

44. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.
45. The Employee is liable for all costs, expenses and expenditures including, and without limitation, the complete legal costs incurred by the Employer in enforcing this Agreement as a

result of any default of this Agreement by the Employee.

46. No failure or delay by the Employer in exercising any power, right or privilege provided in this Agreement will operate as a waiver, nor will any single or partial exercise of such rights, powers or privileges preclude any further exercise of them or the exercise of any other right, power or privilege provided in this Agreement.
47. This Agreement will inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns, as the case may be, of the Employer and the Employee.
48. This Agreement may be executed in counterparts.
49. Time is of the essence in this Agreement.
50. If there is a previous employment agreement between the parties to this Agreement, the parties agree that this Agreement will replace that previous employment agreement and the Employee acknowledges that this Agreement was entered into in consideration of a compensation increase commencing the start of this Agreement. The Employee acknowledges that it was agreed at that time that a new employment agreement would be entered into in consideration of the compensation increase.
51. This Agreement constitutes the entire agreement between the parties and there are no further

items or provisions, either oral or written. As of the effective date of this Agreement, this Agreement supersedes all other agreements between the parties. The parties to this Agreement stipulate that neither of them has made any representations with respect to the subject matter of this Agreement except such representations as are specifically set forth in this Agreement. Each of the parties acknowledges that it has relied on its own judgment in entering into this Agreement.

**IN WITNESS WHEREOF** Katherine Zupan and Dewey C. Howe have duly affixed their signatures under hand and seal on this 17th day of April, 2006.

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Katherine Zupan

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Dewey C. Howe

